The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, February 8, 2007, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Judy Dixon, Chairman
Gary Noffsinger
Dave Appleby
Tim Miller
Jimmy Gilles
Keith Evans
Martin Hayden
Stewart Elliott, Attorney
Madison Silvert, Attorney

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CHAIRMAN: We'll call the February 8, 2006 Owensboro Metropolitan Planning Commission to order.

The first item on the agenda is Mr. Evans will lead us in a prayer and the pledge of allegiance.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: The first item on the agenda is to consider the minutes of the January 11, 2007 meeting. The minutes have been on file in the office and on line. Are there any corrections?

MR. NOFFSINGER: No, ma'am.

CHAIRMAN: Ready for a motion.

MR. APPLEBY: Motion for approval.
MR. EVANS: Second.

CHAIRMAN: We have a motion for approval and a second. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Before we begin, if you need to address an item, please approach the microphone at one of the podiums and be sworn in by Mr. Elliott. Then if you have any questions that you want, direct them to the Chair and we'll try to gather the information for you. Thank you.

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ZONING CHANGE

ITEM 2

7361 Deserter Creek Road, 129 +/- acres
Consider zoning change: From EX-1 Coal Mining to A-R Rural Agriculture
Applicant: James Donald Wimsatt, et al.

MR. ELLIOTT: State your name, please.

MR. HOWARD: Brian Howard.

(MR. BRIAN HOWARD SWORN BY ATTORNEY.)

PLANNING STAFF RECOMMENDATIONS

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

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

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

3. The subject property has frontage on and access to Deserter Creek Road which is an existing street with no new streets proposed;

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

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

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

CHAIRMAN: Is the applicant here?

(NO RESPONSE)

CHAIRMAN: Has there been any inquiries or comments filed in the office?

MR. NOFFSINGER: No, ma'am.

CHAIRMAN: Any questions from anyone in the audience or anyone wishing to speak against the item?

(NO RESPONSE)
CHAIRMAN: Any questions from any of the commissioners?

(NO RESPONSE)

MR. APPLEBY: Is Chair ready for a motion?

CHAIRMAN: I am.

MR. APPLEBY: Motion for approval based on Planning Staff Recommendations and the Findings of Fact 1 through 5.

CHAIRMAN: We have a motion by Mr. Appleby.

MR. HAYDEN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

ITEM 3

3701 Kipling Drive, 4.03 +/- acres Consider zoning change: From R-1B Single-Family Residential to R-1C Single-Family Residential Applicant: J.E.D. Rentals Family Partnership, LTD

MR. NOFFSINGER: Madam Chairman, this application has been requested for postponement by the applicant until our March meeting which will be the second Thursday in March. There may be some folks here tonight that wish to speak on this application. You might want to see if anyone is here, but Staff would recommend that you do postpone and that would
take a vote.

CHAIRMAN: Is there anyone here wishing to address this item?

(NO RESPONSE)

CHAIRMAN: We're ready for a motion.

MR. HAYDEN: Make a motion to postpone.

MR. APPLEBY: Second.

CHAIRMAN: We have a motion and a second to postpone. Any question on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Related Item:

ITEM 3A

Mallard Creek, 4.03 +/- acres
Consider approval of major subdivision preliminary plat/final development plan.
Applicant: J.E.D. Rentals Family Partnership, LTD

MR. NOFFSINGER: Madam Chairman, this application too has been requested for postponement by the applicant.

CHAIRMAN: Is there anyone wishing to address this item?

(NO RESPONSE)

CHAIRMAN: Any question from any of the
commissioners?

(NO RESPONSE)

CHAIRMAN: We're ready for a motion.

MR. APPLEBY: Move to postpone.

MR. MILLER: Second.

CHAIRMAN: We have a motion to postpone and a second. All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

ITEM 4

1815 Leitchfield Road, 10.95 acres
Consider zoning change: From R-1C Single-Family Residential and A-U Urban Agriculture to R-3MF Multi-Family Residential
Applicant: Wabuck Development Company; Board of Education of the Owensboro Independent School District

PLANNING STAFF RECOMMENDATIONS

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

CONDITION:

Access shall be limited to the extended East 18th Street only and shall be in compliance with the standards of the Access Management Manual.
FINDINGS OF FACT

1. The subject property is located in a Central Residential Plan Area, where urban mid-density residential uses are appropriate in general locations;
2. Sanitary sewer service is available to the subject property;
3. The proposal meets a goal of the Comprehensive Plan to establish a variety of housing types for a variety of people within a neighborhood; and,
4. The proposal supports the Comprehensive Plan's goals by encouraging the concentration of urban development within the Urban Service Area to limit urban sprawl.

