The Owensboro Metropolitan Planning Commission met in regular session at 6:00 p.m. on Thursday, August 11, 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
Scott Jagoe
Irvin Rogers
Sister Vivian Bowles
Judy Dixon
Dr. Bothwell
Martin Hayden
Stewart Elliott,
Attorney

CHAIRMAN: I would like to welcome everybody to our August 11th meeting of the Owensboro Metropolitan Planning Commission. Would you please stand. Our invocation will be given by Nick Cambron.

(INVOCATION AND PLEDGE OF ALLEGIANCE)

CHAIRMAN: Our first of order of business will be to consider the minutes of the July 14, 2005 meeting. Are there any additions, corrections or questions?
CHAIRMAN: If not the Chair is ready for a

MR. CAMBRON: Motion for approval.

MS. DIXON: Second.

CHAIRMAN: Motion for approval by Mr. Cambron. Second by Ms. Dixon. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please, Mr. Noffsinger.

-----------------------------------------

PUBLIC FACILITIES PLANS
REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

ITEM 2

100-300 Blocks Ellis Smeathers Road
Land Acquisition
Consider comments regarding the acquisition of the existing right-of-way of Ellis Smeathers Road.
Referred by: City of Owensboro

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this application. The application is in order. This request comes from the City of Owensboro in regard to annexation of the property. In order to move that forward, they need to acquire this existing private right-of-way so that they can move forward on the annexation. This is a substandard
roadway. Planning Staff would recommend that should this right-of-way be used in a redevelopment of the Green River Steel property that that roadway be improved to the public improvement specifications.

CHAIRMAN: Is there anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody have any questions?

(NO RESPONSE)

CHAIRMAN: If not the chair is ready for a motion.

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

CHAIRMAN: Motion for approval by Mr. Cambron.

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.

-----------------------------------------

ZONING CHANGES - CITY

Ohio Valley Reporting
(270) 683-7383
ITEM 3

310, 314, 316 Ford Avenue
2002, 2014, 2016, 2026, 2038 Frederica Street,
2.715 acres
Consider zoning change: From R-1B Single-Family Residential and P-1 Professional/Service to P-1 Professional/Service
Applicant: Daviess County Public Library

MR. ELLIOTT: State your name, 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 condition and findings of fact that support this recommendation include the following:

Condition:

No direct access shall be permitted to Frederica Street. Access to the subject property shall be limited to Maple Avenue and Ford Avenue only.

Findings of Fact:

1. The subject property is located in a Professional/Service Plan Area, where professional/service uses are appropriate in general locations;

2. The proposed library will be a nonresidential use; and,
3. The request will result in a single zoning classification of P-1 on all tracts within the subject property so consolidation can be approved.

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

CHAIRMAN: Is there anybody here representing the applicant?

MR. BRANCATO: Yes.

MR. ELLIOTT: Stated your name, please.

MR. BRANCATO: My name is Frank Brancato.

(MR. FRANK BRANCATO SWORN BY ATTORNEY.)

MR. BRANCATO: Mr. Chairman, I don't have a presentation, but if anybody has any questions I'd be glad to answer them on behalf of the library.

CHAIRMAN: Thank you very much.

Does anybody have any questions

MR. ELLIOTT: State your name, please.

MS. BLACKBURN: Heather Blackburn.

(MS. BLACKBURN SWORN BY ATTORNEY.)

MS. BLACKBURN: My name is Heather Blackburn. My husband and daughter and I live at 2015 St. Elizabeth Street which runs behind what is currently the Owensboro High School parking lot. I do have a few questions for Mr. Brancato if I may.

CHAIRMAN: Yes, ma'am. How many questions
do you have and we'll see if we can group them all together and have them answered all at one time.

MS. BLACKBURN: Two or three.

CHAIRMAN: I think we can handle that. Go ahead.

MS. BLACKBURN: The first question I have is about whether or not there's been any sort of a traffic study done on the impact on the residential area around this new proposed library.

CHAIRMAN: Okay. What's your next question?

MS. BLACKBURN: Next question is: What will happen with the high school parking? I guess my third and final question is: What sort of lighting are we talking about in the parking lot and what kind of impact will it have on the residential area behind what is currently the high school parking lot?

CHAIRMAN: Thank you.

Mr. Brancato.

MR. BRANCATO: To answer the first question is we haven't done any specific traffic study. We know that Ford Avenue is a collector road and has a significant amount of traffic on it now. Some of that traffic that is now on Ford Avenue actually comes to the existing library. I don't think
there will be a material change on the traffic on Ford Avenue. We would expect that a lot of our traffic will come up Frederica Street, turn in to Ford Avenue and then turn into our driveway or coming the other direction it might turn in to Maple Street and come into our driveway.

We do hope though that the location of the library does promote and facilitate more usage, public usage. That is our goal to increase library usage within the community.

I lost the second question.

CHAIRMAN: Second question had to do -- there was the one on the traffic, and then there was the lighting, and then there was the parking lot.

MR. BRANCATO: The lighting is we're looking at Ballard lighting as we get closer to the adjacent neighbors. Ballard lighting be the lower lighting as opposed to the more institutional type lighting. Also we are going to use some institutional lighting because of safety and because we also have an agreement with the school that the library parking lot will be available to the school on Friday nights for football and other activities.

Then as far as what the school intends to do, I really couldn't speak for them, but I can tell
you that our arrangement with the school right now is
that until we break ground they have free access and
use of the parking lot. Until we need it, the school
is going to be able to use it.

CHAIRMAN: After you all break ground,
will the school have access to the parking during the
day or would that be strictly excluded to library?

