The Owensboro Metropolitan Planning Commission met in regular session at 6:00 p.m. on Thursday, May 12, 2005, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  Drew Kirkland, Chairman
Gary Noffsinger
Nick Cambron
Dave Appleby
Jimmy Gilles
Scott Jagoe
Irvin Rogers
Sister Vivian Bowles
Judy Dixon
Dr. Bothwell
Martin Hayden
Stewart Elliott,
Attorney

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CHAIRMAN:  I would like to welcome everybody to the May 12, 2005, Planning Commission. Please stand. Our invocation will be given by Mark Bothwell.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  First item of business is consider the minutes of the April 14th meeting. Are there any additions, corrections, questions?

(NO RESPONSE)
CHAIRMAN: If not, the Chair is ready for a motion.

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

SISTER VIVIAN: Second.

CHAIRMAN: Second by Sister Vivian. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously. Next item, please.

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PUBLIC FACILITIES PLANS
REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

ITEM 2

2801-2901 Blocks Bittel Road
Land Acquisition and Facilities Construction
Consider request for the acquisition of property and the construction of a soccer field with parking.
Referred by: Owensboro Public Schools

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this application. We find no conflict with the Comprehensive Plan. We have been in communication with the Owensboro Public School superintendent and their attorney, Mr. Wilson, is here tonight about the extension of Thompson Drive through this property. At this time the public schools are

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making no plans for that extension; however, the soccer complex that's being proposed would not preclude a street from being extended at some point in time in the future. What would likely happen there, instead of Thompson Drive extending straight on out to Bittel Road, it's likely that Thompson Drive could cross the ditch and then turn to the west over toward the Good Shepherd Church property.

However, the applicant nor their attorney can commit future boards to that happening, but they have indicated at least from their standpoint willingness to work with that in the future. With that it's ready for consideration.

CHAIRMAN: Does anybody have any questions or comment of the applicant?

(NO RESPONSE)

CHAIRMAN: If there are none, the Chair is ready for a motion.

MR. CAMBRON: Motion for approval, Mr. Chairman.

CHAIRMAN: Motion for approval by Mr. Cambrion.

DR. BOTHWELL: Second.

CHAIRMAN: Second by Dr. Bothwell. All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 3

2002, 2014, 2016, 2026, 2038 Frederica Street
310, 314, 316 Ford Avenue

Land Disposition, Land Acquisition and Building
Construction

Consider request by the Owensboro Public School to
dispose of property and request by Daviess County
Public Library to acquire property and construct new
library facility.

Referred by: Owensboro Public Schools
Daviess County Public Library District

MR. NOFFSINGER: Mr. Chairman, Planning

Staff has reviewed this application. We find no

conflict with the Comprehensive Plan.

CHAIRMAN: Are there any comments or

questions?

(NO RESPONSE)

CHAIRMAN: If not, the Chair is ready for

a motion.

SISTER VIVIAN: Move to approve.

CHAIRMAN: Motion for approval by Sister

Vivian.

MR. CAMBRON: Second.

CHAIRMAN: Second by Mr. Cambron. All in

favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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CHAIRMAN: Motion carries unanimously.
Next item, please.

ITEM 4

450 Griffith Avenue, 1624 Alderson Court
Land Disposition, Land Acquisition
Consider request by Daviess County Public Library
District to dispose of property and request by
Owensboro Public School System to acquire property.
Referred by: Owensboro Public Schools
Daviess County Public Library District

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this application. Find no conflict
with the adopted comprehensive plan.

CHAIRMAN: Are there any questions?
(NO RESPONSE)

CHAIRMAN: If there are no questions,
Chair is ready for a motion.

MR. ROGERS: Motion for approval.

CHAIRMAN: Motion for approval by Mr.
Rogers.

MR. HAYDEN: Second.

CHAIRMAN: Second by Mr. Hayden. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

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ZONING CHANGE - CITY
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ITEM 5

3830 Broadleaf Court
Consider zoning change: From R-3MF Multi-Family Residential to R-1C Single-Family Residential
Applicant: James Estel & Betty J. Hagman

MR. ELLIOTT: State your name for the record, please.

MR. HOWARD: Brian Howard.

(MR. BRIAN HOWARD SWORN BY ATTORNEY.)

PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal is in compliance with the community's adopted Comprehensive Plan. The findings of fact that support this recommendation include the following:

Findings of Fact:

1. The subject property is located in an Urban Residential Plan Area, where urban low-density residential uses are appropriate in limited locations;

2. The dwelling unit located on the subject property was constructed, and has always been used for single-family residential activities;

3. The existing R-3MF Multi-Family Residential zoning classification is inappropriate and the proposed R-1C Single-Family Residential zoning classification is appropriate; and,

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4. Sanitary sewers are available to the site.

MR. HOWARD: We would like to enter the Staff Report as Exhibit A.

CHAIRMAN: Are there any questions?

(NO RESPONSE)

CHAIRMAN: Does the applicant have anything they would like to say?

(NO RESPONSE)

CHAIRMAN: If not, the Chair is ready for a motion.

DR. BOTHWELL: Motion for approval, Mr. Chairman, based on Findings of Fact 1 through 4.

CHAIRMAN: Motion for approval by Dr. Bothwell.

MS. DIXON: Second.

CHAIRMAN: Second by Ms. Dixon. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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ZONING CHANGES - COUNTY

ITEM 6

4527 KY 54

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Consider zoning change: From B-4 General Business with conditions to B-4 General Business

Applicant: Shamrock Land, LLC

PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal is in compliance with the community's adopted Comprehensive Plan. The conditions and findings of fact that support this recommendation include the following:

Conditions:

1. Access to the subject property shall be limited to the proposed full access on Thruston-Dermont Road and the right-turn in only on KY 54;

2. Interconnection via a public access easement should be provided to the adjoining property to the east which could provide a future full access for the subject property to KY 54 at which time the right-turn in only access currently proposed on KY 54 shall be eliminated;

3. Interconnection via a public access easement should be provided to the adjoining property to the north that is currently residentially zoned; and,

4. Install a 10' landscaping easement

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along the north and east boundaries of the property
with one tree every 40 linear feet with continuous six
foot high planting, hedge, fence, wall or earth mount.

Findings of Fact:

1. The subject property is located in a
Business Plan Area, where general business uses are
appropriate in limited locations;

2. The subject property is currently
zoned B-4 General Business with an access condition
that will be replaced with this rezoning; and,

3. The applicant's proposal should not
significantly increase the extent of B-4 General
Business zone within the area and should not
overburden the capacity of roadways and other
necessary urban services that are available in the
affected area.

MR. HOWARD: We would like to enter the
Staff Report as Exhibit B.

CHAIRMAN: Is there anybody here
representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Anybody have any questions of
the applicant?

(NO RESPONSE)

CHAIRMAN: If there are no questions, the
Chair is ready for a motion.

MR. CAMBRON: Mr. Chairman, motion for approval based on Conditions 1 through 4 and Findings of Fact 1 through 3.

CHAIRMAN: Motion for approval by Mr. Cambron.

MR. HAYDEN: Second.

CHAIRMAN: Second by Mr. Hayden. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

6A RELATED ITEM:

4527 KY 54, 2.011 acres
Consider approval of final development plan.
Applicant: Shamrock Land, LLC

MR. NOFFSINGER: Mr. Chairman, the Planning Staff and the Engineering Staff have reviewed this application. The application is found to be in order. Found to be consistent with the adopted Comprehensive Plan and the adopted Zoning Ordinance and is ready for your consideration.

CHAIRMAN: Does anybody have any questions?

(NO RESPONSE)

CHAIRMAN: If not, the Chair is ready for
MR. HAYDEN: I make a motion for approval.

CHAIRMAN: Motion for approval by Mr. Hayden.

SISTER VIVIAN: Second.

CHAIRMAN: Second by Sister Vivian. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

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MAJOR SUBDIVISIONS

ITEM 7

Hialeah at the Down, Unit 3, 6.063 acres
Consider approval of major subdivision final plat.
Surety (Letter of Credit) posted: $26,647.60
Applicant: Thompson Homes, Inc.

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this application and Engineering Staff. It's found to be consistent with the adopted Comprehensive Plan and the approved preliminary plat that's on file in the office.

CHAIRMAN: Is anybody here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody have any questions
of the applicant?

(NO RESPONSE)

CHAIRMAN: If not, the Chair is ready for a motion.

MR. ROGERS: Motion for approval, Mr. Rogers.

CHAIRMAN: Motion for approval by Mr. Rogers.

SISTER VIVIAN: Second.