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

CHAIRMAN: Do we have anyone wishing to speak to this item?
(NO RESPONSE)

CHAIRMAN: Do we have anyone wishing to speak in opposition to this item?
(NO RESPONSE)

CHAIRMAN: Any of the applicants have any comments they would like to make?
(NO RESPONSE)
CHAIRMAN: Question from any of the commissioners?

(NO RESPONSE)

CHAIRMAN: Ready for a motion.

MR. MILLER: Motion to approve based on Planning Staff Recommendations, the Condition as stated and Findings of Fact 1 through 4.

CHAIRMAN: We have a motion by Mr. Miller.

MR. APPLEBY: Second.

CHAIRMAN: Second by Mr. Appleby. Any questions on the motion?

(NO RESPONSE)

CHAIRMAN: All those in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Related Item

ITEM 4A

Scholar House, 10.95 acres
Consider approval of major subdivision preliminary plat/final development plan.
Applicant: Wabuck Development Company; Board of Education of the Owensboro Independent School District

MR. NOFFSINGER: Madam Chairman, this application has been reviewed by the Planning Staff and Engineering Staff. It's found to be order at this time. It's found to meet with the adopted
Comprehensive Plan as well as the Adopted Zoning Ordinance and subdivision regulations.

The applicant is represented here tonight. I think it would be good for the applicant to give a brief description in terms of what this project consist of. We have read a little bit about it in the paper, but for the viewing audience it would be good to have a brief description of what they're doing.

CHAIRMAN: I'm sure that can be arranged.

MR. ELLIOTT: State your name, please.

MS. GLASSCOCK: Tracy Glasscock. I'm with Wabuck Development Company.

(MS. TRACY GLASSCOCK SWORN BY ATTORNEY.)

MS. GLASSCOCK: The Scholar House project is a Kentucky Housing Corporation response project. It consist of 56 units of multi-family housing. It also has a 10,000 square foot day care center attached to it.

This is designed to house single parents who are seeking a degree. It will offer services and many points to allow them to do this as well as day care for their children.

Is there anything in specific more than that, that you all would like to know about the project?

MR. NOFFSINGER: Yes. Would you tell us a
little bit about the project specific in terms of the number of dwelling units, street extensions for it. I would like to recognize we do have a boy scout troop here tonight and they are working toward earning their badge. We'd kind of like to give them a little bit of information and those that aren't familiar with what you're proposing to do a little bit of information about why you're before us tonight.

MR. GLASSCOCK: Well, we're here before you tonight to get the zoning changed to allow for the housing and also the day care facility to be there. It is 56 apartments that are two bedroom. They're designed to house single parents. That is the program. A day care facility will be attached to it. There will be an independent entity that operates that. That will be Audubon Area Community Services. So there will be Head Start slots and day care associated with this. It's designed as a program with Brescia University as the sponsor and having the ownership and the entity. It is designed to aid single parents who otherwise would struggle and have a very difficult time to go to school, complete a degree and be introduced into the community as working individuals.

The program will offer many services. There
will be a service board that is attached to this that Brescia University will oversee. They will also work with the other colleges here in the Owensboro area in hopes that they can help them aid their single-parent population as well.

The services that will be linked with this will be mainly impalement services. There will be, for instance, budgeting. There will be work shops done on parenting skills, on nutrition. The Audubon Area Community Services that will be operating a day care also has many services that are associated with their Head Start slots for the children and also the parents of the facility. That will be counselors that will be available and also nutritional classes.

The project itself will be very strong and very service driven to help aid these individuals if they get in any distress at all. There will be links within other organizations in the community of Owensboro, other service providers that will also aid these individuals. So any distress that they get in that might cause them difficulty completing their education. It's our hope that this service board will be able to help them and to keep them focused and on track and able to complete their education.

MR. NOFFSINGER: One thing I would add to
that, in terms of zoning, what we're looking at and the reason we have zoning is to address the economic, fiscal and social issues within our community. This is one project that touches on all three of those. Economic impact of this development can be seen through the construction process as well as the programs that are served, as well as the social impact. The social impact can be seen from the program and Brescia's involvement in what they're doing for these single moms in providing housing and housing assistance.

