

## 1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 NOVEMBER 9, 2006

3 The Owensboro Metropolitan Planning Commission  
4 met in regular session at 5:30 p.m. on Thursday,  
5 November 9, 2006, at City Hall, Commission Chambers,  
6 Owensboro, Kentucky, and the proceedings were as  
7 follows:

8 MEMBERS PRESENT: Drew Kirkland, Chairman  
9 Gary Noffsinger  
10 Scott Jago  
11 Tim Miller  
12 Irvin Rogers  
13 Dave Appleby  
14 Nick Cambron  
15 Judy Dixon  
16 Dr. Mark Bothwell  
17 Martin Hayden  
18 Stewart Elliott, Attorney  
19 Madison Silvert, Attorney

20 CHAIRMAN: Welcome everyone to our November 9,  
21 2006 meeting of the Owensboro Metropolitan Planning  
22 Commission. Will you please rise. Our invocation  
23 will be given by Mr. Nick Cambron.

24 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

25 CHAIRMAN: Our first order of business will be  
to consider the minutes of the October 12, 2006  
meeting. Are there any corrections, questions,  
additions?

(NO RESPONSE)

CHAIRMAN: If not the Chair is ready for a

1 motion.

2 MR. JAGOE: Move for approval.

3 CHAIRMAN: Motion for approval by Mr. Jagoe.

4 MR. MILLER: Second.

5 CHAIRMAN: Second by Mr. Miller. All in favor  
6 raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously.

9 Next item, please, Mr. Noffsinger.

10 ITEM 2

11 PRESENTATION OF FISCAL YEAR 2006 AUDIT by Robert  
12 Kuphal.

13 MR. NOFFSINGER: I do not see Mr. Kuphal here.  
14 I guess I will handle that.

15 This year our fiscal year 2006 audit was  
16 prepared by Gene D. Boaz, CPA. The actual work was  
17 performed by Robert Kuphal. He was working for Gene  
18 Boaz.

19 Each of the Planning Commissioners has been  
20 mailed a copy of the audit which you received at least  
21 a week prior to this meeting and having had an  
22 opportunity to review. So if you have any questions  
23 I'll be glad to answer any of those.

24 I see Mr. Kuphal is here.

25 MR. ELLIOTT: State your name, please.

1 MR. KUPHAL: My name is Robert Kuphal.

2 (MR. ROBERT KUPHAL SWORN BY ATTORNEY.)

3 MR. KUPHAL: My name is Robert Kuphal. I'm a  
4 CPA and an associate of Gene Boaz, CPA, of Morgantown  
5 and Owensboro, Kentucky, who is also here tonight.

6 We were engaged to audit the financial  
7 statements for Owensboro Metropolitan Planning  
8 Commission for the year ending June 30, 2005 and 2006.

9 We conducted our audit in accordance with US  
10 generally accepted audit standards applicable to  
11 financial audits contained in government auditing  
12 standards issued by the comptroller general of the  
13 United States.

14 Our audit was conducted for the purpose of  
15 performing an opinion on the basic financial  
16 statements taken as a whole. We stated in our opinion  
17 the financial statements referred to above present  
18 fairly and all material respects the financial  
19 position of the Owensboro Metropolitan Planning  
20 Commission as of June 30, 2006, and the results of its  
21 operations and cash flows for the year ended in  
22 accordance with US generally accepted accounting  
23 principals.

24 Each of you should have received a copy of the  
25 audit report. We submit it for your approval and will

1 be glad to answer any questions.

2 CHAIRMAN: Does anybody on the commission have  
3 any questions?

4 (NO RESPONSE)

5 CHAIRMAN: Does Anybody in the audience have  
6 any questions?

7 (NO RESPONSE)

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

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

12 CHAIRMAN: Motion for approval by Mr. Cambron.

13 MS. DIXON: Second.

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

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries unanimously.

18 Next item, please.

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20 ZONING CHANGES

21 ITEM 3

22 1912 James David Court, 1911 West Parrish Avenue,  
23 0.215 acres

24 Consider zoning change: From R-4DT Inner-City  
25 Residential to B-4 General Business

Applicant: Adam Hansen, Edwin L. And Marilyn C.  
Ramsay

1 MR. ELLIOTT: State your name, please.

2 MR. HOWARD: Brian Howard.

3 (MR. BRIAN HOWARD SWORN BY ATTORNEY.)

4 PLANNING STAFF RECOMMENDATIONS

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

10 CONDITIONS:

11 1. Approval of a final development plan by  
12 the OMPC.

13 2. Approval of a consolidation plat to  
14 consolidate 1911, 1915 West Parrish Avenue and 1912,  
15 1916 James David Court into a single parcel.

16 3. Access for the consolidated lots to West  
17 Parrish Avenue shall be limited to a single access  
18 point as far east along the property frontage as  
19 possible.

20 4. Install a ten foot landscape easement with  
21 a six foot high element and one tree every 40 linear  
22 feet along the east property line where the subject  
23 property abuts residential zoning.

24 FINDINGS OF FACT:

25 1. The subject property is located in a

1 Central Residential Plan Area, where general business  
2 uses are appropriate in limited locations;

3 2. Property to the immediate west of the  
4 subject property is zoned B-4 General Business; and,

5 3. The applicant's proposal is a logical  
6 expansion of the B-4 General Business zoning to the  
7 west, and it will not significantly increase the  
8 extent of general business uses that are located in  
9 the vicinity or overburden the capacity of the  
10 roadways or other necessary urban services in the  
11 affect area.

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

14 CHAIRMAN: Do we have someone here  
15 representing the applicant?

16 APPLICANT REP: Yes.

17 CHAIRMAN: Does anybody on the commission have  
18 a question of the applicant?

19 (NO RESPONSE)

20 CHAIRMAN: Does anybody in the audience have a  
21 question of the applicant?

22 (NO RESPONSE)

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

25 MR. CAMBRON: Motion for approval, Mr.

1 Chairman, based on Planning Staff Recommendations and  
2 Conditions 1 through 4 and Findings of Fact 1 through  
3 3.

4 CHAIRMAN: We have a motion for approval by  
5 Mr. Cambron.

6 MS. DIXON: Second.

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

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries unanimously.

11 Next item, please.

12 ITEM 4

13 1018-1026 Oglesby Street, 0.499 acres  
14 Consider zoning change: From R-4DT Inner-City  
15 Residential to P-1 Professional/Service  
16 Applicant: Melvin J. Smith, Jr.; Tenth Street Baptist  
17 Church

18 PLANNING STAFF RECOMMENDATIONS

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

24 CONDITION: Submission and approval of a consolidation  
25 plat to consolidate the subject property with the main  
church building lot that is currently zoned P-1.

FINDINGS OF FACT:

1           1. The subject property is located in a  
2           Central Residential Plan Area, where  
3           professional/service uses are appropriate in limited  
4           locations;

5           2. Property to the immediate north of the  
6           subject property is zoned P-1 Professional/Service;  
7           and,

8           3. The applicant's proposal is a logical  
9           expansion of the P-1 Professional/Service zoning to  
10          the north, and it will not significantly increase the  
11          extent of general business uses that are located in  
12          the vicinity or overburden the capacity of the  
13          roadways or other necessary urban services in the  
14          affected area.

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

17          CHAIRMAN: Is someone here representing the  
18          applicant?

19          APPLICANT REP: Yes.

20          CHAIRMAN: Does anybody in the audience have a  
21          question of the applicant?

22          (NO RESPONSE)

23          CHAIRMAN: Does anyone on the commission have  
24          a question of the applicant?

25          (NO RESPONSE)



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

3 DR. BOTHWELL: Motion for approval, Mr.  
4 Chairman, based on the one condition and Findings of  
5 Fact 1 through 3.

6 CHAIRMAN: Motion for approval by Dr.  
7 Bothwell.

8 MS. DIXON: Second.

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

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries unanimously.

13 Next item, please.

14 ITEM 5

15 3611 Ralph Avenue, 3628 KY 54, 0.847 acres (Postponed  
16 from October 12, 2006 meeting.)

17 Consider zoning change: From R-1A Single-Family  
18 Residential to B-4 General Business

19 Applicant: MPG Commercial Properties, LLC

20 PLANNING STAFF RECOMMENDATIONS

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

CONDITIONS:

1. Submission and approval of a final

1 development plan for the subject property.

2 2. Post bond at the time of final development  
3 plan submittal for \$4,968.00 to cover their portion of  
4 a future right turn lane on KY 54 at Ralph Avenue.  
5 The bond shall be reviewed every two years for  
6 inflation.

7 3. Install a ten foot landscape buffer along  
8 the south and east property lines to contain a six  
9 foot high element with one tree every 40 linear feet.

10 4. Provide a public access easement to the  
11 adjoining property to the east for future  
12 interconnection.

13 5. No access shall be permitted to KY 54.  
14 Access shall be limited to Ralph Avenue only.

15 6. Due to the proximity to existing  
16 residential zones, all lighting for the subject  
17 property shall be directed away from the residential  
18 property to reduce the layering and impact of the  
19 lighting on the residential uses.

20 FINDINGS OF FACT:

21 1. The subject property is located in an  
22 Urban Residential Plan Area, where general business  
23 uses are appropriate in very-limited locations;

24 2. Although not an acre and one half in size,  
25 the applicant has committed to provide a public access

1       easement to the adjacent property to allow future  
2       interconnection without requiring an access point to  
3       KY 54;

4               3. The subject property is arterial street  
5       located and has road frontage on a street designated  
6       for commercial traffic;

7               4. The proposal is a logical expansion of B-4  
8       zoning to the north and west and should not  
9       significantly increase the extent of the zone in the  
10      vicinity of the expansion; and,

11              5. With the applicant's commitment to post  
12      bond for a portion of a future right-turn lane on KY  
13      54 at Ralph Avenue when the final development plan is  
14      submitted, the rezoning should not overburden the  
15      capacity of roadways and other necessary urban  
16      services that are available in the affected area.

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

19              CHAIRMAN: Do we have someone representing the  
20      applicant?

21              APPLICANT REP: Yes.

22              CHAIRMAN: Do we have any questions of the  
23      applicant?

24              (NO RESPONSE)

25              CHAIRMAN: Does anybody on the commission have

1 any questions of the applicant?

2 (NO RESPONSE)

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

5 MR. WILSON: Mr. Chairman, we're here to  
6 address that. We don't have questions of the  
7 applicant. We'd like to make some statements from  
8 adjoining land owners.

9 CHAIRMAN: Would you step to the podium.

10 MR. ELLIOTT: State your name, please.

11 MR. WILSON: Bill Wilson.

12 (MR. BILL WILSON SWORN BY ATTORNEY.)

13 MR. WILSON: Mr. Chairman, Members of the  
14 Commission, Mr. Noffsinger, I'm here with Matt Hayden  
15 and his partners and other landowners in the area up  
16 and down Ralph Avenue and Villa Point, in that area.

17 We're here to address mainly the deceleration  
18 lane that's been recommended and the method in which  
19 it's being proposed that that's going to be paid for  
20 over future time.

21 It's my understanding that the Staff has taken  
22 the eight-tenths of an acre tract that's here under  
23 consideration for rezoning and divided that into the  
24 anticipated acreage in the general area up and down  
25 Ralph Avenue that may or may not in the future develop

1 and is provided that this particular tract, when the  
2 final development plan is submitted, would post  
3 whatever that percentage was of that overall acreage.

4 The reason we're here to address that, not  
5 that we want people to not develop their property or  
6 get their zoning approved, which we do because my  
7 people are developing up a storm out there. But they  
8 recently developed along Ralph Avenue and Commonwealth  
9 Avenue. The Staff at that time required them to take  
10 the whole cost, you know, and shoulder the whole cost  
11 of these type of roadway improvements; the  
12 deceleration lanes, the extra lanes for traffic. Now  
13 all of a sudden we go into a tract that - - we're  
14 talking about large acres. They've developed 30 and  
15 50 acre parcels out in that area as you all know.  
16 They've bitten the bullet and come up with some pretty  
17 extensive expenses in putting in all of the  
18 improvements that others have come along benefit from.

19 Now here we've got an eight-tenth of an acre  
20 parcel that's up for rezoning the Comprehensive Plan  
21 calls for. Of course, it's a recommendation. I  
22 understand that. It doesn't meet the acre and a half  
23 recommendation for such a rezoning so it's getting a  
24 concession there, which is fine. It needs to be  
25 commercial. There's no question about that.

1           Then when we get into the cost associated  
2 with, we seem to be applying a different standard,  
3 working by a different set of rules for this real  
4 small development. You've hit some of them that have  
5 done larger developments in the identical area. Now,  
6 here we've got no access onto 54, and that's certainly  
7 understandable. It's my understanding the proposal  
8 has got like two access points on Ralph Avenue on a  
9 piece of property that only has a couple of hundred  
10 feet of frontage. My client recently in the last year  
11 or two has done the same and similar proposal right  
12 there in the same area on Commonwealth Avenue and was  
13 given no access points.

14           I don't know what these two streets are under  
15 the transportation plan. I don't know what they're  
16 designated as, either Ralph Avenue or Commonwealth  
17 Avenue, but the way that area is booming out there it  
18 looks to me like, and the reason we're here is we've  
19 got a little tract that's going to be rezoned. It's  
20 going to put up a relatively minor amount of money for  
21 future development with the anticipation that future  
22 developers, whoever they might be, of the other  
23 property up and down Ralph Avenue. Back even into  
24 Splash, who may or may not ever even use this access.

25           It's my understanding that the Splash people

1 have a way or a possibility way of using an alternate  
2 method of access when they develop. Even they are  
3 included I think in the acreage. That this  
4 recommendations is saying would pay for their  
5 perspective portions of this cost of the deceleration  
6 lane.