CHAIRMAN: Second by Sister Vivian. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 8

Highlands of Heartland, Phase 2, 8.370 acres
Consider approval of major subdivision final plat.
Surety (Certificate of Deposit) posted: $25,628.40
Applicant: Jagoe Homes & Construction Co, LLC

MR. NOFFSINGER: Mr. Chairman, this plat has been reviewed by the Planning Staff and Engineering Staff. It's found to be consistent with the adopted Comprehensive Plan, as well as in compliance with the soon to be approved development plan.

There has been a minor amendment proposed
to it regarding a ditch or a drainage way that was
being required, I think, a change by the Division of
Water. That development plan is in the office and
will be approved shortly. So with that we recommend
approval conditioned upon the approval of an amended
development plan.

MR. JAGOE: Mr. Chairman, I need to
disqualification myself.

CHAIRMAN: Let the record note that Mr.
Jagoe will be disqualified on this item.

MR. CAMBRON: Mr. Chairman, motion for
approval.

CHAIRMAN: Motion for approval by Mr.
Cambron.

MR. APPLEBY: Second.

CHAIRMAN: Second by Mr. Appleby. All in
favor raise your right hand.

(ALL BOARD MEMBERS PRESENT - WITH THE
DISQUALIFICATION OF SCOTT JAGOE - RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 9

Shadewood Village, 5.084 acres
Consider approval of major subdivision final plat.
Surety (Letter of Credit, Certified Check) posted:
$26,572.00
Applicant: Image Builders

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MR. NOFFSINGER: Mr. Chairman, Planning Staff and Engineering Staff have reviewed this application. It has been brought to the attention of the Planning Staff as well as Planning Commission attorney, Mr. Stewart Elliott. The adjoining property owner may have a binding contract on a portion of this property and there is some dispute over that.

I would like to say that the plat is in order. I can say that the plat is consistent with the approved development plan that's on file; however, with this issue being brought to our attention, I'd recommend that we hear from the applicant. I think the adjoining property owner is here tonight as well as our attorney, Mr. Stewart Elliott.

CHAIRMAN: Would the applicant step forward, please.

MR. ELLIOTT: State your name, please.

MR. BRANCATO: My name is Frank Brancato.

(MR. FRANK BRANCATO SWORN BY ATTORNEY.)

MR. BRANCATO: I'm not sure what the objection is. It's a little difficult to respond to something until you're made aware of it.

This is a plat that's previously been approved. The property is now owned by a different organization who has filed to modify it because they...
can get more lots in the same area. So it's a change essentially of density. What I've been advised of by the Staff is that a neighbor has claimed to have an interest in the property. I have provided Mr. Elliott with some information. There is no contract in which he's a party. I've checked the title. He's not in the chain of title. So I would like to hear under oath what his claim is so that we can really assess it.

CHAIRMAN: Thank you.

Is the adjoining property owner here? Would you step forward to the mike, please.

MR. ELLIOTT: State your name, please.

MR. SMITH: Mark Smith.

(MR. MARK SMITH SWORN BY ATTORNEY.)

MR. SMITH: On April 17, 2003, I received a letter from the Planning & Zoning office stating request for the said property to be rezoned to R-1B Single-Family residence, which has occurred.

May 26, 2004, I received a letter and original plat from the former owner which was H.W. Woodhouse, Jr. after the sale of the property to Image Builders advising that I was receiving a gift of 20 feet in width of the west side of then lot 28 and...
brief instructions how to proceed in adding it to my existing property.

Starting in June of 2004, I started contacting Brian Howard here in City Hall once a month to see if the final plat had been filed with the city's Planning & Zoning office.

In mid 2004, I contacted Mr. Estes about a final plat of the property. That it was to be given to me as outlined earlier. That conversation deteriorated and ended. It went nowhere.

In mid March of 2005, I met with Don Bryant Engineering. His plat did not show the 20 foot section given to me. I was advised that he was unaware of information contained in the sales contract and the survey to the present property line. He advised later that Image Builders did not recognize any such agreement. I then contacted Mr. Woodhouse. He authorized someone from South Central Bank to provide me a copy of the sales contract, which I then obtained.

A proposal by Bryant Engineering dated April 20, 2005, estimates the cost for me to revise and submit an amended combination preliminary plat and final development plan for Shadewood Village Subdivision would be $1800. This appeared to be
redesign of a plat that was drawn up incorrectly from the beginning with the intent of ignoring the terms of the sales contract.