The physical impact, which is quite exciting for the community, is an extension of East 18th Street. 18th Street would be extended from it's present termination at Leitchfield Road through this property and eventually up to Kentucky 54, which addresses a physical element or transportation element for the community. Not only for the access and convenience of this particular property and those that adjoin it, but also for the motoring public.

Very good and with that it is ready for consideration.

MR. APPLEBY: Motion for approval.

CHAIRMAN: We have a motion for approval. Is there a second?
MR. GILLES:  Second.

CHAIRMAN:  We have a motion and a second.  Any questions on the motion?

(NO RESPONSE)

CHAIRMAN:  All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN:  Motion carries.

Good example of zoning and planning at its finest.  Thank you.

ITEM 5

140 Salem Drive, 0.765 acres
Consider zoning change:  From I-1 Light Industrial to B-4 General Business
Applicant:  Ken Crandall, Jerry N. Yeiser

PLANNING STAFF RECOMMENDATIONS

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

CONDITION:

Access to Salem Drive shall be limited to the existing access point with no additional access points permitted.

FINDINGS OF FACT:

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

2. The subject property is surrounded by B-4 zoning on all sides; and,

3. The proposed zone and use conform to the Comprehensive Plan requirements for nonresidential development.

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

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Anything you want to add?

APPLICANT REP: No, ma'am.

CHAIRMAN: Anyone wishing to speak in opposition to the item or ask questions concerning it?

(NO RESPONSE)

CHAIRMAN: Any questions from any of the commissioners?

(NO RESPONSE)

CHAIRMAN: Ready for a motion.

MR. GILLES: Motion to approve based on Findings of Facts 1 through 4 and the one condition that Staff recommends.

CHAIRMAN: We have a motion by Mr. Gilles. Is
there a second?

MR. HAYDEN: Second.

CHAIRMAN: Second by Mr. Hayden. Any question of the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

ITEM 6

2337 West Second Street, 0.156 acres
Consider zoning change: From B-4 General Business to B-5 Business/Industrial
Applicant: William C. Mitchell

PLANNING STAFF RECOMMENDATION

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

CONDITION:

No access shall be permitted to West Second Street. Access shall be limited to Central Avenue only.

FINDINGS OF FACT:

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

2. The subject property lies within an existing area of mixed commercial and industrial uses;

3. The Comprehensive Plan provides for the continuance of mixed use areas; and,

4. The proposed land use for the subject property is in compliance with the criteria for a Business/Industrial Plan Area and a B-5 Business/Industrial zoning classification.

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

CHAIRMAN: Is anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Do you have anything you want to say?

APPLICANT REP: No.

CHAIRMAN: Anyone wishing to speak in opposition or to ask questions of this item?

(NO RESPONSE)

CHAIRMAN: Any question from any of the commissioners?

(NO RESPONSE)

CHAIRMAN: Ready for a motion.
MR. APPLEBY: Motion for approval based on the Staff Recommendations and with the one condition and the Findings of Fact 1 through 4.

CHAIRMAN: We have a motion by Mr. Appleby.

Is there a second?

MR. MILLER: Second.

CHAIRMAN: Second by Mr. Miller. Any question on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item.

ITEM 7

2610 West Second Street, 1.38 acres
Consider zoning change: From B-4 General Business to B-5 General Business/Industrial
Applicant: Johnny & Janice Goodman

PLANNING STAFF RECOMMENDATIONS

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

CONDITIONS:
1. Access shall be limited to the existing access point with no additional access to West Second Street permitted; and,

2. A consolidation plat shall be submitted and approved by the OMPC;

FINDINGS OF FACT:

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

2. The subject property lies within an existing area of mixed commercial and industrial uses;

3. The Comprehensive Plan provides for the continuance of mixed use areas; and,

4. The proposed land use for the subject property is in compliance with the criteria for a Business/Industrial Plan Area and a B-5 Business/Industrial zoning classification.

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

CHAIRMAN: Anyone here representing the applicant?

MR. KAMUF: Ms. Chairman, we're here. We have the applicant with us if you have any questions.

CHAIRMAN: Does anyone in the audience have
questions, opposition, concerns?

(NO RESPONSE)

CHAIRMAN: Any questions from any of the commissioners?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. HAYDEN: Make a motion for approval with Staff Recommendations, and Conditions 1 and 2, and Findings of Fact 1 through 4.

MR. APPLEBY: Second.

CHAIRMAN: We have a motion and a second. Any questions on the motion?

