

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 FEBRUARY 8, 2007

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

- 8 MEMBERS PRESENT: Judy Dixon, Chairman
- 9 Gary Noffsinger
- 10 Dave Appleby
- 11 Tim Miller
- 12 Jimmy Gilles
- 13 Keith Evans
- 14 Martin Hayden
- 15 Stewart Elliott, Attorney
- 16 Madison Silvert, Attorney

17 \* \* \* \* \*

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

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

22 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

23 CHAIRMAN: The first item on the agenda is to  
24 consider the minutes of the January 11, 2007 meeting.  
25 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.

1 MR. EVANS: Second.

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

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: Motion carries.

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

12 -----

13 ZONING CHANGE

14 ITEM 2

15 7361 Deserter Creek Road, 129 +/- acres  
16 Consider zoning change: From EX-1 Coal Mining to A-R  
17 Rural Agriculture  
18 Applicant: James Donald Wimsatt, et al.

18 MR. ELLIOTT: State your name, please.

19 MR. HOWARD: Brian Howard.

20 (MR. BRIAN HOWARD SWORN BY ATTORNEY.)

21 PLANNING STAFF RECOMMENDATIONS

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

1 FINDINGS OF FACT:

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

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

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

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

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

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

18 CHAIRMAN: Is the applicant here?

19 (NO RESPONSE)

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

22 MR. NOFFSINGER: No, ma'am.

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

25 (NO RESPONSE)

1           CHAIRMAN: Any questions from any of the  
2 commissioners?

3           (NO RESPONSE)

4           MR. APPLEBY: Is Chair ready for a motion?

5           CHAIRMAN: I am.

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

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

10          MR. HAYDEN: Second.

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

13          (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14          CHAIRMAN: Motion carries.

15          ITEM 3

16          3701 Kipling Drive, 4.03 +/- acres  
17          Consider zoning change: From R-1B Single-Family  
18          Residential to R-1C Single-Family Residential  
19          Applicant: J.E.D. Rentals Family Partnership, LTD

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

1 take a vote.

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

4 (NO RESPONSE)

5 CHAIRMAN: We're ready for a motion.

6 MR. HAYDEN: Make a motion to postpone.

7 MR. APPLEBY: Second.

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

10 (NO RESPONSE)

11 CHAIRMAN: All in favor raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 Related Item:

15 ITEM 3A

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

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

23 CHAIRMAN: Is there anyone wishing to address  
24 this item?

25 (NO RESPONSE)

CHAIRMAN: Any question from any of the

1 commissioners?

2 (NO RESPONSE)

3 CHAIRMAN: We're ready for a motion.

4 MR. APPLEBY: Move to postpone.

5 MR. MILLER: Second.

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

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries.

11 ITEM 4

12 1815 Leitchfield Road, 10.95 acres  
13 Consider zoning change: From R-1C Single-Family  
14 Residential and A-U Urban Agriculture to R-3MF  
15 Multi-Family Residential  
16 Applicant: Wabuck Development Company; Board of  
17 Education of the Owensboro Independent School District

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:

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

1 FINDINGS OF FACT

2 1. The subject property is located in a  
3 Central Residential Plan Area, where urban mid-density  
4 residential uses are appropriate in general locations;

5 2. Sanitary sewer service is available to the  
6 subject property;

7 3. The proposal meets a goal of the  
8 Comprehensive Plan to establish a variety of housing  
9 types for a variety of people within a neighborhood;  
10 and,

11 4. The proposal supports the Comprehensive  
12 Plan's goals by encouraging the concentration of urban  
13 development within the Urban Service Area to limit  
14 urban sprawl.

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

17 CHAIRMAN: Do we have anyone wishing to speak  
18 to this item?

19 (NO RESPONSE)

20 CHAIRMAN: Do we have anyone wishing to speak  
21 in opposition to this item?

22 (NO RESPONSE)

23 CHAIRMAN: Any of the applicants have any  
24 comments they would like to make?

25 (NO RESPONSE)

1 CHAIRMAN: Question from any of the  
2 commissioners?

3 (NO RESPONSE)

4 CHAIRMAN: Ready for a motion.

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

8 CHAIRMAN: We have a motion by Mr. Miller.

9 MR. APPLEBY: Second.

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

12 (NO RESPONSE)

13 CHAIRMAN: All those in favor raise your right  
14 hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries.

17 Related Item

18 ITEM 4A

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

24 MR. NOFFSINGER: Madam Chairman, this  
25 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



1 Comprehensive Plan as well as the Adopted Zoning  
2 Ordinance and subdivision regulations.

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

9 CHAIRMAN: I'm sure that can be arranged.

10 MR. ELLIOTT: State your name, please.

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

13 (MS. TRACY GLASSCOCK SWORN BY ATTORNEY.)