MR. BRANCATO: It will be exclusive to
construction. There's not a lot of lay down room area
on that lot. Of course, once the building framing is
up and all the steel is erected, we won't need quite
as much lay down room, but out of the abundance of
cautions and certain of safety, the school is going to
park some place else once we break ground.

CHAIRMAN: Thank you.

Are there any other questions?

MR. ELLIOTT: State your name, please.

MR. PIKE: My name is Michael Pike.

(MR. MICHAEL PIKE SWORN BY ATTORNEY.)

MR. PIKE: My name is Michael Pike. I
live at 501 Ford Avenue. I'm here to speak in
opposition of this zoning change.

I feel like that this will be an undo
burden on our community for the people who live near
that. I think that Maple Avenue, St. Elizabeth,

Ohio Valley Reporting
(270) 683-7383
Locust, Ford will be impacted greatly by the traffic.

I know now that during the day the high school students, a lot of them park on the side streets. It's a hindrance to traffic as it is. I think that's just going to be worse. I'm also concerned about the high school's plan to build a stadium size arena, as the paper calls it. You know, where is that going to go? Where is the parking for that going to go? How is it land being given up going to impact the high school's plan? What will happen to the community? How will that impact the community?

I know that three or four year ago when I had an addition to my home, I came down here and applied for a variance. I asked for eight feet closer to McCreary Avenue. I was denied that variance. Your panel told me at that time that the reason they were denying it is that it would change the character of the neighborhood. Now, if that's true and if that's the view of this panel, to protect the character of our neighborhood, I believe that this new library and this position will greatly change the character of our neighborhood and people that live there.

I don't oppose the library needing a new facility. I don't oppose, you know, improving or whatever. I think it's being put in the wrong place.

Ohio Valley Reporting
(270) 683-7383
It's not a good thing for the people that put their money into their homes and try to improve their place to live. I just think it's going to be a negative impact upon our community, where we live.

CHAIRMAN: Thank you.

Are there any other questions or comments?

MS. BLACKBURN: Heather Blackburn.

I didn't get a chance to make a comment after asking my questions. I think some of my questions haven't been answered have given me rise to a lot of concern about what would happen to our neighborhood.

My husband and I bought our home just a little over a year ago. We understood that we were neighbors with the high school obviously buying the home where we did. We've put up with the traffic during football games and our driveway being blocked on occasion and those sorts of things. I think we've been a good neighbor to the high school.

Our concern though is that we are now being pushed by two public entities. We have a high school on one side and now we're going to have a library right next to it. I also don't oppose the building of a new library. I think given regulations and some of those things, we need to get the library
up to code. I am concerned about this location.

Already we have seen homes by the high school have been left neglected to a point that there's probably nothing more to do than to tear them down. I don't deny that. However, I'm beginning to wonder if I'm going to become the next immanent domain person as the high school needs more space. I have yet to hear anybody convince me that that may not happen.

I'm concerned about the library eventually needing more space. We are going to be sharing a city block with the library and there will be a tremendous impact on my family and in our neighborhood and our community. Until some of these questions are further answered, I would oppose the granting of any of these permissions to build at this time.

CHAIRMAN: Are there any other comments or questions?

MR. BRANCATO: I just wanted to respond to Ms. Blackburn's comment about needing more space. I hope we do need more space at the library, again, as usage grows and continues to grows. The space that we need is already in this lot. The building is being designed with future expansion in mind. The expansion would be toward the south of the existing location as
shown in the drawing that I sent to you all. The
construction or design right now is taking into
consideration the possibility of adding 20,000 square
feet to the building sometime down the road, but that
does not mean that we would necessarily need to add
any additional space to the property that the library
already owns on Frederica between Ford and Maple
Avenue.

CHAIRMAN: Thank you.

Are there any other comments?

MR. CAMBRON: Mr. Brancato, what size is
the parking that you're going to have at the new
facility as opposed to what you're coming from?

MR. BRANCATO: We have I believe 52 spaces
at the current facility and we're proposing 115 at
this facility. One of the problems with the 52
spaces, of course, is we have 40 some employees.
They're not all there at the same time, but they do
consume usually about half the space, half available
park spaces. That's one of our fundamental problems.
That we can't get enough of our patrons and our
patrons can't find parking.

MR. CAMBRON: Thank you.

CHAIRMAN: If there are no more questions
or comments.
Mr. Noffsinger, do you happen to have a comment?

MR. NOFFSINGER: Yes, sir, Mr. Chairman. I just would like to state for the record that we are talking about a public facility that is exempt from zoning requirements. This rezoning is being submitted to clean up the zoning within the area and to consolidate so that all the lots are consolidated into one parcel and clean up the zoning. Many of these issues that have been raised here tonight should be taken to the public library board as well as the city schools. Those entities can listen to your concerns and do something about them. This board in terms of trying to direct the public library or the city commission can only do so in an advisory capacity. They do not have to follow the recommendations of the Planning Commission.

I just want to state that for the record, again, this rezoning is clearly for property boundary reasons only. They do not have to have this property rezoned in order to construct the library.

CHAIRMAN: Thank you, Mr. Noffsinger.

With that said the chair is now ready for a motion.