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

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DEVELOPMENT PLANS

ITEM 8

3611 Ralph Avenue, 0.847 acres
Consider approval of final development plan.
Applicant: Sonny's Enterprises, Inc., MPG Commercial Properties, LLC

MR. NOFFSINGER: Madam Chairman, this application has been reviewed by the Planning Staff and Engineering Staff. It's found not to be in order.
The reason for that is back two or three months ago the applicant or this property went through the zoning change process and was rezoned from residential to commercial, B-4 classification.

This commission held a public hearing and there was testimony taken at that hearing from the Planning Staff, the applicant as well as some adjoining land owners.

The application was recommended for approval by this board with several conditions. One of the conditions was participation in payment for a right turn decel and storage lane. There were some others. We're not going to go through all of them, but the one condition that's not being met here tonight is the condition that access be granted to the adjoining residential property so that when that property develops in the future you can have cross access between the two properties.

During that public hearing, the applicant was agreeable to all of those conditions. In fact, I stated that the Planning Staff would not have recommended rezoning of the property unless those specific conditions were met.

There was also testimony from adjoining land owners about access to this property as well as
whether it should be rezoned at all. When the application went to Fiscal Court, the Daviess County Fiscal Court removed one of the conditions. That being the condition that the property, this property grant an access easement to the adjoining property for cross access.

When Fiscal Court removed that condition and approved the rezoning with the remaining conditions, it created a conflict because the Planning Commission had already approved a preliminary development plan, which indicated that cross access would be provided to that adjoining property. Therefore, when the development plan was filed in the office, I could not sign it. Usually I will sign development plans so long as they meet all requirements of the zoning ordinance.

In this case I could not do that because the applicant is before you tonight without providing a cross access easement.

So with that I would just say turn it over to the applicant for them to discuss why they are proposing to develop this property without cross access to the adjoining property.

CHAIRMAN: We need to hear from someone representing the applicant.
MR. ELLIOTT: State your name, please.

MR. MEYER: J.D. Meyer.

(MR. J.D. MEYER SWORN BY ATTORNEY.)

MR. MEYER: Ms. Dixon, Members of the Commission, Mr. Noffsinger, my name is J.D. Meyer. I'm here on behalf of MPG Commercial Properties. In the audience I have Mike Colbert, Greg Hartsough and Phil Altman who are the owners of that entity.

If I may take a moment, I have put together a packet of information that I would like to take the commission through in an effort to explain the reason that we are requesting that the final development plan omit the easement that was a condition during the initial zoning application a couple of months ago. Let me get those packets of information for you all now.

We also have a large blow-up drawing of the preliminary development plan as well as the final development plan.

Ms. Dixon, if you would direct us where you'd like that to be set up.

CHAIRMAN: Right over here is fine.

MR. MEYER: Pursuant to the preliminary development plan that was submitted on September 21, 2006, that preliminary development is listed as Tab B
in the packet of information that was provided.

As Mr. Noffsinger pointed out, one of the conditions to the rezoning and the condition as set forth on the preliminary development plan included an access easement to provide interconnection to the next lot, which is a property that is owned by Mr. and Mrs. Owen.

At the time that the application for the zoning amendment was submitted to this board and at the time that the preliminary development plan was submitted, my clients had no knowledge or clear understanding as to what this property would ultimately be developed for. At that time they were in negotiations with two separate entities who had looked to develop this property as some type of restaurant, fast food establishment.

The provision to provide for the interconnectivity through that easement, we certainly agreed with.

Now, the question, what developed after that fact was that in November an entity that is Fields Enterprises, Inc approached my clients and began discussing the possibility of purchasing the property and constructing a car wash. You'll see on the final development plan, the final development plan is set
forth as Tab F in your packet. You can see that
obviously the use and the flow of the property is
specifically geared toward the intended purpose that
the purchaser wants to develop the land for.

The Planning Staff had indicated in
discussions with them prior to and leading up to the
submission of the preliminary development plan and the
final zoning application that one of their goals is to
provide for the interconnectivity between the lots
that my clients are developing and the adjacent lot
which is approximately a half an acre lot that, again,
is owned by the Owen family.

The idea was to provide for directional flow
through their property and allow access over to Ralph
Avenue.

If you'll look at Tab J, I have provided to
you all copies of the land that is owned by Mr. and
Mrs. Owen. They are here tonight and are certainly
free to and we expect to stand up and voice their
opinion with respect to this matter.