7 It just doesn't seem like the same rules are  
8 being applied to everybody that's developing out  
9 there. That's what we're here to address.

10 CHAIRMAN: Mr. Wilson, let me address your  
11 questions and let me bring our staff member, whoever  
12 worked on this project, to the podium and address this  
13 issue. Thank you.

14 MR. HOWARD: Mr. Wilson is correct. This is  
15 approximately an eight-tenths of an acre tract. We  
16 are looking for the developer to post bond for their  
17 portion of a future right turn lane when the  
18 requirements are met.

19 The issue is with such a small acreage on this  
20 tract, being only eight-tenths of an acre with one use  
21 on it, it's not going to meet the requirements to  
22 install a right turn lane on Kentucky 54. So we  
23 couldn't put the entire burden of a right turn lane on  
24 them. They will contribute traffic onto the Kentucky  
25 54 and Ralph Avenue area. So in order to eliminate

1 the need for - - in the future whenever the rest of  
2 Ralph Avenue develops and the need for a right turn  
3 lane is met, instead of putting the entire burden of  
4 installing a right turn lane on one developer, we're  
5 trying to develop a way to share that cost over time.

6 The intent was not to let anybody off easy.  
7 We understand that the larger developments have, like  
8 Ralph Avenue, 34 feet put in turn lanes, put  
9 additional lanes and those were needed a part of a  
10 larger development.

11 When they come in smaller pieces, it's harder  
12 to allocate who does what. This was just a method of  
13 trying to even the cost.

14 CHAIRMAN: Thank you.

15 MR. CAMBRON: Is this a new method that we're  
16 using here? Is it something that we've just started?

17 MR. HOWARD: This is in a lot of ways a unique  
18 event. Ralph Avenue was widen to 34 foot streets so  
19 now it's a commercial street that opens up that entire  
20 west side road to commercial development. In order  
21 to, like I said, share the cost, this was a method  
22 that the developer's engineer came up with as far as a  
23 way to share that cost. We looked at the numbers and  
24 agreed.

25 CHAIRMAN: Excuse me. Which engineer came up



1 with that idea?

2 MR. HOWARD: Bryant Engineering, Don Bryant.

3 CHAIRMAN: Let me bring Mr. Bryant to the  
4 stand.

5 MR. ELLIOTT: State your name, please.

6 MR. BRYANT: Don Bryant.

7 (MR. DON BRYANT SWORN BY ATTORNEY.)

8 MR. BRYANT: As of about 2 or 3:00 this  
9 afternoon, we found out that this project that we had  
10 major opposition. I think in a nutshell I think I  
11 represent about half of the people in this room and  
12 we're not all in agreement right now. I've never been  
13 in this situation before. I did prepare the  
14 application.

15 I will say that our procedures, up front we  
16 disagreed with the need for a turning lane and all,  
17 but agreed later in order to satisfy the Staff. We  
18 agreed. They suggested we prorate it based on  
19 acreage. We did that for the undeveloped acreage, but  
20 beyond that I've got such a conflict of interest in  
21 representing all the parties involved that I'm going  
22 to have to excuse myself from any further testimony on  
23 this issue. I don't know any other way really for me  
24 to properly deal with it.

25 CHAIRMAN: Mr. Bryant, as far we don't want

1       you to testify against any of your clients. We  
2       understand your professional situation here, but I  
3       think in fairness Mr. Wilson was questioning how the  
4       Staff and the fairness of this division came about and  
5       whether we were treating his clients differently than  
6       possibly we've treated other clients in the past on  
7       development. You have been involved in many, many,  
8       many developments. You were also keeping, in  
9       negotiating this deal, you were keeping the best  
10      interest of your client and clients in mind, correct?

11               MR. BRYANT: Yes, sir.

12               CHAIRMAN: So the question that Mr. Wilson  
13      pose is to the Staff and to the commission is: Are we  
14      dealing fairly with all parties involved? From an  
15      engineering standpoint, you're on the other side of  
16      the fence from the Staff and maybe the commission.  
17      Not that we don't work together, but that is sort of  
18      the question and where we're headed. I think as far  
19      as not being prejudice to any one of your clients,  
20      just answering the question, was it dealt fairly on  
21      behalf of your client?

22               MR. BRYANT: Actually the Staff suggested that  
23      it be prorated to the acreage along Ralph Avenue.  
24      When we did that, we excluded Woodlands Plaza because  
25      that's history. We've dealt with that and the Staff

1       agreed and I suggested that the Woodlands Plaza be  
2       excluded from it because they have already made their  
3       share of the improvements, including the upgrading of  
4       Ralph Avenue.

5               I asked Brian, I said, how do I go about  
6       prorating? It was suggested by the Staff that we  
7       prorate based upon acreage. I don't know a better way  
8       of doing that.

9               We don't have a design. We don't have an  
10       engineering cost estimate on this turn lane. We're  
11       basing it upon turn lanes that we've had in the past.  
12       Where a rough estimate would be 100 to \$150,000 to  
13       build a turn lane depending on what's involved with  
14       utilities and how much reconstruction of drainage  
15       structures between Commonwealth and this street. So  
16       we've used an average of \$125,000 based upon previous  
17       experience. We added 10,000 to cover the cost of  
18       engineering design and permitted through the state.  
19       That's how we came up with the \$135,000. The acreage  
20       was prorated. I think it was 3 point something  
21       percent.

22               I cannot address what is fair. I'm not sure  
23       what is fair. That's not an engineering issue. We  
24       basically did what the Staff requested us to do.

25               CHAIRMAN: So 97 percent or thereabouts of the

1 cost would be shared by the other acreage which would  
2 represent 97 percent of the balance of the acreage?

3 MR. BRYANT: Based upon the method suggested  
4 that would be the case.

5 CHAIRMAN: Mr. Cambron, did you have a  
6 question you were going to ask?

7 MR. CAMBRON: I was just going to say I didn't  
8 know if that was a fair to ask him in the situation  
9 he's in. Really the Staff may have been better off  
10 answering that.

11 CHAIRMAN: Thank you.

12 Let me ask Mr. Wilson if he'll come back.

13 Mr. Bryant, I just kept you along the lines of  
14 engineering. We were not trying to split you with  
15 your clients.

16 MR. BRYANT: I understand that. I just want  
17 everyone to understand my position. Really I cannot  
18 be a part of this hearing beyond what I've said at  
19 this point.

20 CHAIRMAN: Thank you. I appreciate your  
21 position.

22 MR. WILSON: Mr. Chairman, we certainly  
23 understand Mr. Bryant's position.

24 One thing I would like to straighten out. He  
25 indicated an hour or 30 minutes ago he didn't know

1       there was going to be serious opposition to this  
2       project. This is not opposition to the project. That  
3       property at some point is going to be B-4. It may be  
4       night. It may be next month or next year.

5               What we are here, we're here to try to get  
6       some consistency and understand where the commission  
7       and the Staff is going to go with these type of  
8       projects because of the way we were treated at the  
9       same area, on the other side of the street. We paid  
10      for 100 percent of the improvements. Were made to pay  
11      for them for everyone to use up and down there as they  
12      developed.

13             Now we've got a different situation. I  
14      understand. Ours was a whole lot more acreage and a  
15      big project. This is a small project, but I would  
16      surmise that this corner lot is a whole lot more than  
17      three percent of the value of this 20 some odd acres  
18      that's being used to determine who shall bear the cost  
19      of this deceleration lane.

20             We've got a similar situation on the access  
21      points coming in off of Ralph Avenue. We were denied  
22      any access points off Commonwealth. We don't know  
23      what those streets are classified, as I said  
24      previously in the transportation plan, but we do know  
25      this is probably the hottest area in Daviess County

1 from a traffic and a development standpoint. We're  
2 involved in some major development out there and feel  
3 that the commission needs to apply the rules not only  
4 on this one, but on ours and other peoples fairly and  
5 consistently and not make concessions or making  
6 concessions for area acres that doesn't even comply  
7 with the comprehensive plan as far as being rezoned.  
8 Then we continue to give more concessions on  
9 improvements, which others have had to pay all. It's  
10 just not consistent.

11 CHAIRMAN: Mr. Wilson, in your opinion or  
12 maybe your client's opinion, what would you have seen,  
13 how do you think the Staff would have approached the  
14 situation like this any differently than the way they  
15 did.

16 MR. WILSON: I think they should probably  
17 require the developer in some manner pay for these  
18 improvements that are going to be needed if they want  
19 to use the property that way. There's no guarantee  
20 that the owners of these other tracts back Ralph  
21 Avenue are ever going to use this. My client owns  
22 some of those other lots that are included in that 97  
23 percent. Now, he's going to have to pay his  
24 portionate part of the improvements on one side of the  
25 street. He's already paid for all of them on the

1 other side. It's not a fair - - we're making too many  
2 exceptions. We're going to end up with Target  
3 customers that can't get over to Wal-Mart and Towne  
4 Square Mall people that can't get to Home Depot. I  
5 think there needs to be not these exceptions made on a  
6 parcel by parcel. They need to be some real  
7 consistency.

8 CHAIRMAN: Are you saying, Mr. Wilson, of the  
9 150,000, or thereabouts, cost of this decelerating  
10 turning lane, that you feel like the client that has  
11 the .84 acres should up front be responsible for that?

12 MR. WILSON: Or perhaps he should have a  
13 little bigger proposal to comply with the  
14 Comprehensive Plan and have at least an acre and a  
15 half, which it calls for a rezoning. We don't know  
16 what these other lots are going to do, east of it and  
17 south of it. They may go commercial. They may not go  
18 commercial, but the buffering on this proposal, it  
19 does have some buffering from the street, from 54  
20 also, but nowhere nearly as strict as what was done on  
21 the other side of the road. Nowhere nearly as strict.  
22 We just don't know, you know, we don't know what to  
23 expect from the commission or the Staff from time to  
24 time when we come in to these proposals.

25 We're looking for consistency. We had to have

1 traffic counts and this sort of thing. I don't think  
2 there's been any. There's just a variety of things  
3 that others are being required to do. We need to know  
4 because we're going to be coming back again and again.  
5 If this leeway is available, fine. We would expect it  
6 in the future also.

7 CHAIRMAN: Dr. Bothwell, you have a question.

8 DR. BOTHWELL: I would like to have Mr.  
9 Noffsinger address this very issue as chairman of the  
10 Planning Staff. I'm a little curious myself why if  
11 what he's saying is correct, what was the reasoning  
12 that we made these concessions, first of all; and the  
13 reason of cost sharing and how they arrive at this. I  
14 mean is this a fairly new thing? I'd like some  
15 answers.

16 MR. NOFFSINGER: Sure. Be glad to.

17 I don't think this is a new thing. This is  
18 the challenge that we as planners are faced with on a  
19 daily basis when we try to plan for our community.

20 When we go into a green field development, a  
21 large tract of land like Wyndall's Plaza, we had the  
22 opportunity to plan a large neighborhood to where it  
23 functions very well with the infrastructure that's in  
24 place and we can upgrade the infrastructure. When you  
25 prorate over the cost of the development, it makes a



1 whole lot more sense than when you go into a brown  
2 field development such as we're in now where you  
3 already have existing development.

4 This area changed significantly when Wal-Mart  
5 came. It really introduced and invited people to the  
6 Kentucky 54 area. Then growth started occurring. Now  
7 we have Woodlands Plaza that has developed very well.  
8 It's a very well planned development that has good  
9 access, good traffic movement.

10 It's a much larger development that meets  
11 warrants for roadway widening as well as you can  
12 include in that right turn decel and storage lane.  
13 You can make it happen.

14 When we first viewed this proposed rezoning,  
15 it was recommended for denial. Number one, they  
16 didn't have a development plan. Number two, they were  
17 deficient in acreage.

18 We also had to realize that the Kentucky  
19 Revised Statutes recognizes that once an area has  
20 changed that was not anticipated by the Comprehensive  
21 Plan, that can be a basis to recommend rezoning. So  
22 that gets us beyond just the criteria of the  
23 comprehensive plan.

24 I can tell you this: Other applicants have  
25 been before you and have certainly testified to that

1       affect, how a particular development has changed the  
2       character of the area. So I think you have to look  
3       beyond the criteria and recognize of this area change.

4               The Planning Staff certainly told this  
5       commission and all those in the audience when  
6       Woodland's Plaza was being proposed and changes were  
7       being proposed to Ralph Avenue, that this area is  
8       going to change, and it has. It certainly has.

9               The developer, we had asked, the Planning  
10       Staff had asked the developer to widen Ralph Avenue  
11       back a certain distance as well as put in a right turn  
12       decel and storage lane off of Highway 54. They said,  
13       that's unreasonable. You should make others people  
14       for these improvements. You know, rightfully so.

15              The Planning Commission approved the Woodlands  
16       Plaza development with the widening of Ralph Avenue.  
17       Was that a significant cost? Sure it was, but they  
18       didn't have to put the right turn decel and storage  
19       lane in to Ralph Avenue.

20              Some argued that Ralph Avenue should be closed  
21       at 54. Planning Staff argued, no, it should remain  
22       open because you've got these small lots up and down  
23       through here that access Ralph Avenue.

24              So here we are today. We have the Woodlands  
25       Plaza that's made a significant investment in that

1 area and improved the roadway that has opened it up  
2 for commercial development. It's very attractive and  
3 we knew it would be.

4 How we finish the improvements? What's fair?  
5 I don't know that acreage is a fair way to do it?  
6 Maybe it is based upon that. Can you put a dollar  
7 value on the land out there? Will that require an  
8 appraiser? We don't know what that would be.

9 Our staff in working with the applicant's  
10 engineer came up with this way of paying for,  
11 hopefully paying for a right turn decel storage lane  
12 and finishing the improvements. We don't know how  
13 this area is ultimately going to develop because we're  
14 dealing with brown field area that's already  
15 developed, piecemeal, several property owners  
16 involved.

17 If we were dealing with one property owner, we  
18 could tell you. We would have a plan before you that  
19 addressed a safe and efficient access that you could  
20 spread over a larger area. We don't have that.

21 Ultimately this right turn decel and storage  
22 lane may never be installed. The applicant may get  
23 every penny of that money back. We don't know what  
24 will happen with the extension of Villa Point or other  
25 lots in that area.

1           So if we're dealing with a large area, we can  
2           be more successful and more accurate in how we plan  
3           and how we develop the area, but when we're piecemeal  
4           developing like this we can't be. What we have to do  
5           is go in with the best possible solution at the time  
6           because we have an application before us.

7           We negotiated with this applicant just as we  
8           negotiated with Woodland's Plaza, as we will do in the  
9           future, as we've done in the past.

10          CHAIRMAN: Mr. Noffsinger, is it correct then  
11          even though we may vote in a zoning change for this  
12          Ralph Avenue property, the development cannot take  
13          place until the decel lane is put in?

14          MR. NOFFSINGER: That would be incorrect. I  
15          think they would be able to continue to develop the  
16          property without the installation of the decel lane.  
17          We're only talking about four percent, five percent of  
18          the total cost to install the decel lane. This  
19          property, you know, in this scenario would not be held  
20          up until that lane goes in. They would be able to  
21          develop it.

22          CHAIRMAN: At what point would the  
23          decelerating lane be mandatory to be put in?

24          MR. NOFFSINGER: At a point at which it meets  
25          warrants it should be installed. Does it meet

1 warrants right now? Staff tells me that currently  
2 based upon the highest estimate in terms of traffic on  
3 this property, the warrant would not be met for this  
4 single user. It's likely that it would not be met  
5 with the uses that are in place right now.

6 As these properties develop up and down Ralph  
7 Avenue, at some point in time we're going to be there.  
8 Do we put all of the burden on the small lot? Do we  
9 spread it around, or do we put it on the last user, or  
10 do we just simply forget about it and move forward  
11 without a right turn decel, or do we deny the  
12 proposal?

13 Maybe it's premature. Maybe the timing is not  
14 right for this particular piece of property to  
15 develop.

16 You know, those are the tough questions.  
17 We've tried to give you a recommendation how to move  
18 forward, but it's just that. It's a recommendation  
19 that can be modified.

20 CHAIRMAN: I think Mr. Walker has a question  
21 or a statement.

22 MR. ELLIOTT: State your name, please.

23 MR. WALKER: Marty Walker.

24 (MR. MARTY WALKER SWORN BY ATTORNEY.)

25 CHAIRMAN: Mr. Walker, before you start, are

1 you represented by Mr. Wilson?

2 MR. WALKER: No, I'm not.

3 CHAIRMAN: You're not. Okay. Thank you.

4 MR. WALKER: But I am in agreement with  
5 everything he has said so far.

6 CHAIRMAN: I just wanted to verify where you  
7 stood with Mr. Wilson.

8 MR. WALKER: I guess I've heard what Gary says  
9 and I can probably bring some light to this whole  
10 methodology thing, which I'm kind of learning as we go  
11 along because it's not in the filing or the zoning  
12 change. Actually I didn't find out about it until  
13 today. That was part of all of this.

14 I have 17 acres which, I don't know. I guess  
15 Mr. Bryant could tell us percentage-wise how much that  
16 is of this whole project back at Splash, which is at  
17 the end of Ralph Avenue.

18 How much percentage-wise?

19 CHAIRMAN: Wait a minute, Mr. Walker. If  
20 we're going to ask Mr. Bryant a question, you'll have  
21 to sit down and bring Mr. Bryant up.

22 Mr. Bryant, I think you feel free to answer  
23 that question.

24 MR. BRYANT: I think the number is about 23  
25 acres. It's in the Staff Report.

1           CHAIRMAN: Is Mr. Walker's property in the  
2 prorated portion?

3           MR. BRYANT: Yes, but I don't know the  
4 percentage.

5           CHAIRMAN: The 23 acres is the total acreage  
6 of the whole properties.

7           MR. BRYANT: Approximately 23 is the total  
8 that was used on the basis for prorated.

9           CHAIRMAN: Thank you.

10          MR. WALKER: I guess my point is going to be  
11 that 17 acres of 23 is the vast majority of this cost.  
12 The property at the end of Ralph Avenue is not  
13 commercial. It's only residential. I don't know if  
14 Gary would like to speak to that.

15                 Really to put commercial that far off 54 is  
16 really not, at this point. Maybe 50 years down the  
17 road it may change if it's still open property.

18                 I guess my point is I'm not going to - - I  
19 don't know if you're counting on Splash coming in on  
20 this, but it's not going to. So if you think there's  
21 going to be some cost that come in at some point later  
22 on, you're not going to cover the 135,000 or whatever  
23 because I'm going to tie on with the farms next me and  
24 it will go residential. There will not be - - Ralph  
25 Avenue will not go all the way back through Splash.

1       So I don't know where you think you're going to get  
2       this money back, but it's not going to be - - I'm not  
3       going to attribute to the project unless I'm being  
4       made to. As I understand it, as being proposed now,  
5       unless you develop you're not required to contribute  
6       to it. Is that correct?

7               CHAIRMAN: Just a moment, Mr. Walker.

8               Mr. Noffsinger, several questions raised by  
9       Mr. Walker.

10              MR. NOFFSINGER: Sorry, I wasn't paying  
11       attention. I was looking at something else.

12              We did not calculate or the applicant - -  
13       Staff did not do the calculation. The applicant's  
14       engineer did the calculation. We took what the  
15       applicant's engineer gave us; however, Splash was not  
16       accounted in that calculation. It was counted in the  
17       calculation?

18              MR. WALKER: Yes, it was counted, as I  
19       understand it. I haven't seen the formula or any of  
20       that. This is all - - it would be nice to get a copy  
21       of all of this.

22              MR. NOFFSINGER: Brian Howard, do you have  
23       those numbers?

24              CHAIRMAN: Mr. Walker, would you sit down a  
25       moment and we'll bring Mr. Howard back to the podium.



1 Mr. Howard.

2 MR. HOWARD: They're in the file.

3 MR. CAMBRON: Mr. Chairman, can I ask a quick  
4 question?

5 CHAIRMAN: Absolutely.

6 MR. CAMBRON: I'm learning things tonight and  
7 I've been here a long time. I did not know this is  
8 the way that we were handling these particular  
9 developments now. I'm not sure that I'm really  
10 understanding everything on how we're sharing these  
11 costs. Yet you say it's fairly new to us doing that.  
12 Maybe we ought to be exploring other alternatives that  
13 are out there instead of reinventing the wheel. Look  
14 around and see what else is out there on how these  
15 costs are shared in different communities.

16 CHAIRMAN: Do you have a proposal,  
17 Mr. Cambron?

18 MR. APPLEBY: In the past it's been my  
19 experience when we've required a deceleration lane  
20 it's the person who generates the warrant that pays  
21 the expense of the deceleration lane. There may never  
22 be a decel lane here if he doesn't develop that  
23 property commercially. I don't know how it's going to  
24 develop. He may never generate the traffic that  
25 requires to install a decel lane on Ralph Avenue in

1 the first place. Am I right?

2 MR. NOFFSINGER: Right.

3 MR. APPLEBY: If Villa Point Drive is extended  
4 down and eventually ties in across from Thoroughbred  
5 East, for example, across all of that property down  
6 through there, may there not be a decel lane there  
7 rather than Ralph Avenue?

8 MR. NOFFSINGER: That's correct.

9 MR. APPLEBY: So we don't know that there's  
10 going to be a decel lane there. Typically we don't  
11 collect anything from anybody with the exception of I  
12 think the applicant, they contributed toward one on  
13 the bypass at one time. No. No. That was Brad  
14 Anderson and those guys. They contributed toward an  
15 additional turn lane on the bypass. To my knowledge  
16 that's the only time we've ever required somebody to  
17 escrow money toward a decel lane that wasn't  
18 warranted. Well, I think that was warranted right  
19 now, but we couldn't hardly make them pay for that  
20 little lane. The state is going to be involved in  
21 that one.

22 In the past, it's my understanding that's the  
23 way we've dealt with them. So this is something new  
24 all together that we're asking the applicant to  
25 contribute toward a decel lane that's not warranted

1 today.

2 Typically it's the end user that causes the  
3 need that pays for it.

4 MR. JAGOE: It's the last guy in that would  
5 generally cause it if it's on your property.  
6 Sometimes you may have things that are items that may  
7 come up that are off of your property.

8 Decel lanes that we've been required to put in  
9 and post bonds on generally adjoined the whole  
10 property, but we created the traffic. Maybe I missed,  
11 but if I understand correctly this property, as it  
12 stands, and the current uses beyond it don't require a  
13 decel lane; is that correct?

14 MR. APPLEBY: That's the way I understand it.

15 MR. JAGOE: So we're looking for a way, we  
16 don't have a methodology today to be able to put that  
17 on there.

18 In fact, what we've done is thrown an impact  
19 out there to the future people that are going to  
20 develop in that area. The issue is, really the issue  
21 is we don't know what's going to go there. We know  
22 it's there now and that's all really we can deal with.  
23 We know it's going to be developed, but we don't know  
24 if it's going to be more or less traffic. The  
25 property could be consolidated and an access put

1 further down 54 and dealt with in a different way.

2 CHAIRMAN: What you said you had a thought or  
3 proposal, Mr. Jagoe. What's your thought?

4 MR. JAGOE: As a developer, I wouldn't like  
5 the way this was done either or as a property owner  
6 standing back there I wouldn't like the way that it  
7 has taken place or the requirement if I wanted to do  
8 something.

9 If I came in and created the traffic and  
10 needed to put the infrastructure to go forward and I  
11 knew I had to do that, I'd put up my numbers and see  
12 if it was feasible or not. If it wasn't feasible, I'd  
13 walk away. If it was, I'd go ahead and do the  
14 project.

15 My suggestion was that we approve the zoning  
16 as it is without Condition 2. Findings of Fact,  
17 remove Condition 2, which may not be the best in the  
18 spirit of planning, but I'm not comfortable, I would  
19 not be comfortable voting on it as it stands here for  
20 the thoughts of future uses that we may create here.

21 CHAIRMAN: A question that I would have of Mr.  
22 Noffsinger: If the way the division is done and Mr.  
23 Walker - -

24 Mr. Walker, you have 17 acres?

25 MR. WALKER: Correct.

1           CHAIRMAN: Seventeen of twenty-three. He's  
2           responsible for 75 to 80 percent, which would be 75 or  
3           80 percent of the total cost, and all of a sudden all  
4           these other properties develop, Mr. Walker goes  
5           residential or hooks on to develop his property  
6           residential, what happens to the 75 or 80 percent of  
7           the cost and all these other properties then all of a  
8           sudden develop and we've got traffic every which way  
9           and Mr. Walker says, hey, I'm residential.

10          MR. JAGOE: I think the issue starts with what  
11          Mr. Noffsinger said. We know that something is going  
12          to happen there in the future. Something will happen  
13          there. It may be plans that they don't have now or  
14          may be plans that some of those landowners may come  
15          up. We don't know. We're guessing that it's going to  
16          go commercial. It could warrant, depending on those  
17          uses in that commercial and traffic, a turn lane, but  
18          today we don't know that.

19          DR. BOTHWELL: I guess my biggest concern is  
20          it's a recurring thing I've seen over and over again  
21          by this commission. People go out and buy property  
22          and then they come to us and they have a problem.  
23          They didn't investigate more often than not the  
24          consequence of that property before purchasing.

25          I disagree with making these people pay for a

1 turning lane. I'm with you, Scott. We can't predict  
2 what is going to be down here.

3 We made the Woodland's development improve  
4 Ralph Avenue. Well, these people that are on Ralph  
5 are benefiting from that improvement.

6 We always have to seem to come from the  
7 backside and work to the front. It would be simpler  
8 if these things were resolved before the property was  
9 ever purchased.

10 MR. APPLEBY: Some of these improvements on  
11 Ralph Avenue and other improvements you've got to  
12 figure there is the cost of doing business. Either it  
13 works or it doesn't. You look at it and you determine  
14 that it makes sense. The fact that it improves that  
15 other property though, you know, maybe they should  
16 have bought that corner too, but they didn't.

17 The fact of the matter is the road has been  
18 improved and it has made this a viable corner and  
19 that's the way it exist today. So we've got to deal  
20 with it the best way we can. We have an application  
21 before us.

22 DR. BOTHWELL: I agree with all of that.

23 I agree totally with your proposal, Scott. We  
24 seem to always be caught.

25 MR. JAGOE: That's what we're here for.

1 CHAIRMAN: Hold on, Scott.

2 We've got maybe a question.

3 MR. ELLIOTT: State your name, please.

4 MR. HAYDEN: Matt Hayden.

5 (MR. MATT HAYDEN SWORN BY ATTORNEY.)

6 MR. HAYDEN: I guess several interesting  
7 discussions at this point. I guess one thing I've  
8 learned so far is the concern of economic feasibility  
9 of when you partner or allocate cost amongst  
10 landowners.

11 Yes, we would have had an interest in that  
12 corner if I realized we were going to partner on the  
13 improvements on an ongoing basis. Due to how things  
14 were handled in the past, we elected to pass on that  
15 lot.

16 I guess my question is: On an ongoing basis  
17 we have developments in all sizes whether it's two  
18 acres or hundreds of acres. When do I need to let the  
19 cost feasibility known to where we need help for  
20 additional acreage in arrear to help in the cost  
21 offset would be my first question.

