

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 AUGUST 10, 2006

3 The Owensboro Metropolitan Planning Commission

4 met in regular session at 5:30 p.m. on Thursday,

5 August 10, 2006, at City Hall, Commission Chambers,

6 Owensboro, Kentucky, and the proceedings were as

7 follows:

8 MEMBERS PRESENT: Drew Kirkland, Chairman

Gary Noffsinger

9 Dave Appleby

10 Scott Jagoe

Irving Rogers

11 Jimmy Gilles

Nick Cambron

12 Judy Dixon

Dr. Mark Bothwell

13 Martin Hayden

Stewart Elliott, Attorney

14 Madison Silvert, Attorney

15 CHAIRMAN: I would like to welcome everybody

16 to our Planning & Zoning meeting. Would everybody

17 please rise for our invocation which will be given by

18 Mr. Madison Silvert.

19 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

20 CHAIRMAN: Our first order of business is to

21 consider the minutes from our last meeting which was

22 July 13th. Are there any additions, corrections?

23 (NO RESPONSE)

24 CHAIRMAN: If not the Chair is ready for a

25 motion.

1 MS. DIXON: Move to approve.

2 CHAIRMAN: Motion for approval by Ms. Dixon.

3 MR. HAYDEN: Second.

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

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries unanimously.

8 Next item, Mr. Noffsinger.

9 -----

10 CELLULAR TELECOMMUNICATIONS FACILITIES
11 PER KRS 100.987

12 ITEM 2

13 3790 Earls Lane
14 Consider approval of a wireless telecommunications
tower.
Applicant: Crown Communications, Inc.

15 MR. NOFFSINGER: We are reviewing this
16 application for consistency with the adopted
17 comprehensive plan.

18 MR. ELLIOTT: State your name, please.

19 MR. LANE: Doug Lane.

20 (MR. DOUG LANE SWORN BY ATTORNEY.)

21 MR. LANE: The applicant is extending an
22 existing cell tower from 140 feet in height to 153
23 feet to allow co-location of another antenna and it's
24 conforming with the zoning ordinance requirements for
25 cell towers.

1 CHAIRMAN: Are there any questions of the
2 applicant?

3 (NO RESPONSE)

4 CHAIRMAN: Does anybody on the commission have
5 any questions?

6 (NO RESPONSE)

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

9 DR. BOTHWELL: Motion for approval.

10 CHAIRMAN: Motion for approval by Dr.
11 Bothwell.

12 MS. DIXON: Second.

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

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries unanimously.

17 Next item, please.

18 -----

19 ZONING CHANGES

20 ITEM 3

21 3800 Block Crane Pond Road, 49.8 acres
22 Consider zoning change: From EX-1 Coal Mining to A-R
23 Rural Agriculture
24 Applicant: Montie Edwards

25 PLANNING STAFF RECOMMENDATIONS:

 Staff recommends approval because the proposal

1 is in compliance with the community's adopted
2 Comprehensive Plan. The findings of fact that support
3 this recommendation include the following:

4 FINDINGS OF FACT:

5 1. The subject property is located in a Rural
6 Maintenance Plan Area, where rural farm residential
7 uses are appropriate in limited locations;

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

10 3. The subject property has frontage on Crane
11 Pond Road which is an existing street with no new
12 street proposed;

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

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

19 MR. LANE: We would like to enter the Staff
20 Report as Exhibit A.

21 CHAIRMAN: Is anybody here representing the
22 applicant?

23 (NO RESPONSE)

24 CHAIRMAN: Does anybody have any questions?

25 (NO RESPONSE)

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

3 MR. CAMBRON: Motion for approval,
4 Mr. Chairman, based upon the Staff's Findings of Fact
5 1 through 5.

6 CHAIRMAN: Motion for approval by Mr. Cambron.

7 MS. DIXON: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 ITEM 4

13 5300 Lee Rudy Road, 20.14 acres
14 Consider zoning change: From P-1 Professional/Service
15 to A-U Urban Agriculture
16 Applicant: Brent A. Ballard; Saltzman Heirs,
17 c/o Carl Saltzman

18 PLANNING STAFF RECOMMENDATIONS

19 Staff recommends approval because the proposed
20 zoning for the subject property is more appropriate
21 than the current zoning classification. The findings
22 of fact that support this recommendation include the
23 following:

24 FINDINGS OF FACT:

25 1. The subject property is located in a
26 Professional/Service Plan Area where rural farm
27 residential uses are generally not recommended;

1 2. Although zoned professional/service, the
2 site has historically maintained agricultural
3 production; and,

4 3. Based on the historical agricultural use
5 of the property and rural, agricultural uses in the
6 vicinity of the subject property, an agricultural
7 zoning is more appropriate than the current
8 professional/service zoning classification.

9 MR. LANE: We would like to enter the Staff
10 Report as Exhibit B.

11 CHAIRMAN: Is anybody representing the
12 applicant?

13 APPLICANT REP: Yes.

14 CHAIRMAN: Does anybody have any questions of
15 the applicant?

16 (NO RESPONSE)

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

19 MS. DIXON: Move to approve based upon
20 Planning Staff Recommendations and Findings of Facts
21 1, 2 and 3.

22 CHAIRMAN: Motion for approval by Ms.
23 Dixon.

24 DR. BOTHWELL: Second.

25 CHAIRMAN: Second by Dr. Bothwell. All in

1 favor raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries unanimously.

4 Next item.

5 ITEM 5

6 8600 Block Short Station Road, 67.00 acres
7 Consider zoning change: From A-R Rural Agriculture to
8 EX-1 Coal Mining
9 Applicant: Western Kentucky Minerals, Inc.; Harry J.
10 And Becky J. Pedley

11 PLANNING STAFF RECOMMENDATIONS

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

16 FINDINGS OF FACT:

17 1. The subject property is located in a Rural
18 Maintenance Plan Area where coal mining uses are
19 appropriate in general locations;

20 2. The subject property is located in the
21 Rural Service Area outside of a Rural Community Plan
22 Area;

23 3. The subject property adjoins existing
24 areas of EX-1 Coal Mining zoning;

25 4. The Philpot-Maceo Quadrangle Map indicates
the presence of coal deposits on the site; and,

5. State and county roads proposed to be used

1 for the transportation of coal have been approved by
2 the appropriate officials.

3 MR. LANE: We would like to enter the Staff
4 Report as Exhibit C.

5 CHAIRMAN: Is anybody representing the
6 applicant?

7 MR. HAYNES: Yes.

8 MR. ELLIOTT: State your name, please.

9 MR. HAYNES: Brian Haynes.

10 (MR. BRIAN HAYNES SWORN BY ATTORNEY.)

11 MR. HAYNES: I'm Brian Haynes. I'm attorney
12 for Western Kentucky Minerals. I have Tony Lanham
13 here who is the president and Jeff Arnold who is a
14 professional engineer. We're just here if you all
15 have any questions.

16 CHAIRMAN: Thank you very much.

17 Does anybody have any questions of the
18 applicant?

19 (NO RESPONSE)

20 CHAIRMAN: If nobody has any questions the
21 Chair is ready for a motion.

22 MR. CAMBRON: Motion for approval, Mr.
23 Chairman, based upon the Findings of Fact 1 through 5.

24 CHAIRMAN: Motion for approval by Mr. Cambron.

25 MR. HAYDEN: Second.

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

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: Motion carries unanimously.

5 Next item, please.

6 ITEM 6

7 Portion of 8851 Short Station Road, 22.853 acres
8 Consider zoning change: From A-R Rural Agriculture to
9 EX-1 Coal Mining
Applicant: Western Kentucky Minerals, Inc.; Anthony
V. And Sandra K. Lanham

10 PLANNING STAFF RECOMMENDATIONS:

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

15 FINDINGS OF FACT:

16 1. The subject property is located in a Rural
17 Maintenance Plan Area where coal mining uses are
18 appropriate in general locations;

19 2. The subject property is located in the
20 Rural Service Area outside of a Rural Community Plan
21 Area;

22 3. The subject property adjoins existing
23 areas of EX-1 Coal Mining zoning;

24 4. The Philpot-Maceo Quadrangle Map indicates
25 the presence of coal deposits on the site; and,

1 5. State and county roads proposed to be used
2 for the transportation of coal have been approved by
3 the appropriate officials.

4 MR. LANE: We would like to enter the Staff
5 Report as Exhibit D.

6 CHAIRMAN: Is somebody representing the
7 applicant?

8 MR. HAYNES: Yes.

9 MR. ELLIOTT: State your name, please.

10 MR. HAYNES: Brian Haynes.

11 Make the same comments as I made before.

12 We're here to answer questions if you have any.

13 CHAIRMAN: Does anybody have any questions of
14 the applicant?

15 (NO RESPONSE).

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

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

20 MR. CAMBRON: Second.

21 CHAIRMAN: Motion for approval by Mr. Hayden.
22 Second by Mr. Cambron. All in favor raise your right
23 hand.

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: Motion carries unanimously.

1 Next item, please.

2 ITEM 7

3 5150 Todd Bridge Road, 114.70 +/- acres (Postponed
4 from July 13, 2006 meeting)
5 Consider zoning change: From A-R Rural Agriculture to
6 R-1C Single-Family Residential
7 Applicant: Thompson Homes, Inc.

8 PLANNING STAFF RECOMMENDATIONS

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

14 CONDITIONS:

15 1. Widen Todd Bridge Road to include two 11
16 foot travel lanes. The widening shall begin where the
17 city project to widen Todd Bridge Road terminates and
18 taper back to the existing road width beyond the
19 access point for the development;

20 2. Install a separate southbound right-turn
21 deceleration and storage lane on Todd Bridge Road at
22 the subdivision access point;

23 3. Install a separate southbound left-turn
24 deceleration and storage lane on Carter Road at the
25 subdivision access point; and,

 4. Submit a traffic impact study to the
 Kentucky Transportation Cabinet prior to or in

1 conjunction with application for ingress/egress
2 permits from the state and complete any additional
3 roadway improvements as required by the transportation
4 cabinet. Any additional required improvements above
5 and beyond the previously stated conditions will
6 require the preliminary plat/final development plan to
7 be amended.

8 FINDINGS OF FACT:

9 1. The subject property is located in a Rural
10 Preference Plan Area where urban low-density
11 residential uses are appropriate in very-limited
12 locations;

13 2. Sanitary sewer service is currently
14 available to the site and will be incorporated into
15 the subdivision design;

16 3. The proposal is a logical expansion of
17 existing R-1C zoning located immediately north of the
18 subject property; and,

19 4. The proposed development is proportional
20 in scope to the existing Twin Lakes subdivision and
21 should not overburden roadway capacity and other
22 necessary urban services that are available in the
23 affect area once required roadway improvements have
24 been completed.

25 MR. LANE: We would like to enter the Staff

1 Report as Exhibit E.

2 CHAIRMAN: Anybody representing the applicant?

3 MR. ELLIOTT: State your name, please.

4 MR. RINEY: Jim Riney.

5 (MR. JIM RINEY SWORN BY ATTORNEY.)

6 MR. RINEY: I'm here tonight. We prepared the
7 application for the rezoning request. We've read the
8 Staff Recommendations and obviously agree with that.
9 Also we agree with the findings of fact as identified
10 by the Staff. The Staff has identified four items of
11 conditions. We agree with those conditions as
12 evidenced by the information we've put on the plan
13 that comes later in the agenda that's addressed by
14 these four items, including the traffic impact study
15 which has been submitted to the state highway
16 department district office as well as to the local
17 engineers and to the Planning Commission Staff.

18 We're here to answer any questions.

19 CHAIRMAN: Thank you, Mr. Riney.

20 Does anybody have any questions of the
21 applicant?

22 MS. FULKERSON: I do.

23 MR. ELLIOTT: State your name, please.

24 MS. FULKERSON: My name is Mary Charlotte
25 Fulkerson.

1 (MS. MARY CHARLOTTE FULKERSON SWORN BY
2 ATTORNEY.)

3 MS. FULKERSON: I want to share with you some
4 observations of living on Todd Bridge Road across from
5 the proposed subdivision for the last 30 years.

6 I want to submit to the zoning official
7 records four items that any perspective home buyer
8 needs to be aware of.

9 Snow storm Christmas of 2004 saw Todd Bridge
10 Road blocked by both drifted snow and by cars that
11 blocked the road by being stuck in the ditch.

12 Carter Road was also drifted over and
13 neighbors took in stranded people to spend Christmas
14 Eve.

15 My question then: Will the state put these
16 two highways, Carter Road and Todd Bridge Road, on a
17 higher priority for snow removal?

18 Second point: Will each home purchaser be
19 aware before the purchase that they will be required
20 by their mortgage lender to keep flood insurance in
21 force for the life of the loan?

22 FEMA dictates that any building in a zone
23 designated for a 100 year floodplain must have this
24 insurance in place before a person can receive a loan
25 or other financial assistance. This is spelled out in

1 the flood insurance purchase requirement, Section
2 0606021 of the Owensboro Metropolitan Planning
3 Commission.

4 Do I need to submit this, Mr. Chairman?

5 CHAIRMAN: Yes, go ahead. You can submit
6 that.

7 MS. FULKERSON: All right, sir.

8 Will the average buyer know the meaning of 100
9 a year flood? Who will explain the impact to them?

10 This may be of help. I would like to show you
11 a picture. This picture was taken where people in the
12 subdivision will live. I also have - -

13 CHAIRMAN: Do you want to also submit that?

14 MS. FULKERSON: Yes, sir, I do have a copy
15 that will be submitted in the record.

16 CHAIRMAN: When you finish with your
17 presentation, just give it to Lynnette here.

18 MS. FULKERSON: All right, sir.

19 The elevation of the water is 388.3 feet. If
20 this flood happens to this depth again, the house
21 located will have ten inches to spare before the water
22 gets on their carpet and furniture.

23 Does a 100 year flood happen just once every
24 100 years? Nobody in this room should be fooled by
25 that.

1 We have been out of our houses five times in
2 the last 30 years, not to mention the other floods
3 that we have not had to evacuate for.

4 CHAIRMAN: Ma'am, if you've got questions in
5 regards to the flood or the 100 year, I think that's
6 what we have engineer here, Mr. Riney, would address
7 those questions.

8 MS. FULKERSON: That's my question to him.
9 Who will tell the homeowner before they buy that this
10 is what it looked like?

11 MR. CAMBRON: Can we see the picture up here,
12 please?

13 MS. FULKERSON: Yes, sir, you sure can.

14 This is a picture of the Zogleman home. This
15 was taken - - I took that picture in 1997. There's no
16 point in getting into the 1997 flood except to say the
17 calculations that I have that I've taken from the plat
18 supplied by Planning & Zoning, adding what the height
19 of the water was, which was 44 inches - -

20 CHAIRMAN: Let me ask you to stop for just a
21 moment and let's bring Mr. Riney forward to address
22 because that's part of what their application has to
23 deal with.

24 MS. FULKERSON: Are you surprised at the ten
25 inches?

1 CHAIRMAN: I'm not surprised at anything from
2 up here. Would you be seated for just a moment and
3 let's bring Mr. Riney forward and let him answer that
4 question, please.

5 Mr. Riney, do you understand the question?

6 MR. RINEY: Why don't you repeat that.

7 CHAIRMAN: She's quite concerned about the 100
8 year flood level in your area of your subdivision.
9 This picture was taken in '97, which I'm sure that
10 everybody lived here is very aware of the water during
11 that year. So if you would address what the
12 subdivision has done, what levels will be seeking and
13 your retention and to deal with the flood.

14 MR. RINEY: As Planning Commission knows and
15 the Planning Staff, as well as local Engineer Staff,
16 you can build in a flood hazard area. That's
17 something that's allowed by the Comprehensive Plan.
18 That's something that's allowed by FEMA.

19 There is a process to go through in FEMA to
20 get the permit to construct in a floodplain that's
21 done routinely and that's what will have to be done at
22 this location.

23 Ms. Fulkerson mentioned the 388 elevation.
24 The farm that we're looking at it varies in elevation
25 from probably 388, 387, 388 up to 391, 392. The base

1 flood elevation for this location is 392.2. All of
2 the lots will have to be elevated to that point which
3 may mean three or four feet of fill on the site.
4 They're aware of that.

5 As you mention, Mr. Kirkland, there are
6 retention basins that will be required as you're
7 familiar with on any other project.

8 The retention basins will provide the fill in
9 order to elevate those lots to meet FEMA's standards.

10 As far as the public notice, the final plats
11 will have to show that the area is in a flood hazard
12 area, which has been removed. There is a mechanism
13 within the FEMA regulations and criteria. Once an
14 area has been filled and it be whatever property is in
15 the floodplain, as long as it's in a floodplain. If
16 it's fill, then there's a letter of map revision, a
17 lomars based on fill. Those lomars are something that
18 I know that the Planning Staff is familiar with. The
19 building inspector reviews those because that's
20 another mechanism of which Daviess County could build
21 in a floodplain. That's within Article 18 of the
22 Zoning Ordinance is to - -

23 CHAIRMAN: Mr. Riney, in other words, when
24 your plan is totally complete, that a) you'll have a
25 retention basin, which you'll extract the dirt to

1 raise the level.

2 MR. RINEY: Right.

3 CHAIRMAN: Then you'll meet FEMA's
4 requirements to have a map revision to take this from
5 the floodplain, out of that floodplain. Then the
6 flood insurance, what effect will that have on the
7 homeowner at that point in time?

8 MR. RINEY: Once the letter of map revision is
9 issued by FEMA, once the fill is placed and the home
10 slab is constructed so that it can be documented, the
11 slab is to the appropriate elevation, then that
12 exempts that property from the requirement for flood
13 insurance and that's a permanent issue.