DR. BOTHWELL: Motion for approval with Ohio Valley Reporting (270) 683-7383
1 Condition 1 and Findings of Fact 1, 2 and 3.
2 
3 CHAIRMAN: Motion for approval by Dr. Bothwell.
4 
5 MR. CAMBRON: Second.
6 
7 CHAIRMAN: Second by Mr. Cambron. All in favor raise your right hand.
8 
9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
10 
11 CHAIRMAN: Motion carries unanimously.
12 
13 Next item, please.
14 
15 ZONING CHANGES - COUNTY
16 
17 ITEM 4
18 
19 10300 - 10700 Blocks Jackson Road North, 78 acres
20 Consider zoning change: From A-R Rural Agriculture
21 and EX-1 Coal Mining to A-R Rural Agriculture
22 Applicant: Terry and Linda Dukes
23 
24 PLANNING STAFF RECOMMENDATIONS
25 
26 Staff recommends approval because the
27 proposal is in compliance with the community's adopted
28 Comprehensive Plan. The findings of fact that support
29 this recommendation include the following:
30 
31 Findings of Fact:
32 
33 1. The subject property is located in a
34 Rural Maintenance Plan Area, where
35 agricultural/forestry uses are appropriate in general
36 locations;
37 
38 2. The subject property is currently
39 Ohio Valley Reporting
40 (270) 683-7383
being used for agricultural purposes as crop land;

3. The subject property is designated as prime agricultural land according to the "Important Farmlands" map created by the US Department of Agriculture Soil Conservation Service dated March 1980;

4. Mining activities have ceased and reclamation has been completed; and,

5. The Owensboro Metropolitan Zoning Ordinance Article 12a.31 requires that property shall revert to its original zoning classification after mining.

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

CHAIRMAN: Is the applicant here?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody have any questions?

(NO RESPONSE)

CHAIRMAN: If not the chair is ready for a motion.

MS. DIXON: Move for approval based upon Findings of Fact 1, 2, 3, 4, and 5.

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.

Next item, please.

ITEM 5

9519 KY 815, 12.337 acres
Consider zoning change:  From EX-1 Coal Mining to A-R Rural Agriculture
Applicant:  George and Belinda Hayden

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 a Rural Maintenance Plan Area, where rural farm residential uses are appropriate in limited locations;

2. The subject property is a separate, large tract of land;

3. The subject property has frontage on KY 815 which is an existing street with no new street proposed;

4. Mining activities have ceased and

Ohio Valley Reporting  
(270) 683-7383
reclamation has been completed; and,

5. The Owensboro Metropolitan Zoning Ordinance Article 12a.31 requires that property shall revert to its original zoning classification after mining.

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

CHAIRMAN: Is there anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody have any questions?

(NO RESPONSE)

CHAIRMAN: If not the chair is ready for a motion.

MR. HAYDEN: Make a motion for approval based on Findings of Fact 1 through 5.

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, please.
MAJOR SUBDIVISIONS

ITEM 6

Lake Forest, Unit 22, Lots 259-261, 268, 269, 275-277, 3.371 acres
Consider approval of major subdivision final plat.
Surety (Certificate of Deposit) posted $53,668.14
Applicant: Lake Forest Community, LLC

MR. NOFFSINGER: Mr. Chairman, this plat has been reviewed by the Planning Staff. It's found to be consistent with the Comprehensive Plan and the Adopted Zoning Ordinance and Subdivision Regulation. It's ready for consideration.

CHAIRMAN: Do we have 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.

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.

-----------------------------------------

MINOR SUBDIVISIONS

ITEM 7

701, 709, 715 Fulton Drive, 0.551 acres
Consider approval of minor subdivision plat.
Applicant: Talk II Enterprises

MR. NOFFSINGER: Mr. Chairman, this plat comes before the Planning Commission having been reviewed by the Planning Staff and found to be in order.

It creates a lot to the rear of another parcel that will not have frontage on public right-of-way. There is an access easement going back to that lot that will not have frontage on the public right-of-way; however, this is for the creation of a leased lot area for an existing telecommunications tower. There is a notation on the plat that this property is to be used for tower facilities only. So with that the Staff would recommend that you grant the exception and approve the plat.

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.

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.

ITEM 8

124 Ellis Smeathers Road, 4+/- acres
Consider approval of minor subdivision plat.
Applicant: Yager Enterprises

MR. NOFFSINGER: Mr. Chairman, this plat has been reviewed by the Planning Staff. It's found to be in order. It was surveyed by the City of Owensboro. It's for acquisition of right-of-way along the Ellis Smeathers Road, which I discussed in Item Number 2. The plat is in order and is ready for your consideration. If it's approved, it would need to be approved subject to the land owners signing the plat. It's my understanding that the plat has been prepared, but the original tracing was at an
attorney's office that's on vacation. They were unable to get the plat signed for this meeting. It will get signatures. If not, the plat will not be signed.

CHAIRMAN: Is anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Anybody have any questions?

(NO RESPONSE)

CHAIRMAN: If not the chair is ready for a motion.

MR. CAMBRON: Motion for approval, Mr. Chairman, with the stipulation that the plat is signed by the owner.

Is that correct, Mr. Noffsinger?

MR. NOFFSINGER: Yes, sir.

CHAIRMAN: Motion for approval by Mr. Cambron with the conditions.

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.

-----------------------------------------
Ohio Valley Reporting
(270) 683-7383
AGRICULTURAL DIVISIONS

ITEM 9

4400-4500 Blocks Medley Road, 10.015 acres
Consider approval of agricultural division.
(Postponed from July 14, 2005 meeting)
Applicant: Robert Wimsatt

MR. ELLIOTT: State your name, please.

MR. WIMSATT: Bob Wimsatt.

(MR. BOB WIMSATT SWORN BY ATTORNEY.)

DR. BOTHWELL: I want to ask a question before we get started.

CHAIRMAN: Sure.

DR. BOTHWELL: So we are still on last months recommendation that it not be approved. Is that the Staff's contention?