22 The second thing is, we're working awful hard  
23 on a comprehensive plan that you all have worked hard  
24 to establish that clearly states that an acre and a  
25 half does not meet the zoning request simply on that.

1 A lot of discussion is going into something that just  
2 clearly does not meet the standards that you all have  
3 set.

4 Now, I'm for the progress on Highway 54. How  
5 come that this could not be tabled and a traffic  
6 study, which in my opinion on the hottest corridor in  
7 Owensboro, is that not warranted?

8 I mean there's a lot of steps that normally  
9 are taken so that all of these facts are laid out in  
10 front of you all.

11 I guess a series of a couple of questions and  
12 I would like to have some answers.

13 CHAIRMAN: Mr. Hayden, we're not going to let  
14 you leave without an answer coming back.

15 If we take the 23 acre total plot, we subtract  
16 Mr. Walker's 17, we come up with 6. Then if we divide  
17 150,000 by six acres, whatever portion you have of the  
18 six acres, what feasibility does that do to you at  
19 this present time or have you considered it?

20 MR. HAYDEN: I would like to thank Marty for  
21 partnering in the turning lane I guess first off. I  
22 would like to have thought that when I spent all the  
23 money on Ralph Avenue that we could go back and  
24 implement that or I could pass some of these costs on  
25 because I was forced or - -



1                   CHAIRMAN: Encouraged.

2                   MR. HAYDEN: - - encouraged to spend those  
3 dollars. I had to go back and run my numbers and know  
4 am I ready to do this or not? In all honesty, the  
5 traffic did not warrant the improvements that I made,  
6 but in order for me to move on in a commercial  
7 development, I had to make a feasibility, an economic  
8 decision, whether it was the right one or not. It  
9 would have been a lot easier if I realized I was going  
10 to have partners in it.

11                   Yes, I'm happy that I wouldn't have to pay the  
12 whole cost if that was your question.

13                   CHAIRMAN: Let me address, I think your  
14 questions probably Mr. Noffsinger will be the best  
15 person on the Staff to address your question.

16                   Mr. Noffsinger.

17                   MR. NOFFSINGER: Would you please restate the  
18 question?

19                   MR. HAYDEN: Could she read it back?

20                   MR. NOFFSINGER: No. Are you asking for a  
21 traffic study?

22                   MR. HAYDEN: I've asked a lot of questions.  
23 If you'd like to start with: How do we work  
24 partnerships on economic feasibility on remaining  
25 acreages on an ongoing basis because I've got things

1 ready to submit now and I need to put that in my  
2 performa on how I can hope for partnerships.

3 MR. NOFFSINGER: I don't know that we do. In  
4 fact, this was probably, this has turned out to be a  
5 mistake. This should not have been our  
6 recommendation, and for that I'm at fault. We have  
7 recommendation for denial. We probably should have  
8 stuck with that recommendation based strictly upon the  
9 Comprehensive Plan. However, as we do with any  
10 applicant that comes in, we work a case to the finish.  
11 Until it gets to this commission, we are working  
12 diligently to try to come up with a solution that we  
13 feel makes sense.

14 Obviously this doesn't make sense for a lot of  
15 reasons.

16 We've tried. It sounds like it's not going to  
17 work. It's not going to be fair.

18 We're talking about right now a \$5,000 bond,  
19 surety less than \$5,000 that the applicants did not  
20 want to post. They just simply said, we don't want to  
21 post a \$5,000 surety. If we do, we only want to post  
22 it for five years.

23 He said, no, that's not good enough. We're  
24 only talking about \$5,000 here. It's really a drop in  
25 the bucket. I don't know that it's fair. You know,

1 certainly to do a traffic study would be a significant  
2 cost and who pays for that?

3 We were just trying to spread those cost  
4 amongst the lots that hadn't been rezoned and  
5 developed and felt that working with the applicants  
6 that that would be a fair proposal. We didn't realize  
7 that it would cause this much concern.

8 Certainly Staff would recommend that Condition  
9 Number 2 be removed because, you know, you're only  
10 talking about \$5,000. Really in the big it's really  
11 just a drop in the bucket. It really wasn't worth all  
12 the confusion and probably discussion that has opened  
13 up.

14 MR. HAYDEN: Obviously you thought something  
15 of it because you warranted the discussion for the  
16 decel lane. So if it is not a big deal or if it's not  
17 warranted, I guess why are we moving forward on this?  
18 Shouldn't we do some more studies whether it cost  
19 \$3,000 or \$50,000 and know that we're making a good  
20 long-term decision instead of just waiving something  
21 that is an issue.

22 CHAIRMAN: Well, Mr. Hayden also had a  
23 question about the acreage size of this property  
24 moving forward being less than the - - you used the  
25 figure acre and a half.

1           MR. HAYDEN: It actually states in your  
2 comprehensive long-term plan, and I've got the section  
3 on it in my notes.

4           MR. NOFFSINGER: Acre and a half. Again, I  
5 thought I addressed that earlier by stating that the  
6 statutes had various ways you can rezone property.  
7 One of those is if it's not in direct compliance with  
8 the Comprehensive Plan, you look to see if there are  
9 major changes that were not anticipated by the  
10 Comprehensive Plan.

11           The applicant made that argument to the  
12 Planning Staff on day one when they came into our  
13 office. I made that same statement when Woodland's  
14 Plaza was rezoned, recognizing that there had been a  
15 change in that area.

16           So I think you have to get beyond the acre and  
17 a half in this particular case and realize, as Mr.  
18 Wilson stated, this property is going to develop  
19 somehow some day for a non-residential use. We're  
20 just trying to come up with a way to move forward and  
21 to share in those cost. But if it doesn't meet  
22 warrant, the warrant is not met, then the decel lane  
23 will not be installed until the warrant is met. Then  
24 the real question is who pays for that? Is it the end  
25 user?

1           MR. HAYDEN: You brought up that the developer  
2 did not want to put up the money in escrow. So I  
3 guess that was the reasoning as to why - - I guess we  
4 need to let it be known that we don't ever appreciate  
5 paying for the additional cost either, but obviously  
6 it's always a business decision and the next step of  
7 how you all move things forward in this situation.

8           Now, it just seems to me there's a lot of  
9 things that we're willing to take concessions on and  
10 maybe we table it and actually had more facts, traffic  
11 study, and a bigger plan, you might find out that it's  
12 not warranted. I'm not trying to spend their money,  
13 but at the same token I'm a little still disturbed on  
14 the acre and a half variance. You know, it's a big  
15 decision to let this happen, this eight-tenths when  
16 you look at all of the acreage behind it.

17          MR. NOFFSINGER: Excuse me. Mr. Hayden, you  
18 misinterpreted my statement. I said the applicant did  
19 not want to post surety for the \$5,000, which is just  
20 a little less than that. That in no way reduced the  
21 amount. That was the amount that was put for them.  
22 So no way did that reduce the amount. It was based  
23 upon a percentage. That was the percentage that was  
24 discussed between the Staff and the applicant's  
25 engineer from day one when we were talking about cost

1 share.

2 MR. HAYDEN: You seem to work it awful hard to  
3 make this happen when the Comprehensive Plan clearly  
4 states that this shouldn't happen. I mean whether  
5 it's the decel lane, what's going to happen on Ralph  
6 Avenue, how we're going to pay for it if it happens.  
7 If it was one of the developments that I'm involved  
8 in, I would have to post 100 percent of it or I just  
9 couldn't start.

10 MR. APPLEBY: The decel lane is not warranted  
11 today. The Comprehensive Plan - -

12 MR. HAYDEN: Ralph Avenue improvements were  
13 not warranted when I did that and there's still none.  
14 There's only five driveways on Ralph Avenue now.

15 DR. BOTHWELL: I thought you had an A or B,  
16 decel lane or Ralph Avenue, and you chose B.

17 MR. APPLEBY: Actually originally they  
18 requested they do both.

19 DR. BOTHWELL: I thought we compromised and  
20 pick one or the other. Is that not correct?

21 MR. HAYDEN: Basically pick your choice and  
22 each was at an expense.

23 DR. BOTHWELL: I understand that, but you got  
24 to choose.

25 MR. HAYDEN: I didn't get the option of, well,

1 can I just pick A or B and then just pay for 5 percent  
2 because I'm only six driveways.

3 DR. BOTHWELL: And I'm with you with that on  
4 100 percent. My point being that you had - -

5 MR. HAYDEN: I had somewhat of an option.

6 DR. BOTHWELL: Yes. We offered you a choice.

7 MR. HAYDEN: Yes.

8 CHAIRMAN: Mr. Hayen, basically what you're  
9 saying, and I'm just paraphrasing you to try to sum  
10 all of this up.

11 Basically what you're saying is you and the  
12 other people that are involved in your group oppose  
13 the approval of this rezoning based on the amount or  
14 the proportion of the decel lane that would be burden  
15 by your group; is that correct?

16 MR. HAYDEN: And the Comprehensive Plan does  
17 not call for. Because when I was rezoning there's  
18 properties that I did not need on Ralph Avenue, which  
19 I had to purchase in order to make everything work.

20 CHAIRMAN: So you had two points. One, the  
21 proportion and, two, outside the Comprehensive Plan.

22 MR. HAYDEN: There is additional land there  
23 that could be purchased.

24 CHAIRMAN: In all fairness, the Staff had  
25 tried to work with the developer to bring another

1 development on line. So they were not trying to be  
2 unfair to previous developers. They were trying to  
3 continue to work with developers. So that from an  
4 economic standpoint, you know, that is to their  
5 credit.

6 DR. BOTHWELL: Mr. Chairman, I have a question  
7 of Mr. Noffsinger.

8 If we drop Number 2, does that then take your  
9 recommendation for approval and reverse it to Staff  
10 recommending not approval?

11 MR. NOFFSINGER: No, sir. Staff's  
12 recommendation at this point is that you drop  
13 Condition Number 2 and you still have a favorable  
14 recommendation; however, Mr. Hayden is here tonight to  
15 give you a basis of why you should deny this rezoning.  
16 You also have findings of fact through a previous  
17 recommendation that you can make that recommendation  
18 to fiscal court as well.

19 MR. CAMBRON: Mr. Chairman, I would like to  
20 make a motion at this point in time.

21 CHAIRMAN: Mr. Cambron, would you hold your  
22 motion because I think we've heard from the opposition  
23 and I think we ought to at least hear from - -

24 MR. HAYDEN: I want to clear up one thing.  
25 I'm not against this group developing this property.



1 I just think that there's other things that still  
2 could be resource whether it's a traffic study, only  
3 1.5 acres. There is additional acreage available. I  
4 would understand if there was no acreage around it,  
5 but I would understand your variance in your position  
6 on your Comprehensive Plan. So I just want everybody  
7 to know that I am for growth.

8 CHAIRMAN: Let me ask: Did that mean that you  
9 are for or against this proposal?

10 MR. HAYDEN: I'm for consistency.

11 DR. BOTHWELL: Good answer.

12 CHAIRMAN: Thank you.

13 Let me call somebody representing the other  
14 property owners because we've heard from this part and  
15 I think we deserve to hear from you all.

16 MR. ELLIOTT: State your name, please.

17 MR. ALTMAN: Phil Altman.

18 (MR. PHIL ALTMAN SWORN BY ATTORNEY.)

19 MR. ALTMAN: When we started this project,  
20 after we acquired the land, before we did anything we  
21 went in and talked to Staff about what would be the  
22 requirements to rezone this property. We discussed -  
23 - we did meet the acre and a half requirement. They  
24 informed us there is a new Comprehensive Plan that is  
25 going to proposed that if approved come in to play in

1 January or early next year. That requirement would  
2 not be a really important part of this assuming that  
3 happens.

4 You know, we met with them. We've had our  
5 attorneys meet with them, and engineers meet with the  
6 Staff. Everything that they've proposed for us to do  
7 we've agreed to do. We've done everything we know to  
8 do to develop this property.

9 I don't know what you - - you know, someone  
10 come in trying to develop something. I don't know  
11 what else you can do besides work with Staff, all  
12 their recommendations, agree to all your requirements  
13 and come before this commission.

14 CHAIRMAN: Mr. Altman, based on your  
15 statement, I'm going to bring Mr. Howard to the podium  
16 to address that future possibility that you mentioned,  
17 if that's okay with you. Have you got any further  
18 statement?

19 MR. ALTMAN: No.

20 CHAIRMAN: Any of the rest of your members?

21 Mr. Colbert, let me hold you up just a moment  
22 until we clear up this issue with Mr. Howard.

23 MR. HOWARD: He is correct. We are currently  
24 updating our Comprehensive Plan and the integral part  
25 of that when rezones are involved is the land use map.

1           As Mr. Noffsinger stated, there have been  
2 significant changes in the area. Wal-Mart, the  
3 Woodland Plaza developments.

4           With Ralph Avenue being widen to a commercial  
5 street, we are proposing in that new version of the  
6 Comprehensive Plan that the plan area that this  
7 property is located in a business plan area, which the  
8 one and a half acre requirement for an expansion  
9 across an intervening street would not be one of the  
10 factors in a rezoning for that. The current acreage  
11 wouldn't be a factor.

12           CHAIRMAN: What would be a factor?

13           MR. HOWARD: It would just be a logical  
14 expansion of B-4 use.

15           CHAIRMAN: So .10 or whatever.

16           MR. HOWARD: Right. Wouldn't be able to do a  
17 lot.

18           CHAIRMAN: I understand. Thank you.

19           Mr. Colbert, did you want to address the  
20 commission?

21           MR. ELLIOTT: State your name, please.

22           MR. COLBERT: My name is Mike Colbert.

23           (MR. MIKE COLBERT SWORN BY ATTORNEY.)