14 CHAIRMAN: So they will no longer be required
15 or they will no longer have that flood stigma that
16 causes the highly increased homeowner insurance,

17 MR. RINEY: That's correct. It will be
18 removed.

19 MR. CAMBRON: Mr. Riney, a quick question. Of
20 course, we're going forward here. On this development
21 plan it looks like there's, what, five different
22 retention basins or six.

23 MR. RINEY: Yes. Mr. Kirkland mentioned
24 retention basins, but there's multiple basins.

25 MR. CAMBRON: Right. There's six at least.

1 MR. RINEY: I think you're correct.

2 MR. CAMBRON: Again, the county engineer
3 signed off on all of this or will be.

4 MR. RINEY: Yes. The city engineer and the
5 county engineer have both reviewed this because today
6 it's in the county. It is anticipated to be annexed
7 to the city. So both jurisdictions have reviewed that
8 and have signed the plat for approval and there's a
9 note on there to that effect.

10 CHAIRMAN: Thank you.

11 Ms. Fulkerson, do you have any further
12 questions?

13 MS. FULKERSON: I want to clarify what Mr.
14 Riney said. Number one, he is going to say that if
15 you buy property in this subdivision you will not be
16 flooded; therefore you do not need flood insurance.
17 Is that the way you understood it?

18 CHAIRMAN: I don't believe that's what he said.
19 I think you would not be required by your homeowners
20 insurance to carry additional flood insurance. Which
21 people that are in that area know how costly that is.

22 MS. FULKERSON: So what you're saying is this
23 is now going to be taken out of the 100 year flood
24 area, which I do realize can be done.

25 CHAIRMAN: That's what Mr. Riney is saying,

1 but that's what FEMA will certify by virtue of the
2 fill versus the dirt coming out of the retention
3 basin. That they will raise the level of this area.

4 MS. FULKERSON: So my point still stands.
5 What I did I went and - -

6 CHAIRMAN: A point, if you've got a question
7 we'll answer a question. He is an engineer and that's
8 what he does for a living is figure this stuff out.

9 MS. FULKERSON: Let me ask Mr. Riney a
10 question then.

11 I took a point. I went 1200 foot in from Todd
12 Bridge Road, 200 foot from a football field. I want
13 to get an average house off the plat. I know what the
14 current elevation is, which was 388.3. I know the
15 flood water during the '97 flood was 46 inches. So
16 that made it 390 to 1. Minimum first floor height for
17 the houses will be 393 even. That's ten inches if we
18 have another '97 flood. What he is saying, and my
19 question is: If we have another '97 flood, will the
20 water not get into the subdivision and it won't impact
21 these houses?

22 MR. CAMBRON: I just make a comment here too.
23 A lot of the things you're bringing up would be
24 covered more than likely by a mortgage carrier and the
25 insurance carrier to make sure none of this is done.

1 They're not going to insure these houses if they're
2 going to flood. A lot of that will be taken care of,
3 even though your little preliminary here on what
4 they're going to fill, but that will be taken care of
5 in a later date and that's something we can't be
6 concerned with as far as that's concerned.

7 CHAIRMAN: Let me ask Mr. Riney if he'll
8 address that question.

9 MR. RINEY: The base flood elevation is 393.2.
10 Based on Ms. Fulkerson's numbers, it was less than
11 that. I don't have any data that tells me what it was
12 in '97 for that area. The data I have is from the
13 OMPC web page, but it dealt with the Ohio River
14 flooding.

15 The principal of the flood insurance is that
16 if you build at or above the regulatory level that
17 FEMA has established, and they're the ones who spends
18 the money in the community to establish that. If you
19 build at that, you can exempt yourself out. You don't
20 have to carry insurance. You can if you want to. So
21 that is the criteria that's required locally to build
22 at a floodplain is to meet or exceed that base flood
23 elevation.

24 We look at it in terms that the minimum lot
25 grade around the house, the lowest adjacent grade,

1 which people refers to, would be the base flood
2 elevation. We recommend that the house be at least a
3 foot above that base flood elevation.

4 CHAIRMAN: So the base elevation of the home
5 will be - -

6 MR. RINEY: Probably around 393.2.

7 CHAIRMAN: Thank you very much.

8 Do you have any other questions?

9 MS. FULKERSON: Yes, sir. If there is another
10 '97 flood, who will signal the evacuation?

11 DR. BOTHWELL: That comes from office of
12 emergency management. That's not us.

13 CHAIRMAN: That's not anything that we - -

14 MS. FULKERSON: My question to you is: Would
15 it be the developer's responsibility to put some type
16 of warning system up?

17 MR. CAMBRON: Only if the county require it or
18 the city require them to, but I don't see that
19 happening.

20 MS. FULKERSON: The reason I ask is that in
21 '97 at 12 noon on a Saturday we saw the water a mile
22 away to the east. By 9:00 Sunday it was over 431 and
23 it was in our house. So it does move that fast.

24 CHAIRMAN: What you're saying is your home is
25 below the flood?

1 MS. FULKERSON: Yes. It was at that time.

2 CHAIRMAN: Well, these homes, due to FEMA
3 requirements, are going to have to be above that.
4 That's what FEMA requires.

5 MS. FULKERSON: We're talking 392.2 is the
6 base flood. That's what's they require. And these
7 house are going to be 393.

8 CHAIRMAN: Okay. What is your next question?

9 MS. FULKERSON: That is my last question. I
10 just wanted to also show this is what in '97 the area
11 where the houses will be look like. It was completely
12 under water. As you see, there is a line for Todd
13 Bridge Road. There is a line for Keller Road.
14 Everything to the north of Keller Road to Southtown
15 was under water. Water does not flow to the creek at
16 this point, which is something a lot of people think
17 does happen. I do have a copy to be submitted into
18 the record.

19 I guess my last question was: Who is going to
20 tell people that it's time to get out? Because we
21 don't want cars to get, you know, we don't want people
22 to be stranded. Of course, with only two exits.

23 CHAIRMAN: Thank you.

24 Mr. Riney, would you like to address that.

25 MR. RINEY: As I heard someone from the table

1 say, the public notice comes from the civil defense
2 and civil disaster folks. They're the ones that are
3 in charge in this community with dealing with
4 catastrophes like tornados and floods, any type of
5 natural event. I think I heard a siren go off
6 tonight. Those are the people we trust to warn us as
7 a community.

8 CHAIRMAN: Thank you, Mr. Riney.

9 Are there any other questions or comments?

10 Yes, sir.

11 MR. ELLIOTT: State your name, please.

12 MR. LAMBERT: Kenneth Blandford.

13 (MR. KENNETH BLANDFORD SWORN BY ATTORNEY.)

14 MR. BLANDFORD: I'm an adjoining property
15 owner. We are very concerned with the drainage issue
16 out there. The closing of a Blue Line ditch that runs
17 through that Zogleman farm and Thompson Development.
18 They're rerouting our water over to the big ditch.
19 I'm very concerned that we do not have - - we are very
20 concerned with the drainage issue.

21 If they're closing the Blue Line Ditch that
22 has drained our water for the last 100 years and
23 wanting to reroute it over to the big ditch, we want
24 something that will guarantee that our water will get
25 off at the same time and speed that it gets off now.

1 CHAIRMAN: Let me bring Mr. Riney back to the
2 mike to address that question.

3 MR. RINEY: The rezoning issue was also
4 related to the item for the development plan. Do we
5 deal with this now or later? It doesn't make any
6 difference. If there's more of a specific item on the
7 development plan. I just bring that up.

8 CHAIRMAN: To satisfy his questions, let's go
9 ahead and address it.

10 MR. RINEY: The drainage, and I met with the
11 Blandford family, I think a representative of the
12 family, four different times even out at the site this
13 week. I'm aware of their concerns and they're aware
14 of what we've looked at.

15 The drainage goes through a tributary of Goetz
16 Ditch through the Zogleman Farm and onto the south and
17 southeast. It actually goes upstream towards Panther
18 Creek. So it's not upstream from the flowness. It's
19 flowing upstream the way Panther Creek flows.

20 What we propose to do is the big ditch will be
21 wide. It won't be the same ditch that neighborhood
22 sees today. When you look on the plan, you'll see
23 that the basin is going to be widen almost 200 feet.
24 190 feet most places. That water will be rerouted
25 through an open ditch. One of the things we looked at

1 with the Blandfords initially, the Blandford family,
2 was a pipe. They were concerned about the pipe, about
3 the clogging of the pipe and who would clean the pipe.
4 We talked with the developers and they agreed, even
5 though paved ditches are something they try to avoid,
6 that we would go ahead and include a paved ditch to
7 bring the water from the area of the Blandford farm on
8 over to the basin by the big ditch. Big ditch will be
9 as I say widened. I will say that when we met with
10 the Corp of Engineer, we met with them back in April
11 to look at this site, they looked at it and looked at
12 the agricultural ditch and said they didn't see any
13 impact, any problems. They thought that diverting the
14 water through the big ditch would be something we
15 could do. That the widening of the big ditch would be
16 something they could permit. We still need to submit
17 the information, but they told us they didn't see any
18 type of mitigation or any issue at this point in time
19 that we would have to deal with. It would be just
20 submitting the plan for them to review and permitting
21 on that basis.

22 So we have looked at the ditch situation. The
23 farm ditch versus the big ditch and the relocation of
24 the ditch.

25 CHAIRMAN: Thank you, Mr. Riney.

1 Yes, sir.

2 MR. BLANDFORD: We want the water moved at the
3 same rate of speed and at the same amount of time that
4 it is moving through the Zogleman farm now. The
5 figures that we're seeing or what he shows me, what he
6 tells me, I cannot see that it can be done.

7 If they route our ditch over to the big ditch,
8 the water will back up in that basin to where our
9 water going into the basin will be flooded at that
10 time when that water is at its highest peak in a big
11 rain.

12 CHAIRMAN: Mr. Riney, are you familiar with
13 the area that he is talking about where we would have
14 the water back up?

15 MR. RINEY: Yes. I've talked to Mr. Zogleman
16 about this.

17 We looked at the calculations. We deal with
18 the facts of the site. We looked at it the 100 year
19 storm event. The flood of record would be the 100
20 year. And what it would do in the ditch. The best
21 part of the ditch run south of the Zogleman farm.
22 That flow velocity is about one cubic foot per second.

23 We looked at what the FEMA document show that
24 the flow in the big ditch is. The flow in the big
25 ditch velocity, and that's public information, is 2.2

1 feet per second. So it's at a higher velocity. The
2 ditch that we propose to make the connector between
3 the two is a concrete base ditch. It's a section and
4 the velocities in it are over 60 feet per second. So
5 we have looked at the rate of flow to make sure that
6 we've got the right facts. We've shown those to Mr.
7 Blandford. Maybe it doesn't make sense, but that's
8 what the facts are.

9 CHAIRMAN: Just so I would understand it. The
10 rate of flow that you're projecting, the new rate of
11 flow of the water off of this property compared to the
12 old rate of flood off of his property is?

13 MR. RINEY: It will be equal to or better than
14 what the flow rate is now. That's what the numbers
15 show.

16 CHAIRMAN: Equal to or better than?

17 MR. RINEY: Almost one foot per second versus
18 over 6 feet per second or 2.2 feet the big ditch has
19 current, in the current condition it is. It's going
20 to be widen to where it has more capacity along the
21 frontage of the development.

22 CHAIRMAN: Apparently you do have concern
23 about this.

24 MR. BLANDFORD: Very much concern. I'm asking
25 when the big ditch fills up and it backs up into his

1 basin where our water is going into that basin, that
2 water is not going to be moving at that rate of speed
3 at that basin. That water backs up and gets into our
4 inlet, the water that we're letting out.

5 Ask Jim. Is he guaranteeing that that water
6 won't back up and block our water while that ditch is
7 full and backed up in that basin.

8 CHAIRMAN: Wait just a minute. So I
9 understand this. At the present time does this
10 happen?

11 MR. BLANDFORD: No.

12 CHAIRMAN: So it does not happen?

13 MR. BLANDFORD: No. We do not go to that
14 ditch.

15 CHAIRMAN: So if his figures are correct, that
16 the water is moving equal to or greater than, then it
17 should not happen.

18 MR. BLANDFORD: Ask Mr. Riney if he will go on
19 record and state that it will not back up and block
20 our water while the big ditch is going down.

21 CHAIRMAN: That's a fair observation.

22 Mr. Riney.

23 MR. RINEY: Again, we've talked to
24 Mr. Blandford. What we see is that Mr. Blandford's
25 farm is in the higher elevation than what the water

1 has been in the big ditch. That's evidenced by, we've
2 got elevations all along the southern line there of
3 Twin Lakes. There was a ditch in there, and I
4 understand that part of that was filled in by the
5 previous farmers, Zogleman farm.

6 We've looked at the elevations and the
7 elevations there are lower than the lowest area on the
8 Zogleman farm. I'll use some numbers roughly. 391 is
9 the elevation on the Zogleman farm. Somewhere around
10 elevation 389 to 390, I don't remember the exact
11 number, is the elevation that the water would have to
12 get to from the big ditch to reach back and come back
13 toward the Blandford farm. I understand from the
14 Blandford family that that has not happened. So that
15 tells me mother nature has not put enough water in the
16 big ditch to get above that 389 to 390 elevation.

17 The Blandford farm is 391 so it's still higher
18 where the water will flow down hill. So that's what
19 we've looked at are those elevations at the site.

20 CHAIRMAN: Is the volume of the big ditch
21 greater than the previous volume; is that correct?

22 MR. RINEY: Absolutely. Absolutely.

23 CHAIRMAN: I can understand. His total
24 concern is, as I basically see it, I'm just
25 rephrasing. He doesn't want to be any worse off than

1 he is now in your water situation.

2 Would that be a fair assumption?

3 MR. BLANDFORD: Certainly.

4 CHAIRMAN: Are you able to tell him that he
5 will be no worse off than what he is presently?

6 MR. RINEY: Based on our information, our
7 numbers, and we've used this same principal on
8 retention basins - -

9 CHAIRMAN: If for some reason, Mr. Riney, that
10 your calculations may be slightly off, what effort
11 would you have to put him in a position where he would
12 be no worse off than he currently is?

13 MR. RINEY: Well, Mr. Blandford has asked the
14 question several times for us to guarantee. Well,
15 we're professional services. We don't issue
16 guarantees. We certify our documents. We have
17 certified those documents to the city engineer, to the
18 county engineer, to the planning office. That's what
19 we do. He's asking us to do something that
20 professionally we can't do. What we've done is we've
21 looked at every method that we can to evaluate the
22 form water runoff. As I started to say, it's the same
23 method that evidently was success on.

24 CHAIRMAN: Is there somewhat built in a margin
25 of error so-to-speak?

1 MR. RINEY: With calculations, but I don't
2 want to say what that is. I want to say what the
3 numbers are. I don't want to hedge my bet. I want to
4 say what the numbers are. We would error on the side
5 of safety. That's always what we try to do.

6 The retention basins that we design always
7 have additional capacity. We want it that way. It's
8 for the good of the public.

9 The storm water events, they do have rainfall
10 intensity. They do have a large of error, but we deal
11 with those numbers as presented by the local
12 officials. We take those at face value.

13 DR. BOTHWELL: Mr. Riney, if you are or say or
14 even suggesting that you are, inner error by slight or
15 some event happens, what is his remedy as far as he
16 feels and can prove that this project has caused him
17 harm?

18 MR. RINEY: Mr. Blandford has asked that
19 before and the obvious remedy is some sort of legal
20 action, but in addition to that he has talked to the
21 city and county engineer. I think they're both here,
22 representatives of those offices are here tonight.
23 They have asked that an extra-ordinary step be done.
24 We have used the usual and customary calculations for
25 subdivision drainage design. They've asked that an

1 extra-ordinary step be done. Hydraulic analysis that
2 implements floodplain analysis FEMA might use or the
3 Corp of Engineers. We've agreed to that. There's a
4 notation on the plat that says that that will be done
5 and that if that analysis shows that other steps needs
6 to be taken, that they will be implemented prior to
7 the final plat. I think Mr. Noffsinger knows where
8 that note is on the plat.

9 MR. CAMBRON: Is that unusual though, Mr.
10 Riney?

11 MR. RINEY: That is very unusual. That's
12 something that we've never had in our 30 something
13 years of experience. We've never had something like
14 that as far as drainage design. It is an
15 extra-ordinary step for the benefit of the adjacent
16 property owner.

17 CHAIRMAN: Thank you.

18 MR. BLANDFORD: It's very unusual because it's
19 a very unusual situation. Mr. Riney the other day
20 when I was out there and asked him about this berm,
21 would our water be going at that level or blow that
22 berm. He had to finally tell me it would have to be a
23 little lower than the berm. If you take the berm down
24 a foot, it's going to back up. That's what we're
25 going to be going into. That's my question that I

1 wanted answered. We can't drain with water sitting in
2 that basin. Now, they can give you all the figures
3 they want, but they have to prove that and I don't
4 think it's there. That's why that ditch was banked.

5 The Zogleman family, the Keller family, the
6 Fishers, they can all tell you what that ditch does.
7 It's got a lot more load on it now than it had before
8 they put this new drainage in up north on Carter Road.

9 CHAIRMAN: Did Mr. Riney, did you say our city
10 and county engineers are both here?

11 MR. RINEY: I believe they're in the audience,
12 representatives of both offices.

13 CHAIRMAN: We are currently in the county?

14 MR. RINEY: That's correct.

15 CHAIRMAN: Let me ask the county engineer
16 representative to step forward.

17 MR. ELLIOTT: State your name, please.

18 MR. RAYAN: Senan Rayan.

19 (MR. RAYAN SWORN BY ATTORNEY.)

20 CHAIRMAN: Obviously you're sitting there and
21 knowing technically what both sides are speaking of.
22 One was questioning. The other was answering in a
23 technical term. You sitting in your situation as
24 county engineer are reviewing these facts, obviously
25 as a third party removed. Obviously, you want to

1 protect the homeowner and obviously you need to be
2 fair to the developer. With that statement made,
3 would you address the homeowner's question and the
4 developer's remedy?