They own the property that on the first page
of Tab J is identified with the Number 6 on it. They
also own the lot, and I believe that's the Madeline
Wells Subdivision, that is identified as Lot Number 9.

In addition to that, Mr. and Mrs. Owen own a
tract, the contiguous tract of the land consisting of about 3.17 acres that encompasses what it looks to be another house and a pond running east down Highway 54.

So in total Mr. and Mrs. Owen own a little over 4 acres of land, which they are certainly free and plan on the future to develop.

In an effort to assist the Planning & Zoning and in consideration to meet the minimum distant requirements, our clients, and it's shown on both the preliminary development plan and the final development plan have agreed to give up any access on Highway 54.

I believe that the Planning Staff in attempting to require this access easement was trying to predict and plan for the single development of what is identified as Lot 6. The next contiguous lot that's about a half acre tract.

In reality we believe that this property in all probability will be developed as a whole. That interconnectivity is a contingency in the future that places a hardship upon us at the present time. Especially in light of what the Planning and Staff, especially in light of the different use that we plan to utilize and is submitted in the final development plan.
If you're looking at the free flow of traffic, it doesn't make sense to be able to provide -- there's no logical place to provide for the access easement. There's really given the development and the property that's owned by the Owens that is in essence down here that consist of approximately four acres, we feel there's no need to develop or provide that access easement.

In fact, if you look at the way the flow of the traffic in and through this lot, it would cause kind of a nightmare situation. It would cause a detriment possibly to the public because where do you put the easement that is a two-way traffic easement when all you have is single directional operation of the entire facility.

I will note also that on the final development plan the additional access point on Ralph Avenue is given up. So there will only be one access point on this entire property. That's an important fact that needs to be considered. It is the main reason that the easement should be removed.

Now, at the time that this was going through and developing, we had the conceptual plan drawing that was submitted to my clients in December of 2006. This matter had not been heard before the Fiscal
Court. It was at that juncture that we spoke with members on the Fiscal Court and requested that given the purchaser, and again Fields Enterprises had entered into a Purchase Agreement on November 27th of 2006. Given these circumstances and given the way the directional flow that the Fields Enterprises intended to utilize the property and the fact that we were, the Planning Staff in requesting this easement was looking at trying to provide the interconnectivity and the flow of traffic to access that one additional lot. There was evidence and testimony and discussion before the Fiscal Court that this would pose an undue hardship on the property.

I have attached as Exhibits C and D the relevant portions of the Daviess County Fiscal Court meetings that occurred on January 4, 2007, and January 18, 2007, that concern the discussions about the removal of the easement. Specifically Commissioner Kunze indicated that he had discussed the application, reviewed it, talked about it with staff as well as the applicants and that he felt that it would pose, and I'm quoting. "Cause an unnecessary hardship on the property owner and the future plans for the property and given the fact that there are no plans at this point for the property to the east" - that is the
Owens property that Commission Kunze is referring to -
"and the configuration of the property and the fact
that the adjoining property is a part of a much larger
tract." That is, again, under Tab C.

Thereafter, the Daviess County Fiscal Court
struck the requirement of an easement as a condition
to the zoning change. Continued on with the first
reading and then again held their second meeting on
January 18th.

There was again additional discussion.

Commissioner Kunze again pointed out that he hoped the
Planning Commission would respect the wishes of the
Fiscal Court.

We had gone at that point through the zoning,
the Fiscal Court. We had shown this same type of
information to. Given the fact that it would pose a
hardship on the property, we requested in the Fiscal
Court to remove the condition to require an easement
connecting the next property.

I think it's also relevant to point out to the
commission that at the time that the zoning
application was made by MPG Commercial Properties, the
Comprehensive Plan indicated that the area, this area
was an urban residential classification. I know that
one of the issues that the Planning Staff spoke of was
the fact that under -- if you're going in to change to
a business use in urban residential classification,
there's a minimum lot requirement of one and a half
acres.

I point out to the commission that as it
stands today the comprehensive plan has changed and
that the area where the property is located is now in
a general business classification under the
Comprehensive Plan. There are no lot size
restrictions. We feel that the removal of the
easement is appropriate and that it actually would
assist the public. Because providing an easement
there, number one, would cause some traffic problems
given the proposed use.

Number two, it is going to and will result in
this deal falling through.

You have a letter from the Fields Enterprises,
Inc. that is attached as Exhibit I that indicated that
if this easement remains that they will have to void
the contract.