24           MR. COLBERT: Tonight we come here an hour  
25 before the meeting. We've lost our engineer. We've

1 lost our legal counsel. We're three business owners  
2 trying to make an investment like anybody else. It's  
3 been very confusing, very hard on us.

4 All we've been able to do is to follow the  
5 guidelines presented to us for us to come here  
6 tonight. I guess that's why we're on the back row  
7 here is because us three are here by ourself. We're  
8 just asking for your approval. Thank you.

9 CHAIRMAN: Thank you Mr. Colbert.

10 Mr. Walker.

11 MR. WALKER: I guess I have an observation of  
12 what's going to happen next.

13 I actually own a half acre right behind their  
14 property. It looks like to me it's going to be a rush  
15 on zoning and the last guy is going to be caught with  
16 a big ticket at the end.

17 I guess you people are going to see me next  
18 month for the zoning change along with Matt. So I  
19 guess be prepared for that would be one observation  
20 that I see happening. I don't know if you all see  
21 that happening, but I see that being the next course  
22 of action.

23 Something that I'm curious about. If there is  
24 a stoplight within I guess it's less than 500 feet  
25 there at Commonwealth Drive, does that not in affect

1 help this whole situation? Has that been taken into  
2 consideration as far as a turning lane is concerned?  
3 That's certainly a better access point during heavy  
4 traffic. That's going to slow down traffic. I don't  
5 know. Is it purely a traffic count issue I guess is  
6 my question. I'm sure that's been made in to  
7 consideration but I would like to hear an answer for  
8 that.

9 CHAIRMAN: Mr. Noffsinger.

10 MR. NOFFSINGER: At this time a right turn  
11 decel and storage lane is not warranted. In the  
12 future, it could be.

13 CHAIRMAN: Mr. Noffsinger, it's very obvious  
14 what Mr. Walker's observation is and what Mr. Hayden's  
15 thoughts have to be and Mr. Colbert, Mr. Altman, Mr.  
16 Hartsough. Will there reach a point where if we do  
17 not device some sort of plan off of Ralph Avenue that  
18 is fair and equitable to all that, as Mr. Walker said,  
19 then all of a sudden somebody wants to put in a real  
20 high traffic and puts together a three acre parcel out  
21 there, and all of a sudden we come in and say, you  
22 know, you win the \$150,000 decel lane and it turns out  
23 to be Mr. Hayden.

24 MR. JAGOE: Mr. Chairman, the better question  
25 there is: How far away from your property does the

1 developer have to continue to pay for improvements?

2 CHAIRMAN: You asked the question. Do you  
3 have an answer?

4 MR. JAGOE: I don't have an answer.

5 CHAIRMAN: Mr. Appleby, from your development  
6 standpoint, do you?

7 MR. APPLEBY: I have no comment.

8 MR. JAGOE: From my development standpoint,  
9 it's only less than an inch away from my property. I  
10 don't necessarily think that I should have to deal  
11 with that.

12 MR. APPLEBY: We've all done off-site  
13 improvements.

14 MR. JAGOE: We've all done off-site  
15 improvements. The question is: How far away are you  
16 impacting - - what if that road were a mile long and  
17 you're at the end of the mile, then would you have to  
18 participate in that?

19 CHAIRMAN: Mr. Jagoe, I know you being a  
20 developer, in this situation here, I think it would be  
21 fair to all parties involved rather than leave all of  
22 this undecided is we come up with some equitable plan  
23 for all of the future possible developers, if that's  
24 something that could be - -

25 MR. APPLEBY: Tonight?

1           MR. JAGOE: Mr. Chairman, I understand what  
2 you're saying, but I think that goes right back to  
3 Mr. Hayden's point because I certainly would like to  
4 go back for improvements that I've made to everybody  
5 that's behind me and recoup those costs.

6           I'm putting a decel lane out on 231. I don't  
7 think that I'm going to go the 900 acres behind me and  
8 collect from them, but I sure am putting a stub street  
9 out to all that property.

10          MR. APPLEBY: But it was a cost you knew going  
11 up front and you waived that. You determined that it  
12 made the project still feasible.

13          MR. JAGOE: And I also determined that it  
14 would end up serving other properties. The traffic  
15 study required it in that particular instance.

16          If I was putting in 30 lots, probably wouldn't  
17 have been required. Sooner or later there may have  
18 needed to be one there.

19          CHAIRMAN: Dr. Bothwell.

20          DR. BOTHWELL: You know, this is a very small  
21 development. Your point is well taken. You know,  
22 traffic study and the impact.

23          In this instance, this is just one little  
24 development, but we know down the road certainly  
25 there's going to be a huge impact.

1 MR. APPLEBY: Well, we don't know that.

2 DR. BOTHWELL: Well, we can't say that  
3 tonight.

4 MR. APPLEBY: We don't know that on Ralph  
5 Avenue. We don't know what the use of the rest of it  
6 will be. We don't know that it will ever warrant a  
7 decel lane there. We asked them to escrow money for a  
8 decel lane that may never be built. They agreed to do  
9 it, but now the Staff is recommending we remove that  
10 requirement. I'm ready to make a motion if Chair is  
11 ready.

12 MR. WALKER: I have another observation if you  
13 don't care. I know you're in a hurry, Mr. Appleby.

14 CHAIRMAN: Mr. Walker, we are never in a  
15 hurry. We're never in a hurry. We're ready for all  
16 your comments.

17 MR. WALKER: It would be nice to think as a  
18 property owner that, I mean I didn't find out about  
19 this until Mr. Hayden called me today at 3:00. I was  
20 just assuming this was going to be a zoning change. I  
21 didn't know it was going to implicate other issues.

22 It would be nice to have that on the front  
23 side so that we can get with the parties that are  
24 involved and maybe try to work some things behind the  
25 scenes. It may be a more efficient way than sitting



1 up here on TV and trying to resolve these issues at  
2 the last possible moment. That's just an observation.

3 CHAIRMAN: Let me call - - Mr. Colbert, do you  
4 all have a team captain?

5 MR. ELLIOTT: State your name, please.

6 MR. HARTSOUGH: Greg Hartsough.

7 (MR. GREG HARTSOUGH SWORN BY ATTORNEY.)

8 CHAIRMAN: Mr. Hartsough, obviously you've  
9 heard all these observations, questions, and  
10 suggestions. Something that Mr. Walker sort of closed  
11 with. It might be a good idea if all of you all  
12 agree, if all of you would be willing to sit down,  
13 since Mr. Hayden's group and Mr. Walker were not  
14 totally aware of what was going on until this  
15 afternoon. Would you all be willing to sit down and  
16 see if you all amongst yourself come up with some  
17 equitable agreement? Of course, include Mr. Bryant.

18 MR. HARTSOUGH: We hired Mr. Bryant and we  
19 hired another gentleman in the room as well when we  
20 started this process. I feel like Mr. Bryant has  
21 represented these other parties on other projects and  
22 that he was well versed on what they would accept and  
23 what they wouldn't accept. This is our first attempt  
24 here in Owensboro to come before the commission to get  
25 property zoned according to the rules and regulations.

1 We met with the Staff here. We met with a positive  
2 recommendation. Right from the first time we met  
3 there shouldn't be any opposition of this in change  
4 from residential to business venture.

5 Then we met with opposition that essentially  
6 they wanted to acquire money from us to possibly put  
7 in a turn lane. It's not warranted now.

8 CHAIRMAN: Mr. Hartsough, obviously you  
9 realize the climate has changed dramatically.

10 MR. HARTSOUGH: Yes, and I think, I really  
11 don't think the climate, if you listen to the  
12 undertones, it has changed. I think what Mr. Hayden  
13 is saying and what Mr. Walker is saying is that these  
14 projects sometimes don't warrant. The moneys come  
15 from the developer. Because a traffic count wouldn't  
16 suggest, if you took a study right now, it wouldn't  
17 suggest that a turn lane is warranted right now. Put  
18 up the money.

19 We thought, our engineer proposed a two,  
20 possibly a five years commitment for the money.

21 CHAIRMAN: Mr. Hartsough, what I'm asking or  
22 what I'm saying is, it would be a lot easier for the  
23 commission if all parties involved would meet and  
24 agree to some sort of formula if we face this in the  
25 future and we already had this ironed out where we

1 wouldn't be going through this. Say you all acquire -  
2 -

3 MR. HARTSOUGH: I understand maybe the three  
4 of us get together and we come up with a formula.  
5 Let's just say next month that there's three other  
6 parties. Mr. Jagoe is involved. Mr. Appleby is  
7 involved or somebody else is involved and they don't  
8 like our formula. I think that's what you've got the  
9 Staff here that's suppose to be doing. Is to come up  
10 with recommendations for a basis of confronting these  
11 particular problems.

12 Matt and Marty and I may come up here and we  
13 agree. We come up with whether it's 20 percent, 30  
14 percent or whatever our particular portions are. We  
15 say, yes, we agree. Mr. Jagoe doesn't want to put up  
16 turn lane money for 231, but he goes in his business.  
17 We could sit down and maybe agree upon it.

18 The bigger picture is next month what's the  
19 basis for the next agreement.

20 CHAIRMAN: Well, Mr. Jagoe's project has  
21 nothing to do - -

22 MR. HARTSOUGH: I understand.

23 CHAIRMAN: That would be totally, he would not  
24 enter into that conversation.

25 MR. HARTSOUGH: I understand. I just used

1       that as a possibility. I'm just saying our three  
2       parties here may agree on getting together and  
3       agreeing to some basis.

4               CHAIRMAN: What you're saying is you would  
5       rather not do that or you would do that?

6               MR. HARTSOUGH: I thought we were doing that  
7       to be honest with you with the Staff's recommendation  
8       to include our particular lot, which came up to around  
9       a little less than an acre. It's .85 or .96 or  
10       whatever, you can look at the documents, as a portion  
11       of the whole access there on Ralph avenue.

12              Now, Marty says that his particular property  
13       behind Splash would not use that access so it would go  
14       off on residential area back there with a couple of  
15       farms. I understand that.

16              My question would be: Would that access be  
17       cut off or still utilized through Ralph Avenue if  
18       there's not an access point through Ralph Avenue? He  
19       has a warranted claim. Don't pay for it.

20              I don't know where you come up and really come  
21       to an agreement here with our parties here than using  
22       that as a basis for your continue use in the future.

23              CHAIRMAN: Then based on my question, what you  
24       said was no?

25              MR. HARTSOUGH: You want to table the issue if

1 that's what you're coming up with and asking, I will  
2 take a moment here and meet with our parties and say,  
3 my other owners here decide whether we want to do  
4 that.

5 DR. BOTHWELL: Mr. Hartsough, before you get  
6 to that point.

7 Mr. Appleby offered to make a motion. I'd  
8 like to hear that motion.

9 MR. APPLEBY: I didn't have a motion.

10 MR. CAMBRON: I'd like to give my motion.

11 CHAIRMAN: Go ahead.

12 MR. CAMBRON: It might fly and it may not.

13 Mr. Hartsough, I understand exactly where  
14 you're coming from. I'm not too sure if all three of  
15 you get together now just like you said and next month  
16 it's a different ballgame. I almost have to challenge  
17 the Staff to come up with a different approach to  
18 handle this. I can't think in the last 11 years I've  
19 been on this commission we've come to this situation.  
20 I may be completely off base, but I don't think we  
21 have, but we are here now. So once we're here we need  
22 to look for some equitable way to handle this in the  
23 future.

24 I don't know that you three should come up  
25 with that. I think the Staff needs to come up with

1       it. There are other ways out there to handle this I'm  
2       sure. I appreciate everybody's comments here, but  
3       again we're kind of caught right now, we are, because  
4       we're as dumb-founded as you all may be to a certain  
5       point because we didn't know what this was.

6               My motion is to table this for next month, but  
7       sometime between now and the next 15 days is to ask  
8       the Staff to look into this and come back to us with  
9       some recommendations or at least give us some  
10      information on how this should be handled from now on  
11      because it's become a big hot potato here.

12             CHAIRMAN: Mr. Cambron, why don't we just sort  
13      of discuss your motion.

14             Dr. Bothwell, do you have a suggestion?

15             DR. BOTHWELL: I say you should call for a  
16      second.

17             MR. CAMBRON: That's exactly right.

18             MS. DIXON: I'll second.

19             CHAIRMAN: Ms. Dixon second. Mr. Cambron has  
20      a motion. We've got a second by Ms. Dixon. All in  
21      favor of Mr. Cambron's motion to table - - are we able  
22      to table, Mr. Silvert? Mr. Elliott, we can table  
23      this?

24             MR. ELLIOTT: Yes.

25             CHAIRMAN: All in favor - -

1 MR. NOFFSINGER: Time out.

2 CHAIRMAN: Mr. Noffsinger.

3 MR. NOFFSINGER: In terms of time frame, which  
4 the Planning Commission must act by statutes, where do  
5 we stand?

6 MR. ELLIOTT: I think if it's tabled there  
7 will have to be a motion at the next meeting to bring  
8 it off the table.

9 MR. NOFFSINGER: Are we within the time frame  
10 as specified by KRS 100?

11 MR. ELLIOTT: You mean for our recommendation?

12 MR. NOFFSINGER: For a recommendation once an  
13 application has been proposed.

14 MR. ELLIOTT: Yes.

15 MR. NOFFSINGER: It was postponed from the  
16 last meeting.

17 MR. ELLIOTT: It was?

18 MR. NOFFSINGER: Yes. At the request of the  
19 applicant.

20 MR. CAMBRON: This time it's postponed by the  
21 request of the commission or tabling it.

22 MR. ELLIOTT: I'm not real sure.

23 MR. NOFFSINGER: We need a clarification on  
24 that before we postpone without the applicant's - -

25 MR. CAMBRON: We're tabling it.

1           MR. NOFFSINGER: We're postponing. You're not  
2 taking action.

3           MR. CAMBRON: Right.

4           MR. ELLIOTT: It was postponed from the last  
5 meeting by the applicant.

6           CHAIRMAN: Mr. Elliott, while you're  
7 researching that, Mr. Silvert, we've got a motion on  
8 the table and a second. We can have a discussion  
9 about the motion and then we might draw in what Mr.  
10 Appleby's thoughts are.

11           Mr. Cambron, would you care if we - -

12           MR. SILVERT: Question has been called and a  
13 second so it does require a vote.

14           CHAIRMAN: So we just have to wait until you  
15 clarify it. Because we go ahead and vote on this and  
16 it is tabled and we don't meet the Kentucky statute -  
17 -

18           MR. SILVERT: And you also could vote against  
19 the motion and the motion could be renewed. That's  
20 another option while we research this for a moment.

21           CHAIRMAN: So we can go ahead and vote?

22           MR. SILVERT: No. Someone can move to recess  
23 and take that, but someone would first have to move to  
24 suspend the rules.

25           MR. ELLIOTT: Within 60 days.



1           MR. SILVERT: We would be outside. It's 60  
2 days from the receipt of the application.

3           CHAIRMAN: So Mr. Cambron's motion and the  
4 second we can accept that motion and if it does pass,  
5 then the applicant can come back in December?

6           MR. SILVERT: He would have to refile.

7           MR. ELLIOTT: He would have to refile.

8           CHAIRMAN: Then it would not be - -

9           MR. APPLEBY: You can't make a motion to  
10 postpone is what you're saying?

11          DR. BOTHWELL: So we either turn it down or we  
12 approve it.

13          MR. APPLEBY: Right.

14          MR. CAMBRON: You can make a motion to  
15 postpone it?

16          DR. BOTHWELL: No.

17          MR. SILVERT: It would be tandem out to a  
18 recommendation not to approve. Well, it would be more  
19 than that. Nothing would go forward. It would be  
20 outside the time frame.

21          MR. NOFFSINGER: Unless the applicant agrees  
22 to a postponement.

23          MR. ELLIOTT: Correct.

24          MR. CAMBRON: How do we handle this now? I've  
25 got a motion and we have a second. Should I withdraw

1       it and then ask them? I'm going to withdraw my  
2       motion.

3               MR. ELLIOTT: We have got to make a decision.

4               MR. HARTSOUGH: Mr. Chairman, you're going to  
5       penalize us here - -

6               DR. BOTHWELL: We haven't done anything yet,  
7       Mr. Hartsough. Hold up.

8               Can he withdraw his motion or does that call  
9       for a vote?

10              CHAIRMAN: We have to call for a vote. We've  
11       got a motion and a second. But if we vote Mr.  
12       Cambron's motion down, then the floor would be open  
13       for a discussion or another motion.

14              MR. SILVERT: That's correct. We have to make  
15       a recommendation of governmental body within the time  
16       frame selected by Staff.

17              CHAIRMAN: Mr. Cambron, do you understand?

18              MR. CAMBRON: Don't like it, but yes.

19              CHAIRMAN: Does everybody understand? If we  
20       vote against Mr. Cambron's motion for postponement,  
21       then we can accept another motion or other discussion.

22              Chair has got a motion by Mr. Cambron and a  
23       second by Ms. Dixon. All in favor of Mr. Cambron's  
24       motion raise your right hand.

25              (BOARD MEMBERS NICK CAMBRON AND JUDY DIXON

1 VOTED AYE.)

2 CHAIRMAN: All opposed to Mr. Cambron's  
3 motion.

4 (BOARD MEMBERS SCOTT JAGOE, TIM MILLER, IRVIN  
5 ROGERS, DAVE APPLEBY, DREW KIRKLAND, DR. MARK BOTHWELL  
6 AND MARTIN HAYDEN RESPONDED NAY.)

7 CHAIRMAN: The motion fails by seven to two.

8 DR. BOTHWELL: Time for another motion, Mr.  
9 Appleby.

10 MR. APPLEBY: If we need to discuss the  
11 postponement with the applicant before I make my  
12 motion, I have no problem with that.

13 CHAIRMAN: Mr. Hartsough.

14 MR. HARTSOUGH: So could we take a recess here  
15 for a moment and talk about it with the owners and  
16 then get back here in five minutes or something.

17 CHAIRMAN: Five minutes will be excellent.

18 MR. SILVERT: I do think that counsel needs  
19 to, if our interpretation of the statute, and it does  
20 say in the case of a proposed amendment originating at  
21 the legislative level of fiscal court, the Planning  
22 Commission shall make it's recommendation within 60  
23 days.

24 Stewart, I'm not sure if this didn't originate  
25 with the legislative body or fiscal court.

1           Supposing we are and there is a time  
2           limitation under statute, it does say shall. I don't  
3           know if it gives an opportunity to postpone on behalf  
4           of the applicant.

5           CHAIRMAN: We've already defeated  
6           Mr. Cambron's motion. Do we have a problem with  
7           granting the applicant a five minute recess and then  
8           come back for their final discussion on this matter?

9           Do we have a motion for a recess?

10          MR. MILLER: Motion to recess for five  
11          minutes.

12          CHAIRMAN: Mr. Miller has a five minute  
13          recess.

14          MR. APPLEBY: Second.

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

17          (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18          CHAIRMAN: There will be a five minute recess.

19          -- - - (OFF THE RECORD) - - - -

20          CHAIRMAN: I want to reconvene our meeting  
21          after our recess.

22          Mr. Hartsough, before we go forward, would you  
23          like to report back to us.

24          MR. HARTSOUGH: We've heard earlier testimony  
25          by the two other parties, our legal counsel as well as

1 others, and they said that they didn't want to pay for  
2 any of these costs, proportionate of what would come  
3 about with our rezoning of the property on Ralph  
4 Avenue. Unless they change their testimony or their  
5 thoughts, which Mr. Hayden talked to us, he hasn't  
6 changed his idea. I understand Mr. Walker here says  
7 that his 17 acres back there at Splash would be  
8 included in some residential. We don't see that there  
9 would be any benefit. As they've already testified,  
10 they didn't want to pay for any of these costs. If  
11 you reduce it down to six other acres, which I think  
12 we were talking about, if you take out Mr. Walker's  
13 acreage, the other parties are not probably here, some  
14 other landowners, I think we're arbitrarily making a  
15 decision for them and they're not represented. So I  
16 think the commission needs to make the decision here  
17 that's based on not putting in a turning lane and  
18 rezoning our application.

19 CHAIRMAN: Our recess was for you all to meet  
20 and see if - -

21 MR. HARTSOUGH: We met with Mr. Walker and  
22 he's more than willing to get up here and talk, his  
23 opportunity as well as ours and Mr. Hayden's. We'd be  
24 glad to talk with them, but they've already entered  
25 earlier testimony that they're not going to help pay

1 for anything.

2 CHAIRMAN: Then the commission at this point  
3 in time needs to move forward and we're prepared to do  
4 that. We took a recess there.

5 MR. CAMBRON: Mr. Chairman, would like to make  
6 another motion.

7 MR. WILSON: Can we make a comment?

8 CHAIRMAN: Mr. Wilson wants to make a brief  
9 statement.

10 MR. WILSON: Mr. Chairman, a motion to table  
11 it, we didn't come up here to get a motion to table it  
12 or to have talks about who is going to pay how much.  
13 If those talks took place, we're interested in us  
14 being one group, Mr. Walker and any other landowners  
15 be a group, the applicant be in a group. Any  
16 participation from this commission or at least from  
17 Gary and the Staff. We're not here just worried about  
18 having to pay something on this one. That's not the  
19 big picture. It's like we're here opposing this  
20 development. It's not this development we're  
21 opposing. It's the system that's being utilized.  
22 We've got an application here for a rezoning and the  
23 important thing from safety or otherwise was this one  
24 condition was this deceleration lane. Now, all of a  
25 sudden there's been some opposition raised as to how

1       it's going to be paid for. Then all of a sudden it's  
2       not important enough. It's out of the recommendation  
3       now. That's what we're looking for. We're looking  
4       for consistency. We've got a lot of proposals to  
5       bring before this commission. We're not here just to  
6       oppose this. We hope to have a very successful  
7       development on that corner.

8               The lack of consistency is what we're here  
9       trying to address and trying to - - we would love to  
10      have a meeting with Greg and his group and with Gary  
11      and his group. Where we decide, how do we address  
12      these things? We're not worried about how much - -  
13      well, we are obviously worried about that. This isn't  
14      the big picture. That's not why we're here. We're  
15      here because of a small zoning here, a small zoning  
16      there. Some people pay for everything. Then we're  
17      going to piecemeal it here. You know, if these people  
18      want to develop this corner, why don't they buy the  
19      whole cost of this development. If it's never  
20      required at some point in time in the future, and it  
21      may be 5, 10, 20 years. I don't know what it would  
22      be. They get all their money back. The traffic, it's  
23      been talked about by Staff. It may never be  
24      necessary.

25              CHAIRMAN: Mr. Wilson, we know that your group

1 with the intent and the things that they've done in  
2 the past do not oppose development in any shape, form  
3 or fashion.

4 MR. WILSON: It just happens to be the vehicle  
5 that we're trying to get our message over to this  
6 commission and the Staff.

7 We need to be able to plan with some  
8 consistency and know what things are going to cost.  
9 This is just such a variance from what we've been  
10 facing over the last two to five years. You know, are  
11 we going to be treated like this on our next one and  
12 get these by concessions or are we not? We would love  
13 to sit down with Staff and with these developers and  
14 work out a way on this one that maybe can apply in our  
15 future developments. That's what we're concerned  
16 about. Our immediate purpose is why not just have  
17 them bond the whole thing. If it's never used, they  
18 get their money back.

19 CHAIRMAN: Mr. Wilson, you realize you've been  
20 up here enough and so have your clients. Each  
21 individual case is taken case by case.

22 MR. WILSON: Certainly we do.

23 CHAIRMAN: There's many variable reasons why  
24 we have to do that. I appreciate your comments, but I  
25 think it's come to a point in time where the



1 commission will make a decision. Thank you, Mr.  
2 Wilson.

3 MR. CAMBRON: Is chair ready for a motion?

4 CHAIRMAN: Mr. Cambron, I am ready for a  
5 motion.

6 MR. CAMBRON: I'd like to bring my last motion  
7 up again. My motion is to table this item for 30  
8 days. I would charge the Staff to try to come up with  
9 something, some other alternative method on how to  
10 handle this in the future and try to bring all parties  
11 of concern in on these conversations, on the work and  
12 trying to make this. That's my motion is to table it.

13 CHAIRMAN: Mr. Cambron, before I ask for a  
14 second, I would like to ask counsel to weigh in on the  
15 position one more time for me, please.

16 MR. ELLIOTT: We looked at the statute. The  
17 60 days that we indicated does not apply. It did not  
18 originate with the legislative body or the fiscal  
19 court or the city commission. It originated here. So  
20 we're not limited by the 60 day rule.

21 CHAIRMAN: Mr. Elliott, just to make it very  
22 simple for me and the applicants. In other words, if  
23 we approve Mr. Cambron's motion, then this group could  
24 be back in December?

25 MR. CAMBRON: Without having to file again?

1 MR. ELLIOTT: Right.

2 CHAIRMAN: We have a motion by Mr. Cambron for  
3 tabling this motion.

4 MS. DIXON: Second.

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

7 (BOARD MEMBERS DREW KIRKLAND, NICK CAMBRON,  
8 JUDY DIXON AND DR. MARK BOTHWELL RESPONDED AYE.)

9 CHAIRMAN: All opposed.

10 (BOARD MEMBERS SCOTT JAGOE, TIM MILLER, IRVIN  
11 ROGERS, DAVE APPLEBY AND MARTIN HAYDEN RESPONDED NAY.)

12 CHAIRMAN: Five to four. The motion is  
13 defeated.

14 Do we have another?

15 MR. APPLEBY: Mr. Chairman, I'd like to make a  
16 motion for approval based on the original application  
17 including posting the bond. Motion for approval on  
18 Staff's Recommendations, Conditions 1 through 6 and  
19 Findings of Fact 1 through 5.

20 CHAIRMAN: We have a motion for approval by  
21 Mr. Appleby.

22 MR. JAGOE: Does that include Condition 2?

23 MR. APPLEBY: Yes.

24 CHAIRMAN: We have a motion by Mr. Appleby.

25 MR. ROGERS: Second.

1           CHAIRMAN: We've got a second by Mr. Rogers.  
2 All in favor of Mr. Appleby's motion raise your right  
3 hand.

4           (BOARD MEMBERS SCOTT JAGOE, TIM MILLER, IRVIN  
5 ROGERS, DAVE APPLEBY, DREW KIRKLAND, JUDY DIXON, DR.  
6 MARK BOTHWELL AND MARTIN HAYDEN RESPONDED AYE.)

7           CHAIRMAN: All opposed.

8           (BOARD MEMBER NICK CAMBRON RESPONDED NAY.)

9           CHAIRMAN: Motion carries.

10          Next item.

11          Related Item:

12          ITEM 5A

13          3611 Ralph Avenue, 0.847 acres  
14          Consider approval of preliminary development plan.  
15          Applicant: MPG Commercial Properties, LLC

16          MR. NOFFSINGER: Mr. Chairman, this  
17          application has been reviewed by the Planning Staff.  
18          It's found to be in order. It is a preliminary  
19          development plan. Therefore, no construction activity  
20          can occur until such time as a final development plan  
21          is approved by the OMPC office. With that it's ready  
22          for consideration.

23          CHAIRMAN: Do we have anybody representing the  
24          applicant?

25          APPLICANT REP: Yes.

26          CHAIRMAN: Do we have any questions of the

1 applicant?

2 MR. JAGOE: I'm assuming on a final  
3 development plan you would have to show a decel lane  
4 on here?

5 MR. NOFFSINGER: No.

6 MR. JAGOE: Because it's not warranted.

7 MR. CAMBRON: Wait a minute. I thought we  
8 just voted on that.

9 MR. APPLEBY: Surety would have to be posted.

10 MR. JAGOE: So we're approving this  
11 preliminary development plan without a decel lane?

12 MR. APPLEBY: Yes, but they'll have to post  
13 bond at that time.

14 MR. JAGOE: At this point it would not require  
15 a decel lane?

16 MR. NOFFSINGER: That's correct.

17 MR. JAGOE: Is chair ready for a motion?

18 MR. NOFFSINGER: If you do approve this item  
19 we recommend it be conditioned upon approval of the  
20 zoning change by the legislative body.

21 MR. JAGOE: I'm not sure I can repeat that.

22 MR. NOFFSINGER: Admission upon approval of  
23 the zoning change by the legislative body.

24 MR. JAGOE: I move that we approve this  
25 conditioned upon approval change by the legislative

1 body.

2 MR. NOFFSINGER: In other words, we don't sign  
3 it until the - -

4 MR. JAGOE: We won't sign the preliminary  
5 development plan until it's passed zoning.

6 MR. NOFFSINGER: That's right.

7 MR. APPLEBY: Second.

8 CHAIRMAN: We have a motion by Mr. Jagoe.  
9 Second by Mr. Appleby. All in favor of Mr. Jagoe's  
10 motion please raise your right hand.

11 (BOARD MEMBERS SCOTT JAGOE, TIM MILLER, IRVIN  
12 ROGERS, DAVE APPLEBY, DREW KIRKLAND, JUDY DIXON, DR.  
13 MARK BOTHWELL AND MARTIN HAYDEN RESPONDED AYE.)

14 CHAIRMAN: All opposed.

15 (BOARD MEMBER NICK CAMBRON RESPONDED NAY.)

16 CHAIRMAN: We've got nine to one.

17 Motion carries. Next item.

18 ITEM 6

19 2968 Settles Road, 1.5 acres  
20 Consider zoning change: From R-1A Single-Family  
21 Residential and A-U Urban Agricultural to A-U Urban  
22 Agricultural  
23 Applicant: Ramona Rhodes

24 PROPOSED ZONE & LAND USE PLAN

25 The applicant is seeking an A-U Urban  
Agricultural zone. The subject property is located in  
a Future Urban Plan Area, where rural small-lot

1 residential uses are appropriate in general locations.

2 SPECIFIC LAND USE CRITERIA

3 (A) Separate lots fronting on public roads or  
4 streets - Each dwelling should be located on its own  
5 individual lot that fronts on a public road or street.  
6 New subdivision streets should be constructed to urban  
7 specifications, including curbs and gutter.

8 (B) Lots sizes adequate for septic tank  
9 systems - Lots should be large enough in size to  
10 assure satisfactory operation of conventional septic  
11 tank systems as regulated by state law.

12 APPLICANT'S FINDINGS

13 The proposed zone change amendment is in  
14 compliance with the Comprehensive Plan. The land use  
15 plan allows rural small-lot residential use in areas  
16 without sanitary sewer systems. The proposed  
17 amendment is an extension of an existing  
18 Urban-Agricultural Zone.

19 PLANNING STAFF REVIEW

20 The subject property is located in the 2900  
21 block of Settles Road. Land use criteria applicable  
22 to this proposal are reviewed below.

23 GENERAL LAND USE CRITERIA

24 Environment

25 According to a study prepared by the US

1 Department of Agriculture Soil Conservation Service  
2 dated March 6, 1990, it appears that the subject  
3 property is not located in a wetlands area. The  
4 subject property is not located in a special flood  
5 hazard area per FIRM Map 21059C0285C. It appears that  
6 the subject property is not designated as prime  
7 agricultural land according to the "Important  
8 Farmlands" map created by the US Department of  
9 Agriculture Soil Conservation Service dated March  
10 1980. The developer is responsible for obtaining  
11 permits as may be required by the Division of Water.  
12 The Army Corp of Engineers, FEMA or other state and  
13 federal agencies as may be applicable.

14 It appears that the subject property is in  
15 their vicinity of the Owensboro Wellhead Protection  
16 area according to a map created by the GRADD office  
17 dated March 1999.

#### 18 Urban Services

19 Electricity, water and gas are available to  
20 the subject property. Sanitary sewage disposal is  
21 currently accomplished by an on-site septic system.

#### 22 Development Patterns

23 The subject property is located in an area of  
24 developing small-lot urban residential lots with some  
25 existing small-lot rural residential uses. The

1 property to the north is zoned R-1C single-family  
2 residential and is part of the Lake Forest  
3 subdivision. The properties to the east and south are  
4 split zoned R-1A and A-U with residential and  
5 agricultural uses. The property to the west is zoned  
6 R-1A and is residential in use.

7 The site currently has a single-family  
8 residence with several additional structures which are  
9 used as part of a nursery business. The applicant  
10 proposes to continue the use of the property as a  
11 nursery which is currently a zoning violation since  
12 the use is not permitted in an R-1A single-family  
13 residential zone.

14 The subject property has frontage on Settles  
15 Road which is classified as a major collector roadway.  
16 Driveway spacing should be a minimum of 250 feet apart  
17 and a roadway buffer of 30 feet from the street  
18 centerline is required. If the rezoning is approved,  
19 access to the site should be brought into compliance  
20 with the current access management requirements.

#### 21 SPECIFIC LAND USE CRITERIA

22 According to the Comprehensive Plan, rural  
23 small-lot residential uses consist of single-family  
24 dwellings located in areas without sanitary sewer  
25 systems where development densities approach urban



1 levels due to concentrations of small lots. The use  
2 of the property for agricultural purposes does not fit  
3 into the definition of rural small-lot residential  
4 uses and the minimum lot size for agricultural  
5 subdivisions is 10 acres. Although sanitary sewer  
6 does not currently serve the property, it is available  
7 in the vicinity based on the development of the Lake  
8 Forest subdivision located across Settles Road.  
9 Additionally, the development pattern along this  
10 portion of Settles Road is primarily single-family  
11 residential development. The area has development as  
12 described in the rural small-lot residential  
13 definition and with the availability of sanitary sewer  
14 service in the vicinity, the current zoning for the  
15 property is more appropriate than an agricultural  
16 zoning classification.

17 The subject property is located within a  
18 Future Urban Plan Area, inside the Urban Service Area.  
19 The Comprehensive Plan anticipates the ultimate full  
20 urbanization of future urban plan areas within the  
21 Urban Service Area. Therefore, an R-1A single-family  
22 residential zoning classification, especially with  
23 sanitary sewer service available in the vicinity, that  
24 would allow urban small-lot residential development  
25 consistent with the type of development located across

1 Settles Road is more appropriate than an agricultural  
2 zone.

3 The intent of the rural small-lot criteria in  
4 the Comprehensive Plan is to allow residential lots to  
5 be divided from parent tracts for the purpose of  
6 building a residence served by a septic system. Each  
7 lot is required to have sufficient road frontage on a  
8 public street and be large enough in size to be served  
9 by a septic system. The lot size intended for rural  
10 small-lot residential uses is not large enough to  
11 sustain agricultural activity and there is no  
12 provision in the definition for agricultural uses.  
13 The sole purpose of this application is to allow the  
14 continued use of an agricultural use that is  
15 prohibited under the current zoning classification of  
16 the property. As R-1A single-family zoning  
17 classification which is consistent with other zoning  
18 in the area and appropriate as the area continues to  
19 urbanize with the expansion of sanitary sewer service.

#### 20 PLANNING STAFF RECOMMENDATIONS

21 Staff recommends denial because the proposal  
22 is not in compliance with the community's adopted  
23 Comprehensive Plan. The findings of fact that support  
24 this recommendation include the following:

25 FINDINGS OF FACT:

1           1. The subject property is located in a  
2 Future Urban Plan Area, where rural small-lot  
3 residential uses are appropriate in general locations;

4           2. The intent of the rural small-lot criteria  
5 in the Comprehensive Plan is for residential homes on  
6 lots with septic systems with no mention of  
7 agricultural production;

8           3. With sanitary sewer service available in  
9 the vicinity, the R-1A zoning is more appropriate for  
10 future urban small-lot residential development; and,

11           4. Within a Future Urban Plan Area, the  
12 current R-1A Single-Family Residential zoning is more  
13 appropriate than an agricultural zoning.

14           MR. HOWARD: We would like to enter the Staff  
15 Report as Exhibit D.

16           CHAIRMAN: Do we have someone representing the  
17 applicant?

18           MR. RHODES: Yes.

19           CHAIRMAN: Do we have any questions of the  
20 applicant?

21           MR. WALKER: I have a question.

22           CHAIRMAN: Mr. Walker, I believe.

23           MR. ELLIOTT: State your name, please.

24           MR. WALKER: Marty Walker.

25           Is this being done just, the zoning change so

1 you can sell your plants?

2 CHAIRMAN: Mr. Walker, you've got to address  
3 the questions to us.

4 MR. WALKER: My question is: Are they  
5 requesting the zoning change just to sell plants and  
6 flowers, the business I guess that they have?

7 CHAIRMAN: Is that your question, Mr. Walker?

8 MR. WALKER: Yes. Is that the only reason for  
9 this zoning change?

10 CHAIRMAN: Would you step forward, please.

11 MR. ELLIOTT: State your name, please.

12 MR. RHODES: Bart Rhodes.

13 (MR. BART RHODES SWORN BY ATTORNEY.)

14 MR. RHODES: The only reason we wanted to  
15 change the zoning was so that we could sell perennial  
16 plants in containers. Nothing else would be sold on  
17 the lot.

18 Based on the Metropolitan Planning Commission  
19 told us when we started doing this five years ago is  
20 that as long as we grew them and sold, we could sell.  
21 Since we were split zone, we didn't really realize how  
22 far back the line went between R-1A and the A-U. So  
23 they suggested, if you want to continue to apply for  
24 rezoning.

25 CHAIRMAN: Mr. Walker, does that answer your

1 question?

2 MR. WARREN: Yes, it does. I guess I'm here  
3 just to support the Staff's position. I have 15 acres  
4 that is actually behind the Bairds property, but right  
5 next to their property. So I am concerned about a  
6 business operating on Settles Road. Especially in a  
7 corner of Settles Road where it is. The traffic on  
8 Settles Road is very heavy now. Their access point  
9 into their property is now grown from a single  
10 driveway to basically it covers the whole front of  
11 their property. There are several issues, but I'm in  
12 support of the Staff's recommendation.

13 CHAIRMAN: Thank you.

14 I believe we have another gentleman that might  
15 have a question.

16 Yes, sir.

17 MR. COX: Billy Joe Cox.

18 (MR. BILLY JOE COX SWORN BY ATTORNEY.)

19 MR. COX: I have property adjoining this  
20 particular, 2968, 2904, 2898, 2886.

21 I've watched this nursery over the past three  
22 or four years and needless to say it's not the nicest  
23 looking operation that I've ever seen.

24 The greenhouses they put up they last about a  
25 month or two and it blows down. I'm not interested in

1       procuring something that would better us for the  
2       nursery is concerned. I think it's just an avenue  
3       that they will be able to purchase or build a shed or  
4       a garage or a barn without any particular inspections  
5       or codes. It's something they'll build on their own  
6       there on the street or highway. As far as purchasing  
7       plants is something that they promised before. That  
8       they'd only operate on the weekends. Traffic is there  
9       throughout the week. It's not just on Saturday or  
10      Sunday. It's Monday through Sunday. This would  
11      definitely give them the avenue to sell products. Not  
12      only plants, but I'm talking about gardening tools,  
13      shovels, tractor-trailer load of bark that's been  
14      delivered there. So we're not looking at the nursery  
15      as such to sell and raising daisies.

16                The second item that is of interest here that  
17      they have a landfill. I don't know who authorized the  
18      landfill. I've talked to Jim Mischel concerning this.  
19      Needless to say that you've taken a nice home site and  
20      created a landfill out of it and cutting aged trees.  
21      I'm talking like trees that are 30, 40 years old and  
22      remove them from the property and then change a green  
23      lawn into a dense grade gravel. No parking. You  
24      leave Settles Road, you turn in and then zig-zag and  
25      then back out on Settles Road again.

1           The landfill to my understanding has had no  
2 supervision, no inspection and no planning. Right now  
3 they're continuing to haul trash, dirt and whatever.  
4 I'm talking about trash I'm talking about materials  
5 such as logs, big timbers which shouldn't be in the  
6 landfill to start with.

7           They're back filling and moving the landfill  
8 from the drainage that's there now back toward my  
9 property. Which if they move it another 12 feet they  
10 push the ditch over on me, the water that's going on  
11 to Mr. Watts' property.

12           So I have several reasons that I oppose  
13 approval of it.

14           CHAIRMAN: Thank you, Mr. Cox.

15           Mr. Rhodes, would you step to the podium and  
16 address Mr. Cox's concerns.

17           MR. RHODES: A couple of things that Mr.  
18 Cox - - well, let me first start by saying we don't  
19 want to be bad neighbors here. We just want to grow  
20 flowers.

21           He referred to the bark that was delivered.  
22 It's actually soil. We've done projects in the past  
23 with the Botanical Garden, with Owensboro Pride  
24 project. We sell them containers with soil. So the  
25 soil is a bark mix, but it's not a bark. We don't

1 sell it. We use it in our plants.