5 MR. RAYAN: What we asked the engineer, the
6 developer engineer add warn information, give us more
7 information about the hydraulics of the big ditch. We
8 needed to know more information about it.

9 His concern is our concern. We took his
10 concern and after doing a review we came to the
11 conclusion that additional information is needed to
12 make a final determination.

13 CHAIRMAN: So at this point in time the final
14 determination has not been made?

15 MR. RAYAN: That is true. Our approval is
16 based upon the condition to the note that's added in
17 there.

18 MR. CAMBRON: About the addition of the
19 hydraulics test?

20 MR. RAYAN: Correct.

21 CHAIRMAN: So in your professional position,
22 and back to his original question which seems very
23 simple to me, will he be as well off in the future as
24 he was in the past with his drainage situation?

25 MR. RAYAN: Well, when we get that

1 information, we will have a better understanding. So
2 the condition that we put on there is for the
3 developer to go ahead and just move dirt. So nothing
4 is going to be developed into anything. Until we have
5 that information, it has to be to our satisfaction.
6 We will sit with them and we'll put everything on the
7 table and we'll discuss this issue. If there is an
8 issue, we'll bring it up. Then the developer would
9 have to do something about it. Review to revising the
10 plan, to satisfy me, satisfy the condition that it's
11 in.

12 DR. BOTHWELL: Mr. Chairman, should we
13 postpone this issue? I mean there's a lot of
14 questions not to be answered. Just table it until all
15 the final information is in.

16 CHAIRMAN: I think based on what he was saying
17 that the only thing we could give them conditions at
18 this time where they would have to meet the future
19 conditions placed on them by the county engineer to go
20 forward with total development.

21 Is that correct with your conditions?

22 MR. RAYAN: That's what we understood talking
23 to the director of planning. To add that note on
24 there, we have that back to do.

25 CHAIRMAN: Mr. Noffsinger, would you

1 completely sum up our position on this situation.

2 MR. NOFFSINGER: The Planning Staff has had no
3 involvement in the review of this plan for drainage
4 with that understood first.

5 Secondly, there is a notation that's placed on
6 this preliminary plat, but the Planning Staff had no
7 involvement in it.

8 What the Planning Staff is looking for in a
9 development would be for the city and/or county, in
10 this case both, to sign off on the plan so that we can
11 present that plan to this commission. That's where we
12 are.

13 Generally you do not have notations such as
14 what I'm getting ready to read into to the record on
15 the plan; however, it's been described as this is an
16 unusual situation.

17 Here is the note: "Plan approval is being
18 granted based upon the information provided. Further
19 hydraulic analysis shall be provided by the developer
20 to the satisfaction of the city and county engineer to
21 model the impact to the big ditch. Any changes
22 required to be made as a result of this analysis shall
23 be implemented prior to the final plat. No water can
24 be diverted from the tributary of Goetz Ditch into big
25 ditch until this analysis is completed and further

1 approval of the rerouting has been granted by both the
2 city and county engineers. The signing off of this
3 preliminary subdivision plat does not grant the
4 developer permission to perform the rerouting."

5 I think the reason this note is here as
6 conveyed to me from the city engineering department is
7 that they do not want to hold this project up. They
8 feel that this is a viable project; however, this
9 analysis is necessary to make sure that what is being
10 proposed will not harm adjoining property owners.
11 Therefore, we have the plan in proper form for you to
12 consider, but it is a conditional use permit or it is
13 a conditional approval by the city and county
14 engineer. However, they have signed off on it. The
15 Planning Staff, we're not qualified to do a drainage
16 review and we are relying on the city and county
17 engineer to perform those services.

18 CHAIRMAN: Thank you, Mr. Noffsinger.

19 MR. JAGOE: Mr. Chairman, do we consider
20 drainage issue in zoning or do we consider those on a
21 preliminary or final development plan?

22 CHAIRMAN: Mr. Noffsinger.

23 MR. NOFFSINGER: I think we have made the
24 decision here or the chairman has allowed testimony
25 toward the preliminary plan and we are discussing the

1 drainage, which can come into play with the zoning
2 change. I think the decision was made by the chairman
3 to allow that discussion to occur. So we can do that.
4 I think it's at the Chairman's pleasure.

5 CHAIRMAN: Mr. Riney, would you like to say
6 something, some comments to the county engineer?

7 MR. RINEY: I was going to amplify what Mr.
8 Noffsinger said. I'm glad he read that into the
9 record because I think it's important to have that.

10 The planning rule is granted based on the
11 information provided. That's the first sentence.

12 Then we understood that this extra-ordinary
13 step that we talked about earlier is there for the
14 protection and to help assure the adjoining property
15 owner that the scenario that we've described will
16 function properly. We have confidence because we
17 happen to know that area. We've seen it work.

18 The developer, we agreed to this. In order to
19 give the adjoiners an additional level of comfort, the
20 city and county engineer wanted to do that so we
21 agreed to do it. The approval, as Mr. Noffsinger
22 says, has been granted. So the plat is in order for
23 consideration tonight. Be sure we understand that.

24 CHAIRMAN: Okay. So you have built in, as the
25 county engineer, an extra level of protection for the

1 adjoining property owners until you receive further
2 information.

3 MR. RAYAN: To my satisfaction.

4 CHAIRMAN: To your satisfaction.

5 MR. RAYAN: Correct.

6 CHAIRMAN: Of which time you will certify this
7 as?

8 MR. RAYAN: Correct.

9 DR. BOTHWELL: Or not.

10 CHAIRMAN: If it doesn't meet your
11 specifications, back to the digging stage.

12 MR. RAYAN: Correct or they have to do a
13 revision.

14 CHAIRMAN: Yes.

15 MR. RAYAN: To accommodate for the problems
16 that we have, if there is any.

17 CHAIRMAN: Okay. All right.

18 Does anybody have any questions while we have
19 the county engineer, does anybody in the audience have
20 any questions of the county engineer?

21 MR. BLANDFORD: I have one question. If
22 though start this development and that ditch, they
23 decide they cannot, if they don't prove that they can
24 drain our property at the same time it drains now,
25 they start this development and they start moving dirt

1 and say that ditch had to be left open to get our
2 water off at the same time level, I understand that
3 they start the development and start moving dirt, that
4 ditch could be a major concern with the way the
5 development is designed right now.

6 CHAIRMAN: I don't think really that would be
7 a question for the county engineer unless maybe - -

8 MR. RAYAN: According to the construction
9 stage that they're going to go through, moving the
10 dirt, they're going to start with the basins along the
11 big ditch. This is not going to harm anything.
12 Actually it's official.

13 They're also going to move in to a third
14 basin, which in the area where the ditch that he's
15 talking about that drains his property, we would want
16 to see that basin also help in that area too. So
17 actually it's going to benefit the drainage of your
18 property not touching that ditch and not providing a
19 condition where it makes it worse. So we will be
20 watching what they're doing and we will keep on it.

21 MR. BLANDFORD: I understand. But what if
22 they decide that that ditch has to be left open? I
23 understood the other day that we were talking about
24 that if that ditch had to be left open it would make a
25 major change in their plan now. Do you follow me?

1 CHAIRMAN: Yes, sir. I don't think it would
2 really effect the county engineer. He's just going to
3 certify what it takes to make it right. I think that
4 would be a question for Mr. Riney. It would just be a
5 development change.

6 MR. BLANDFORD: We get all the figures in and
7 we see that they cannot move the water as fast as it
8 gets off of our property now. They've started these
9 basins. If that ditch had to be left open, would this
10 cause a problem with the dirt they have moved?
11 Because I understood that the development was designed
12 for that ditch to be closed.

13 DR. BOTHWELL: Mr. Chairman, may I interject
14 something?

15 CHAIRMAN: Yes, sir.

16 DR. BOTHWELL: We are not approving the final
17 plan of the subdivision tonight. If the changes come
18 back that your ditch has to stay open, they will have
19 to revise that plat to reflect that for us to approve
20 later. Not tonight. So all we're approving tonight
21 is the zoning change to allow them to proceed.

22 MR. APPLEBY: And we're looking at a
23 preliminary plat.

24 DR. BOTHWELL: And a preliminary at that.

25 MR. NOFFSINGER: Which is the construction

1 drawing for that development.

2 DR. BOTHWELL: That can change if it has to.

3 MR. BLANDFORD: Thank you.

4 MR. RAYAN: Just to state on record. Now,
5 when we review their analysis, we're going to be
6 looking at what happens upstream and what happens
7 downstream. We want to make sure that no adverse
8 impact will happen. So that's our focus. We want to
9 make sure it does not cause problems. It's not adding
10 to the already existing problem. We already have
11 problems exist down below such as Fisher Road.
12 There's already backing up water going to the farms.
13 So I'm looking at that close to making sure that we're
14 not going to make any more.

15 MR. CAMBRON: Are you working with the city
16 engineer too in conjunction with this?

17 MR. RAYAN: That's correct.

18 CHAIRMAN: So basically his original question
19 that I sort of simplified, your total review is to
20 make sure that he is no worse off than what he is
21 currently?

22 MR. RAYAN: That is correct.

23 CHAIRMAN: Thank you.

24 Does anybody else have any other questions?

25 Yes, sir.

1 MR. ELLIOTT: State your name, please.

2 MR. FISHER: Joe Fisher.

3 (MR. JOE FISHER SWORN BY ATTORNEY.)

4 MR. FISHER: My family has a farm on the
5 corner of Carter Road and Fisher Road.

6 Several times this year Fisher Road has gone
7 under water because Carter Road cannot take the water.
8 A ditch gets full from all the development that's
9 happened over the past several years. This aggravates
10 the flooding on Fisher Road and our farm. This year I
11 had to do something for the first time I've ever done.
12 Bush hog tobacco due to the drowning.

13 My question to Mr. Riney: You made the
14 comment earlier that you would widen Carter Road twice
15 as wide, the ditch. If you're going to do that, have
16 you contact the landowners, the homeowners and the
17 businesses? And how far are you going to make that
18 ditch wide? All the way to the creek?

19 CHAIRMAN: Let's have Mr. Riney address that.

20 MR. RINEY: My statement was it was going to
21 be widen along the frontage of this property. That's
22 all that they have control over. So whatever that is,
23 I don't remember, 1,000 feet, probably almost 2,000.
24 That distance along the frontage will be widen. The
25 ditch now maybe got a six foot bottom, but the bottom

1 we're going to have in there it will be a wet basin
2 will be somewhere around 190 feet wider than what it
3 is now. It will be a substantial increase in width
4 along the frontage of this particular piece of
5 property that we're discussing tonight.

6 MR. APPLEBY: But you're really adding
7 retention there more than - -

8 MR. RINEY: That's correct. That's part of
9 the retention. All the basins are interconnected so
10 you get much more storage.

11 Just for the record, the numbers show that
12 there's over 6 million cubic feet, 6.2 million cubic
13 feet of storage in these basins up to elevation 390.
14 So that's a substantial increase in the storage that's
15 out there for retention.

16 Now, if it's in a backwater situation, then
17 that's a different deal. But I think the Blandfords
18 understand backwater is different than the headwater
19 situation.

20 MR. FISHER: The ditch cannot handle any more
21 water than it is right now. That's why Fisher Road is
22 flooding and that's why I'm losing crops.

23 CHAIRMAN: Mr. Fisher, let me call the county
24 engineer, because the last part of the statement is he
25 made reference to he was looking at the development

1 plan in regards to the water behind the development
2 and the water in advance of the development which he
3 did mention Fisher Road.

4 MR. FISHER: Correct. I am downstream.

5 CHAIRMAN: Let me ask him to what detail
6 because actually this development may, with the
7 retention basins, may be improving your situation. I
8 will not make that statement, but I'll pose the
9 question to the county engineer and ask that.

10 MR. RAYAN: According to the calculation that
11 they submitted to us - -

12 CHAIRMAN: That Mr. Riney submitted.

13 MR. RAYAN: Yes, the developer's engineer. It
14 shows that there is an improvement to the downstream.
15 They've slowed the amount of flow. We believe
16 additional analysis that they're going to do is going
17 to give us better numbers.

18 CHAIRMAN: When you say improvement, if I was
19 in Mr. Fisher's situation myself, I would want to know
20 what actually determines improvement because obviously
21 he's getting flooded at the present time because of
22 increased development or other situations above him
23 that have brought more water into his property.

24 MR. RAYAN: The additional runoff that is
25 coming from the development, and if the property of

1 Blandfords coming toward the ditch too and with the
2 basin built, the basin is going to act as a hold for
3 that water and it's going to let go an amount less
4 than the existing condition per cubic foot per second
5 value, which is a flow of water. It's going to be
6 less than the existing condition. That's the number I
7 look for. I review those numbers. I will make sure
8 that as a result leaving the subdivision at the tip of
9 that subdivision downstream is less than the existing
10 condition.

11 MR. CAMBRON: And that's done by a retention
12 basin?

13 MR. RAYAN: According to their numbers the
14 basin is doing that.

15 MR. CAMBRON: I'm asking you. Is that done
16 with holding that water back? Is that how you do
17 that?

18 MR. RAYAN: Yes. You keep water for some time
19 and then let it go slow.

20 CHAIRMAN: Mr. Fisher, do you have another
21 question or did he adequately answer your concern?

22 MR. FISHER: I don't believe the basins will
23 help my situation. I believe it will hold the water
24 back more and drainage on Fisher Road will be slower
25 because the ditch is still going to be full. He's

1 talking about 1,000 feet. That's not going to reach
2 down to where Fisher Road is I don't believe.

3 CHAIRMAN: Let's bring our engineer back.

4 MR. RAYAN: Again, the additional information
5 that I'm requiring from the developer's engineer it's
6 going to show me a better, it's going to give me a
7 better understanding to the condition given the
8 development. I'm still looking at that. I have not
9 made that determination.

10 DR. BOTHWELL: You're not in a position to
11 answer that question yet?

12 MR. RAYAN: No, not yet. If it's not, then
13 they're going to have to do a revision to make that
14 happen. We're allowing them to go ahead and move
15 dirt. That's all it is.

16 MR. CAMBRON: But you feel comfortable with
17 the developer standing by what you're asking him to
18 do?

19 MR. RAYAN: They are confident that they will
20 provide that information.

21 MR. CAMBRON: But I'm asking you. Do you feel
22 comfortable with the developers taking care of this
23 problem?

24 MR. RAYAN: That's the engineer information
25 that they're going to go by.

1 MR. CAMBRON: Whatever the problem is with the
2 runoff. You said that you're going to allow them to
3 do this, but apparently you feel comfortable enough
4 fo9r the developer to go forward; is that correct?

5 MR. RAYAN: Correct. What they're doing right
6 now is not going to have an impact because they're not
7 adding surfaces. All they're doing is moving dirt.
8 But when we get to the next stage when they're saying
9 we want to add, we want to put streets and build, that
10 we're going to say, stop here. That information is
11 not good. They're aware of that.

12 MR. GILLES: Mr. Riney, you said you're
13 looking upstream and downstream, especially on the
14 Carter Road ditch. If you see that it's going to add
15 more water to that ditch than it currently can handle,
16 what's the next step?

17 MR. RAYAN: Then I will go back to the
18 engineer and tell them I'm not going to accept this.
19 So you need to revise your plan to help it downstream.
20 Then if he does that, then I want to see how it
21 impacted the upstream. So it's a complicated issue
22 here. You might do something to help downstream and
23 you might affect the upstream. I look at the
24 upstream. If it has an impact, then I'm going to tell
25 him he has to do something.

1 MR. CAMBRON: It could be more of a retention
2 basin or maybe a larger retention basin?

3 MR. RAYAN: Maybe put a retention.

4 MR. CAMBRON: Right.

5 MR. RAYAN: Or a different design.

6 MR. CAMBRON: Yes. But they want to go ahead
7 and move dirt so it's okay. It's not going to have an
8 adverse impact in the existing condition. It's not
9 going to add more water to Fisher Road area what
10 they're going to be doing.

11 MR. GILLES: According to Mr. Fisher, Carter
12 Road ditch can't handle any more water now. Is there
13 anything in the future to widen that Carter Road ditch
14 or anything?

15 MR. RAYAN: Not that I'm aware of. I know
16 they're working the retention basins. What they're
17 going to be doing is a retention basin that it could
18 have a positive impact on the drainage.

19 CHAIRMAN: Do we have any further questions of
20 our county engineer or Mr. Riney?

21 Yes, sir.

22 MR. ELLIOTT: State your name, please.

23 MR. KELLER: My name is Don Keller.

24 (MR. DON KELLER SWORN BY ATTORNEY.)

25 MR. KELLER: I'm likewise concerned on the

1 south part of the property. I'd like to ask Mr. Riney
2 about the Keller farm and the Henry O'Bryan property
3 they were concerned about run off to the south. I
4 haven't seen any plans to know what you are going to
5 do.

6 MR. RINEY: The plan is the Keller farm is a
7 long big ditch. We plan to continue the berm at the
8 long big ditch on our side of the property line. To
9 me that berm on where it ties back into higher ground
10 so that the water can't reach over.

11 The Kellers are concerned. Years ago the
12 water had reached over. The ditch was in different
13 condition. So we're going to have a berm there just
14 to assure that that won't happen.

15 The balance of the property where the common
16 boundary is, where water sheds back in on the
17 developed property, where water shed back in to the
18 basins on the development. Only right at the edge or
19 the back slope behind the adjoining streets or
20 whatever where the water fall and grass, that small
21 strip go onto the adjoining property. The whole area
22 out there almost from Southtown Boulevard south
23 naturally flows to the south. The water off of this
24 project site is going to stay, at least the water that
25 falls on the pervious area and improved areas is going

1 to stay within the basin system to be detained. The
2 basins act as a buffer as you're aware. So that water
3 will not be discharged directly onto the site other
4 than what might fall right at the slope where you have
5 to fill base flood elevations and it goes down to the
6 existing ground. That will be grass. That water will
7 fall off a slope. That's what's coming off the farm
8 right now as it goes on south onto the adjoining
9 property.