MR. NOFFSINGER: Yes, sir. There has been much dialogue conversations amongst different individuals from Planning Staff and on the other side. Nothing has changed since the last meeting.

DR. BOTHWELL: Thank you.

MR. CAMBRON: Can I be I guess brought up to speed? I don't remember exactly why it was denied.

MR. WIMSATT: Mr. Chairman, if you would like, I could go through my presentation.

CHAIRMAN: No, sir. We're going to have a background first.

Ohio Valley Reporting
(270) 683-7383
MR. NOFFSINGER: The applicant submitted a plat to the Planning office for review as an agricultural division. It was discussed. There was some discussion at the last meeting as to whether or not this was an agricultural division.

The Staff's contention is that the property as presented is not an agricultural division, in that it is proposed creation of a ten acre tract of land that is part of a parent tract that has seen ongoing development. This is nothing more than one more lot off of that parent tract.

The Planning Staff, although we would prefer to see a number of lots created on this ten acres, the Planning Staff would not be opposed to the creation of a ten acre tract provided this tract address the ongoing development of the parent tract that this property is involved in. There was a request that a notation be placed on this plat that, aside from what's already on it, that there will be — if there's ever a street constructed through this property, that that street be constructed through the property to the adjoining property to the south.

The applicant contends that they want to create additional tracts in the future, but do not want to be subject to a street having to connect to
the adjoining property.

Since our last meeting we recommended a somewhat modified note that basically stated that if a street is required in the future for property divisions, that street will connect to the adjoining property. Not necessarily to the south. It's my understanding that the applicant was opposed to that.

The debate centers around whether or not this is an agricultural division, and it's based upon also this notation that the applicant disagrees with the Staff.

DR. BOTHWELL: Mr. Noffsinger, just for my own clarity and hopefully for Mr. Cambron's.

We were not opposed to one home being placed on this and no requirement for the street to run through. It was the subsequent potential subdivision for further homes that created the issue. Is that not correct?

MR. NOFFSINGER: That's correct.

MR. CAMBRON: I don't have this piece of paper. I don't know exactly where it's located at, so on and so forth.

MR. APPLEBY: That's just the notation.

CHAIRMAN: Does anybody else on the commission have any comments?
CHAIRMAN: Mr. Wimsatt, before you begin, the Commission has been informed greatly on this issue. We've spent a great deal of time on it at the last meeting and we did postpone it for this meeting. So anything that you may have to state, you know, we would hopefully not be redundant on any issue that would be addressed on the issue of agricultural, nonagricultural.

MR. WIMSATT: I'll try to be careful in making sure that I don't bog any of our time down with redundant information.

CHAIRMAN: We feel like a ten minute presentation would be more than enough.

MR. WIMSATT: I'll speak as quickly as I can, Mr. Chairman.

First, Mr. Chairman, I do feel like it's important for me before I say anything tonight. I do sincerely apologize to each of you. If in any way I came off abrasive, argumentative or over-aggressive in the thoughts and points I tried to get across at the meeting. Especially my apology to you, Mr. Kirkland, and you, Dr. Bothwell. I assure you in no way was it my intention to offend anyone then nor was it my intention here tonight and I'll try very hard to...

Ohio Valley Reporting
(270) 683-7383
simply stick to the facts.

Mr. Chairman, I hope on my part to do a
better job presenting the facts here tonight.

Mr. Chairman, the plat that you have
before you tonight still is this ten acre agricultural
division. To help orient everyone or make it a little
clearer where that ten acres is, just try to make it a
little clearer because I think you all have a concept
drawing, which isn't necessarily real clear.

This ten acres sits right here, this
agricultural division. This is part of what was
originally a couple of hundred acre tract. Over the
last eight to ten years, I have developed some of this
property. What I've developed is maybe 25 percent of
that property over in this corner. I also have --
all of this has been done has been fully designed and
deeded and ready for sale.

I've also done preliminary plats on some
portions of this property. I've actually done the
design work that's been approved by this commission.
This work is not all being completed. It is not all
ready for sale at this time.

In addition, I've sold some pieces off of
this property. I've sold eight or ten acres here and
did not develop that property, even though I could
have come in here with a cul-de-sac. I sold five, six, seven, eight acres here. You may remember it. It was about a year or so ago. I was looking at putting a short cul-de-sac in here that did meet this commissions approval. Would do a cul-de-sac that wasn't being required to be connected to anything. It met the zoning ordinance. Do a cul-de-sac here. I remember the neighbors showed up in force and opposed it. This commission, and I pretty vividly, Mr. Kirkland, remember you pointing out to the neighbors that this was in order. It was approved by this commission. Since then I did decide to go ahead and sell this to the neighbors and I pulled that.

My point is that much of this property has yet to be developed. There are no formal design plans for a great deal of this property. All there is at this time is just a concept that's subject to change. That concept in fact has changed many times over the years. At one time this street was suppose to go this way and connect in to Bon Harbor Estate.

Mr. Steel decided he had an annexation agreement with the city. He had a complete design plans to develop all this property. He decided for his own personal reasons that he was not going to develop that property. He had the right to decide not
to do that. There's an annexation agreement with the
city. He had that right. The city did not oppose him
deciding not to develop that property. Things change.

     When this changed, we decided to revise
our concept plan. Instead of the street coming across
here and coming down here, we made this two
cul-de-sacs. We brought this street this way.
There's been other changes on this concept plan. This
concept plan excluded, it's changing all the time.
There's so much question mark as to what might happen
in this area in the future.