2 As for the landfill, there was, actually we  
3 woke up one morning and someone had dumped a stump  
4 there. We do have a Certificate of Compliance from  
5 the EPA on our field. They came out and inspected it.  
6 The only thing that's been dumped in it, other than  
7 that one stump that we had no control over, is  
8 concrete and asphalt or soil. The Daviess County Road  
9 Department has dumped there. We got permission with  
10 Kenergy Electric to fill because we are filling  
11 underneath one of their lines up by the road. The  
12 land itself was pretty unusable before that.

13 I do understand Mr. Cox's concerns about  
14 drainage. It's our concern too. We're making sure  
15 that the gentleman who we pay to finish off this is,  
16 I'm sure that there's drainage back to the lake behind  
17 the house.

18 We do have a retainer with Tony Huff &  
19 Associates for the cut and fill permit. We've paid  
20 that and we're still waiting on him to get that  
21 information together to give to Mr. Rayyan and to go  
22 back to Mr. Mischel at his office.

23 CHAIRMAN: Do you by chance have your  
24 certificate with you?

25 MR. RHODES: I do not, sir.



1           CHAIRMAN: Let me ask, I believe you had your  
2 conversation with Mr. Mischel in the past; is that  
3 correct?

4           MR. RHODES: Yes. Since we first started.  
5 When we first decided to try to grow, we asked if it  
6 would be all right to begin with. That was  
7 approximately five years ago.

8           CHAIRMAN: Let me bring Mr. Mischel to the  
9 stand, if we may.

10          MR. ELLIOTT: State your name, please.

11          MR. MISCHEL: Jim Mischel.

12          (MR. JIM MISCHEL SWORN BY ATTORNEY.)

13          MR. MISCHEL: I'm not sure about the five  
14 years, but we had compliance about a business being  
15 run at this address. It's 2968 Settles Road, I  
16 believe.

17                 In investigating it, we've had contact with  
18 the Rhodes and eventually sent a letter out, a  
19 violation letter. At that time they come in to the  
20 office to seek a rezoning.

21                 Also the complaint was the cut and fill. We  
22 have contacted the county engineer. Like he said,  
23 he's contacted Tony Huff. I guess Tony is preparing  
24 the study right now.

25                 We also have some concerns about that access.

1 We've already stated to them that they would have to  
2 address the access, address the cut and fill permit.  
3 We've been over the rules and regulations as far as  
4 what can be sold on this property. It's anything that  
5 can be grown on that property. Any type of plants.  
6 They cannot sell garden tools, flower pots or anything  
7 else. In this zone there is accessory use for things  
8 that are grown on the property.

9 CHAIRMAN: Mr. Mischel, let me see. Maybe  
10 everybody else has got this and I'm missing it.

11 If they do what they have originally done and  
12 they grow plants on that property and sell plants that  
13 come off that property, then their current zoning is  
14 correct?

15 MR. MISCHEL: No. It's currently zoned R-1A,  
16 single-family. The rear portion of the property, a  
17 small portion of that property is zoned A-U  
18 agricultural.

19 CHAIRMAN: So they have always been in  
20 noncompliance?

21 MR. MISCHEL: That's right. The plants are  
22 being I guess grown and sold is on that R-1A zone  
23 right now. So they need to rezone it to A-U to be  
24 able to do this. You cannot do this in an R-1A zone.  
25 That's strictly single-family.

1           CHAIRMAN: So from day one, they've been in  
2 violation?

3           MR. MISCHEL: That's right.

4           MR. HAYDEN: Does it specify how big A-1, the  
5 property has to be to grow plants and sell them? An  
6 acre and a half or five acres?

7           MR. MISCHEL: R-1A?

8           MR. HAYDEN: Yes.

9           MR. MISCHEL: It's just not allowed.

10          MR. HAYDEN: I mean rural agricultural.

11          MR. MISCHEL: It's not specified. In an A-U  
12 zone it says you can grow these plants as an accessory  
13 use, as long as it's grown on the property. If they  
14 live there with their house, as long as the plants  
15 were accessory to them living there, it really doesn't  
16 say it has to a half acre, an acre, two acres to have  
17 that activity.

18          MR. ROGERS: Mr. Mischel, could this lot come  
19 into compliance if it was zoned urban agricultural?

20          MR. MISCHEL: I'm sure it could. We're  
21 talking about access issue. I'm talking about the cut  
22 and fill. With the county engineer he might make  
23 changes or have them make changes. You know, changes  
24 could be made.

25          CHAIRMAN: Mr. Rhodes, do you want to make

1 another comment?

2 Mr. Mischel, thank you.

3 MR. RHODES: We have already started  
4 addressing the issue about access. We're putting some  
5 grass along the road. We closed off all of that front  
6 area other than 30 feet; although there might be other  
7 things that they would want us to do. We've already  
8 begun addressing that issue. We put monkey grass  
9 there so we wouldn't have to mow it. It can be driven  
10 over. If like the Kenenergy trucks needed to get in  
11 there or whatever, but it does close it off to  
12 traffic.

13 Mr. Cox mentioned this earlier about through  
14 the week. We were initially selling just to the  
15 Farmers Market. We still sell to local Farmers  
16 Market. People were knocking on our door every day of  
17 the week. We did what we thought was the best thing  
18 to do at the time and that was to post when we would  
19 sell, you know, from the property itself. Because the  
20 A-U would allow like a roadside type of operation.  
21 We've never sold anything other than the plants we  
22 grow and the containers that they're grown in.

23 I don't know if there's anything else I could  
24 help you all with. I appreciate your time.

25 CHAIRMAN: Thank you.

1           MR. NOFFSINGER: Mr. Chairman, if I could, I'd  
2 would like to pass around and submit for the record an  
3 aerial photograph of the area to give you a better  
4 idea of what's existing out there.

5           In terms of access, there's a home located on  
6 the property that has always had residential access  
7 for many years. The applicant has gone in and created  
8 a separate access for this business. It was a rather  
9 wide access point and they have narrowed it down.  
10 However, Settles Road is classified as a major  
11 collector in traffic. It's picking up on that  
12 roadway. That driveway should be closed entirely.  
13 Whether this zone change is approved or not, it should  
14 be closed entirely and if the zoning change were  
15 approved, then the existing residential driveway  
16 should be closed as well and relocated to a point  
17 where you have 250 foot standard, where you're 250  
18 feet from the driveway is on either side of this  
19 property because, again, it's a very narrow road.  
20 Traffic is increasing significantly.

21           It's not that the Staff is proposed to a  
22 particular use. It's the area. This is an up and  
23 coming residential area. It has been for many years  
24 and is going to continue on this side of Settles Road.  
25 That's the concern we have.

1 DR. BOTHWELL: Mr. Noffsinger, just from my  
2 own information. Would a conditional use permit  
3 possibly be a better answer for these people? In  
4 other words, board of adjustment say we're going to  
5 let you for a period of time continue under the  
6 certain restrictions that you are stating or is that  
7 not a good idea?

8 MR. NOFFSINGER: It's not a good idea. It's  
9 not a bad idea. It's an idea. The problem with that  
10 idea is that the zoning ordinance does not allow these  
11 types of uses to be conditionally permitted in a  
12 residential zone. They are permitted, principally  
13 permitted or permitted as an accessory use in an  
14 agricultural zone. So that's why they need to  
15 rezone.

16 DR. BOTHWELL: You answered my question.

17 CHAIRMAN: Mr. Cox, would you step to the  
18 podium, please.

19 MR. COX: One other thing mentioned. As far  
20 as traffic on Settles Road, probably that particular  
21 curve directly in front of the entrance for Lake  
22 Forest on to Settles Road is in that curve, but prior  
23 to that they put an additional turning lane going into  
24 Lake Forest, but prior to that they - - Green River  
25 Electric had gone to that property to south of this

1 residence and took the pole down, put the cable under  
2 the ground, buried it back past his property onto my  
3 property. Put it on a line, brought it back over head  
4 in to Lake Forest. So you can see the reason for  
5 doing that is because they've had so many accidents  
6 coming around that curve that they couldn't risk  
7 tearing the power line down again. So they've had  
8 accidents there many, many times.

9 CHAIRMAN: Let me ask you something, Mr. Cox.  
10 Obviously your property is contiguous and all the way  
11 around this gentleman's operation.

12 MR. COX: That's correct.

13 CHAIRMAN: You are obviously a homeowner,  
14 landowner living in that area. This gentleman  
15 obviously is operating in the wrong zone. Is there  
16 anything that you could see where we could continue or  
17 this gentleman could continue to operate that would be  
18 with your approval?

19 MR. COX: I don't think that he's in a  
20 position to do it. I don't think that he'll follow up  
21 with it. Just like the landfill. Jim can say that's  
22 under supervision, but there has been timber buried.  
23 As a matter of fact, one that done most of the back  
24 fill there is a landscape crew. All they haul in  
25 there is brush and trash. Somebody is not watching it

1 very closely.

2 The greenhouses that they built has been blown  
3 over. Naturally they got covered up in the landfill  
4 too. Also a shed they had down below. It was covered  
5 up also.

6 CHAIRMAN: I'm posing the question to you as  
7 the adjacent homeowner. This commission could instill  
8 requirements upon this operator that he must comply  
9 with. He would know the alternative if he did not.  
10 The situation that we're in is obviously you are the  
11 adjacent homeowner and this gentleman is operating in  
12 an incorrect zone.

13 What I'm posing to you: Is there something  
14 that we could impose upon him that would allow him to  
15 continue to operate his business without facing the  
16 potential and very serious situation that would  
17 actually force him to close his business?

18 MR. COX: I really don't see the need of that  
19 type business in that particular area. That's my  
20 personal opinion. They can do a lot more - - as far  
21 as decorating the landfill, what are they going to do?  
22 It takes five years, ten years to grow a tree.

23 CHAIRMAN: Let me ask, if you don't care, let  
24 me ask Mr. Rhodes to come forward. There's some  
25 situation of contention.



1           Mr. Rhodes, you see the situation the  
2           commission is in.

3           MR. RHODES: I certainly do.

4           CHAIRMAN: You're operating a business in an  
5           incorrect zone.

6           MR. RHODES: Right.

7           CHAIRMAN: I asked Mr. Cox, since he was the  
8           adjacent owner, and his property is completely around  
9           you.

10          MR. RHODES: No, it's not completely around  
11          me. The Watts are on one side.

12          CHAIRMAN: I'm sorry, on one side.

13          MR. RHODES: Yes, sir, that is correct.

14          CHAIRMAN: On one side. You heard the  
15          question that I asked him. I feel it would be only  
16          fair to offer you, could you make a proposal to  
17          Mr. Cox that might alleviate this situation?

18          MR. RHODES: Well, the one thing that I can  
19          assure the Coxes is that we would do anything and  
20          everything we could so that they would be satisfied  
21          with the way it looked once we were finished with the  
22          fill.

23          As it heads back off the road it's coming very  
24          quickly to level ground again. A couple of the trees  
25          that we took out, one was half dead and the other tree

1 was sweet gum. If you've ever had a sweet gum tree, I  
2 don't know if I have to say anything more.

3 The other items that he mentioned being  
4 covered over, they were actually hauled off by the  
5 landscaper that was doing our work for us.

6 We would like to plant flowering plants. On  
7 the first 60 feet by the road we put in an \$8,000  
8 retaining wall and terrace. That's a lot of money.  
9 So further back we were hoping, if they were okay with  
10 it, we would plant flowers along that slope to hold it  
11 together; although it's holding up very well as it is  
12 now. Then also clear a wide path for drainage so that  
13 that would not be a concern. I don't want them to  
14 feel like we're trying to scoot around their concerns.  
15 We would do anything they asked us to and even the  
16 commission asked us to. We just want to sell flowers.

17 DR. BOTHWELL: Mr. Chairman, it looks like  
18 we're in a rock and a hard place here. We either deny  
19 or we postpone and see if they can work out something.  
20 I don't know which way to go. Anybody have a motion?

21 CHAIRMAN: Everybody has sort of had an input.  
22 Anybody got a solution or a suggestion?

23 (NO RESPONSE)

24 DR. BOTHWELL: Well, if nobody does, I make a  
25 motion that we deny it based on Findings of Fact 1

1 through 4.

2 MR. APPLEBY: Second.

3 CHAIRMAN: We have a proposal by Dr. Bothwell  
4 and we have a second by Mr. Appleby that we deny the  
5 application. All in favor of the motion raise your  
6 right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously.

9 Next item.

10 MR. JAGOE: Motion to adjourn.

11 MR. MILLER: Second.

12 CHAIRMAN: Motion for adjournment by Mr.  
13 Jagoe. I think we have a second by Mr. Miller. All  
14 in favor raise your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: We are adjourned.

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

4 I, LYNNETTE KOLLER FUCHS, Notary Public in and  
5 for the State of Kentucky at Large, do hereby certify  
6 that the foregoing Owensboro Metropolitan Planning  
7 Commission meeting was held at the time and place as  
8 stated in the caption to the foregoing proceedings;  
9 that each person commenting on issues under discussion  
10 were duly sworn before testifying; that the Board  
11 members present were as stated in the caption; that  
12 said proceedings were taken by me in stenotype and  
13 electronically recorded and was thereafter, by me,  
14 accurately and correctly transcribed into the  
15 foregoing 100 typewritten pages; and that no signature  
16 was requested to the foregoing transcript.

17 WITNESS my hand and notary seal on this the  
18 1st day of December, 2006.

19

20

\_\_\_\_\_  
LYNNETTE KOLLER FUCHS  
OHIO VALLEY REPORTING SERVICES  
202 WEST THIRD STREET, SUITE 12  
OWENSBORO, KENTUCKY 42303

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23 COMMISSION EXPIRES: DECEMBER 19, 2006

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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