Talked with personnel at Simmons Surveying and Cecil Surveying both. They advised this could have been handled in a financially cheaper manner if Bryant Engineering had been made aware of the sales contract stipulations and move back 20 feet off the existing line to start survey and design.

April 25, 2005, I called Randy Hayden to see where we stood on the above proposal. I left him a voice message. I later received a call from Mr. Estes. In a taped conversations by me, he advised that I needed to sign the proposal to obtain the property in question. When I asked him why he felt that I was responsible for the redesign an improperly prepared plat, he stated he did not know that I wanted the property.

He called back six minutes later and, again, the conversation deteriorated.

On April 28th, I received a letter from an attorney representing his interest advising me I had ten days to either sign the contract with the surveying company and pay to have those three lots redesigned or to accept it as is and move personal
property off of their property.

So I'm asking to pay for my fair share which I was aware of that from the very beginning. It was a gift from a very nice gentleman. That gift has become costly because no one contacted me from the very beginning to see what my interest or intentions were. Whether I was interested or uninterested. I feel responsible for a portion of it related to me, but not the redesign of something that I was never involved with to begin with.

CHAIRMAN: Thank you.

Does anybody have any questions of either applicant?

MR. CAMBRON: Did you have a recorded contract of some type did you say?

MR. SMITH: I only have a copy of the sales agreement, the original sales agreement.

MR. CAMBRON: You have that?

MR. SMITH: Yes, sir.

MR. CAMBRON: Do you have it with you?

MR. SMITH: Yes, sir.

MR. APPLEBY: Stewart, is this an issue - we shouldn't even be deliberating on this.

MR. ELLIOTT: No. Whether or not it's enforceable we shouldn't be dealing with that.
CHAIRMAN: Stewart, are we at the point here where we ought to just postpone?

MR. ELLIOTT: Until they can work it out, yes.

CHAIRMAN: Mr. Brancato, do you have a comment?

MR. BRANCATO: Yes.

Well, first of all, I didn't hear anything that said he had an ownership interest in the property.

Secondly, I don't believe he produced a document to show that he did.

Thirdly, if it's this commission's decision to postpone it, then I'm asking you what do we need to do? You're asking me to prove a negative. Prove that he doesn't have an interest. I think the burden is on him. Prove that he does have an interest. Whether he proves it to you or proves it to somebody else. I can come here every meeting you have and say, I think I might have an interest in property, if that's all it takes to stop a plat like this.

CHAIRMAN: Mr. Elliott, have you seen the said contract?

MR. ELLIOTT: I got faxed a copy of the

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contract, but it's not -- I don't think it's my
responsibility or my duty is to determine whether or
not that contract is enforceable. I think they need
to do that before they bring the issue to us. It's
not our responsibility to be the determination of
legal issues. That's what we're being asked to do
here.

CHAIRMAN: Mr. Brancato, based on --

MR. BRANCATO: This gentleman is not a
party to any contract. In fact, he said a former
owner promised to give him something, but he's not any
party to a written contract.

CHAIRMAN: Mr. Brancato, if our attorney
feels that there is an issue that should be settled
before we rule, then it would be very precarious for
this board to make a ruling. I mean you see our
situation. I mean we'll go ahead and make a ruling on
anything that's put before us, but in this situation
where there's a questionable issue, I think it's very
difficult for this board to move forward.

MR. BRANCATO: I guess my dilemma here is,
again, I'm being asked to prove a negative. Prove
that he doesn't have an interest instead of we have a
third party essentially an interloper for saying I do
have an interest. You're taking that with all
CHAIRMAN: Let me ask Mr. Elliott a question here.

Could we possibly either approve or disapprove this issue based on a condition of fact, the outcome of a solution of the total and proper ownership or would you recommend against it?

MR. ELLIOTT: I wouldn't recommend it. I think they should get their problem resolved. It seems to me it's a problem of who is going to pay for engineering cost. It seems like they ought to be able to resolve that.

Isn't that the issue?

MR. BRANCATO: That essentially is part of the issue. The point is whether his claim, if it is a valid claim, still could be satisfied after this commission makes a ruling on the plat. All we're asking this commission to do is is this plat as presented in order with the Planning & Zoning regulations. I believe it is. There's no question he's not an owner of this property. I don't think he would stand up under oath and say, I own any piece of this property that's under consideration by this commission. So his signature is not required for this decision tonight.
Now, if he has a cause of action or he believes he has an equitable interest in the property, he can still pursue that and nothing this commission does tonight impairs that ability in the future. What I'm saying is if somebody can simply stand up and say without documentation, without being in the chain of title, I think I have an interest in something, I can think of a way that we can stop every application coming before this commission.