So we're looking, our clients are looking to
try to assist Owensboro to help it grow from an
economic development standpoint. They've invested
their time and money into this project, as well as
Fields Enterprises, to bring another service, another
business opportunity out on 54.

    I think finally in conclusion, this easement,
I think the overall theme is that it poses a hardship
on the way that the intended recipient or the intended
perspective purchaser intends to utilize the property.
It's one that it should be removed and therefore we've
submitted the plan in a way that has taken that
easement out.

    So with that I'll conclude and answer any
questions that you all may have.

    CHAIRMAN: Any commissioners have any
questions of Mr. Meyer?

    MR. MILLER: I have a question, please.

    Mr. Meyer, originally when it was agreed that
there would be access given to the adjoining property,
where was that going to be?

    MR. MEYER: It was identified as being here,
but our clients had the right to move the access
anywhere on the property line that they desired.
Which I think it's important to know that by doing
that, based upon the land that the Owens own, it's
really going to restrict how this segment, which is
kind of inner-set, develops.

    It would be my opinion, while I'm an attorney
and not a developer, that you could establish a
building here where my hand is and then have this area
serve as the parking lot and then line buildings up
around, if you intended to do that.

With that easement there and with my client's
ability to move that easement anywhere along that
property line as long as they provided it, you're
going to really prohibit the ability of the Owens or
any potential buyer of their property to develop
anywhere along this property line. Because like I
said it couldn't move.

CHAIRMAN: Any other questions?

MR. SILVERT: Mr. Meyer, in Section J of the
documents that you provided for us, there is a deed in
there in Deed Book 324, Page 256, is that the subject
property or a portion of it?

MR. MEYER: That is the, if you look back,
that is the deed for the property that is identified
as Number 6 on the very first page there. Lot 3 in
Block B of the Madeline Wells Subdivision.

MR. SILVERT: This was a consolidation of 4, 5
and 6?

MR. MEYER: No. It was a consolidation of
only 4 and 5.

MR. SILVERT: And this is just 6?

MR. MEYER: That is the deed for just 6.
MR. SILVERT: I just wanted to make sure because it had a residential deed restriction in it.

MR. MEYER: Yes. All of those residential deed restrictions have been lifted.

MR. SILVERT: Okay.

CHAIRMAN: Mr. Noffsinger.

MR. NOFFSINGER: A few comments on this.

Certainly as a planner and anyone sitting here looking at this drawing, I think you can clearly see that an access easement to the adjoining property is not going to work with this layout. No one would question that. I certainly don't.

The real question is, and what we're really doing here is we're taking a piece of property that had some parameters associated with it and some conditions to the development and we're taking that and saying, okay, that's not going to work. We have a different buyer now and what we want to do is to orient the site based upon our current buyer and disregard the development requirements for that property.

I understand in terms of economic development, most everyone here, and hopefully all, are for economic development. I think there is a use for this property. I think it's going to develop.
I think it's very good that you're eliminating the access point nearest Ralph Avenue. Planning Staff didn't like that, but there wasn't anything we could do because there's not an ordinance that regulated that. That was the applicant's decision to have that access point there.

It was also the applicant's decision to have the access easement shown where it was located.

The real problem comes when we rezone property not knowing what we're going to do with it. That's what happened here. We had a buyer purchase land. They didn't know what they wanted to do with it, but they knew they wanted to sell it for commercial development. They submitted the plan to this Planning Commission that they knew probably wasn't going to work. So now what we have to do is go back in and try to figure out how we make all of this work and how we make the best planning decision that we can. Again, eliminating the access point nearest Ralph Avenue is great. That goes a long way. The biggest question remaining is the adjoining property.

Mr. Meyer, you had made reference to this. You think in your opinion it's going to develop with a larger piece of property.

What guarantees do we have of that? At this
point I know we don't have any. How can we assure
that because what do we tell the applicant of that
adjoining property when they come in and want to
rezone that property as a single lot? What do we tell
them? Because the adjoining property is zoned
commercial already and it just makes sense to do a
logical expansion, but we do have access issues and we
have access issues on to Highway 54. It's a major
roadway. There are traffic issues there now. There's
going to be more commercial development, more
residential development out there. How do we address
the access if we continue to develop lots in a
piecemeal fashion?