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

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

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

25 MR. NOFFSINGER: Yes. Would you tell us a

1 little bit about the project specific in terms of the  
2 number of dwelling units, street extensions for it.

3 I would like to recognize we do have a boy  
4 scout troop here tonight and they are working toward  
5 earning their badge. We'd kind of like to give them a  
6 little bit of information and those that aren't  
7 familiar with what you're proposing to do a little bit  
8 of information about why you're before us tonight.

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

25 The program will offer many services. There

1 will be a service board that is attached to this that  
2 Brescia University will oversee. They will also work  
3 with the other colleges here in the Owensboro area in  
4 hopes that they can help them aid their single-parent  
5 population as well.

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

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

25 MR. NOFFSINGER: One thing I would add to

1 that, in terms of zoning, what we're looking at and  
2 the reason we have zoning is to address the economic,  
3 fiscal and social issues within our community. This  
4 is one project that touches on all three of those.  
5 Economic impact of this development can be seen  
6 through the construction process as well as the  
7 programs that are served, as well as the social  
8 impact. The social impact can be seen from the  
9 program and Brescia's involvement in what they're  
10 doing for these single moms in providing housing and  
11 housing assistance.

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

21 Very good and with that it is ready for  
22 consideration.

23 MR. APPLEBY: Motion for approval.

24 CHAIRMAN: We have a motion for approval. Is  
25 there a second?

1 MR. GILLES: Second.

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

4 (NO RESPONSE)

5 CHAIRMAN: All in favor raise your right hand.

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries.

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

10 ITEM 5

11 140 Salem Drive, 0.765 acres  
12 Consider zoning change: From I-1 Light Industrial to  
13 B-4 General Business  
14 Applicant: Ken Crandall, Jerry N. Yeiser

15 PLANNING STAFF RECOMMENDATIONS

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

21 CONDITION:

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

25 FINDINGS OF FACT:

1. The subject property is located in a

1 Business/Industrial Plan Area, where general business  
2 uses are appropriate in general locations;

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

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

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

10 CHAIRMAN: Anyone here representing the  
11 applicant?

12 APPLICANT REP: Yes.

13 CHAIRMAN: Anything you want to add?

14 APPLICANT REP: No, ma'am.

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

17 (NO RESPONSE)

18 CHAIRMAN: Any questions from any of the  
19 commissioners?

20 (NO RESPONSE)

21 CHAIRMAN: Ready for a motion.

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

25 CHAIRMAN: We have a motion by Mr. Gilles. Is

1       there a second?

2               MR. HAYDEN:   Second.

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

5               (NO RESPONSE)

6               CHAIRMAN:   All in favor raise your right hand.

7               (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8               CHAIRMAN:   Motion carries.

9       ITEM 6

10       2337 West Second Street, 0.156 acres  
11       Consider zoning change:   From B-4 General Business to  
12       B-5 Business/Industrial  
13       Applicant:   William C. Mitchell

14       PLANNING STAFF RECOMMENDATION

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

20       CONDITION:

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

24       FINDINGS OF FACT:

25               1.   The subject property is located in a  
      Business/Industrial Plan Area, where

1 business/industrial uses are appropriate in general  
2 locations;

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

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

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

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

13 CHAIRMAN: Is anyone here representing the  
14 applicant?

15 APPLICANT REP: Yes.

16 CHAIRMAN: Do you have anything you want to  
17 say?

18 APPLICANT REP: No.

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

21 (NO RESPONSE)

22 CHAIRMAN: Any question from any of the  
23 commissioners?

24 (NO RESPONSE)

25 CHAIRMAN: Ready for a motion.



1           MR. APPLEBY: Motion for approval based on the  
2 Staff Recommendations and with the one condition and  
3 the Findings of Fact 1 through 4.

4           CHAIRMAN: We have a motion by Mr. Appleby.  
5 Is there a second?

6           MR. MILLER: Second.

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

9           (NO RESPONSE)

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

12          (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13          CHAIRMAN: Motion carries.

14          Next item.

15          ITEM 7

16          2610 West Second Street, 1.38 acres  
17          Consider zoning change: From B-4 General Business to  
18          B-5 General Business/Industrial  
19          Applicant: Johnny & Janice Goodman

19          PLANNING STAFF RECOMMENDATIONS

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

25          CONDITIONS:

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

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

6 FINDINGS OF FACT:

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

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

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

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

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

21           CHAIRMAN: Anyone here representing the  
22 applicant?

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

25           CHAIRMAN: Does anyone in the audience have

1 questions, opposition, concerns?

2 (NO RESPONSE)

3 CHAIRMAN: Any questions from any of the  
4 commissioners?

5 (NO RESPONSE)

6 CHAIRMAN: Chair is ready for a motion.

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

10 MR. APPLEBY: Second.

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

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

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries.

17 -----

18 DEVELOPMENT PLANS

19 ITEM 8

20 3611 Ralph Avenue, 0.847 acres  
21 Consider approval of final development plan.  
22 Applicant: Sonny's Enterprises, Inc., MPG Commercial  
23 Properties, LLC

24 MR. NOFFSINGER: Madam Chairman, this  
25 application has been reviewed by the Planning Staff  
and Engineering Staff. It's found not to be in order.

1           The reason for that is back two or three  
2 months ago the applicant or this property went through  
3 the zoning change process and was rezoned from  
4 residential to commercial, B-4 classification.

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

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

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

24           There was also testimony from adjoining land  
25 owners about access to this property as well as

1       whether it should be rezoned at all.  When the  
2       application went to Fiscal Court, the Daviess County  
3       Fiscal Court removed one of the conditions.  That  
4       being the condition that the property, this property  
5       grant an access easement to the adjoining property for  
6       cross access.

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

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

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

24             CHAIRMAN:  We need to hear from someone  
25      representing the applicant.

1 MR. ELLIOTT: State your name, please.

2 MR. MEYER: J.D. Meyer.

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

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

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

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

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

22 CHAIRMAN: Right over here is fine.

23 MR. MEYER: Pursuant to the preliminary  
24 development plan that was submitted on September 21,  
25 2006, that preliminary development is listed as Tab B

1 in the packet of information that was provided.

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

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

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

20 Now, the question, what developed after that  
21 fact was that in November an entity that is Fields  
22 Enterprises, Inc approached my clients and began  
23 discussing the possibility of purchasing the property  
24 and constructing a car wash. You'll see on the final  
25 development plan, the final development plan is set

1       forth as Tab F in your packet. You can see that  
2       obviously the use and the flow of the property is  
3       specifically geared toward the intended purpose that  
4       the purchaser wants to develop the land for.

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

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

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

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

25              In addition to that, Mr. and Mrs. Owen own a



1 tract, the contiguous tract of the land consisting of  
2 about 3.17 acres that encompasses what it looks to be  
3 another house and a pond running east down Highway 54.

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

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

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

18 In reality we believe that this property in  
19 all probability will be developed as a whole. That  
20 interconnectivity is a contingency in the future that  
21 places a hardship upon us at the present time.  
22 Especially in light of what the Planning and Staff,  
23 especially in light of the different use that we plan  
24 to utilize and is submitted in the final development  
25 plan.

1           If you're looking at the free flow of traffic,  
2           it doesn't make sense to be able to provide -- there's  
3           no logical place to provide for the access easement.  
4           There's really given the development and the property  
5           that's owned by the Owens that is in essence down here  
6           that consist of approximately four acres, we feel  
7           there's no need to develop or provide that access  
8           easement.

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

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

22          Now, at the time that this was going through  
23          and developing, we had the conceptual plan drawing  
24          that was submitted to my clients in December of 2006.  
25          This matter had not been heard before the Fiscal

1 Court. It was at that juncture that we spoke with  
2 members on the Fiscal Court and requested that given  
3 the purchaser, and again Fields Enterprises had  
4 entered into a Purchase Agreement on November 27th of  
5 2006. Given these circumstances and given the way the  
6 directional flow that the Fields Enterprises intended  
7 to utilize the property and the fact that we were, the  
8 Planning Staff in requesting this easement was looking  
9 at trying to provide the interconnectivity and the  
10 flow of traffic to access that one additional lot.  
11 There was evidence and testimony and discussion before  
12 the Fiscal Court that this would pose an undue  
13 hardship on the property.

14 I have attached as Exhibits C and D the  
15 relevant portions of the Daviess County Fiscal Court  
16 meetings that occurred on January 4, 2007, and January  
17 18, 2007, that concern the discussions about the  
18 removal of the easement. Specifically Commissioner  
19 Kunze indicated that he had discussed the application,  
20 reviewed it, talked about it with staff as well as the  
21 applicants and that he felt that it would pose, and  
22 I'm quoting. "Cause an unnecessary hardship on the  
23 property owner and the future plans for the property  
24 and given the fact that there are no plans at this  
25 point for the property to the east" - that is the

1 Owens property that Commission Kunze is referring to -  
2 "and the configuration of the property and the fact  
3 that the adjoining property is a part of a much larger  
4 tract." That is, again, under Tab C.

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

10 There was again additional discussion.  
11 Commissioner Kunze again pointed out that he hoped the  
12 Planning Commission would respect the wishes of the  
13 Fiscal Court.

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

20 I think it's also relevant to point out to the  
21 commission that at the time that the zoning  
22 application was made by MPG Commercial Properties, the  
23 Comprehensive Plan indicated that the area, this area  
24 was an urban residential classification. I know that  
25 one of the issues that the Planning Staff spoke of was

1 the fact that under -- if you're going in to change to  
2 a business use in urban residential classification,  
3 there's a minimum lot requirement of one and a half  
4 acres.

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

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

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

21 So we're looking, our clients are looking to  
22 try to assist Owensboro to help it grow from an  
23 economic development standpoint. They've invested  
24 their time and money into this project, as well as  
25 Fields Enterprises, to bring another service, another

1 business opportunity out on 54.

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

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

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

13 MR. MILLER: I have a question, please.

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

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

24 It would be my opinion, while I'm an attorney  
25 and not a developer, that you could establish a

1 building here where my hand is and then have this area  
2 serve as the parking lot and then line buildings up  
3 around, if you intended to do that.

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

11 CHAIRMAN: Any other questions?

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

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

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

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

24 MR. SILVERT: And this is just 6?

25 MR. MEYER: That is the deed for just 6.

1           MR. SILVERT: I just wanted to make sure  
2 because it had a residential deed restriction in it.

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

5           MR. SILVERT: Okay.

6           CHAIRMAN: Mr. Noffsinger.

7           MR. NOFFSINGER: A few comments on this.

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

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

22           I understand in terms of economic development,  
23 most everyone here, and hopefully all, are for  
24 economic development. I think there is a use for this  
25 property. I think it's going to develop.



1           I think it's very good that you're eliminating  
2           the access point nearest Ralph Avenue. Planning Staff  
3           didn't like that, but there wasn't anything we could  
4           do because there's not an ordinance that regulated  
5           that. That was the applicant's decision to have that  
6           access point there.

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

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

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

25          What guarantees do we have of that? At this

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

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

24 By giving up those access points, in my  
25 opinion it has assisted the Planning Staff in

1 addressing those concerns. I know you have a 500 foot  
2 minimum requirement, but that's going to keep two  
3 parcels from having an access point in violation of  
4 that 500 foot standard. You may have one parcel that  
5 would have access point in violation of that 500 foot  
6 standard.

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

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

23 MR. MEYER: And I'd say that's a fair point  
24 other than you can drive up 54 and there are CVS and  
25 other entities that have those access points that are

1 smaller in a commercial type setting that are  
2 violating that 500 minimum standard.

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

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

11 Mr. Owen would like to come up.

12 MR. ELLIOTT: State your name, please.

13 MR. OWEN: Richard Owen.

14 (MR. RICHARD OWEN SWORN BY ATTORNEY.)

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

19 MR. NOFFSINGER: Mr. Owen, what the Planning  
20 Staff is trying to do is look at the future. I know  
21 you said at this time. We're looking down the road  
22 and trying to anticipate the future redevelopment of  
23 your property, which you have a lot that's almost a  
24 half and then a larger tract of land. The impact here  
25 of rezoning their corner lot to commercial without

1       addressing an interconnection to your property can  
2       have an effect on you rezoning that half acre tract.  
3       Mr. Meyer said tonight that he would foresee your half  
4       acre tract developing with your larger tract of land.  
5       If that were the case, then I think it puts at ease  
6       the questions and concerns that the Planning Staff has  
7       of your half acre lot being developed, isolated from  
8       that larger tract because we could end up with an  
9       access point on your half acre tract to 54 and then  
10      another access point on that larger tract. It's just  
11      too close for access. If we had guarantees, which we  
12      don't have, that the larger tract would not be  
13      developed without being attached to the larger tract  
14      then, you know, that gives some comfort level there.

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

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

25               MR. OWEN: Winds in and around and up. I

1 don't see it.

2 MR. NOFFSINGER: There are other areas where  
3 that connection could be, which it could be to the  
4 rear of your property which you wouldn't necessarily  
5 have to do that. We're talking about the future. You  
6 can't predict the future and neither can I. We're  
7 just trying to address concerns and issues we know we  
8 have and will have to face in the future on Kentucky  
9 54.

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

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

24 MR. NOFFSINGER: I certainly wouldn't debate  
25 that because the way they have it laid out there it

1 would be very difficult for it to work, but that  
2 doesn't mean the way they have it laid out is the only  
3 way that property can be developed. I want to see  
4 this property developed and I believe it will be. I  
5 also have a concern for that adjoining property and  
6 the future access on to Highway 54.

7 CHAIRMAN: Anyone else have questions of Mr.  
8 Owen?

9 (NO RESPONSE)

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

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

20 None of us can. You know, Commissioner Kunze  
21 pointed that out. What we have to do is we have to  
22 weigh the effects of each. Whether we take a risk now  
23 or in the future. It was Commissioner Kunze's opinion  
24 that we've got -- that this property would probably  
25 develop, as I've indicated as a whole, the property

1 next to it, and that the present easement posed an  
2 unnecessary hardship on the property and therefore he  
3 motioned and voted as did the other commissioners, all  
4 of them, that the zoning be approved with the  
5 condition removed, the condition being the requirement  
6 of the easement.

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

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

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

16 (NO RESPONSE)

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

19 (NO RESPONSE)

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

22 MR. APPLEBY: I have one comment.

23 CHAIRMAN: Okay, Mr. Appleby.

24 MR. APPLEBY: While I definitely appreciate  
25 what the Staff is trying to do with establishing the



1 connectivity between these lots, I also understand  
2 that you can't always know what a commercial lot is  
3 going to develop, how it's going to develop. It's one  
4 thing to be able to say that this lot is commercial.  
5 It's another to be able to say that I can get this lot  
6 commercial if you go there. So I can sympathize with  
7 the applicants in that they didn't have a use for it.  
8 They attempted to use a worse case scenario, which in  
9 their opinion would be a fast food restaurant. That  
10 was what they based their original application on.  
11 They now have somebody with cash that has a hard  
12 application for it and the access point doesn't work  
13 with this. I'm concerned about opening the  
14 possibility of an access point on this quarter acre  
15 lot next-door, but I think that's going to have to an  
16 issue, in my opinion, that we deal with if and when  
17 this comes before us. I don't know that there's not  
18 somebody that could come up with an application for a  
19 half acre and the guy has an existing access point at  
20 that point. I think the best we could do would be to  
21 at that point address that zoning and address that  
22 access by shared access as far away from Ralph Avenue  
23 as we could get it, but that's another issue.

24 I would have to vote to approve the plan  
25 without the access point. They have made some

1 improvements. They've removed the one up closer to  
2 Ralph Avenue. This is a viable plan. They have a use  
3 for it. They have a perspective buyer. I would make  
4 a motion to approve the plan as they've submitted it.

5 CHAIRMAN: That's your motion?

6 MR. APPLEBY: That's my motion.

7 CHAIRMAN: Do we have a second?

8 MR. HAYDEN: Second.

9 CHAIRMAN: We have a second by Mr. Martin.

10 Any question on the motion?

11 (NO RESPONSE)

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

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries.

16 Related Item:

17 ITEM 8A

18 3611 Ralph Avenue, 0.847 acres  
19 Consider approval of minor subdivision plat.  
20 Applicant: MPG Commercial Properties, LLC

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

CHAIRMAN: Anyone wishing to address this

1 item?

2 (NO RESPONSE)

3 CHAIRMAN: Any questions from the  
4 commissioners?

5 (NO RESPONSE)

6 MR. APPLEBY: Motion for approval.

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

9 MR. MILLER: Second.

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

12 (NO RESPONSE)

13 CHAIRMAN: All in favor raise your right hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries.

16 -----

17 NEW BUSINESS

18 ITEM 9

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

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

1 and hopefully approval.

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

4 (NO RESPONSE)

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

7 CHAIRMAN: We have a motion by Mr. Gilles.

8 MR. MILLER: Second.

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

11 (NO RESPONSE)

12 Chairman: All in favor raise your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries.

15 We have one final motion.

16 MR. APPLEBY: Move to adjourn.

17 MR. EVANS: Second.

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

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: We are adjourned.

22 -----

23

24

25

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

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

16 WITNESS my hand and notary seal on this the  
17 28th day of February, 2007.

18

19

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

22

COMMISSION EXPIRES: DECEMBER 19, 2010

23

COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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25