10 MR. KELLER: Do you have any plans that we can
11 see how that is going - - I know you took some aerial
12 photographs.

13 MR. RINEY: We have a plan on record here that
14 we can share with you all to see what that is.

15 MR. KELLER: Okay.

16 MR. RINEY: We've got those elevations.

17 CHAIRMAN: Do you have a copy of the plan with
18 you, Jim, by chance?

19 MR. RINEY: I didn't bring the whole plan. We
20 can get a plan to him. That's the plan that's filed
21 with the commission.

22 MR. KELLER: We just want to be assured that
23 there's not going to be any more runoff to the south
24 of us than there already is from Zogleman's farm.

25 MR. RINEY: It will be less because it's going

1 to be going back toward the basins.

2 MR. KELLER: See, I don't know what basins
3 are. I'm just now getting in on this.

4 CHAIRMAN: We can give you a copy of this plot
5 that we have.

6 MR. RINEY: He can't read that. We can get
7 him a copy or he can get a copy from the planning
8 office.

9 CHAIRMAN: You can look at this one right now.
10 If you have any other questions, why don't you contact
11 Mr. Riney. You can go by his office and you can get a
12 bigger plan that might give you a better idea of
13 what's going on.

14 MR. KELLER: Okay. Thank you.

15 CHAIRMAN: At this point in time, are there
16 any further questions?

17 MR. THOMPSON: One comment, Mr. Chairman.

18 MR. ELLIOTT: State your name, please.

19 MR. THOMPSON: Tommy Thompson.

20 (MR. TOMMY THOMPSON SWORN BY ATTORNEY.)

21 MR. THOMPSON: Mr. Chairman, Members of the
22 Commission, I appreciate this opportunity to speak
23 very briefly. I just want to mention I don't think
24 there's probably a plan that comes before this good
25 body that doesn't have drainage issues and traffic

1 issues raised.

2 With that being said I just want to go on
3 record that we are incredibly and sincerely sensitive
4 about the concerns of our good neighbors out there.

5 That's why, as Mr. Riney stated, that he has
6 met with the Blandfords at least four times to discuss
7 the issues that we've heard yet again tonight and
8 tried not only to be sensitive to those issues, but to
9 listen and learn and address our remedy to those
10 concerns.

11 I have personally met with Mr. Blandford one
12 time to hear his good concerns because I am concerned
13 about it. We're going to be his neighbor. We want to
14 be a good neighbor like we've been since 1994 since
15 we've been in business here.

16 Let me just assure you that the people that
17 are more concerned about having an adverse impact
18 without being able to properly deal with the drainage
19 is this company because we're going to make an
20 incredible investment, we already have, in this
21 property. We'll be making a bigger investment.

22 We certainly do not want to do anything that's
23 going to provide injury or deprivation to the people
24 that are going to be living out there, and we
25 certainly don't want to do it to our neighbors. So

1 that's why we've made sure that we're using the best
2 engineers available, using the best design criteria
3 available.

4 Even when you look at that design criteria,
5 every part of it is equal to or in excess of their
6 requirements. We've exceeded the FEMA requirements.
7 FEMA doesn't even require one to one anymore anywhere
8 in the country, but it's being required in Owensboro
9 and Daviess County and we were meeting or exceeding
10 one to one.

11 CHAIRMAN: Mr. Thompson, would you clarify
12 your statement "one to one"?

13 MR. THOMPSON: Well, one to one ratio on fill
14 and floodplain is not required by FEMA. You simply
15 have to elevate out of the base flood elevation.

16 We've met - - the Comprehensive Plan
17 contemplates development in floodplains, which
18 unfortunately we have a lot of time in Daviess County.
19 If we didn't develop in floodplains in Daviess County,
20 we wouldn't have any development at all.

21 We have met with the Corp of Engineers. We've
22 satisfied their concerns. Even with Mr. Blandford's
23 good comments, which all of his comments are good, he
24 talked to us about his concern about a ditch that was
25 on our northern property lines with the Jagoe

1 Development, Twin Lakes, and then coming back to his
2 property. We originally had a design to tile. He
3 thought it might be better and provide more storage,
4 even though we didn't really feel that way, but he
5 thought it would provide more storage if it were to be
6 an open ditch. So we now have agreed and reflected
7 that on our plan to be an open ditch.

8 Finally, I just want to emphasize about this
9 additional hydraulic study that's being required. I
10 want to make a point. This is extra-ordinary. In my
11 30 plus years of development, we have never had to do
12 that. I don't think Mr. Riney has ever had to do it
13 for one of his clients. I don't know of another
14 developer colleague that's had to do this. But as a
15 means of providing that extra method and that extra
16 level of comfort to the neighbors, we have greed to do
17 that at some expense.

18 Let me just say that when those numbers come
19 back, we're very confident because of the
20 professionals we have that it will support what we're
21 designing because everything we've designed in the
22 past has worked and we want it to condition to do
23 that. We're confident it's going to work in this
24 situation because what's at risk for us and our
25 neighbors.

1 If by some stretch it comes back and it says,
2 you need more storage, we have gone on record to say,
3 we will do that. We'll provide what additional
4 storage or remedy is necessary. I don't know how we
5 could be any more fair to our neighbors about our
6 desire to develop this.

7 Let me just say, Mr. Riney mentioned that
8 there was about 6.2 million cubic feet of storage on
9 this property. I mean we recognize that it has held
10 water. Mr. Blandford's farm has spilled over and
11 flooded this farm for years. We've got to deal with
12 that and we're going to deal with that.

13 Over 20 percent of this site is going to be
14 dedicated to storage. So of the 114 acres that we've
15 got, we're dedicating over 20 percent of it is going
16 to be in storage so that we can make sure that we can
17 meet the drainage requirements and we don't provide
18 any adverse impact to our homeowners or to our
19 neighbors.

20 So we're prepared to stand by that and we
21 would ask for your positive consideration.

22 CHAIRMAN: Thank you, Mr. Thompson.

23 I want to thank our county engineer for being
24 here. I believe we have a representative from the
25 city engineer's department. We appreciate you all

1 being here to help us with these very technical
2 situations that the commission faces.

3 If there are no further questions, I think at
4 this point in time the Chair is ready - -

5 Yes, sir.

6 MR. BLANDFORD: I didn't agree to the ditch
7 going over to the big ditch. I only said that a ditch
8 would carry more water than a tile. I want that on
9 record.

10 I still would like to see the Blue Line ditch
11 kept open. Because I do not feel that the ditch will
12 carry water off of our farm as fast and as it does
13 through the Zogleman farm.

14 Mr. Thompson just said that I agreed to a
15 ditch. I don't remember doing that.

16 CHAIRMAN: There is some question.

17 Before the Chair ask for a motion, Mr.
18 Thompson, do you want to clear up that contention?

19 MR. THOMPSON: I didn't say he agreed. He
20 made a suggestion and commented that a particular
21 ditch that's on our northern common property line with
22 Twin Lakes would probably have more capacity if it
23 were open as opposed to tile. We were originally
24 planning on tiling it. So we agreed to keep that
25 open. We thought he made a good point.

1 CHAIRMAN: Thank you, Mr. Thompson.

2 MR. BLANDFORD: The Question we have out there
3 on that ditch, if that ditch is opened up, to open a
4 ditch for our outlet, it will back flood right now.
5 Are they telling us that that retention basin is going
6 to take care of all of that problem?

7 CHAIRMAN: That's something that this
8 commission is not technically capable.

9 MR. BLANDFORD: That's what I understand.

10 CHAIRMAN: We have to rely upon the county
11 engineer. We have the greatest deal of faith in him
12 because he has reviewed every plan that this
13 commission has passed. There's been a lot of
14 questions raised, but his scrutiny on each and every
15 plan has been correct. His records at this point has
16 been impeccable and he has flood water, drain water to
17 deal with in every plan that he reviews. That's the
18 decision we have to go by.

19 MR. BLANDFORD: Thank you.

20 CHAIRMAN: Thank you. Now - -

21 MS. FULKERSON: Mr. Kirkland, may I ask one
22 more question to Mr. Thompson?

23 CHAIRMAN: You can ask a question.

24 MS. FULKERSON: Mr. Thompson, my question to
25 you is: We live past the Zogleman farm. In other

1 words, it floods us at the intersection of Todd Bridge
2 and Keller before it floods the Zogleman farm. When
3 the water comes out of Panther Creek, comes out of
4 Goetz ditch and comes toward the south, toward the
5 Zogleman farm, it spreads out. What Mr. Riney was
6 saying earlier is that everything is going to be built
7 up. The Zogleman farm will be built up to get all of
8 the houses out of the floodplain. Therefore, it won't
9 flood there. Therefore, when the water comes out of
10 Panther Creek, it's going to be deeper on me because
11 it won't be able to spread onto what was the Zogleman
12 farm. Do you understand?

13 CHAIRMAN: Is that your question, Ms.
14 Fulkerson?

15 MR. FULKERSON: Well, that's the preempt of my
16 question.

17 CHAIRMAN: In due respect to Mr. Thompson, I
18 think I will call Mr. Riney to address that with your
19 permission, Mr. Thompson.

20 MR. THOMPSON: I agree with that.

21 CHAIRMAN: Mr. Riney, did you understand the
22 question?

23 MR. RINEY: Yes. And Ms. Fulkerson brings up
24 a good point. That point is the point that's
25 addressed. We said earlier, Mr. Thompson did say

1 earlier that it's one to one ratio, which the local
2 officials have adopted. This policy requires that for
3 every cubic foot of water that you displace by fill,
4 that you create another opening over here, another
5 void for that water to go into. So that's why
6 Mr. Thompson said 20 percent of this farm will be
7 dedicated to storage. That's the reason. So that it
8 can provide that one to one ratio. We actually exceed
9 that ratio by two percent or whatever, but we're over.

10 Again, we try to error on the side of safety.
11 That water will not be displaced. The farm is going
12 to be fill, but it's not the entire farm. So that
13 displacement will be taken care of on the site of the
14 development.

15 CHAIRMAN: With your retention basins.

16 MR. RINEY: Yes.

17 CHAIRMAN: Thank you, Mr. Riney.

18 MR. CAMBRON: At this point in time, Mr.
19 Riney, it looks like we're talking about 20 plus acres
20 of retention on that particular farm and maybe more
21 depending on how the hydraulics tests comes back?

22 MR. RINEY: That's right.

23 MS. FULKERSON: So my point is, what he's
24 talking about on the retention basins is for the
25 water, for example, rain water. I'm talking about

1 water backing up out at Panther Creek. This water
2 will not be able to go into the retention basins
3 because they're built so high.

4 CHAIRMAN: Well, there's head water and
5 there's back water. The back water coming back from
6 Panther Creek is something I'll refer to him on, but
7 that's something different than the water that he is
8 creating off of his property.

9 MS. FULKERSON: What my question is - -

10 CHAIRMAN: I'll ask him to address that and
11 then we will move on. Thank you.

12 Yes, sir, Mr. Riney.

13 MR. RINEY: This project will not take care of
14 Panther Creek floodplain flooding. That is an immense
15 issue. This probably won't take care of that.

16 The storage will be available though for the
17 Panther Creek. If you don't get a drop of rain out
18 there in that neighborhood and you get a rain on up
19 the water shed and that massive water starts coming
20 downstream, the neighborhood will still benefit
21 because the basins will be there. They're
22 interconnected into the drainage system.

23 So as Ms. Fulkerson said, as it backs up
24 coming up Carter ditch or whatever, it will be able to
25 back into these basins through the pipes that we have

1 that interconnect the basins into all the basins that
2 are out there. So they still get a benefit, even if
3 they don't get a drop of rain on the site and they do
4 have a flood.

5 It will not serve to buffer the 100 year
6 floodplain from Panther Creek. That's beyond the
7 scope of that whole neighborhood out there to do that.

8 CHAIRMAN: Thank you, Mr. Riney.

9 MS. FULKERSON: Mr. Kirkland, first off water
10 does not come from Panther - - that comes out of
11 Panther Creek up Goetz ditch. We're not talking about
12 going into Carter Road ditch. The water comes from
13 the southeast going toward town. So the way it was in
14 '97, as you saw in my photos, it spread out over the
15 Zogleman farm.

16 CHAIRMAN: That's exactly why we brought the
17 county engineer in. That's what we will be reviewing
18 in a professional manner. That is what the whole
19 scope of our review is based on. That's what our
20 county engineer will determine.

21 MS. FULKERSON: Also, I think Mr. Riney was
22 trying to make fun of me thinking that we're going to
23 take care all the ills of the 100 year flood without
24 Panther Creek.

25 CHAIRMAN: I did not interpret that. I did

1 not interpret that at all. I think he was making a
2 professional statement.

3 MS. FULKERSON: Nobody can take care of the
4 flooding of Panther Creek. I do realize with Mr.
5 Riney. That's not the problem. What my problem is is
6 that the water that's coming out of Panther Creek, not
7 going go on what was the Zogleman farm, because it's
8 built up.

9 MR. APPLEBY: But the basins are not. All the
10 basins are interconnected with all the ditch system
11 out there. So the water is going into the ditches
12 first. It's going to back up to these basins before
13 it goes anywhere else.

14 DR. BOTHWELL: So it still goes onto the farm.
15 It hasn't changed.

16 MR. APPLEBY: It still goes back onto this
17 farm just like it always did. There's 6 million cubic
18 feet of storage on this farm connected to this ditch
19 system around it. So regardless it's going to hold as
20 much water as it holds now no matter where it comes
21 from.

22 MS. FULKERSON: The '97 flood water did not
23 back up out of the Carter Road ditch.

24 MR. APPLEBY: It backed out of some ditch
25 somewhere.

1 MS. FULKERSON: It did not cross Carter Road.

2 DR. BOTHWELL: Mr. Chairman, we're discussing
3 engineering issues.

4 CHAIRMAN: If you have a specific question,
5 we'll answer it. At this point in time in courtesy to
6 the rest of our people, I think we need to move on and
7 the Chair will call for a motion. Thank you.

8 MS. FULKERSON: Thank you.

9 CHAIRMAN: The Chair has heard diligent
10 testimony from all sides and we appreciate your
11 patience of you that are out there. We appreciate
12 both professional engineering staffs and the people
13 that has participated. The property owners, we have
14 we've answered your questions. Obviously the
15 commission can't answer, but we did have a
16 professional staff that could. I encourage you if you
17 have any future questions that I think Mr. Riney is
18 very open and I know our county engineer is open.
19 They would be glad to assist you in a future date.

20 Now, with that being said the Chair is now
21 ready for a motion.

22 MR. CAMBRON: Mr. Chairman, can I ask you one
23 question?

24 CHAIRMAN: Yes, sir, Mr. Cambron.

25 MR. CAMBRON: If a motion is made to the

1 affirmative and Conditions 1 through 4 are submitted
2 and the Findings of Fact 1 through 4, would it be
3 appropriate or okay for Mr. Noffsinger to read in that
4 hydraulics, whatever it was on that plat there into
5 the record too again?

6 MR. APPLEBY: It's on the next item on the
7 agenda.

8 CHAIRMAN: That will move very quickly.

9 MR. CAMBRON: On this one too?

10 MR. NOFFSINGER: I will do whatever.

11 CHAIRMAN: Is it necessary?

12 MR. APPLEBY: I don't think it's pertinent
13 until - -

14 MR. NOFFSINGER: You do have it on the next
15 item as a notation on the plan. I do whatever the
16 commission.

17 MR. JAGOE: Probably not necessary for the
18 zoning, but it will be necessary for the plan.

19 MR. CAMBRON: I understand. I just thought
20 maybe it might be a good clarification for the other
21 people out there to understand that they are going to
22 be working on that, but that's fine.

23 My motion is for the affirmative based on
24 Conditions 1 through 4 and Findings of Fact 1 through
25 4, Mr. Chairman.

1 MR. APPLEBY: Second.

2 CHAIRMAN: Mr. Cambron makes a motion for
3 approval. We have a second by Mr. Appleby. All in
4 favor raise your right hand.

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries unanimously.

7 Next item, please.

8 RELATED ITEM:

9 ITEM 7A

10 Keeneland Trace, 114.70 +/- acres (Postponed from July
11 13, 2006 meeting)

12 Consider approval of major subdivision preliminary
13 plat/final development plan.

14 Applicant: Thompson Homes, Inc.

15 MR. NOFFSINGER: Mr. Chairman, the Planning
16 Staff and Engineering Staff has reviewed this plan.
17 The plan is found to be in order. We do have the
18 notation regarding the hydraulic analysis on this plan
19 that I read into the record previously.

20 There is also a notation on this plan that
21 states this subdivision is located within an area that
22 contains a variety of agricultural activities. Under
23 Kentucky law, agricultural and civil-cultural
24 operations will have certain protections from
25 non-agricultural uses. That notation should be
26 carried over to all final plats on the property.

27 We have reviewed for consistency with the

1 Comprehensive Plan and based upon the prior zoning
2 recommendation it would be consistent with the
3 Comprehensive Plan as well as meet the requirements of
4 the subdivision regulations and zoning regulations and
5 pending further review by city and county engineer on
6 this hydraulic analysis.

7 Should there be any changes to this plan, this
8 plan will have to be amended; however, at the current
9 time it would be approved by the director of the
10 office and would not come before this commission of
11 the public hearing unless you so choose.

12 CHAIRMAN: Thank you, Mr. Noffsinger.

13 Are there any questions?

14 (NO RESPONSE)

15 CHAIRMAN:) If not the Chair is ready for a
16 motion.

17 MR. APPLEBY: Motion for approval.

18 CHAIRMAN: Motion for approval by Mr. Appleby.

19 DR. BOTHWELL: Second.

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

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Next item, please.

25 ITEM 8

1 9251 KY 144, 0.331 acres
2 Consider zoning change: From B-4 General Business and
3 R-1A Single-Family Residential to B-4 General Business
4 Applicant: Richard W. And Mary Rose Howard

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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. Close the existing access at the intersection of KY 144 and Knottsville-Mt. Zion Road and upgrade the existing drive on KY 144 to a standard drive;

2. Provide landscaping as required by the zoning ordinance adjacent to 9229 KY 144; and,

3. Pave all drives and vehicular use areas as required in the Owensboro Metropolitan Zoning Ordinance.

FINDINGS OF FACT:

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

2. The proposal is a logical expansion of existing B-4 General Business zoning that currently

1 exists on the subject property; and,

2 3. The expansion of a General Business zone
3 will not significantly increase the extent of the zone
4 in the vicinity of the expansion and should not
5 overburden the capacity of roadways and other
6 necessary urban services that are available in the
7 affected area.

8 MR. LANE: We would like to enter the Staff
9 Report as Exhibit F.

10 CHAIRMAN: Thank you.

11 Are there any questions?

12 (NO RESPONSE).

13 CHAIRMAN: Anybody representing the applicant?

14 (NO RESPONSE).

15 CHAIRMAN: Does anybody have any questions?

16 (NO RESPONSE)

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

19 DR. BOTHWELL: Motion for approval,
20 Mr. Chairman, based on Conditions 1, 2 and 3, and
21 Findings of Fact 1, 2 and 3.

22 CHAIRMAN: Motion for approval by Dr.
23 Bothwell.

24 MS. DIXON: Second.

25 CHAIRMAN: Second by Ms. Dixon. All in favor

1 raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries unanimously.

4 Next item, please.

5 ITEM 9

6 12400 Block US 431, 100 Block East Harmons Ferry Road,
7 31.027 acres

8 Consider zoning change: From A-R Rural Agriculture
and I-1 Light Industrial to A-R Rural Agriculture

9 Applicant: Ann G. Wilson

10 PLANNING STAFF RECOMMENDATIONS

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

15 FINDINGS OF FACT:

16 1. The subject property is located in a Rural
17 Maintenance Plan Area where rural farm residential
18 uses are appropriate in general locations;

19 2. The subject property has historically been
20 used for agricultural purposes;

21 3. Based on the historical use of the subject
22 property, an agricultural use is more appropriate than
23 the current split zoning;

24 4. The subject property has sufficient road
25 frontage to allow any further lot divisions to have
separate driveways on a public roadway; and,

1 5. The subject property has sufficient road
2 frontage and acreage to allow for several dwellings to
3 be located on large separate tracts having potential
4 for agricultural use.

5 MR. LANE: We would like to enter the Staff
6 Report into the record as Exhibit G.

7 CHAIRMAN: Is anybody representing the
8 applicant?

9 APPLICANT REP: Yes.

10 CHAIRMAN: Do we have any questions for the
11 applicant?

12 (NO RESPONSE).

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

15 MS. DIXON: Move for approval based upon
16 Planning Staff Recommendations and Findings of Fact 1,
17 2, 3, 4 and 5.

18 CHAIRMAN: Motion for approval by Ms. Dixon.

19 MR. HAYDEN: Second.

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

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Next item.

25 ITEM 10

1 Portion of 9500-9600 Blocks Sauer Lane, 20.50 acres
2 Consider zoning change: From A-R Rural Agriculture to
3 I-1 Light Industrial
4 Applicant: Buskill Properties, a Kentucky partnership

5 PLANNING STAFF RECOMMENDATIONS

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

11 CONDITIONS:

- 12 1. Widen Sauer Lane to 22 feet from where
13 roadway improvement end at the Kimberly Clark site to
14 the access point of the subject property. The
15 transition taper back to 18 feet shall begin beyond
16 the access point;
- 17 2. All vehicular use areas shall be paved;
- 18 3. Outdoor storage areas shall be screened
19 per zoning ordinance requirements; and,
- 20 4. Submission and approval of a final
21 development plan prior to the issuance of any building
22 permits.

23 FINDINGS OF FACT:

- 24 1. The subject property is located in a Rural
25 Maintenance Plan Area where light industrial uses are
appropriate in limited locations;

1 2. The proposed zoning change is a logical
2 expansion of an existing industrial zoning
3 classification located immediately south of the
4 subject property;

5 3. With the commitment by the developer to
6 widen Sauer Lane, the proposed zoning change should
7 not overburden roadways or other necessary urban
8 services that are available in the affected area; and,

9 4. With the preliminary development plan
10 submitted in conjunction with the rezoning application
11 provides screening to adjoining properties which
12 should help reduce the impact of the development on
13 the rural character of the surrounding properties.

14 MR. LANE: We would like to enter the Staff
15 Report into the record as Exhibit H.

16 MR. ROGERS: Mr. Chairman, I need to
17 disqualify myself on this item.

18 CHAIRMAN: Okay. Let the record show Mr.
19 Rogers is disqualifying himself.

20 Is there anybody representing the applicant?

21 MR. ELLIOTT: State your name, please.

22 MR. KAMUF: Charles Kamuf.

23 (MR. CHARLES KAMUF SWORN BY ATTORNEY.)

24 MR. KAMUF: We represent Buskill Properties.
25 They now own approximately 39 acres that's on Sauer

1 Road.

2 As you recall the last time there was 39 acres
3 that was requested to be rezoned. There has been a
4 major change in our application since that time. Now
5 we have dedicated half of that property.

6 As you see this is where the property is
7 located. This is the existing industry that we have
8 out there. This is the site as I showed you at the
9 last hearing in February.

10 This property is 39 acres. Now we have
11 changed that original application. Where the
12 application, of course, is 39 acres, but we have
13 dedicated over 20 acres of that to buffer so that it
14 will retain somewhat of the rural characteristics of
15 the neighborhood.

16 I'll have about ten exhibits. We'll go ahead
17 and introduce them so we won't have to bother the
18 board.

19 This rezoning is adjacent to the existing
20 industry that we have there. The proposed rezoning is
21 an expansion of the industrial site. That's the one
22 that we have here. It's over 600, 700 acres. Where
23 the industrial plan is zoned I-2. We did not ask for
24 I-2 rezoning. We have asked for I1 rezoning.

25 The industrial plant is a new state of the art

1 plant which was received overwhelming support here in
2 Daviess County on this particular site. It's one of
3 the largest and most innovative plants in the United
4 States.

5 We have filed herewith a preliminary
6 development plan. Of course, this preliminary
7 development plan, this is a copy for each member of
8 the board.

9 CHAIRMAN: Mr. Kamuf, why don't you hand that
10 to me and I will do your hand-outs and you can
11 continue to move along with your program.

12 MR. KAMUF: That's just a replica for each
13 member of the board to have.

14 CHAIRMAN: And those of you in the audience,
15 this is just an exact copy of what Mr. Kamuf handed
16 outside to us.

17 DR. BOTHWELL: It's just colored.

18 MR. KAMUF: So we have filed herewith a
19 development plan, which you can ask your director what
20 a development plan is. It is something that we are
21 bound by.

22 The purpose of filing this development plan is
23 to make the project more compatible with the rural
24 character of the neighborhood. We create different
25 buffer zone.

1 This is Tract 1. The remainder of Tract 1
2 shown on this preliminary development plan will not be
3 rezoned and will remain agriculture. So the area you
4 see right through here, none of that property - - it's
5 approximately a 20 acre tract. It will not be
6 rezoned. It will be a buffer between the area.

7 There is a gentleman that lives over here.
8 It's a Mr. Greenwell, I think. He will have a 20 acre
9 buffer zone buffering him from this project.

10 The yellow that you see here is the proposed
11 building site. It is approximately - - the maximum
12 that we can build on this property would be 2,008
13 square foot building.

14 The established tree line to the west, and
15 that's along this property that you see here. It's an
16 established tree line to the west of the subject
17 property is to remain as it exist. You can see that
18 the tree line makes up over 10 acres. This is the
19 tree line that I'm talking about right in through this
20 area.

21 The green area that we have is colored, but
22 those as it exist right now, and I'll show you another
23 map in just a few minutes, it is existing.

24 The building that we have construct will be
25 approximately 500 feet from Sauer Lane. The building

1 will be approximately 65 by 320 or 2,008 square feet.
2 The operation that we have there will be approximately
3 from 7 a.m. to 4 p.m. There will be approximately
4 eight to ten trips per day.

5 To the rear, and I'll show you another map in
6 just a second. To the rear is the Neal Rudy property.
7 Mr. Rudy is not here, but he has no objection to the
8 rezoning.

9 The ingress, and this is a critical area
10 because, I'll show you on the map, the big map in just
11 a second. As you can see, the ingress and egress to
12 this rezoning area is controlled along the frontage on
13 Sauer Road and it makes it near impossible for a truck
14 to turn and go in an eastwardly distribution. The
15 traffic will go from here back to Kimberly Clark or to
16 the existing industry.

17 Along this side, this is along the east side,
18 there is a double roll of pine trees along the eastern
19 boundary line which is above and beyond the
20 requirements of the zoning ordinance. You'll find
21 that in your Staff Report.

22 Also on the Staff Report it says the overall
23 acreage of the proposed industrial ground has been
24 reduced by nearly 50 percent of the original zoning
25 application.

1 We also have a letter, this was at the last
2 meeting. Let me change maps here. Just a second.

3 Before I show you this particular map, this
4 is the property by Mr. Lamar. He is Number 6. He has
5 written this letter:

6 "Dear Members of the Commission: I received
7 notice of the request of the zoning change of the
8 property across Sauer Lane from my farm. I understand
9 the property will be used for warehouse storage. I am
10 very pleased to see a private investment being made to
11 serve and encourage our existing industry and promote
12 job growth and economy in Daviess County. I'm sure
13 that the storage in the neighborhood will save money
14 not only for highways but for the industry. I
15 appreciate you providing a copy of this letter to the
16 members of the commission."

17 I have copy for everybody if you'd like to see
18 it.

19 Approximately, and you see from Mr.
20 Greenwell's house to this subject property as you see
21 this right here, what this is is that we've taken the
22 aerial photograph and made a transpose with the
23 development plan on it.

24 The Number 1 property, Number 2 property,
25 Number 3 is Mr. Rudy. As you can see there's a

1 natural, and I'll show some photographs of this in
2 just a minute. There is a natural boundary between
3 Mr. Rudy and, of course, this is Mr. Lamar.

4 Number 4 is approximately a 20 acre tract. I
5 think it's about 700 feet from the building over to
6 this tract.

7 CHAIRMAN: Mr. Kamuf, at this point in time I
8 know there are probably questions that maybe people in
9 the audience may have. I think you've made a very
10 good overview presentation. I know I've gotten with
11 your handout to us a pretty good idea of what this
12 property will be. I obviously recognize the changes.
13 Would you object if I would turn this over for
14 questions because people may have questions about
15 things that you haven't covered and they may have
16 questions about things that you've already covered.

17 MR. KAMUF: However you want to handle it, Mr.
18 Chairman. I have no objection.

19 CHAIRMAN: I think we have people in the
20 audience that may have questions. Are you near the
21 conclusion?

22 MR. KAMUF: No, I'm not near.

23 CHAIRMAN: Well, let us sort of stop at this
24 point and turn it over to the other people and ask if
25 they may have questions.

1 MR. KAMUF: I'm sure they have some. We have
2 witnesses and expert witnesses here tonight that will
3 testify concerning that.

4 The major drift of the case tonight is there
5 was some questions by some members of the board, what
6 have you done to try to assist these people to remain
7 some type of let's just say consideration to their
8 proposals and to their concerns? We have filed
9 herewith this development plan, which binds us and
10 where we have dedicated over half of the property to a
11 buffer. It has a buffer on the east and on the west
12 and a natural buffer the other way. I'll be through
13 in just a second so you can go ahead.

14 CHAIRMAN: Very briefly.

15 MR. KAMUF: Let me point this out to you.

16 Several issues the last time. One of the main
17 issues the last time was a traffic issue. This is
18 from Gate D. We have agreed to widen the road to the
19 subject property.

20 The important thing here is is that there's
21 not a traffic problem for anybody because there won't
22 be any increase in traffic except from this point to
23 this point. So that gentleman would be affected.
24 That gentleman would be affect. That gentleman would
25 be affected. Because the traffic comes from here to

1 here and there will be eight to nine trips a day where
2 the traffic would go back this way.

3 MR. CAMBRON: What's the distance between - -

4 MR. KAMUF: It's about 900 feet.

5 That is a key issue. Traffic was a big issue
6 the last time. We don't think that traffic is an
7 issue. As far as the rural characteristics, we've
8 tried to do everything. I don't know that we can do
9 any more than to give away and dedicate over half of
10 the property to allow for the buffers that we
11 requested out there.

12 CHAIRMAN: Thank you, Mr. Kamuf.

13 At this present time, let me ask the people
14 that may have questions to be sure, and we want to
15 address your questions, but please make your
16 statements in the form of a question so we can get
17 your question answered and somebody else's questions
18 answered also. I will call upon Mr. Kamuf and
19 whatever other people that he has to answer your
20 questions.

21 With that being said let me ask if there are
22 any questions of anybody in the audience.

23 MR. ELLIOTT: State your name, please.

24 MR. GREENWELL: Dan Greenwell.

25 (MR. DAN GREENWELL SWORN BY ATTORNEY.)

1 MR. GREENWELL: This is not a question, but I
2 will be very short.

3 We do not consider this a traffic issue
4 because we do not live on Sauer Lane. You all turned
5 this down in February. That was good. We still have
6 basically the same problem here. We would like for
7 you to turn it down again.

8 In February he said there was no known
9 connection with the existing industry, no contract
10 with them. That makes it a whole separate thing. The
11 project is suppose to create six to eight new jobs.
12 You cannot justify that with a negative impact on the
13 community. The way it's going to change our lives,
14 the lifestyles, the homes, everything. It's right in
15 the middle.

16 He says "buffer zone." I would like to show a
17 picture of this buffer zone. May I?

18 CHAIRMAN: Absolutely. I assume you're moving
19 towards a question.

20 MR. GREENWELL: Yes.

21 This picture is a picture from my north deck
22 to Carl and Brenda Millay's property. Clean across
23 this. This is the tree line six or eight months out
24 of the year when the leaves are not on. This is the
25 way it is all along the country right there. It's

1 wide open.

2 The only way to build this thing and make it
3 where it's going to please the neighbors is to build
4 it in a box and put a lid on it or not build it at
5 all. That's all I need to say.

6 CHAIRMAN: So you do not have a question?

7 MR. GREENWELL: Would you not build it?

8 That's the question.

9 CHAIRMAN: I don't think that's something that
10 Mr. Kamuf can answer.

11 Do we have anybody else with a question?

12 Did you want this to go into the record, your
13 picture?

14 MR. GREENWELL: Yes. Could I say one more
15 thing, please?

16 CHAIRMAN: Yes, sir.

17 MR. GREENWELL: The last time we had a
18 petition signed by 60 people that were against this.
19 Now we have a petition signed by over 200 people who
20 are against this. I'd like to enter that in the
21 record too.

22 CHAIRMAN: Thank you.

23 MR. KAMUF: Mr. Chairman, I just have one
24 issue, if I can.

25 In other words, we have this plat here.

1 Mainly one reason we had the plat is to show the
2 people that get up where they live. So this next
3 gentleman that gets up, if he could show us where he
4 lives on this plat.

5 CHAIRMAN: I think this gentleman, Mr.
6 Greenwell - -

7 MR. KAMUF: Yes. There's no question about
8 Mr. Greenwell. In other words, as they get up here,
9 this shows - -

10 CHAIRMAN: Mr. Kamuf, I will take care of
11 that. Thank you.

12 Yes, sir.

13 MR. ELLIOTT: State your name, please.

14 MR. PEDLEY: Gale Pedley.

15 (MR. GALE PEDLEY SWORN BY ATTORNEY.)

16 MR. PEDLEY: I'm here representing my daughter
17 that lives within a quarter of a mile of this site
18 that you're thinking about rezoning. She's been there
19 21 years.

20 My first question is: As I understand it, to
21 rezone this, this property needs to be connected
22 across the road or somewhere it needs to be connected
23 with the Kimberly-Clark property.

24 Now, tract Number 1 is the only connection - -

25 DR. BOTHWELL: Is that a question, sir?

1 Should we answer that, Mr. Chairman?

2 CHAIRMAN: Sir, if you've got a question, we
3 would be glad to answer the question, but in fairness
4 to the number of people we have, we're asking people
5 to ask a question and not make long statements.

6 MR. PEDLEY: We can't be limited to some form
7 of question because we're talking about 21 families
8 within a quarter of mile of this site. They have the
9 equal right to their quaintness and everything that a
10 subdivision in Owensboro has. Restrictions are in
11 place and every subdivision in Owensboro and every
12 subdivision in the county to protect the integrity of
13 the houses that are built.

14 My question is: Can you rezone this property
15 since it doesn't connect to the Kimberly-Clark? Tract
16 Number 1 is their only connection point. You're not
17 asking for rezoning of that property.

18 CHAIRMAN: Let me answer your question.

19 Mr. Noffsinger.

20 MR. NOFFSINGER: Across Sauer Lane there is
21 the Kimberly-Clark property that is zoned I-2 Heavy
22 Industrial. When we look at contiguous, contiguous is
23 defined in the adopted Comprehensive Plan as in close
24 proximity.

25 In this particular case, Staff is recommending

1 approval because it's in compliance with the adopted
2 Comprehensive Plan and they found it to be a logical
3 expansion.

4 Now, Mr. Kamuf did state that they are asking
5 for I-1 Light-Industrial, not I-2. So the question
6 would be, can they ask for I-1 and not be located next
7 to I-2. Sure they can. They can do that. The I-1
8 would certainly be less intense than what the I-2 zone
9 would allow in terms of uses allowed. So, yes, in
10 terms of a logical expansion, Staff has determined
11 that it would qualify as that.

12 MR. PEDLEY: It doesn't have to connect in any
13 way to the Kimberly-Clark property?

14 CHAIRMAN: Ms. Stone - -

15 MR. KAMUF: Mr. Chairman, may I answer that?

16 CHAIRMAN: Just a moment, Mr. Kamuf.

17 Ms. Stone.

18 MR. ELLIOTT: State your name, please.

19 MS. STONE: Becky Stone.

20 (MS. STONE SWORN BY ATTORNEY.)

21 MS. STONE: I think that this gentleman is
22 thinking that none of Tract 1 would be rezoned to I-1
23 and thereby it would be separated from the contiguous
24 nature of the I-1, I-2 zoning across, but the frontage
25 of a portion of that Tract 1 is also in this zoning

1 request and that connects into the I-2 across Sauer
2 Lane. This line right here is the requested zoning
3 line. So that goes across that property frontage.

4 MR. PEDLEY: We knew he couldn't build in that
5 area of Tract 1 because that's floodway. From what I
6 understood, they weren't going to build - - can't move
7 dirt or anything.

8 Doing all of this, moving all of this, doesn't
9 alleviate any of the issue that we had the first time
10 with the people, 21 families living in a quarter mile
11 of this that have an equal right, to every subdivision
12 in Owensboro to have their property increase in value
13 at the same rate as any other subdivision in Owensboro
14 or Daviess County. We know when this plant goes in
15 that the value of their property is going down and
16 that deals directly with the welfare of these people.

17 We've got three issues that we have to deal
18 with. Health, safety and welfare.

19 I know we've got a little bit of health issue
20 there. We've got a little bit of safety issue.

21 CHAIRMAN: Would you mind stating what the
22 health issue would be?

23 MR. PEDLEY: Huh?

24 CHAIRMAN: Would you mind stating what the
25 health - -

1 MR. PEDLEY: We don't know what he's going to
2 store in there. I know he's not - -

3 CHAIRMAN: Okay, one. Two, what is the safety
4 issue?

5 MR. PEDLEY: If he's storing any of these
6 chemicals or bleaches that it takes to use in this
7 plant over here.

8 CHAIRMAN: That is used in the plant across
9 the street.

10 MR. PEDLEY: In the plant.

11 CHAIRMAN: Across the street.

12 MR. PEDLEY: Then is a health situation, a
13 safety situation.

14 CHAIRMAN: You've got health, safety, and
15 what's the third one?

16 MR. PEDLEY: Welfare.

17 CHAIRMAN: Welfare. What is the welfare?

18 MR. PEDLEY: Welfare is the biggest. The loss
19 of value of 21 properties.

20 CHAIRMAN: If you'll be seated, I'll bring
21 Mr. Kamuf to the podium and let him address that.

22 MR. KAMUF: I'd be glad to.

23 CHAIRMAN: Mr. Kamuf, just to review. Safety,
24 health and welfare.

25 MR. KAMUF: We thought this would be an issue

1 so we have brought a certified real estate appraiser,
2 Bob Grimsley, who has a Kentucky Real Estate Appraiser
3 Certificate. He's made approximately 8,000 appraisals
4 in his life. He has visited the property. He has
5 reviewed all of these exhibits. He is a certified
6 appraiser with Kurtz Auction & Realty Company. He is
7 a Certified Residential Real Property Appraiser. He
8 has made numerous appraisals for nearly all the
9 financial institutions.

10 CHAIRMAN: Mr. Kamuf, that's very good.
11 Thanks for your background, but I think let's do it in
12 the order of his questions.

13 He had a safety, a health, and a welfare.
14 What about the safety issue? What about the chemicals
15 that are going to be stored there that are also going
16 to be used at the plant across the street?

17 MR. KAMUF: He'll have to answer that.

18 MR. ELLIOTT: State your name, please.

19 MR. BUSKILL: Dale Buskill.

20 (MR. DALE BUSKILL SWORN BY ATTORNEY.)

21 MR. BUSKILL: As far as the safety, I'm not
22 real sure exactly what he's asking, other than he
23 mentioned chemicals.

24 Mr. Pedley, what else did you mention?

25 MR. PEDLEY: I mentioned the chemicals. If we

1 have a fire, what's going to be released into the
2 atmosphere that we're going to have to worry about?

3 MR. BUSKILL: Number one - -

4 CHAIRMAN: Mr. Buskill, let's keep it going
5 this way because we don't want to cross.

6 MR. BUSKILL: We warehouse for the existing
7 industry now. I have never been asked to warehouse
8 anything in any chemical form or anything of that
9 nature so I really couldn't answer that.

10 CHAIRMAN: In other words, you would be
11 storing on your location the exact same products that
12 are going to be used?

13 MR. BUSKILL: To the best of knowledge.
14 That's correct.

15 CHAIRMAN: So whatever is used in the plant
16 will be stored on your premises; is that correct? I
17 mean chemicals that are used in the plant could and
18 may be stored in your facility?

19 MR. BUSKILL: I've never been asked to. I
20 guess it could.

21 CHAIRMAN: Will you be storing chemicals also
22 or just the raw product?

23 MR. BUSKILL: Well, the raw product is the
24 only thing it's ever been. Of course, the building
25 will be sprinkled. I don't particularly want

1 chemicals in my facility anyway.

2 DR. BOTHWELL: What question I think is: What
3 will be stored? Would that be's an easier way to get
4 to it?

5 MR. BUSKILL: Currently we store for the
6 industry in that area now. We store their finished
7 tissue products. We store bales of scrape paper.

8 CHAIRMAN: That was the safety. What about
9 the health issue? He said the calamity of a fire. In
10 other words, we've got paper and we've got tissue that
11 could possibly burn; is that correct?

12 MR. BUSKILL: That's correct. Like I said the
13 building - - you guys require anything over a certain
14 square footage has to be sprinkled.

15 CHAIRMAN: I think at this point in time we'll
16 get to the welfare issue that he was talking about the
17 property values.

18 I think, Mr. Kamuf, you had adequately
19 introduced your real estate appraiser who can now take
20 the stand.

21 MR. KAMUF: I'd like to show you on this plat
22 that as far as the retention basin there is a
23 retention basin to the rear and there also will be a
24 lake over there in case that they need water for any
25 type of activity there.

1 The witness that I have, here is a copy of his
2 qualifications for him.

3 I've asked Mr. Grimsley to address two very
4 important points after reviewing the documents, after
5 going to the site. The two questions that I will ask
6 him will be thus:

7 Do you have an opinion based upon a reasonable
8 degree of probability as to the rezoning of the
9 agriculture to I-2 of the Buskill property for
10 construction of a storage warehouse would have an
11 adverse affect on the surrounding property value?

12 We're talking about the surrounding. I don't
13 think anybody in the right imagination is going to say
14 it has any affect on half a mile or a mile away.
15 We're talking about the immediate area.

16 The second question is: If the neighbor in
17 that area placed a for sale sign on their property,
18 would the sale price be affected by this construction
19 project? So that's Mr. Grimsley's questions.

20 CHAIRMAN: Thank you.

21 MR. ELLIOTT: State your name, please.

22 MR. GRIMSLEY: Bob Grimsley.

23 (MR. BOB GRIMSLEY SWORN BY ATTORNEY.)

24 MR. GRIMSLEY: Based on the scope of work that
25 I performed for Mr. Kamuf, it is my opinion that the

1 property values based on this proposed addition in
2 that neighborhood would not have an adverse or
3 negative affect on the properties in the area.

4 Number two, the other question he asked was if
5 a for sale sign were placed in the yards of one of
6 these properties in that immediate area. It's also my
7 opinion that it would not adversely affect the sale
8 price of these properties.

9 With that I'll open the floor for questions
10 from the board.

11 CHAIRMAN: Do we have any questions in regards
12 to the real estate appraiser?

13 Yes, ma'am.

14 CHAIRMAN: Would you please be seated so she
15 can take the podium, please.

16 MR. PEDLEY: I'm not finished with my
17 questions?

18 CHAIRMAN: Well, I called upon her. Please be
19 seated. Thank you.

20 MR. ELLIOTT: State your name, please.

21 MS. GREENWELL: Beth Greenwell.

22 (MS. BETH GREENWELL SWORN BY ATTORNEY.)

23 MS. GREENWELL: I have pictures of all of the
24 surrounding homes in the area. You may look at these
25 pictures. We have nice homes in our area. We don't

1 have mansions. We live in the county. We have nice
2 comfortable homes.

3 This is Mr. Brown's home. I've got several
4 you can look at.

5 CHAIRMAN: Are we heading toward a question?

6 MS. GREENWELL: Yes.

7 CHAIRMAN: In fairness with his
8 qualifications, do you have a home in question that
9 you'd like him to just look at? I think also the
10 Owensboro market, and these fellows who deal in real
11 estate might make the comment.

12 Do we have an excessive amount of homes in the
13 Owensboro market, on the market today, Mr. Grimsley?

14 MR. GRIMSLEY: I think there's an increase of
15 homes on the market.

16 CHAIRMAN: Would you take a look.

17 Do you have a specific home that you have a
18 question about?

19 MS. GREENWELL: I'm just stating that I don't
20 think that anybody that has a home in our area, if
21 they put it up for sale with this construction going
22 on that anybody would want to buy a home. I wouldn't
23 want to buy a home, any of these homes, I don't care
24 how nice they are, with construction going on. Like a
25 storage with traffic going in front of my house eight

1 to ten times a day. I don't know how fast they're
2 trucks travel.

3 If they've ever been in the area, when
4 Kimberly-Clark lets out, if their trucks don't go very
5 fast they'll be run over because when they let out,
6 it's like Daytona 500.

7 CHAIRMAN: That's Kimberly-Clark?

8 MS. GREENWELL: Correct. Correct. When they
9 do their shift change - -

10 CHAIRMAN: I would think that probably
11 Mr. Buskill's trucks go at a much slower rate.

12 MS. GREENWELL: Right. And how is that going
13 to affect the traffic on Sauer Lane when Mr. Buskill's
14 trucks do not go very fast? Will that not back up the
15 traffic?

16 CHAIRMAN: I think we'll let Mr. Grimsley sit
17 down and I think we'll ask Mr. Buskill that question.
18 Unless you have a specific real estate question while
19 we have Mr. Grimsley on the stand we will address that
20 to him.

21 MS. GREENWELL: What does he think the
22 property values in that area are and does he think
23 that - - if somebody put their house up for sale, they
24 would get what they ask?

25 CHAIRMAN: There you go, Mr. Grimsley.

1 MR. GRIMSLEY: Mr. Chairman, I don't have a
2 crystal ball so I can't answer all the questions.
3 However I can state that the market reacts differently
4 in different situations. It's my opinion that this is
5 a good external use of property of the neighbors. It
6 appears to be non-offensive. There are many other
7 uses in my opinion that the property could be used for
8 that would affect value. The area is basically farm
9 community with residents built along the road
10 frontages. I think you're going to have farm traffic,
11 combines. You're going to have grain dryers. I don't
12 think this facility would be any more offensive than
13 the current use in that neighborhood.

14 Quite frankly I think if a sign were placed on
15 a property where good planned development is
16 occurring, it would actually have a positive affect.

17 MR. APPLEBY: Mr. Grimsley, what in your
18 opinion, how does light industrial property compare to
19 agricultural ground value-wise?

20 MR. GRIMSLEY: Well, my understanding of I-1
21 zoning is that the property could be used for this
22 kind of a warehouse, maybe some small warehouses,
23 storage buildings. Agricultural zoning to light
24 industrial, in my opinion, is not that much different.

25 CHAIRMAN: Did he answer what - -

1 MS. GREENWELL: No, not really because he
2 didn't - - no, he didn't really answer my question.
3 Can I enter these pictures of our homes?

4 CHAIRMAN: Absolutely.

5 MS. GREENWELL: This really doesn't have
6 anything to do with property value, but there's no
7 buffer zones. Right now in place between Carl and
8 Brenda Millay's house, which is east of the site. To
9 ours you can see directly across the property. See
10 our house from theirs. I don't see where he thinks
11 that there's going to be a buffer zone. Even 20 acres
12 of grass is not - - there's no woods there.

13 MR. CAMBRON: Do you understand they're going
14 to put pine trees ten foot on center? Am I reading
15 that right?

16 MS. GREENWELL: That's what it looks like on
17 the east side, but on the west side there's a line of
18 trees between our property and his, which
19 Mr. Noffsinger right now has that picture. That's it.
20 That's it. You can see clear across to Carl and
21 Brenda Millay's. Thank you.

22 CHAIRMAN: Thank you very much.

23 Does anybody else have a question?

24 Yes, ma'am.

25 MR. ELLIOTT: State your name, please.

1 MS. CHANDLER: Debbie Chandler.

2 MS. CHANDLER: I do live on Sauer Lane. I
3 just have one simple question about his certificate.
4 I'm sure he's an appraiser. I understand from both
5 living in the country and a rural area there's
6 different mine sets. What percentage of his
7 experience has been with rural property? Because when
8 you live in a rural area you have different
9 expectation of what is acceptable than in the city.
10 That's what my question is.

11 CHAIRMAN: Mr. Grimsley.

12 MR. GRIMSLEY: I've got quite an extensive
13 experience in rural properties. I live on a farm and
14 have for the past 23 years. I would be honored to
15 have such a facility next-door to me. My next-door
16 neighbor is Bob Carper so if you know Bob you what I
17 have to put up with.

18 In dealing with the real estate business for
19 the past 20 years and Kurtz Auction Realty Company,
20 most of my experience has been agri-related and rural
21 in nature.

22 CHAIRMAN: Thank you.

23 Does that adequately answer it?

24 MS. CHANDLER: Yes.

25 CHAIRMAN: He lives on a farm.

1 Do we have another question?

2 Yes, sir.

3 MR. ELLIOTT: State your name, please.

4 MR. RANDY PEDLEY: Randy Pedley.

5 (MR. RANDY PEDLEY SWORN BY ATTORNEY.)

6 MR. RANDY PEDLEY: Mr. Kirkland, I have a
7 question for you. Just a minute ago Mrs. Greenwell
8 was talking about a traffic issue and she mentioned
9 Kimberly-Clark and you said, but that's Kimberly-Clark
10 like that has nothing to do with this. My question to
11 you is: If Kimberly-Clark has nothing to do with
12 this, how can that be a logical expansion of
13 Kimberly-Clark?

14 MR. KIRKLAND: I think I referred to the
15 question, I referred to the statement about the
16 traffic at Kimberly-Clark.

17 MR. RANDY PEDLEY: As to separate from this
18 issue.

19 CHAIRMAN: I really meant to be making no
20 comment in regards to what Kimberly-Clark had to do
21 with this property as far as the traffic flow. I
22 think the traffic flow of Kimberly-Clark, the traffic
23 flow of Kimberly-Clark has nothing to do with this
24 development. Whether this development goes in or not,
25 the traffic at Kimberly-Clark will be the same.

1 MR. RANDY PEDLEY: I understand that.

2 CHAIRMAN: That was my statement. That was
3 just a statement in regards to how Kimberly-Clark, you
4 know, she made a comment about the traffic at
5 Kimberly-Clark was extremely fast and was extremely
6 dense. I said, that had no reference to this
7 property. You know, whether they go in or don't go
8 in, the Kimberly-Clark traffic will not change.

9 MR. RANDY PEDLEY: Right. It still kind of
10 brings up the point that Kimberly-Clark is a totally
11 separate operation than what we're talking about here
12 with this.

13 CHAIRMAN: That's exactly what I was referring
14 to also.

15 MR. RANDY PEDLEY: Thank you.

16 CHAIRMAN: Yes, sir.

17 MR. BROWN: Donald Brown.

18 (MR. DONALD BROWN SWORN BY ATTORNEY.)

19 MR. BROWN: On Mr. Kamuf's map over there,
20 where did you say that Gate B is for Kimberly-Clark?

21 MR. KAMUF: Right here, sir. That last gate
22 right there.

23 MR. BROWN: That's my house. That's the
24 driveway that comes out from my house where you're
25 pointing.

1 MR. KAMUF: Is this where you live right here,
2 sir?

3 MR. BROWN: Yes, sir, it is.

4 CHAIRMAN: Mr. Kamuf, if you could, could you
5 stay close to the mike and use your pointer so it's
6 easier to record what you're saying or comments, if
7 you could. That way you can answer Mr. Brown's
8 question and we can record what you're saying.

9 MR. BROWN: The driveway that you pointed to
10 that goes back to my house, the road across from that
11 goes to B.J. Foster's grain bin.

12 MR. KAMUF: We're talking about right here?

13 MR. BROWN: Yes, sir. I'm just an ole country
14 boy. I usually try to walk 36 inches at a step. To
15 get to the gate you're talking about, you're talking
16 about 1800 feet or better.

17 MR. KAMUF: From here to right here?

18 MR. BROWN: Is 900 feet, yes, sir.

19 MR. KAMUF: I can ask the engineer. I have a
20 ruler and we'll find out real quick.

21 MR. BROWN: Great. Let's do it.

22 CHAIRMAN: Is that drawing to scale, Mr.
23 Kamuf?

24 MR. KAMUF: Yes, it is. It's one inch equals
25 90 feet.

1 CHAIRMAN: Mr. Riney, are we bringing you
2 back.

3 Mr. Brown, while they're doing the measuring,
4 by chance do you have another question?

5 MR. BROWN: Well, two or three. About the 900
6 feet. Then the 20 foot buffer zone. That's a ditch
7 is all it is. It slows down. Mr. Strode couldn't
8 farm it. I guess you could walk over it, but you
9 couldn't farm it.

10 CHAIRMAN: Excuse me. Mr. Brown, is that when
11 we're referring to the dense wooded area?

12 MR. BROWN: Yes, sir, I am. So if a buffer
13 zone is a ditch, which isn't any good to him or
14 anybody else, other than it does drain across. I'm
15 not saying it's not any good. It does take care of
16 the thing.

17 Another thing, is the school buses. There's
18 four school buses of a morning that runs Sauer Lane.
19 So that's eight trips they make down there every day.
20 If Mr. Buskill is connected with Kimberly-Clark, they
21 work 24/7. They don't shut that plant down. If he is
22 connected with them, I'd say he'd be working 24/7 too.
23 I don't know that, but I do know the plant runs 24/7.
24 Avid Truck Line two drivers coming down there, I don't
25 know how many trips they make. I'm guessing maybe

1 four apiece in a run of a day or they might be making
2 eight trips. I don't know. That's their business.
3 The traffic is going to be unreal on that narrow road.
4 Whatever you take out of that warehouse, if you pull
5 eight loads out, you have to put eight loads back.
6 Now, these loads will most likely, I have no idea
7 where they come from, but in the United States. So
8 these trucks are all going to be out of town.

9 Let's say they're coming out of Memphis. They
10 come on up 55 to Dowersburg, cuts over through by
11 Paducah and they'll catch the Pennyrile and come on up
12 the Pennyrile. Well, they see that Audubon and say,
13 hey, man, look here. I can cut off time plus I've got
14 a four lane road. Well, they run down through here
15 and look at that map and say, hey, partner, I can get
16 off here at Sorgho/Stanley exit on 1554, which is a
17 state road. I don't have to go all the way to
18 Owensboro back over to 60 and then back down again and
19 then back up Sauer Lane. I can take that state road
20 and get over there.

21 Mr. Kamuf said they would only come out of
22 there and turn west. These fellows out of town don't
23 know that. They're going to be turning any way they
24 can to save a nickel on this fuel at \$3 a gallon. If
25 they can cut 20 miles off of that, they're going to do

1 it.

2 CHAIRMAN: Let'S ask him to address that
3 question. We don't know where they are coming from
4 and which direction.

5 MR. BROWN: Right. It's just a hypothetical.

6 CHAIRMAN: I think that would be a question
7 for Mr. Buskill.

8 DR. BOTHWELL: Mr. Chairman, he had about
9 three or four questions.

10 MR. KAMUF: Let me answer the first one.

11 Mr. Riney tells you it's approximately 1100
12 feet from the point that we talked about right there
13 to the ditch. You can ask him, if you may.

14 DR. BOTHWELL: That's one question.

15 MR. BUSKILL: Well, in Charlie's defense, when
16 I took the roller out there I only went to the ditch
17 when I rolled it because we weren't sure at the time
18 where the driveway was going to be. So we're off 180
19 feet.

20 MR. BROWN: Sure. I understand that.

21 MR. BUSKILL: To answer the - - could I have
22 the question one more time.

23 CHAIRMAN: He was concerned about which
24 direction the trucks would be coming in. The way
25 you've got your driveway designed you've got them

1 pretty well headed, you know, from the left side
2 coming in. He was concerned about what would prevent
3 them from coming the other way. I think the concern
4 where the products are coming from.

5 MR. BUSKILL: I have no idea which way the
6 trucks come into that facility now. I'm assuming that
7 they'd come in 60. Most trucks these days they're GPS
8 controlled. A computer gives them the directions.
9 I'm sure there are some guys that still look at a map
10 and say, hey, I can cut through here. I think that
11 the gentleman would agree that once they ever did cut
12 through that they would never do it again because it's
13 really not suitable. That's why it's so important on
14 that drive. That's why I choose to design it that
15 way. Nobody needs to make an error and come this
16 direction. They should not do that. They should go
17 right back out the same way they came in. On a road
18 that's going to be widen up to the gate. From that
19 gate on, it's already been widen at whoever expense
20 that was.

21 MR. CAMBRON: Will you have proper signage
22 there to educate them as to which way they need to go?

23 MR. BUSKILL: I don't know that I can put a,
24 "Do not turn," but I know I can put a "Please do not
25 turn left."

1 I'm being redundant, but when they come up to
2 the way that this drive is designed, they're not going
3 to turn left unless they want to drag their trailer
4 through the ditch and end up having to call a wrecker.
5 It's designed blatantly to where they cannot turn
6 left.

7 I'll give you guys his. I think Mr. Brown
8 made a comment at the last meeting. It's what we
9 refer to as a yard dogs, fire truck, drainage truck.
10 There's a lot of different little terms for that type
11 of equipment, but that is most likely the type of
12 truck that will be used in this operation. They only
13 run about 30 to 35 miles an hour, depending on which
14 brand you buy.

15 Earlier someone mentioned about they only run
16 35 mile an hour or they'll get run over. That's the
17 speed limit on the road, I think. Well, it's 45.

18 In 1,000 feet, I don't know that you can even
19 get over 45 or over 35 mile an hour in a semi, if it
20 would run 45 mile an hour. I just wanted to comment
21 on the question from earlier.

22 DR. BOTHWELL: Is your traffic primarily going
23 to be from the plant to this warehouse, warehouse to
24 the plant, or is it going to be from the warehouse
25 then out to points unknown.

1 MR. BUSKILL: Both.

2 DR. BOTHWELL: So you're going to have both
3 kinds of traffic?

4 MR. BUSKILL: Both. This is a picture, an
5 aerial picture of the side that we colored in to kind
6 of highlight. We highlighted in green the existing
7 buffer zone that is going to be left. The reason that
8 I turned this around is so that you guys can see.
9 This is an actual aerial photo.

10 A comment was made earlier, and I'm not sure
11 by whom, that it's wide open. That there is no trees.
12 There's approximately 15 to 20 acres of trees in this
13 buffer zone. That's why I turned the map around.

14 MR. BROWN: Could I approach the map? Could I
15 go to the map?

16 CHAIRMAN: Absolutely, but you need to speak
17 from the podium so we can record your testimony.

18 MR. BROWN: Right here is where I live. Here
19 is the entrance to Kimberly-Clark.

20 MR. BUSKILL: That's correct.

21 MR. BROWN: You haven't measured from here to
22 here. You only measured from here to here.

23 MR. BUSKILL: Mr. Riney just measured it. He
24 measured from this point here because I pointed it out
25 to him.

1 MR. BROWN: Is that where you measured it
2 from?

3 MR. RINEY: Yes.

4 MR. BROWN: I'm sorry. I'm sorry. I didn't
5 understand it.

6 CHAIRMAN: Thank you.

7 MR. BROWN: Since I've said that I'm about
8 done.

9 CHAIRMAN: Thank you.

10 Do we have anybody else that has a question?

11 Yes, sir.

12 MR. ELLIOTT: State your name, please.

13 MR. HARDESTY: Will Hardesty.

14 (MR. WILL HARDESTY SWORN BY ATTORNEY.)

15 MR. HARDESTY: I do have a question for
16 Mr. Buskill.

17 Do you at this time have a contractual
18 agreement with Kimberly-Clark for the plans of this
19 warehouse that you're proposing?

20 MR. BUSKILL: As I stated the last time that I
21 was asked that question, and I don't mean this in a
22 mean way or anything, but I don't feel that I have the
23 obligation to discuss my business relationships in a
24 public forum.

25 MR. HARDESTY: Well, I disagree because your

1 business plans affect all these people around here.

2 MR. BUSKILL: What I'll say is I do business
3 with them today, yes. I do business with them today,
4 yes.

5 MR. HARDESTY: No, that's not my question.
6 This proposed warehouse that you are planning, do you
7 have a contractual agreement with Kimberly-Clark?

8 MR. ELLIOTT: You understand - -

9 CHAIRMAN: Mr. Kamuf, just a moment.

10 Mr. Elliott, is this commission entitled to
11 that question?

12 MR. ELLIOTT: I think we're only concerned
13 with what the use is going to be. Not his business.
14 I mean it's industrial use.

15 CHAIRMAN: If this commission cannot ask that
16 question, then I could not require him to answer that
17 question for you.

18 MR. HARDESTY: Even though he is insinuating
19 that Kimberly-Clark will be using this warehouse?
20 He's insinuating that and he's leveraging
21 Kimberly-Clark's name in order to get his warehouse
22 built.

23 CHAIRMAN: I just consulted legal counsel to
24 ask if we could ask that question of Mr. Buskill and
25 they told me that we could not.

1 MR. HARDESTY: Okay. Could I enter this into
2 the record? This is an e-mail from the plan manager
3 at Kimberly-Clark to myself. Could I read this into
4 the record?

5 CHAIRMAN: Can he?

6 MR. ELLIOTT: He can read it, yes.

7 CHAIRMAN: Do you understand the reason I ask
8 that question? I have your rights to think about, but
9 also we have to protect Mr. Buskill's. He said go
10 ahead.

11 MR. HARDESTY: This is addressed to William
12 Hardesty, myself, from Todd Visscher, plant manager.
13 Subject is Warehouse discussion. "Steve Vandergeeten
14 said he received a call from the person who wants to
15 build the warehouse nearby, that he wants to come by
16 and meet with us. I said to Steve that we are not
17 interested and have what we need from Riverport.
18 Thanks, Todd." I would like to enter this into the
19 record.

20 CHAIRMAN: Okay.

21 Does anybody else have a question?

22 I'm going to recognize anybody else that has a
23 question and we'll be glad for you to go again.

24 Yes, ma'am.

25 MR. ELLIOTT: State your name, please.

1 MS. WARREN: Sharon Warren.

2 (MS. SHARON WARREN SWORN BY ATTORNEY.)

3 MS. WARREN: First I'll start with a statement
4 from the land development policy that this board wrote
5 and then I'll address my question.

6 It says, "Urban growth location policy. The
7 major policy of our community is to encourage urban
8 type growth to be concentrated in and the existing
9 urbanized area of Owensboro within the urban service
10 area. The remainder of Daviess County is designated
11 as the rural service area where emphasis is placed on
12 protecting agricultural lands and discouraging urban
13 type activities beyond areas where they currently
14 exist."

15 My understanding is that urban service area is
16 Owensboro; is that right?.

17 CHAIRMAN: Mr. Noffsinger.

18 MR. NOFFSINGER: No, ma'am. In my opinion
19 that is incorrect. The urban service area is a
20 portion of Daviess County which includes the City of
21 Owensboro as well as outline areas of the City of
22 Owensboro, but the urban service area is not the City
23 of Owensboro.

24 MS. WARREN: There's a map on the land
25 development policy that shows an arrow pointing to the

1 area that is considered urban service area and then
2 another area pointing to rural service area. We are
3 definitely talking about the rural service area in
4 this situation.

5 MR. NOFFSINGER: Yes, ma'am. This property is
6 located in the rural service area, but I thought your
7 question was or your statement was that the urban
8 service area was the City of Owensboro. That is not
9 correct. However, this property is located in the
10 rural service area. Not the urban service area.

11 MS. WARREN: Right. Correct. Thank you.

12 How is this board going to ensure this policy
13 if they approve the building of this warehouse?

14 CHAIRMAN: Mr. Noffsinger.

15 MR. NOFFSINGER: I will just briefly attempt
16 to address that. It is just that. It is a policy.
17 That policy goes a little further. There are other
18 policies that are contained within the adopted
19 comprehensive plan. One of which is contained in the
20 land use plan, text of the land use plan, which talks
21 about logical expansions. Logical expansions of
22 existing non-residential uses. I think that's what
23 this board is considering here tonight. Is this a
24 logical expansion of an existing non-residential use.
25 If it is, which Staff we are of the opinion that it

1 is, then they may formulate that into their findings.
2 If they find evidence that it is not, then they may
3 make a motion and have findings to the contrary. So
4 the Comprehensive Plan is not to be incorporated as a
5 straitjacket that this commission and your Daviess
6 County Fiscal Court has to follow word for word. It
7 is a flexible document that is a guideline that sets
8 policies. However, those policies go beyond just what
9 you may read in one particular area of the
10 Comprehensive Plan.

11 MS. WARREN: Thank you.

12 CHAIRMAN: Yes, ma'am.

13 MR. ELLIOTT: State your name, please.

14 MS. BROWN: Mary Ellen Brown.

15 (MS. MARY ELLEN BROWN SWORN BY ATTORNEY.)

16 MS. BROWN: I have a statement about
17 Kimberly-Clark and I have a question for Mr. Buskill.

18 We live on Sauer Lane. We didn't live there
19 when Kimberly-Clark built their place, but they built
20 a highway from 60 to the plant which was suppose to
21 take care of all their semis going to and from the
22 company.

23 Since we have lived there, they have
24 apparently built what they call a drop lot, which they
25 come up in Innovative Way, get on Sauer Lane, which is

1 practically destroyed at Sauer Lane, and then they go
2 to I think Gate B and go back to the drop lot. We get
3 like seven, eight, nine trucks a day. Even at night
4 they go through there like 10, 11, 12:00. You could
5 be watching TV or something and see all these trucks
6 pass your window.

7 What my question is: When he's building this
8 road, what about from Innovative Way all the way to
9 where he is going to build his warehouse? They've
10 mentioned a ditch, but nobody said anything about that
11 little bridge that's there. That bridge will not hold
12 any semis. It will be one lane traffic unless they do
13 something with the bridge.

14 CHAIRMAN: Did you understand her question?

15 MR. KAMUF: I think I did.

16 CHAIRMAN: Thank you, Mrs. Brown.

17 MR. KAMUF: I would like to introduce this
18 into the record.

19 This is a letter from Senan Rayan that you
20 just heard a few minutes ago.

21 "In reference to the rezoning request for Dale
22 Buskill for the 39 acres at 9501, 9601 Block Sauer
23 Lane. I was informed that the storage facilities
24 would be on the above mentioned property on the north
25 side of Sauer Lane and Kimberly-Clark. This facility

1 will accommodate several trucks and will be traveling
2 a section of Sauer Lane and the bridge across the
3 ditch. I have discussed with Mr. Buskill and Attorney
4 Charlie Kamuf with the presence of Mike Riney, County
5 Commissioner, the need to widen a section of Sauer
6 Lane to the width that matches the existing width and
7 then tapers down to the entrance of the proposed
8 facility. The existing bridge will remain the same
9 with no improvement. We also discussed the
10 possibility of issuing an excess weight limit permit
11 to ensure the road structural workability."

12 We have that if you'd like to see a copy. I
13 have copies for all of you if you want to see them.

14 CHAIRMAN: Mr. Kamuf, you want to enter that
15 into the record?

16 MR. KAMUF: Yes.

17 CHAIRMAN: Hopefully we've allowed everybody.

18 Okay, we'll let you ask one question.

19 MR. ELLIOTT: State your name, please.

20 MS. HARDESTY: Kathy Hardesty.

21 (MS. KATHY HARDESTY SWORN BY ATTORNEY.)

22 MS. HARDESTY: If the warehouse is approved,
23 that's just one warehouse. The farm across belongs to
24 Mr. Lamar, who obviously probably will never live
25 there. There's lots of farmland on Sauer Lane. Would

1 it set a precedent that in the future if that
2 warehouse is approved, then another warehouse, and
3 another warehouse, or some other type of building.
4 Would it set that precedent is my question to the
5 zoning committee.

6 CHAIRMAN: Mr. Noffsinger.

7 MR. NOFFSINGER: I think if you read the Staff
8 Report, I think the Staff Report would tend to support
9 that the precedent, if there is a precedent that's
10 been set, was set when Kimberly-Clark moved into the
11 area because that changed the character of the area.
12 You had a non-residential use come into that area.

13 Certainly if you have this particular use,
14 that area is growing. Does it make it easier? Well,
15 I think each case has to be taken upon its own merit;
16 however, this would be just one more case that you
17 would have to point to in terms of non-residential
18 activities in the area.

19 CHAIRMAN: Yes, sir.

20 MR. ELLIOTT: State your name, please.

21 MR. CHANDLER: Scott Chandler.

22 (MR. SCOTT CHANDLER SWORN BY ATTORNEY.)

23 MR. CHANDLER: Good evening. Appreciate your
24 time and allowing us to speak.

25 Back in March after our first meeting, I went

1 to our county clerk's office and sat there and pulled
2 out Map 11, which looks very much like this map here.

3 Are you aware of the sales and exchanges of
4 property that have happened post-Kimberly-Clark and
5 pre-Kimberly-Clark?

6 CHAIRMAN: Mr. Chandler, that has no bearing
7 on this commission.

8 MR. CHANDLER: But it does, sir, in that if
9 this is the logical expansion, then trends of what has
10 happened prior to and afterward should dictate what
11 continues to happen. Am I making sense?

12 CHAIRMAN: Well, it may be an issue for you
13 and an issue that you are bringing to the attention of
14 the commission, but it's not something that the
15 commission would seek out because it would have no
16 bearing on us. You have the right as a citizen and as
17 a participant to bring that to our attention. But as
18 you phrased the question, you said, were we aware of
19 it? We're not and we would not be, but you're getting
20 ready to make use aware of it.

21 MR. CHANDLER: Would you like to be made aware
22 of it?

23 CHAIRMAN: Absolutely. You've got that right.
24 The way you phrased that you're almost saying it was
25 an oversight on our part that we were not. We would

1 not and should not. Yes, you have the privilege and
2 honor to present that to us.

3 MR. CHANDLER: There are about 102 properties
4 on Map 11 in the county office, recording office. Of
5 that are 24 farms and 75 are residential. There's a
6 franchise, and exception and one commercial and, of
7 course, the one industry.

8 Pre-'93, which is when Kimberly-Clark was
9 built, seven farms were sold and 35 residential
10 properties were sold in a 20 year period from '93
11 back. From '93 forward there have been 18 farms sold,
12 56 residential properties for a total of 74 properties
13 or 74 exchanges. That's almost twice what has
14 happened before. To me the trend it isn't a logical
15 progression to go from a residential farm to an
16 industry when this trend shows that the trend has been
17 from farm to residential.

18 I have one more question I'd like to ask.
19 Would you allow, if everything was pretty much the
20 same, would you allow this to be built on the site of
21 the library on Griffith Avenue? Because to me that's
22 residential. That's more than just a residential
23 area. It's a neighborhood. Sauer Lane for us is a
24 neighbored. These are my neighbors.

25 I see this as the camel's nose. It's only

1 2800 square feet now. He's only going to operate
2 between seven and four now. What proof, what
3 protections do we have from him expanding both his
4 operation hours and his facilities? What protection
5 do we have if the trees that he plants on the east
6 side die off? Because once he's planted them, he's
7 met the requirement, but afterwards what protection do
8 we have? Those are my questions to you and I ask that
9 you not allow this to go. Thank you very much.

10 CHAIRMAN: I think the questions are actually
11 more to the board than they are to Mr. Buskill.

12 MR. CHANDLER: Yes, sir.

13 CHAIRMAN: I'll answer the simple one and then
14 I'll have Mr. Noffsinger answer the big one.

15 As far as his trees, he's actually exceeding
16 our requirement. He's planting pines and that's in
17 this area pretty much a no fail deal. I mean once the
18 pines go in, you have a pretty good likelihood that
19 they will survive, unless some highly unusual
20 situation occurs.

21 In regards to your other questions, I will let
22 Mr. Noffsinger address those.

23 MR. CHANDLER: Thank you.

24 MR. NOFFSINGER: Sorry, Mr. Chairman, I'm not
25 sure what the questions are and I'm not sure that I

1 have any answers. Certainly I'm not going to go into
2 the number of properties that have sold or types that
3 have sold, the values.

4 CHAIRMAN: Mr. Noffsinger, I think his key
5 point of his question, if I'm incorrect, Mr. Chandler,
6 please correct me. I believe the crux of one of his
7 questions was, if this proposed warehouse was where
8 the library is on Griffith Avenue, would it be
9 approved by this commission?

10 MR. NOFFSINGER: I do not have an answer for
11 that. That is not an issue here tonight and I would
12 not attempt to address that issue.

13 CHAIRMAN: Thank you.

14 Would you like to conclude? You had started
15 off and you had been making a statement so I let the
16 people go ahead with questions. Now you may ask any
17 question you so desire.

18 MR. ELLIOTT: Identify yourself.

19 MR. GALE PEDLEY: Gale Pedley.

20 As I understand it, a truck terminal is in the
21 same classification as this warehouse; is that right?

22 MR. NOFFSINGER: Yes, sir. It's allowed in a
23 light-industrial zone.

24 MR. GALE PEDLEY: What guidelines, what have
25 you got to keep this from becoming a truck terminal?

1 This is centrally located between Owensboro, Henderson
2 and I-69. What have you got, what has anybody got to
3 keep Mr. Buskill from saying, I've got this 20 acre
4 zoned light-industrial. I can put my truck terminal
5 here. I can save all this running up and down the
6 road. Then we have to put up with it. My daughter
7 and my neighbors have to put up with 40 or 50 trucks
8 making this transit. Nothing to stop them because
9 you've approved an industrial zoning that will permit
10 a truck terminal.

11 Now, you can say, he won't do that. Tell me
12 five years from now, well, he wasn't suppose to do
13 that. He did, but he wasn't suppose to. That won't
14 help these people at all. It won't help their
15 welfare. I'm talking about their money that they put
16 in this thing. It's their life earnings, if you will.
17 That this house is being built. The only thing
18 they've got - - by the way, this house they built, I
19 know most of you live in a subdivision in Owensboro or
20 someplace. You're in a sanctuary. You've got all
21 these things in place that keeps anybody from
22 trafficking on you. They can't come in there and
23 build anything you don't like. They can't put a
24 potbelly pig in their backyard or something. These
25 people have exactly the same right. That's what has

1 got to be stopped because you can trust him if you
2 want to, but when we're talking about dollars, and
3 that's what started all of this is dollars. Then tell
4 me a truck terminal won't go in there. I don't go for
5 it.

6 Another thing. How is he going to get
7 products - - forget it.

8 That's as good as most subdivision. I did the
9 work on that. Hundred trees out there. So I've got
10 something invested.

11 I want to know if you're going to run 35 miles
12 an hour, you're going to go from this building to
13 Kimberly-Clark. You're going to come from
14 Kimberly-Clark back to this building. Is that all
15 he's going to do? Is he just going to take material
16 from Kimberly-Clark to here and from there back to
17 Kimberly-Clark. Somebody has got to take this
18 material either from here to other points or they've
19 got to bring this material from other points to this
20 warehouse; otherwise, how is it going to get there?
21 They just don't just take it to Kimberly-Clark. He's
22 going to pick it up and take it right over to
23 Kimberly-Clark. That's double-handling.

24 MR. CAMBRON: He already stated that it's
25 going to dealt from other trucks.

1 MR. GALE PEDLEY: That came out a little bit
2 late because he was leaving us to believe that it was
3 35 mile an hour trucks that was going to do all of
4 this. We know it's going to be 50 foot trailers
5 running in and out of here. I guess I'm done.

6 CHAIRMAN: Thank you, Mr. Pedley.

7 Yes, ma'am. You want to ask another question?

8 MR. ELLIOTT: Give your name, please.

9 MS. WARREN: Sharon Warren.

10 This is my home. This is a picture of the
11 home I live in now. I'm 45 years old, almost 45 years
12 old. For the first 25, 30 - - how many years was I in
13 a mobile home? Well, all my life. All my live I've
14 lived in a mobile home. I worked hard. My husband
15 and I have worked hard to build this home and make it
16 our home. This is not what we want in our front yard.
17 I'm sorry. That's my statement.

18 CHAIRMAN: Thank you.

19 MR. BEALS: I have one question.

20 MR. ELLIOTT: State your name, please.

21 MR. BEALS: My name is Scott Beals.

22 (MR. SCOTT BEALS SWORN BY ATTORNEY.)

23 MR. BEALS: Beth, do you have the picture I
24 just gave you?

25 My question would be to anybody in the room

1 that can answer this.

2 CHAIRMAN: While you're waiting for the
3 picture you can go ahead and ask your question.

4 MR. BEALS: The picture that you're looking at
5 here, this is my home right here. This is the
6 proposed site right here. Along with the picture
7 you're looking at there, how is putting a trucking
8 terminal right here not detrimental to the rural
9 environment that we are used to living in?

10 I've lived in this community within two miles
11 off and on my whole life. I choose this place because
12 I wanted to be in the country.

13 This is the view from my front porch. You set
14 a trucking terminal in there, I don't have my rural
15 environment any more.

16 This is the way I was raised. This is the way
17 I choose to live my life. I built this house. Like I
18 stated the last time. It's not a mansion, but we
19 built this house with our own hands. We choose this
20 spot. We built a house the way we wanted it. We want
21 to stay here. We don't want a trucking terminal in
22 our front yard. Call it what you will. Warehouse,
23 trucking terminal, whatever. It all looks the same.
24 You have the sounds of the trucks, the forklifts. You
25 can plant trees around it. It don't change it. That

1 one right there, the picture in front of you. That
2 warehouse is going to be right in the middle of that
3 picture. There's no way to hide it. You can't hide a
4 building like that in the country. It doesn't make
5 sense to us. The people that have chosen to live like
6 we've chosen to live forever. There's no way that
7 that's not detrimental to the rural environment that
8 we've all chosen and that we all wish to maintain.

9 CHAIRMAN: Thank you.

10 MR. BEALS: So if anybody can answer how
11 that's not detrimental, that's my question.

12 CHAIRMAN: I respect your efforts in building
13 the home that you did with your own hands, and many of
14 you have done that. Mr. Pedley has helped his
15 daughter build her home. I solely appreciate that.
16 Anybody's home, regardless of what size or how many
17 square foot, you know, your home is your castle
18 regardless of where you live, how big that castle may
19 be. It's in your heart and it is your home.

20 The thing that each one of you and each one of
21 us have to remember, there are certain things that
22 govern how we have to respond. That is based on the
23 facts, findings of fact that we are given by the Staff
24 and certain rights that you all have and certain
25 rights that also the applicant has.

1 We have to vote and each one of us will vote
2 according to how we see that. The development of this
3 and the development of Kimberly-Clark in your area has
4 an affect on what is done in your area. I want each
5 one of you to realize what this commission faces. You
6 all are not just neighbors of each other. You all are
7 neighbors because we all live in Owensboro and Daviess
8 County. I want to present that to you.

9 We're at the point now where it's time for the
10 Chair to ask a motion.

11 Do you have something you'd like to say?

12 MR. BEALS: Yes, I do. The last time we were
13 here this was denied and the findings of fact were
14 that it was detrimental to the rural environment.
15 That's my question. How is it not detrimental to our
16 rural environment?

17 CHAIRMAN: I don't remember it. Was the
18 recommendation for denial the last time that this came
19 before us, Mrs. Stone?

20 DR. BOTHWELL: We had actually come up with a
21 new motion.

22 CHAIRMAN: No. I meant the Staff's
23 recommendation.

24 MS. STONE: No. Our recommendation was for
25 approval of the Planning Commission.

1 DR. BOTHWELL: Mr. Miller made a motion.

2 CHAIRMAN: The vote of the commission was
3 denial.

4 MR. BEALS: Right. Based on it being
5 detrimental to the rural environment.

6 CHAIRMAN: Based on whatever it was at that
7 time.

8 MR. BEALS: Right. So how has that changed?

9 CHAIRMAN: We're getting ready to find out
10 when we vote or if it has changed.

11 MR. BEALS: So my question, I don't mean to be
12 hard: How is putting a warehouse in that field not
13 detrimental? That's to anybody, anybody that wants to
14 answer it.

15 MR. JAGOE: I can probably answer it somewhat.

16 CHAIRMAN: Mr. Jagoe.

17 MR. JAGOE: By just what the Staff wrote in
18 this report. That would be one answer to you.

19 CHAIRMAN: Would you just state that, Mr.
20 Jagoe.

21 MR. JAGOE: The conditions and findings of
22 fact that the Staff found favorable for an approval of
23 this would just be one answer.

24 MR. BEALS: That still doesn't answer how a
25 warehouse sitting in the middle of that picture is not

1 detrimental. It is no matter how you sugar coat it.
2 You build a trucking terminal in that field, in my
3 front yard, in her backyard and everybody's yard, it's
4 detrimental regardless of how you sugar coat it.

5 MR. CAMBRON: We're not here to sugar coat
6 anything. We're here to make a decision.

7 MR. BEALS: I understand. I didn't mean to be
8 sarcastic.

9 MR. CAMBRON: I understand that. We do this
10 with heavy hearts sometimes, but we try to make the
11 right decisions. We don't sugar coat anything and you
12 all don't either. We appreciate all your comments,
13 but we're bound by law on certain things that we can
14 and cannot do.

15 MR. BEALS: And part of the law, as I
16 understand from what was read at the last meeting and
17 that the findings of fact that was denied on were
18 because it was detrimental to the rural environment.

19 DR. BOTHWELL: That's what four out of three
20 thought.

21 MR. BEALS: Yes, sir.

22 DR. BOTHWELL: We're going to find out if that
23 still holds true.

24 CHAIRMAN: Thank you all for your comments,
25 but the Chair is at this point in time ask for a

1 motion.

2 MR. CAMBRON: Mr. Chairman, after lengthy
3 testimony from all these landowners, and appreciate
4 every one of you all. This applicant has met and/or
5 exceeded what he would need to do to comply to rezone
6 this property.

7 Mr. Jagoe stated very eloquently there, you
8 know, we have the answers here that allow him to do
9 that.

10 I'm going to recommend a motion for approval
11 based on Conditions 1 through 4 and the Findings of
12 Fact 1 through 4, but also would like for, and he'll
13 need to agree with this one way or the other, because
14 this will hinge upon whether or not will work for me.
15 I would like to see him go on and apply his screening
16 all the way across the front to the entrance. From
17 the east side all the way to the with west. It looks
18 like it's about 480 acres.

19 DR. BOTHWELL: You talking about down Sauer
20 Lane?.

21 MR. CAMBRON: Down Sauer Lane. I don't know
22 what the distance is there. I'm going to require him
23 to do that.

24 Also I'm going to require him to maintain
25 those trees for at least, guarantee them to be living

1 for at least five years. Once their down for five
2 years, they're going to go, but that's my
3 recommendation.

4 CHAIRMAN: Mr. Kamuf.

5 MR. CAMBRON: Did you understand that?

6 MR. KAMUF: I understand the question.

7 CHAIRMAN: It wasn't actually a question, Mr.
8 Kamuf. It was actually a proposal.

9 MR. BUSKILL: I want to make sure that I'm
10 clear so that I can comply in the manner which you
11 stated.

12 MR. CAMBRON: Let me state it again.

13 That you would take your double row of pine
14 trees from the point where it stops there on Sauer
15 Lane, on the south section, and run it all the way to
16 the west to your entrance there where it's not
17 detrimental to making sure that they can see coming in
18 and out of the entrance there. I don't want to hinder
19 anybody there.

20 MR. BUSKILL: Right. I agree. I have no
21 problem with that.

22 MR. CAMBRON: Also you're going to be required
23 to make these trees. If one of them dies, you need to
24 replace them. I'm talking about in the next five
25 years. You're going to go on record here agreeing to

1 that.

2 MR. BUSKILL: I understand.

3 MR. CAMBRON: In that five year time, most of
4 the time if those trees live five years they're going
5 to make it.

6 MR. BUSKILL: Yes, sir.

7 MR. CAMBRON: That's my motion.

8 MR. BUSKILL: I am in agreement.

9 CHAIRMAN: Mr. Buskill, would you step back to
10 the podium.

11 You understand Mr. Cambron's proposal?

12 MR. BUSKILL: Yes, I do.

13 CHAIRMAN: With the added condition?

14 MR. BUSKILL: Yes, I do.

15 CHAIRMAN: And you do agree to that?

16 MR. BUSKILL: Yes, I do.

17 CHAIRMAN: Thank you very much.

18 We have a proposal by Mr. Cambron with an
19 added condition on the floor at this time.

20 DR. BOTHWELL: Mr. Chairman, I second.

21 CHAIRMAN: We have a second by Dr. Bothwell.

22 All in favor of Mr. Cambron's motion raise your right
23 hand.

24 (ALL BOARD MEMBERS PRESENT - WITH THE
25 DISQUALIFICATION OF MR. ROGERS - RESPONDED AYE.)

1 CHAIRMAN: Motion is unanimous. The motion
2 carries.

3 Next item, please.

4 RELATED ITEM:

5 ITEM 10A

6 9613 Sauer Lane, 39.37 acres
7 Consider approval of preliminary development plan
8 Applicant: Buskill Properties, a Kentucky partnership

9 MR. NOFFSINGER: Mr. Chairman, this plan has
10 been reviewed by the Planning Staff. It's found to be
11 in order. It's found to be consistent with the
12 adopted Comprehensive Plan as per the rezoning that
13 you have just recommended. There's also meets the
14 requirements of subregs in the zoning ordinance.
15 However before the applicant can move dirt on this
16 site, he will have to follow this up with a final
17 development plan that will be approved in-house by the
18 staff unless this commission chooses otherwise.

19 CHAIRMAN: Any questions of the applicant?

20 (NO RESPONSE).

21 CHAIRMAN: Chair is ready for a motion.

22 MR. JAGOE: I've got a question to the plan.

23 It's two tracts and is it dissected right
24 through the center?

25 MR. NOFFSINGER: Yes, sir, but they will not
be separate tracts of land. I think they're just

1 shown for informational. They're just to show where
2 the zoning will be.

3 MR. JAGOE: Thank you..

4 CHAIRMAN: Mr. Jagoe.

5 MR. JAGOE: I understand.

6 CHAIRMAN: The Chair is now ready for a
7 motion.

8 MR. APPLEBY: Motion for approval.

9 CHAIRMAN: Motion for approval by Mr. Appleby.

10 DR. BOTHWELL: Second.

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

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries unanimously.

15 -----

16 MAJOR SUBDIVISIONS

17 ITEM 11

18 Brownwood Oaks, Section 1, Lots 1-8, 13.154 acres
19 Consider approval of major subdivision final plat.
20 Surety (Certificate of Deposit) posted: \$43,451.00
Applicant: Wells and Wells Builders, Inc.

21 MR. NOFFSINGER: Mr. Chairman, this plan has
22 been reviewed by the Planning Staff and Engineering
23 Staff. It's found to be in order. It's found to be
24 consistent with the adopted Comprehensive Plan as well
25 as the zoning ordinance and subdivision regulations.

1 CHAIRMAN: Are there any questions?

2 (NO RESPONSE).

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

5 MS. DIXON: Move to approve.

6 CHAIRMAN: Motion for approval by Ms. Dixon.

7 DR. BOTHWELL: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 Ready for one final motion.

13 MS. DIXON: Move to adjourn.

14 CHAIRMAN: Motion for adjournment by Ms.
15 Dixon.

16 DR. BOTHWELL: Second.

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

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: We are adjourned.

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25

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

3 I, LYNNETTE KOLLER, Notary Public in and for
4 the State of Kentucky at Large, do hereby certify that
5 the foregoing Owensboro Metropolitan Planning
6 Commission meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 30 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 2nd day of September, 2006.

18

19

LYNNETTE KOLLER FUCHS
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202 WEST THIRD STREET, SUITE 12
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22

COMMISSION EXPIRES: DECEMBER 19, 2006

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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