MR. MEYER: The first thing I'd like to do is
address the access issues that you pointed out. I
think the major concession that my clients have
provided to assist the Planning Staff with the access
issue is that they have lessened the traffic concerns
on Highway 54 by giving up all their access to 54. So
now you're looking at if this one single lot should
develop, and it is required to have an access, it's
not going to be competing with any access of my
client's property because there is none there.

By giving up those access points, in my
opinion it has assisted the Planning Staff in
addressing those concerns. I know you have a 500 foot minimum requirement, but that's going to keep two parcels from having an access point in violation of that 500 foot standard. You may have one parcel that would have access point in violation of that 500 foot standard.

I think the second point is the applicants are here. So I'd like to ask if Mr. Owen would like to come up and address the commission on than point.

MR. NOFFSINGER: Keep in mind, Mr. Meyer. These access points you're speaking of, existing access points, are residential access points. They are not commercial access points. Commercial will be a high traffic generator, much higher than a residential access point at this location. I appreciate what you're saying in terms of limiting the number of access points, but it's all tied to the original zoning change and that's beyond us now and we have to forget about that original zoning change and deal with whether or not we should have that interconnection. Those are residential access points. Not commercial access points.

MR. MEYER: And I'd say that's a fair point other than you can drive up 54 and there are CVS and other entities that have those access points that are
smaller in a commercial type setting that are violating that 500 minimum standard.

The Owens would like to come up and address the commission on that point with respect to the effect that this might have on their property.

I think another relevant thing that the commission has to consider is that this is -- the acreage on the lot next to my client's property is .46 acres. That's going to limit a lot what you can do as far as construction-wise from a commercial standard.

Mr. Owen would like to come up.

MR. ELLIOTT: State your name, please.

MR. OWEN: Richard Owen.

(MR. RICHARD OWEN SWORN BY ATTORNEY.)

MR. OWEN: The way this is set up I've had -- (inaudible) - I haven't had a chance to sell it and it don't really matter to me one way or the other on the driveway is in there or not.

MR. NOFFSINGER: Mr. Owen, what the Planning Staff is trying to do is look at the future. I know you said at this time. We're looking down the road and trying to anticipate the future redevelopment of your property, which you have a lot that's almost a half and then a larger tract of land. The impact here of rezoning their corner lot to commercial without
addressing an interconnection to your property can have an effect on you rezoning that half acre tract. Mr. Meyer said tonight that he would foresee your half acre tract developing with your larger tract of land. If that were the case, then I think it puts at ease the questions and concerns that the Planning Staff has of your half acre lot being developed, isolated from that larger tract because we could end up with an access point on your half acre tract to 54 and then another access point on that larger tract. It's just too close for access. If we had guarantees, which we don't have, that the larger tract would not be developed without being attached to the larger tract then, you know, that gives some comfort level there.

MR. OWEN: I'm not willing to give up anything because I don't know what's going to happen. I can't give you -- (inaudible). That's the best I can do.

MR. NOFFSINGER: You could certainly give your property access to Ralph Avenue in the future, which might be, depending on how this lot is developed that we're speaking of here tonight, could be a benefit to the development of your property, especially if it were that coroner lot. I mean that's a decision that you have to make.

MR. OWEN: Winds in and around and up.
don't see it.

MR. NOFFSINGER: There are other areas where that connection could be, which it could be to the rear of your property which you wouldn't necessarily have to do that. We're talking about the future. You can't predict the future and neither can I. We're just trying to address concerns and issues we know we have and will have to face in the future on Kentucky 54.

It's good that you're here because if this connection were not provided across their property to your small lot, based upon review of the criteria and what the Planning Staff has recommended in the past, the Planning Staff would be very hard pressed to recommend favorably a rezoning of your property to commercial. Now, that doesn't mean you wouldn't be successful. It's just we would be hesitant to recommend that. That's at the Staff level. You need to know that because this access can affect the development of your property.

MR. OWEN: Well, access you can't use is not much good. The way I see it right now, who would want an access like that.

MR. NOFFSINGER: I certainly wouldn't debate that because the way they have it laid out there it
would be very difficult for it to work, but that
doesn't mean the way they have it laid out is the only
way that property can be developed. I want to see
this property developed and I believe it will be. I
also have a concern for that adjoining property and
the future access on to Highway 54.

CHAIRMAN: Anyone else have questions of Mr.
Owen?

(NO RESPONSE)

MR. MEYER: I would just like to address one
more point. That is that these changes were made
while the zoning process was still in and going
forward. It still had to be approved. Not by this
body, but by the Fiscal Court. It was at that time
that the Fiscal Court, based on the evidence
presented, decided that while we were planning --
nobody can predict the future.