CHAIRMAN: Mr. Brancato, with the commission we have to take counsel on this issue because I am not qualified to make that type of judgment. The only thing is that a commissioner that I have at my disposal is to check with our counsel and take his advice. I mean this issue will come before us and I'll accept a recommendation and then we will go accordingly.

MR. BRANCATO: Help me understand. If you run title on the property, and I think this gentleman has to admit he's not in the chain of title, what information will I need to present to this commission to double verify and over qualify the fact that my client is the record title holder and that there are no other title holders that need to be a part of the application?
DR. BOTHWELL: My question is, it's not a question of title. It's the question of if you're going to have to redesign these lots. Then we get in the middle of approving as said, that you have to redesign because if he does have a claim we could get into a mess and have to come back. We've been through this before and it wasn't a good thing.

MR. APPLEBY: My question is: Assuming that he turns out to be right and he sues and proves that he has 20 feet coming, at that point are you going to have to deed him 20 feet off of three of these lots or one of these lots?

MR. BRANCATO: It would be off of one or two of the lots.

MR. APPLEBY: At this point it's not an issue of whether or not they own the property or whether or not this plat is in order. It seems to me that all we're here to deliberate is whether or not this plat is in order. If through the court system they determine that he owns this property, the burden will be upon them to bring this back and amended it, won't it?

MR. BRANCATO: That's exactly right.

MR. CAMBRON: Can I ask a question real quick, Dave.
Are we talking about lot 20, and 19, and 18 or are we just talking about lot 20, 19? Which one are we talking about, Mr. Brancato?

MR. BRANCATO: It's just two lots. I don't have the map in front of me.

MR. APPLEBY: It don't think it really make any difference.

MR. CAMBRON: I'm just curious. I just wanted to know.

DR. BOTHWELL: I guess my biggest concern here is that I'm not an attorney. We have an attorney. His legal recommendation is we postpone and do nothing until legally he's satisfied with the standing of where this proposal is. I have to defer to him. That's my feeling.

MR. CAMBRON: The plat is correct, is it not, Mr. Noffsinger? Is this development plan correct?

MR. NOFFSINGER: Yes, sir. The plat is consistent with the approved development.

MS. DIXON: But not necessarily in order, correct?

MR. CAMBRON: But my thing is that I have to take issue because anybody can come up and make an issue whether or not they own it.
MR. ELLIOTT: I understand that. We have to acknowledge that issue. You can't just ignore it.

MR. CAMBRON: We have acknowledged it. We haven't ignored it.

MR. BRANCATO: If it's not in order, then tell me what's not in order in the application.

MR. CAMBRON: I see what you're saying. I understand what he's saying too. We have to acknowledge it. We've done that. This is something that I see that can be resolved later on down the road. This is something that you're talking about 20 foot on the back of that lot, on the back of two lots. Nothing probably would be built there until this was issue, until this was taken of. Nobody is going to build on the back of the lot.

CHAIRMAN: Let's answer his question.

Mr. Brancato, you do not content that he does own the 20 feet?

MR. BRANCATO: He does not own the 20 feet. I think he would admit to you that he does not own it. What the agreement says that he is not a party to, is that the owner will give him 20 feet if he pays for the engineering of it. He hasn't done that in the last year. He was sent notice he needed to do it before this was done for the very reason that
Ms. Dixon pointed out. We didn't want to come here twice, but coming here twice is not an impediment to his right.

CHAIRMAN: Let me ask Mr. Elliott a question.

Mr. Elliott, what should Mr. Brancato do or what would you want him to do to clear up your concern on the issue?

MR. ELLIOTT: It's my understanding in talking with the Staff that this was not in order. It wasn't in line with the rules and regulations. That's what we need for it to do. Becky can probably enlighten us.

MR. NOFFSINGER: Mr. Elliott, if I could. That is true; however, this plat is in order and it's consistent with the plan. It came to our attention that there was a landowner that had an interest in this property. Therefore, the only reason, if this plat is not in order, is that all parties that have an interest in this land have not signed. Now, Mr. Brancato is saying that he does not have an interest in that.

Is that what you're alleging, he does not have an interest in it?

MR. BRANCATO: Yes. He's under oath. Ask
him if he owns the 20 feet. Ask him if he has a deed to it. That's a simple yes or no question.

MR. NOFFSINGER: That obviously is, no, he doesn't, but by having this contract that he has - -

MR. BRANCATO: He doesn't have a contract. He's not a party.

MR. NOFFSINGER: This sales agreement, does that constitute a contract and having interest in that property, in your legal opinion?

MR. BRANCATO: He has a potential future interest in the property if he does certain things beforehand. He has not done those things. If he chooses to do those things, then it might trigger an obligation to transfer the 20 feet. He could have done those things six months ago. He can do it sometime in the future. Neither affects what's before this commission. He does not have a legal interest in the property today. His signature is not required under the rules and regulations of this commission.

CHAIRMAN: Mr. Elliott, is that a viable argument or how does the commission stand?

MR. ELLIOTT: If we act on it, then it's my understanding that we're shifting the cost under the contract back on this gentleman.

MR. BRANCATO: Where it is right now.
MR. ELLIOTT: Where it is right now.

MR. APPLEBY: We're not shifting the cost of the contract. He's got to prove it in court to do it or he's got to go to court and prove that they were not right in the way they handled it. Either way it's not our -- are we setting a precedent --

MR. ELLIOTT: I think that we are. I think that we're getting into things that we shouldn't.

CHAIRMAN: Let Ms. Stone respond. She's waiting patiently.

MS. STONE: I just have one thing to add. Becky Stone.

(MS. BECKY STONE SWORN BY ATTORNEY.)

MS. STONE: The Staff's concern was that we would be approving a final plat that there would be an interest, whether future or current, in that plat that would change the boundaries of those three lots that are final platted.

Our advice to the engineer when they called to see what could be done to transfer this 20 feet to the adjoining property, we advised that a preliminary development revision needed to be done, which is I'm guessing what the engineering cost that were quoted to Mr. Smith were. Once that was done,
then a final plat could come in in accordance with that preliminary development plan showing the 20 feet not included in the boundary of this property.

          Now, that could be done at a later date, but you're looking now at approving a final plat that's going to be a recorded document and those lots can be transferred to individual owners. So once that preliminary development plan, if it's revised to accommodate this 20 feet, now you've got the owner of the development plus any owners that maybe have bought property in that development being a party to this revised development plan. That was one of our concerns. If you're going to be able to transfer these two or three lots and then in the future when it is worked out by whoever is doing this revised development plan, you've got three more lots that may have been sold.

          CHAIRMAN: Thank you.

          Mr. Smith, why don't you step forward to the podium there. The contract, as I understand it, did it state that you needed to pay for the engineering surveying of this property before transfer?

          Mr. Elliott, do you have a copy of the contract?
MR. ELLIOTT: I think I do.

Is that what you sent me?

MR. BRANCATO: Yes. Paragraph 9. I have a copy of it.

CHAIRMAN: Mr. Brancato, we're asking Mr. Smith a question.

MR. SMITH: I have a copy if that's what you're wanting.

CHAIRMAN: Very good. I want you to answer: Does the contract state that you have to pay?

MR. SMITH: Can I read it in whole, sir?

CHAIRMAN: Any way you want to respond is fine.

MR. SMITH: "Per condition the purchaser agrees to deed Mark Smith a 20 foot strip off of what is proposed Lot 28 of the preliminary plat, which is 20 foot strip that will be adjacent to the Smith's adjoined property. The surveying and plat approval expense related to such conveyance shall be the responsibility of Smith. Upon execution of the agreement, seller agrees to provide purchaser with a copy of a recently received" --

CHAIRMAN: Mr. Smith, I will ask Mr. Elliott.

Mr. Elliott, did that state what I think
MR. ELLIOTT: Yes.

CHAIRMAN: What I think it stated was that Mr. Smith is responsible for paying for the surveying before transfer; is that correct?

MR. ELLIOTT: Right.

CHAIRMAN: Mr. Smith, do you have any other statement that you'd like to make?

MR. SMITH: No. My only concern was the letter that I received from the attorney here representing Mr. Estes' interest. The concern was that the property would be modified within ten days of receipt of this letter, which I think has come and gone, you know, prior to the decision, whatever is reached here today. It involves trees. It says removal of a number of trees which Image Builders considered to be interfering with its work in the area.

CHAIRMAN: Mr. Smith, I understand, but there again the defense of where the property stands is where the property stands at this very moment. At this very moment you had situations and obligations that you had to meet to become an owner of this property. Based on the contract that you read to me, and under advice of counsel that I determined, it
appears at this present time you are not an owner of
the property.

MR. SMITH: Yes, sir.

CHAIRMAN: I just wanted to get that clear
in my mind. A question that I might ask: Do you plan
on acquiring that property or exercising that, which
it sounds like your rights have expired?

MR. SMITH: Well, the six month comment
that was made here was unaware to me. I have a letter
that suggested ten days, I believe the letter is dated
the 28th of April of this year, to respond, which was
prior to this meeting. My legal counsel advised me to
attend the meeting and see what I could learn on my
own prior to making any decisions to purchase. As far
as proceeding, I still have an interest personally. I
would like to find out a little bit more about the
exact cost as opposed to a rough overall estimate.

CHAIRMAN: Let me ask one other question.
I think we're getting to the end of this.

Mr. Elliott, due to the terms of that
contract, it appears that his date of exercise has
expired; is that correct?

MR. ELLIOTT: Yes. My question is: Are
we the body that is to enforce that contract? I don't
think we are.
DR. BOTHWELL: Are we truly enforcing it?

MR. ELLIOTT: Yes, you are. We're approving a plat. In doing that, you're saying that it's his responsibility.

MR. APPLEBY: Well, if we approve the plat, then he's not dealing with one property owner in theory. Could be additional property owners, but until such time as they sell those lots, it's the exact same situation as it was before as I said. What have we changed? It was already platted and he was already dealing with the portion of some lots. All we're doing is changing a plat that creates more lots.

My concern is that if we don't -- we're charged with deciding whether this plat is in order. If we postpone this, we open the door to anybody that's had a property line dispute in the future. Any plat that comes before us, somebody jumps down here and says, you know, we've argued over this line. I want ten feet on the other side of that property line. I don't want to see us get into that.

CHAIRMAN: Are you proposing, are you making a motion, Mr. Appleby?

MR. APPLEBY: I would make a motion that we approve the plat because it's in order.
MR. JAGOE: Second.

CHAIRMAN: We've got a second by Mr. Jagoe. All in favor raise your right hand.

(SEVEN COMMISSION MEMBERS PRESENT - DAVE APPLEBY, JIMMY GILLES, SCOTT JAGOE, IRVIN ROGERS, DREW KIRKLAND, NICK CAMBRON AND MARTIN HAYDEN - RESPONDED AYE.)

CHAIRMAN: Seven for.

All opposed.

(TWO COMMISSION MEMBERS PRESENT - JUDY DIXON AND DR. MARK BOTHWELL - RESPONDED NAY.)

SISTER VIVIAN: I abstain.

CHAIRMAN: We've got six for, two against and one abstained.

The motion carries.

Next item, please.

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NEW BUSINESS
PUBLIC FACILITIES PLAN

ITEM 10

2300 Block of JR Miller Boulevard
Land Acquisition and Facility Construction
Consider request to acquire a portion of property owned by H.J. Marks for the construction of an extension of the Greenbelt Park.
Referred by: City of Owensboro.

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this application. It is a part of Ohio Valley Reporting (270) 683-7383
the Greenbelt Park. We would recommend you send a letter to the City of Owensboro stating no conflict with the adopted Comprehensive Plan.

CHAIRMAN: Is there anybody here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: If there are no questions, Chair is ready for a motion.

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

DR. BOTHWELL: Second.

CHAIRMAN: Second by Dr. Bothwell. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

The Chair will entertain one more motion.

MS. DIXON: Move to adjourn.

MR. CAMBRON: Second.

CHAIRMAN: Motion to adjourn by Ms. Dixon. Second by Mr. Cambron. All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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Ohio Valley Reporting
(270) 683-7383
STATE OF KENTUCKY)  ) SS: REPORTER'S CERTIFICATE
COUNTY OF DAVIESS)  

I, LYNNETTE KOLLER, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Planning & Zoning meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 36 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this the 17th day of May, 2005

LYNNETTE KOLLER, NOTARY PUBLIC
OHIO VALLEY REPORTING SERVICE
202 WEST THIRD STREET, SUITE 12
OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES:
DECEMBER 19, 2006

COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

Ohio Valley Reporting
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