     If I decided to set this apart as an
agricultural reserve like Mr. Steel did on his
property back here, there might not ever be any
development on that property. I'm not suggesting
that's necessary what I intend to do.

     The point I'm trying to make is if I'm not
sure that it was clear from the concept drawing that
you all had, what really has happened on this
property. What has happened, has happened in eight or
ten years time frame. It doesn't happen overnight.
There's a lot of changes that can occur and a lot of
gray area in here that just simply we don't know.

     The note, I hope it's clear that we are
not opposed to putting a note on there saying that if
anything ever happens to this ten acres that we
realize it has to meet subdivision regs.

CHAIRMAN: Let me stop you right there.

If you agree to the note that the Staff wants to
assign to the property, correct, Mr. Noffsinger, if
you want to agree to that note, the issue has ended as
far as we're concerned.

MR. WIMSATT: I would really like for this
issue to be over. The note that they've asked for,
Mr. Chairman, the note that they've asked for is for
us to go ahead right now and say -- originally the
note was to ask that street to go all the way to the
bottom of this property line. Now, since then there
has been some discussion that maybe that street could
go here or there or wherever.

CHAIRMAN: If you'll pause just a moment
I'll have Mr. Noffsinger read verbatim the note that
they proposed. We will read that into the record. If
you agree to that, then based on the briefing that the
Staff gave us, then their situation would change.

Mr. Noffsinger.

MR. NOFFSINGER: "Future property
divisions requiring public street construction shall
require street connection to adjoining property."

That is the full notation and that is usual, customary
on each development that is considered by this
commission.

MR. WIMSATT: I'm trying to be real
careful because I don't want to come off
argumentative, as I said when I started.

I know that it is often times customary
that a street to be asked to be subbed out. As it was
asked to be subbed out here and on various locations
over here. Those requests are made and typically
accommodated by the developer at the time when they
get ready to develop that piece of property. At that
time you have a better feel for what's going on around
you. That's a discussion for a later date. That's
the concern that we have by making that commitment
now. A year and a half ago we approved the cul-de-sac
right mere because that made since at that time. This
commission approved that.

CHAIRMAN: Mr. Wimsatt, wait just a
minute. I think I'm vastly confused. I thought you
said or stated that you had no problem with the note
being attached to the property.

MR. WIMSATT: The problem, Mr. Chairman, I
believe, I really am trying to be clear. The problem
is that the note says that future subdivision will
require that a street be adjoining to the adjoining
property line. We don't know depending upon -- first
off we don't know that that ten acres will ever be
developed.

CHAIRMAN: And if it's not, no street is
required.

MR. WIMSATT: I understand that. How it
will be developed, how many lots. We don't know any
of that stuff. So it may very well make perfect sense
just as this commission approved the cul-de-sac to go
right here. It may very well make sense, depending
upon what's actually happened out there at that time
and what this individual actually proposes to do with
that ten acres. It may very well make sense to just
do a little cul-de-sac. That's the difference that
I'm trying to get across.

CHAIRMAN: Let me ask. Will a cul-de-sac
meet the requirements?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Thank you.

Dr. Bothwell.

DR. BOTHWELL: Mr. Chairman, we've been
down this road over and over as of the last meeting.
We're saying that we will approve this for one home.
They want the right to add more without putting a
street through. We say no. That's the note that we
want to put on the property to make this an agricultural subdivision. If we allow more homes to go in there, now we're talking a minor subdivision. Not agricultural division.

MR. WIMSATT: I understand that.

DR. BOTHWELL: To be very clear on that, that's what this note is for. It doesn't say where the street has to go. It doesn't say where it has to stub in. It just says it has to come some place to the adjoining property. I think that's a reasonable request, if they want to do something more than what they're asking, which is an agricultural division. If you're coming to us and want to put more than one house on there, then you should be coming to us with a minor subdivision plat period.

MR. APPLEBY: I have a question. This note doesn't say he has to build a street; is that right?

MR. NOFFSINGER: That's correct. You could create additional tracts. One. Perhaps no more than one additional tract without constructing a street, but if you created more than that, it would likely trigger a street. We're trying to avoid the situation that we were put in with the cul-de-sac that Mr. Wimsatt is talking about that created much
controversy in that neighborhood. Because we left a
remnant of land that was undeveloped that was not a
part of his development. That he had no intentions of
ever developing because it was a utility easement.
Once he developed around it, then all of a sudden it
became developable and he came in with a cul-de-sac
which created a lot of controversy in that
neighborhood.

That ten acre tract that he's speaking of
in green I believe is owned by the gas company. There
are storage wells located on that property. That
property is likely never to develop and should have
been isolated from the development.

MR. WIMSATT: There's a storage well right
here. There are some storage wells, but there wasn't
enough room to do a street in here. There are houses
all the way around that storage well.

MR. NOFFSINGER: Does the gas company own
that?

MR. WIMSATT: Yes, they do.

MR. NOFFSINGER: So it was not sold for
residential development. It was sold to a utility
company.

MR. CAMBRON: Can I ask a question, Mr.
Chairman?
CHAIRMAN: Mr. Cambron.

MR. CAMBRON: I direct this to Mr. Noffsinger.

Is it customary, and I ask this as an open question, for us as a board, and we're doing an agricultural division, to put that note on there?

MR. NOFFSINGER: Again, I question -- I do not believe this is an agricultural division.

MR. CAMBRON: I'm not sure that we can question that. I mean you can question it, but he's come before us requesting an agricultural division. My question is just: Is this customary for when we're doing an agricultural division to do this?

MR. NOFFSINGER: It is not customary on an agricultural division; however, I could go on.

MR. CAMBRON: I know.

CHAIRMAN: Complete your thought and sentence.

MR. NOFFSINGER: However, we are not considering I do not believe an agricultural division. Because Mr. Wimsatt says this is an agricultural division does not make it so. That is for this board to determine based upon the facts presented in the record.

MR. CAMBRON: My other question is this:

Ohio Valley Reporting
(270) 683-7383
Mr. Wimsatt is selling this to somebody I presume.

Is that correct, Mr. Wimsatt?

MR. WIMSATT: I certainly hope so.

MR. CAMBRON: Then that burden, would not
that burden be given to the person that's going to be
-- forget this note. If we don't put the note on
there period. Again, I'm not sure we really have to
at this point in time. Doesn't that burden go to the
person that buys that property, when he comes before
us either provide one tract, two tracts, three houses,
five houses or whatever?

MR. NOFFSINGER: Yes, sir, but what we're
trying to do is plan for the future possibilities
because we're taking a tract of land that's say 200
acres and we're reducing it down to 190 acres. For
whatever we've created a ten acre tract that could be
developed and should not be developed based upon the
adopted comprehensive plan in isolation. It should be
part of a plan development of that overall area where
that the community and the neighborhood connects
through streets, walkways and things like that.

MR. CAMBRON: Not to interrupt you. As I
look at that, you've got - what is that? - 300 acres
around that. Probably not 300. 250 acres around
that, Mr. Wimsatt?
MR. WIMSATT: Roughly 100 acres.

MR. CAMBRON: You've got 100 acres there.

I understand what you're saying. I just have a hard time putting the burden on something that at one point in time here he's not going to have a thing to do with it. He's going to sell it. We have regulations and guidelines to go by when a person buys that if he does develop it.

MR. ROGERS: Nick, last month the reason all this happened --

MR. CAMBRON: I wasn't here.

MR. ROGERS: Whoever he was selling this to wanted to build a house and build a street up there and build two more houses. That took it away from being a farm.

MR. CAMBRON: But that's what he says he wants to do. I'm not saying he wouldn't. I'm just saying he hasn't applied for anything either, correct?

DR. BOTHWELL: No, but he's applied for the right to do those two houses under an agricultural division of this land. They want their cake and eat it too basically. That's my opinion. They want an agricultural division, but they want to be able to put two lots in there and not call it a minor subdivision.

MR. CAMBRON: All I'm looking at is this.
CHAIRMAN: We heard it to a great extent last month and it was pretty well clear.

MR. CAMBRON: I'm very sorry I missed that.

CHAIRMAN: As Mr. Rogers pointed out, I think we did hit --

MR. WIMSATT: Mr. Chairman, I think the buyer would like to speak. I would like to offer this. This is from the Comprehensive Plan. This is Agricultural Division.

MR. ELLIOTT: State your name, please.

MR. STALLINGS: Brett Stallings.

(MR. BRETT STALLINGS SWORN BY ATTORNEY.)

MR. STALLINGS: As far as future development, when Bob and I started talking about this I was very clear to him what I wanted. I wanted ten plus acres. Once we settle on that -- the reason I asked him could we put in to our contract, which he and I have already signed, that in the future if my plans change and I have to sell this property I would like to be able to divide it up some way or another. In other words, if another buyer does not want the house I've constructed and ten acres, I want to have an option.

Also if it's an agricultural division,
anything less than ten acres is no longer an ag
division. So let's say if I came back here, and I
want to say for the records it's totally my intent to
build a home and have the entire ten acres for myself.
Let's just say I came back down here and said, I want
to build a home. All bets are off on the ag division
because you're less than ten acres.

I guess what I've asked when speaking with
Brian in the past was if I ever choose to do future
development with this property I or whoever is buying
this will have to come down and go through zoning or
whatever regulations to make it fly. In so doing,
then it would cease being, if we divide it up it would
cease being an ag division. It is not. That is not
what I'm doing this for. I have absolutely zero
intention of developing any property there because if
- - let's just say for instance if the note is not on
there, even if I develop that I would have to build
the streets, sewer, etcetera, whatever, to make that
happen. From a cost standpoint, if I sold two lots
off that, which is what our agreement is max I could
do, if I did that, then I'm going to have to pay for a
road.

My point is I don't think that, I don't
think I could ever come out monetarily doing that.

Ohio Valley Reporting
(270) 683-7383
The whole reason that I wanted that option is because from a seller standpoint, and this is what I told Bob and why I didn't want the note on there.

Let's say if I go to market this and I've asked two prominent builders in town, if I have this note on there is the value of my property more or less? They both said less with the note. Now, again, if I ever decide to do anything I will have to -- again, then my ten acres will cease becoming an ag division and then I would have to come down here to make a request to do whatever it is I want to do and I'll have to still abide by the rules at that time.

CHAIRMAN: Just a moment, Mr. Stallings.

Mr. Jagoe, could you explain to me why his property value would be worth less with the note attached to the property? He would have to do if he did --

MR. JAGOE: He talked to two builders and he didn't talk to developers was his statement. If you took ten acres and and subdivided that, you could get more than two or three lots if that's what we're talking about. You could put the streets in.

I don't have privy to what you're paying for the ground, but it's done all the time and economically it works out. I understand that may not
be what you want to do. If it's two builders and
you're splitting it off and so forth, then that's just
going to be what the market bares for the price.

CHAIRMAN: I was having a problem
understanding his statement that this note would cause
the property to be worth less.

MR. STALLINGS: May I add one comment.

CHAIRMAN: Sure.

MR. STALLINGS: I know that if you went
out and developed it and whatever, let's say in half
acre lots, you could put many lots there. What I mean
by that though if you're just going to have, as our
agreement, a maximum of two other lots on that
property, then you are restricted, again, we
restricted two maximum lots and you have to build a
road to make that happen. I just feel like most
people looking at this are going to see it more of a
liability than an asset because they can't develop it.

CHAIRMAN: Mr. Stallings, here's where we
are right now. The Staff has recommended this to be
denied. The Staff has worked diligently to try to
reach a compromise to try to push this project
forward. At this point in time, I guess I
misunderstood what Mr. Wimsatt said. I thought he at
one point stated that you all did not have opposition
with the note. With the note being attached to the
property, that completely gets us out of the long-term
review of what could happen to this property. It's
almost automatic. We don't have to come back for
further debate and further arraignment over what could
or could not happen. It's very clear cut what needs
to be done. So basically that is the situation the
board is faced with and that is where we stand right
now. So you as a property owner have that decision to
make. If you decide to go and agree to the note and
the compromise that the staff offered you, then so be
it. If you do not, I think it's time for this board
to make a decision which they have to make because I
don't see any other statements other than redundant
statements that could be brought up at this time. I
think Mr. Jagoe may have one more comment.

MR. JAGOE: Just a point of clarification.

Under the ten acres you can build one home. That's
correct, right?

MR. NOFFSINGER: Yes, sir.

MR. JAGOE: But he could subdivide and
build two?

MR. NOFFSINGER: Yes, sir.

MR. JAGOE: And if subdivides and builds
two, he has to put a street in this note?
MR. NOFFSINGER: No, sir.

MR. JAGOE: If he does subdivide to three, it becomes a minor division?

MR. NOFFSINGER: No, sir. It would become a minor subdivision before that. He doesn't have enough frontage to meet depth to width ratio to get that third lot. So that would --

MR. JAGOE: But for two he could?

MR. NOFFSINGER: For two I think he could.

MR. JAGOE: Your goal would be maybe if you had to sell down the road would be to go with three. Is that what I heard you say?

MR. STALLINGS: Yes. I just would like options.

MR. JAGOE: Okay. If you went to three, you would have to put a street in?

MR. NOFFSINGER: Yes.

MR. JAGOE: Because you're not meeting lot to depth and you're going to --

MR. NOFFSINGER: Right.

MR. WIMSATT: Mr. Chairman, I have just --

--

MR. JAGOE: Let me finish.

Can you bring a five acre tract in? Could he just bring in a five acre tract?
MR. APPLEBY: Not as an ag division.

You're just saying a five acre tract?

MR. JAGOE: Just a five acre tract. Bring it in and create a lot. Is that possible?

MR. APPLEBY: Not without frontage.

MR. JAGOE: But it is possible?

MR. NOFFSINGER: Well, it's possible to do a five acre tract, yes.

MR. JAGOE: Then you could come in and do another five at the next meeting; is that correct, but you have to meet the lot to width ratio?

MR. NOFFSINGER: Right.

MR. CAMBRON: I just make this comment. I feel like, and again I wasn't here last month. I feel like we're putting a note on here that really burdens the buyer and I guess we're penalizing him for possibly for what could happen, but yet we don't even know what's happened, but we have all these regulations in place that would stop this or at least hinder it anyway.

MR. JAGOE: Just want to make sure I understand this correctly. You could subdivide one more time and get two homes. Three times you're not going to meet the lot to width ratio. You would have to build some type of street. You could subdivide
three times if you met the lot to width ratio, lot to depth ratio rather; is that correct?

MR. NOFFSINGER: That's correct.

MR. WIMSATT: Mr. Chairman, may I please just add one other bit of information?

CHAIRMAN: A final comment.

MR. WIMSATT: Just in regards to whether or not this note is customary on an agricultural division. What I handed out was directly out of the Comprehensive Plan. It does say that a ten acre tract with 50 foot of road frontage, according to KRS 1000 and according to policies. All I can ask is that you please read it. It's directly out of the Comprehensive Plan. It says that this commission recognizes that, in KRS 100 recognizes a 10 acre tract with 50 foot of road frontage as an agricultural division.

As an example of that, this is another tract that I broke off just this past month. This was approved by Mr. Noffsinger just two weeks ago. This is 20 acres that I broke off of another tract. This is right across the road from this property. This Boothfield Road. This is right across the road from that property. You have small homes and you have large tracts going on everywhere out there. You have
Gray State Estates and other developments going on out there. This is a 20 acre tract so it's 10 acres plus. It has at least 50 foot of road frontage. This is an agricultural division. It says this plat deemed to be an agricultural division. It was approved and signed by Mr. Noffsinger in-house.

DR. BOTHWELL: Mr. Chairman, excuse me but we're off track again. This is not the same issue. Is chair ready for a motion?

CHAIRMAN: I told him he could make his final comment and I will let him.

MR. STALLINGS: The only thing. What Mr. Cambron says kind of was my feelings exactly and what I've said to Mr. Wimsatt every time. I just feel like it's an unnecessary burden on me. Not on him but on me.

MR. APPLEBY: I have one comment.

CHAIRMAN: Yes, sir, Mr. Appleby.

MR. APPLEBY: At the last meeting it was brought as an ag division. You said, Bob, he wanted to reserve the right to subdivide at least two more lots off of it. So that right off the bat makes it anything but an ag division.

MR. WIMSATT: This --

CHAIRMAN: Just a moment.
MR. APPLEBY: This is not a burden unless you subdivide it. If it's an ag division, the 10 acre ag division you can cut another lot off of it and still meet the width to depth ratio for the additional lot, unless you try to cut a third lot or more lots, at which at that point you're subdividing the property. You don't have this requirement to build a street. So this is not a burden on it unless you subdivide the property. That's the way I see it. Then it becomes a subdivision and this is required on practically every subdivision plat we do. That we require streets to reach the adjoining property.

MR. WIMSATT: Can we make that clear, that the note would only be applied if we do above the three lots? If you can do two lots without that --

MR. APPLEBY: But you can't do it and meet the frontage requirements. You can't cut three lots off.

MR. WIMSATT: I thought Mr. Noffsinger just said that --

MR. APPLEBY: He said you could do two.

You could cut one lot off and make two.

MR. WIMSATT: So can we say that he could break at least one lot off without that requirement being made? That's what we're saying tonight. That
he can do that.

CHAIRMAN: Just a moment.

Mr. Noffsinger.

MR. JAGOE: The note does say that because it says --

MR. APPLEBY: It says future division requiring public streets. One division won't require public street.

DR. BOTHWELL: Mr. Chairman, this has been presented as breaking it into three lots. That's been the presentation from the beginning and we could have saved a lot of time if we could have gotten them to agree to two and we would not have to be where we are.

MR. APPLEBY: Well, you can't do an ag division and have two lots.

DR. BOTHWELL: They can break it into five and five.

MR. APPLEBY: That's not an ag division though. We're doing a ten acre ag division, which is what the gentleman wants to buy at this point, but he wants to reserve the right to further subdivide it. Well, if he does, then this note applies the way I see it.

DR. BOTHWELL: Is the chair ready for a motion now?
CHAIRMAN: The chair is ready for a motion. Everybody had their closing comments and questions. I think the commission was very open in listening to some redundant. Hopefully not a whole lot of redundant information. So at this point in time Dr. Bothwell the chair will accept a motion.

DR. BOTHWELL: Mr. Chairman, I move for denial of this application based on findings of fact that this is not a true agricultural subdivision. The land is located in an ongoing development. The Staff has been more than I think generous and going the extra mile trying to negotiate a compromise in the last 30 days. I make a motion for denial based on those --

MR. APPLEBY: You're making a motion for denial if they refuse to put this note on there. Is that the way I understand it?

DR. BOTHWELL: Yes, that is correct.

MR. WIMSATT: Can we have the option to put the note on there?

CHAIRMAN: Mr. Wimsatt, at this point in time, the option is you either do or you don't. If you do not want to put the note on there, Dr. Bothwell's motion is in the hopper waiting for a second. I mean there's not going to be an option to
option it. As we stand right now, his motion is for denial.

(MR. WIMSATT AND MR. STALLINGS CONFER.)

MR. BOTHWELL: I assume, Mr. Chairman, we're waiting for a second?

CHAIRMAN: No. I think we're giving them time to discuss it. I think there will be a second forthcoming, but I'm giving them more of a courtesy.

MR. WIMSATT: Mr. Noffsinger, would you be opposed to us adding some additional acreage to this 10 acres. That would get it up to 11 acres. That would allow him to do one or two lots along the front without having to build a road and then he could put that note on there that you want. If he builds the road he will connect? Would that be acceptable to the Staff?

MR. NOFFSINGER: Mr. Wimsatt, we would be receptive to listen to that, if you submit a plat in that fashion. Right now this commission has a plat to consider as submitted. Be my recommendation to the Planning Commission that you consider the plat as submitted. Then when they come up with a plat that they can live with, we can review it. They can submit it as a minor subdivision and go with it. Staff recommend you follow along the lines of Dr. Bothwell's Ohio Valley Reporting (270) 683-7383
CHAIRMAN: Dr. Bothwell has a motion. We have allowed some additional discussion in courtesy to the applicant.

At this point in time the chair has a motion for denial. You did state the findings of fact. The chair is now ready for a second.

MR. ROGERS: Second.

CHAIRMAN: Second by Mr. Rogers. All in favor of Dr. Bothwell's motion for denial raise your right hand.

(BOARD MEMBERS - DAVE APPLEBY, SCOTT JAGOE, IRVIN ROGERS, SISTER VIVIAN BOWLES, DREW KIRKLAND, JUDY DIXON, DR. MARK BOTHWELL AND MARTIN HAYDEN - ALL RESPONDED AYE.)

CHAIRMAN: We've got in favor of. All opposed.

(BOARD MEMBER - NICK CAMBRON - RESPONDED NAY.)

CHAIRMAN: Have one against. The motion carries.

We have new business.

-------------------------------

NEW BUSINESS

Ohio Valley Reporting
(270) 683-7383
ITEM 10

Check signing resolution.

MR. NOFFSINGER: I have a check signing resolution that needs to be signed by the officers, the Mr. Chairman, Vice Chairman as well as the Secretary. It would be on file at Independence Bank and this resolution is necessary to be approved by this commission so the bank will have record of each of your signatures for check signing purposes. That would require approval for the Chairman, Vice Chairman and Secretary to sign all checks, as they have in the past. This is a matter of record keeping.

CHAIRMAN: Chair is ready for a motion.

MR. ROGERS: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Rogers.

MR. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

We have one final motion for the chair.

MS. DIXON: Motion to adjourn.

DR. BOTHWELL: Second.

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

CHAIRMAN: Motion carries. We are adjourned.

-----------------------------------------
STATE OF KENTUCKY)
 ) SS: REPORTER'S CERTIFICATE
COUNTY OF DAVIESS)

I, LYNETTE 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 52 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this the 2nd day of September, 2005

LYNETTE 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
(270) 683-7383