I understand, Gary, you've got a tough job in
trying to keep us all on tract.

None of us can. You know, Commissioner Kunze
pointed that out. What we have to do is we have to
weigh the effects of each. Whether we take a risk now
or in the future. It was Commissioner Kunze's opinion
that we've got -- that this property would probably
develop, as I've indicated as a whole, the property
next to it, and that the present easement posed an
unnecessary hardship on the property and therefore he
motioned and voted as did the other commissioners, all
of them, that the zoning be approved with the
condition removed, the condition being the requirement
of the easement.

We believe that it's a tricky situation that
we find ourselves in today. One that we hope and the
Fiscal Court hopes that this Staff would follow the
wishes of the Fiscal Court who also heard it. They
heard the evidence. They heard what was presented.

I would just like to say that in conclusion.
Are there any other questions?

CHAIRMAN: Does anyone else have any questions
of Mr. Meyer?

(NO RESPONSE)

CHAIRMAN: Anyone else in the audience wanting
to address this issue?

(NO RESPONSE)

CHAIRMAN: Add anything one way or the other,
questions, comments, opposition?

MR. APPLEBY: I have one comment.

CHAIRMAN: Okay, Mr. Appleby.

MR. APPLEBY: While I definitely appreciate
what the Staff is trying to do with establishing the
connectivity between these lots, I also understand that you can't always know what a commercial lot is going to develop, how it's going to develop. It's one thing to be able to say that this lot is commercial. It's another to be able to say that I can get this lot commercial if you go there. So I can sympathize with the applicants in that they didn't have a use for it. They attempted to use a worse case scenario, which in their opinion would be a fast food restaurant. That was what they based their original application on. They now have somebody with cash that has a hard application for it and the access point doesn't work with this. I'm concerned about opening the possibility of an access point on this quarter acre lot next-door, but I think that's going to have to an issue, in my opinion, that we deal with if and when this comes before us. I don't know that there's not somebody that could come up with an application for a half acre and the guy has an existing access point at that point. I think the best we could do would be to at that point address that zoning and address that access by shared access as far away from Ralph Avenue as we could get it, but that's another issue.

I would have to vote to approve the plan without the access point. They have made some
improvements. They've removed the one up closer to Ralph Avenue. This is a viable plan. They have a use for it. They have a perspective buyer. I would make a motion to approve the plan as they've submitted it.

CHAIRMAN: That's your motion?

MR. APPLEBY: That's my motion.

CHAIRMAN: Do we have a second?

MR. HAYDEN: Second.

CHAIRMAN: We have a second by Mr. Martin.

Any question on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Related Item:

ITEM 8A

3611 Ralph Avenue, 0.847 acres
Consider approval of minor subdivision plat.
Applicant: MPG Commercial Properties, LLC

MR. NOFFSINGER: Madam Chairman, this application has been reviewed by the Planning Staff. It is now in order with the approved development plan that you have just voted on. So with that it's ready for consideration.

CHAIRMAN: Anyone wishing to address this
item?

(NO RESPONSE)

CHAIRMAN: Any questions from the commissioners?

(NO RESPONSE)

MR. APPLEBY: Motion for approval.

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

MR. MILLER: Second.

CHAIRMAN: Second by Mr. Miller. Any questions on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

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NEW BUSINESS

ITEM 9

Consider approval of the Public Improvement Specifications surety unit cost annual revision.

MR. NOFFSINGER: Madam Chairman, this information was mailed to the Planning Commission at least on one occasion prior to this meeting, as well as you were handed that information I believe again tonight. So with that it's ready for any discussion
and hopefully approval.

CHAIRMAN: Anyone have any questions of the Public Improvement Surety Unit Cost?

(NO RESPONSE)

MR. GILLES: I would like to make a motion that we approve the new cost.

CHAIRMAN: We have a motion by Mr. Gilles.

MR. MILLER: Second.

CHAIRMAN: Second by Mr. Miller. Any questions of the motion?

(NO RESPONSE)

Chairman: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

We have one final motion.

MR. APPLEBY: Move to adjourn.

MR. EVANS: Second.

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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

I, LYNNETTE KOLLER FUCHS, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Planning Commission meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 44 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 28th day of February, 2007.

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

COMMISSION EXPIRES: DECEMBER 19, 2010

COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY