The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, April 12, 2007, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  Drew Kirkland, Chairman
Gary Noffsinger
Judy Dixon
Dave Appleby
Scott Jagoe
Tim Miller
Jimmy Gilles
Irvin Rogers
Keith Evans
Wally Taylor
Stewart Elliott, Attorney
Madison Silvert, Attorney

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CHAIRMAN:  I would like to welcome everybody to our April 12th Planning Commission meeting. Will everybody please. Our invocation will be given by Mr. David Appleby.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  Our first order of business is to consider the minutes of the March 8, 2007 meeting. Are there any additions, corrections, any questions?

(NO RESPONSE)

CHAIRMAN:  If not the chair is ready for a
MR. JAGE:  Move to approve.

CHAIRMAN:  Motion for approval by Mr. Jagoe.

MS. DIXON:  Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN:  Motion carries unanimously.

Next item.

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ZONING CHANGE

ITEM 2

1601 J.R. Miller Boulevard, 1620 Guenther Alley, 1.242 acres
Consider zoning change:  From I-1 Light Industrial to B-5 Business/Industrial
Applicant:  Frank Carrico

MR. ELLIOTT:  State your name, please.

MR. HOWARD:  Brian Howard.

(MR. BRIAN HOWARD SWORN BY ATTORNEY.)

PLANNING STAFF RECOMMENDATIONS

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

CONDITIONS:
No access shall be permitted to J.R. Miller Boulevard. Access shall be limited to East 16th Street and/or the alley only.

FINDINGS OF FACT

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

2. The subject property lies within an existing area of mixed industrial and commercial land 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 A.

CHAIRMAN: Anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody have any questions or comments?

(NO RESPONSE)
CHAIRMAN: If not the chair is ready for a motion.

MS. DIXON: Move to approve based upon Planning Staff Recommendations, the Condition and Findings of Fact 1 through 4.

MR. JAGOE: Second.

CHAIRMAN: We've got a motion for approval by Ms. Dixon. We've got a second by Mr. Jagoe. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 3

2404, 2412 East Parrish Avenue, 65.327 acres Consider zoning change: From A-U Urban Agriculture and R-1A Single-Family Residential to B-4 General Business Applicant: 54 Property Management, LLC; Kathleen Nelson Revocable Trust

MR. JAGOE: Mr. Chairman, I need excuse myself from this.

CHAIRMAN: Let the record show that Mr. Jagoe is excusing himself.

PLANNING STAFF RECOMMENDATIONS With a single access point to East Byers Avenue and construction of necessary roadway improvements, the 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. The existing center turn lane on East Parrish Avenue shall be striped for 450' of turn lane storage with a 180' taper for westbound traffic approaching the new access point on East Parrish Avenue (access #1);

2. An eastbound right turn lane shall be constructed on East Parrish Avenue at Access #1;

3. Between Access #1 and East Byers Avenue, the existing two-way left turn lane shall be widened and converted to two separate dedicated left turn lanes for eastbound and westbound traffic;

4. The Wendell Ford Expressway ramp in alignment with Access #1 should be remarked to accommodate through traffic;

5. No access to Street A as identified on the Preliminary Development Plan shall be permitted between East Parrish Avenue and Street C;

6. Access to East Byers Avenue shall be limited to a single access point in alignment with Friendship Drive;
7. A right turn decel and storage lane should be constructed at the access point in alignment with Friendship Drive on East Byers Avenue;

8. An eastbound right turn decel and storage lane should be installed on East Parrish Avenue at East Byers to KYTC specifications;

9. Access to East Parrish Avenue shall be limited to one access point located in alignment with the Wendell Ford Expressway ramp access;

10. A street access shall be stubbed to the property line for future connection with Summer Walk Court as indicated on the Preliminary Development Plan;

11. Provide a ten foot easement with a six foot high element and one tree every 40 linear feet where the subject property adjoins residentially zoned property;

12. Surety shall be posted for 20 percent of the cost for northbound Wendell Ford Expressway ramp improvements at KY 54 at the time of final platting;

13. Provide a Greenbelt connection along the west side of the development and install sidewalks throughout the entire development to promote bicycle and pedestrian activity; and,

14. Submittal and approval of a preliminary
subdivision plat showing required roadway, sanitary
sewer and water line improvements prior to any
collection activities.

FINDINGS OF FACT:

1. The subject property is partially located
in a Business Plan Area, where general business uses
are appropriate in limited locations and partially
located in an Urban Residential Plan Area where
general business uses are appropriate in very-limited
locations;

2. The development of the subject property
will be non-residential in nature and consistent with
development patterns in commercially zoned property;

3. The proposal is a logical expansion of
existing B-4 General Business zoning located across
the Wendell Ford Expressway east of the subject
property;

4. The proposal also meets criteria for a new
location of General Business zoning in that it is over
15 acres in size and is major street oriented; and,

5. With the roadway improvement conditions to
the rezoning and the extension of sanitary sewer and
water mains to the subject property, the development
should not overburden the capacity of roadways and
other necessary urban services that are available in
the affected area.

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

Then I also have two letters that were submitted to the office that I would like to read into the record at this time as well.

The first is from William R. Jagoe, III. It states, "As the developer of the Heartlands residential development, I wanted to express my thoughts concerning the rezoning of 2404 and 2412 East Parrish Avenue requested by 54 Property Management, LLC ('54 Properties'). I have met with the principals of 54 Properties on various occasions to discuss this proposed commercial/professional development. We are very pleased with the following:

"* 54 Properties will leave the existing natural buffer between our two properties.

"* 54 Properties is going beyond the requirements and will add an eight foot tall vinyl fence along the southern boundary of their development, which is adjacent to the Heartlands Subdivision or a six foot berm where requested by Heartlands.

"* 54 Properties has restricted the use of all land within 100 feet of their southern boundary, which
is adjacent to the Heartlands Subdivision to Professional use.

"I feel 54 Properties is taking the appropriate actions required to develop a first class commercial/professional development and more importantly to assure the integrity of our established residential area.

"It is my understanding, as a result of the Traffic Study, 54 Properties is requesting two access points off of East Byers Avenue, one at Friendship Drive and another between Friendship Drive and the East Parrish Avenue/East Byers intersection. As the developer of Heartland Subdivision, we fully support the additional access point on East Byers Avenue. This proposed development is in need of three access points. However, both parties have agreed that the connector road from the back of the commercial development directly into Heartland Subdivision via Summer Walk is not in the best interest of either party and will be eliminated if two access points are allowed on East Byers Avenue. We feel this is critical for the existing and future residents of Heartland Subdivision. If the additional access point is not granted, then the use and demand for the access points into the residential development will be far
greater.

"The access points on this section of East Byers is more restrictive than any other part of Byers which runs from Frederica Street to New Hartford Road, through a section of Copper Creek, and continues on Ragu Drive after crossing East Parrish Avenue. We feel this should be taken into account and the additional Byers access be allowed.

"As stated we are excited about the efforts of 54 Properties to help protect Heartland and as the developer of Heartlands Subdivision, I ask you to grant both access points on East Byers Avenue and eliminate the Summer Walk access. This keeps all traffic from traveling to the commercial area through Heartland on Byers Avenue and off streets faced by homes."

Then the second letter is from Malcolm Bryant. It states, "As the developer of The Springs Health Centre development, I wanted to express my thoughts concerning the rezoning of 2404 and 2412 East Parrish Avenue requested by 54 Property Management, LLC ('54 Properties'). I have met with the principles of 54 Properties to discuss this proposed commercial/professional development. We are pleased with the following:
54 Properties is planning their Byers Avenue ingress/egress appropriately.

54 Properties is meeting the need of the community with this commercial development.

54 Properties is planning high quality entrances to their development.

"I feel 54 Properties is taking the appropriate actions required to develop a first class commercial/professional development and more importantly to assure the integrity of our area. It is a fast growing area and the traffic patterns must change appropriately.

"It is my understanding, as a result of the Traffic Study, 54 Properties is requesting two access points off of East Byers Avenue, one at Friendship Drive and another between Friendship Drive and the East Parrish Avenue/East Byers intersection. As the developer of The Springs Health Centre, we fully support the additional access point on East Byers Avenue. We also believe that should the northernmost access point to the development on East Byers Avenue be allowed that it should line up with a potential access point to The Springs Health Centre directly across the street. If the additional access point is not granted then the use and demand for the access
points closer to the residential development will be far greater. The access points on this section of East Byers is more restrictive than any other part of this street which runs from Frederica Street to New Hartford Road, through a section of Copper Creek, and continues on Ragu Drive after crossing East Parrish Avenue.

"We believe and suggest that this span of East Parrish Avenue has come to need a slower traffic flow that this development and The Springs command. This will call for the need for more traffic signals. The Springs Health Centre is in emergency need of a traffic signal at its East Parrish entrance.

"As stated, we are excited about the efforts of 54 Properties and as the developer of Heartlands Subdivision, I ask you grant both access points on East Byers Avenue."

MR. HOWARD: I would like to enter both of those into the record.

CHAIRMAN: Thank you, Brian.

Do we have anybody representing the applicant?

MR. MEYER: Yes. Tom Meyer representing the applicant.

(MR. TOM MEYER SWORN BY ATTORNEY.)

MR. MEYER: Unfortunately, I can't talk as
quickly as Brian, but I will make it as prompt as I can when conducting this presentation.

This is, as we noted, an application for the rezoning of 65 acres of ground. It's bounded on East Parrish Avenue, the bypass, and East Byers Avenue. Of course, the request is to go B-4 General Business as mentioned.

The applicants are 54 Property Management, which are represented here tonight by Phil Riney and John Iracane, and also the Kathleen Nelson Trust, which is the current owner of the property.

I'd first like to familiarize you just briefly with this property and the project that is proposed for it.

I've got a document here I'm going to put up on this easel, but you all have been handed out a plat with regard to the properties. So you may find it easier to refer to the plat that's been handed out to you.

This property is represented by East Parrish Avenue running along the bypass as it heads in a northerly direction. The property, this 65 acres is also bounded by East Byers Avenue here and as further mentioned the property itself is boarded to the south by The Heartlands Subdivision.
The proposal as submitted by the applicant has for entranceway here on East Parrish Avenue, which we sometimes refer to as the Number 1 entrance. Two entrances here on East Byers Avenue and originally and is what the Staff has recommended is an entrance that would come on down here and go into The Heartlands and tie in with I think Summer Wind is the residential road that runs through that particular property.

Other than that, I think everything else is on the plat that's before you.

In a moment I'm going to introduce you to Bill Hayes who's the senior project engineer at Barns, Wagner, Summer & Cannon in Nashville, Tennessee. You all are probably familiar with Bill because Bill has done a number of projects up here, including most recently The Highland Pointe project which is just out on the other side of 54.

He also served as a city engineer for the City of Bowling Green for 20 years. Although he's a resident in Nashville, he's very, very familiar with Kentucky Planning & Zoning having been a city engineer in Bowling Green for some 20 odd years.

Brian previously presented to you the Staff Recommendations and whatever. The second document that I have given you all this evening is a comparison
sheet for your alls convenience. You will see as you
go over this comparison sheet that the applicant's
proposal and the Staff Recommendations are pretty much
identical for many of these items as we're in
agreement with regard to that. The Staff has
recommended that this be rezoned B-4 as requested.

If you would take a look at the comparison
sheet that's been provided to you. Item 1 through 4
were previously read into the record. Those are
exactly the same as far as the applicant's proposal
and the Staff's Recommendations.

In Item Number 5, the applicant proposes that
the construction of the access located at the
intersection of Street C and East Byers Avenue be as
shown on this plat.

That's right here is the one we're talking
about.

What the Staff has recommended is that there
would be no access to that street at that particular
location and it would eliminate that access point and
instead confine the access on Byers Avenue solely to
the one that's across from Friendship Drive, which is
this point right down here. So that is one difference
that has been presented.

We strongly, as Bill Hayes will testify to,
that the access point for this third -- the third access point is critical to this development project. We certainly believe that it should be on that particular location.

Going on with the comparison sheet just briefly. Number 6, we would construct an access point aligned with Friendship Drive. The conditions of the Staff Recommendation are virtually the same except they're limiting it to that single location. So that's the difference between the two. There's no issue with regard to the entrance at Friendship Drive. It's strictly whether that would be limited to the only entrance off of Byers Avenue versus the two entrances as shown on this particular plat and on your drawing before you. So that's where the issue is drawn there.

As far as the Friendship Drive location, there is no dispute there. Lines up exactly. Everybody is in agreement and there's no difficulty there.

As you previously heard from the two letters presented by Mr. Jagoe and by Malcolm Bryant, both of those parties who have substantial interest in adjoining properties are in agreement that there should be two entrances there and not an entrance down there in the Summer Wind.
Turning to Item Number 7 there, the developer shall construct a right turn taper at each of the Byers Avenue access points versus the language which the Staff has recommended concerning a single decel and storage lane to be constructed at that.

There we're talking about a difference between when you have two entry points here, there is no need for a decel lane and a storage plane because the traffic count, as Mr. Hayes will get into in a moment, doesn't justify that. It justifies simply a taper lane into each of these two entrances in a direction for traffic moving in this northerly direction on Byers Avenue.

That recommendations that we are making by the way is in accordance with the recommendations of the city traffic engineer or the city engineer. That's the difference between the two there.

CHAIRMAN: Mr. Meyer, we've gone down a few of these points. Why don't we have Brian come back and represent the Staff and address some of these situations rather than us get so far down. There might be questions from the audience. We can take some of these things and try to condense the situation.

MR. MEYER: That will be fine.
CHAIRMAN: Brian, would you come back and address these issues, please.

MR. HOWARD: Certainly.

Basically to this point the main area of disagreement between their recommendation and ours is the two access points to East Byers Avenue. East Byers Avenue is classified as a minor arterial roadway. It's a new construction roadway which the access management manual stipulates 1,000 foot spacing standard.

Based upon that Friendship Drive would meet the 1,000 foot spacing, but this additional access point would not. It would not even meet the 500 foot spacing requirement that would be in the access management manual for a minor arterial street that's not new construction.

That 1,000 foot standard has be held up along Byers Avenue through Heartlands Subdivision. So we're carrying that forward.

The rest of the points I think are just clarification or minor modifications to what we recommended.

It is true that the city engineer's office did recommend tapers if both access points go in. We recommended that with our recommendation a single
access point that they put in a right turn deceleration and storage lane since it will be funneling and focusing all traffic as a single access point.

I think that should address the topics that they brought up at this point. Unless you all have any additional questions, I'll be happy to answer them.

CHAIRMAN: Does anybody on the commission have any questions at this point?

MR. NOFFSINGER: I do.

CHAIRMAN: Mr. Noffsinger.

MR. NOFFSINGER: Mr. Howard, you read two letters into the transcript. One from Mr. Bill Jagoe, Sr., I believe.

MR. HOWARD: Correct.

MR. NOFFSINGER: And the second was from Malcolm Bryant. Rather lengthy letters and I'm not sure that anyone here understood what those letters really said. Of course, it's in the record. Would you please summarize each letter as to what they're saying just briefly.

MR. HOWARD: Sure. The first letter was from Mr. Jagoe. It basically stated that they're in support of the development. They're in support to two access points to Byers Avenue and their in opposition
to the connectivity between Heartland Subdivision and 
through Summer Walk Court. I believe that's the crux 
of that one.

The second letter is from Mr. Bryant. 

Basically stated that, again, they are in support of 
the rezoning. They're in support of the two access 
points. However, he does point out that if they do 
get a second access point that it should be located 
somewhere where it could line up with his property so 
that he could possibly have a future access. That may 
be something that you want to take into consideration. 
Otherwise, he didn't address the access through Summer 
Walk because it doesn't really pertain to his 
development. Again, I think he was in support. Did 
bring up the point that if a second access point is 
put in that it should be somewhere where he could 
create a four-legged intersection with an access point 
to The Springs.

MR. NOFFSINGER: Has the Staff looked at where 
that could be located on the property? I think it's 
described at this first access point nearest Parrish 
Avenue is less than even the 500 foot standard.

MR. HOWARD: Correct.

MR. NOFFSINGER: If they were to meet a 500 
foot standard, would that give Mr. Bryant the
opportunity to have access to his development?

Because I know there's a retention basin in that area.  

MR. HOWARD: Correct. I'm not exactly sure at what point back that that could be recreated. I think where this Street C in their development intersection with Byers Avenue, I believe that would be pretty much directly in alignment with the existing retention basin. There could be some potential further back. Maybe around 500, 520 feet, maybe in that vicinity, depending on where their building locations are proposed. That the intersection could be created, but I don't know the exact location, the exact distance.

MR. NOFFSINGER: If I might. Would you just clarify for us the functional classification of this street and the driveway spacing standards for new development along existing roadways and new development along newly constructed roadways and why you're applying 1,000 foot spacing standard.

MR. HOWARD: Certainly.

This road is classified as a minor arterial roadway. There's several classifications of roadways. Freeways or expressways are the most restricted on access. Then you have principle arterials, minor arterials, and then collective roadways. So this is a minor arterial roadway.
New street construction for a road that's classified as minor arterial in the access management manual there is a 1,000 foot spacing standard. However, on an existing minor arterial roadway, if someone were to request an access point, there would be a 500 foot spacing. The reason being that as new streets are constructed, it's easier to implement greater distances between access points. It can be argued that the more distance between access points that the less or the fewer conflicts that you have, fewer locations for accidents, things like that. So that's why we have historically on this section of Byers Avenue implemented 1,000 foot spacing standard versus up say a 500 foot standard for any other minor arterial that is in existence. If someone went on 54, a 500 foot spacing center would apply the same along Frederica Street or any other major roadways.

MR. NOFFSINGER: If I might. On the spacing standards in the Access Management Manual you're referring to, that's a document that's approved by what body? This is not simply your recommendation. This comes from some document.

MR. HOWARD: Right. It's my understanding that the Access Management Manual and the spacing
centers that are included within are approved through or developed the GRADD office and then taken before the MPO's tact and policy committees for adoption. The Access Management Manual that's in place now was last adopted in 1991, I believe, when these standards were put into affect.

It's not a Planning Commission document. These numbers weren't just created for this development. It is the same that is applied for any type of development and it is created through the GRADD office.

CHAIRMAN: Thank you, Mr. Howard.

Mr. Meyer, why don't you continue but condense.

MR. MEYER: I've been told that before? In the Item Number 10 that you see there on your list as being somewhat different with each other, it's pointed out there that's the stubbing of this road down here.

If you extended this street be all the way down the stubbing to tie into Summer Wind would be here. What we are proposing, the homeowners people are very much in accordance with this, that is Mr. Jagoe or whatever, is that there be no stubbing there. That road not connect. That's all we're talking
In Item Number 11, the difference there, I think the applicant's language is a little more specific. It allows for a six foot berm or an eight foot vinyl fence, which by the way is two feet higher than what the Planning & Zoning Staff is recommending or requiring. We're willing to put up an 8 foot vinyl fence.

Recently we had a meeting with the landowners on Monday night. They seemed to be lobbying strongly for a berm, an earth berm, which we're willing to do. So we have modified the language there to permit for either a six foot berm or this eight foot fence.

That's the only difference in the language.

You get to Item Number 12. Here all it is is more of a clarification than anything else. Just so there's confusion, we're talking about something, again, that's way off site. This is actually over here on an exit ramp off of the bypass as you get on to Highway 54. Remember the property is over here. We're committed to contributing 20 percent, which is what the traffic flow, excavation is called, or a left turn lane, additional turn lane to go on to east Parrish Avenue.

All we're trying to do with that clarification
language is another developer that's developing the property east of the highway, that is Highland Pointe development, they're already committed to the similar arrangement for 20 percent of the access or the widening of those lanes for cars that are turning onto East Parrish Avenue going in an easterly direction. What we're committed to cover the cost with regard to the lane expansion for the left turn lane. That's the only distinction there. I think our language is a little better than what's in the Staff Report. Conceptually it's basically the same. The rest of it is pretty much the same. I'll take a seat and let it go back to Brian.

CHAIRMAN: Mr. Howard.

MR. HOWARD: As far as the access to Summer Walk Court, typically we like to see neighborhoods connect whether in this instance, which there could be some benefit between the residential and commercial connectivity. It would allow residents from Heartland to come into the development a back way, cut through traffic, it could happen, people leaving commercial development. It would also, I think, be somewhat of a path to go from point A to point B.

They've clarified a little bit more detail as far as the landscaping buffer. They put in more
restrictive requirements than the zoning ordinance would allow. Our requirements is just the minimum. I agree with their summation on the 20 percent cost of the land improvements. That would be determined by the Kentucky Transportation Cabinet what that cost would be.

CHAIRMAN: What is your opinion on the neighborhood's position or the developer's position based upon stubbing of the street?

MR. HOWARD: You know, I can see both sides of the story. I can see why the neighbors wouldn't want commercial traffic potentially coming through their development, but I can also see the benefit of them being able to access the development without having to drive through Heartland Subdivision, then get on Byers Avenue, and then turn into the development. There could be benefits and drawbacks to either way that it's done.

CHAIRMAN: How much of an issue is that going to be for us, as far as the Planning Commission?

MR. HOWARD: That's up to you to decide whether or not you think that's a necessary connection. Again, historically we try to connect neighborhoods. It doesn't mean that it always happens, but we do historically try to connect
neighborhoods.

CHAIRMAN: Hold that just a moment.

Mr. Meyer.

MR. MEYER: Yes.

CHAIRMAN: We're working backwards, but we're on the issue of the connecting street with the subdivision. How much of an issue is that going to be for you and for your clients?

MR. MEYER: Well, as I mentioned before, it's critical to have three entry points. We believe that, and the homeowners when they told us at this meeting, as did Mr. Jagoe, one thing that was absolutely unanimous was they did not want that street. They did not want that tie in. They didn't want that traffic through there. So we need three entry points, but we don't think that's the appropriate entry point. So it is a major issue for us there.

As far as you mentioned up on the Byers Avenue entrance, the one that's the furtherest to the north is one that perhaps is at issue. There's a little dotted line on your plat that shows where the retention basin is on Mr. Bryant's property. It basically turns right there. So we're committed to working with Mr. Bryant in lining up that entry point so that it accommodates any entry point that he would
have on the other side of his property. See the
dotted line? That's basically where that retention
basin stops. Understand there may be some filling may
be going on in there anyway.

CHAIRMAN: You're talking about what would be
Street C or the one that's within the 500?

MR. MEYER: Right. The one that connects in
with Street C up here. You see this little dotted
line. That retention basin basically turns right
there across from, roughly across from where that
entrance is. We will work with Mr. Bryant. He wants
an access point, as he mentioned in his letter. We'll
work with him in making sure that we line that up.

CHAIRMAN: This is a situation that we face
constantly about the number of entrances and exits
within that 1,000 foot guideline, you know. You have
one that meets the criteria, which is no problem.

MR. MEYER: Right.

CHAIRMAN: Then the second one is within that
1,000 foot criteria on to, you know, nearest to
Highway 54.

MR. MEYER: There are a number of exceptions
and we drove up and down there today out on Highway 54
and go on over to the bypass, go on out, all the way
out to Franey's and the GD Ritzy's out there where
J.D. and I ate lunch this afternoon and came back in. There are a great number of entry points that would be similar to what we're proposing here.

CHAIRMAN: A lot of those entrances, I'm familiar with those, were where we had a single applicant. Where it was either that entry point or they didn't have another one versus two entry points with an area that has 1,000 foot.

MR. MEYER: But this is very important to us. That's why we have Mr. Hayes here to present some evidence with regard to why that point is appropriate and how the traffic flow would be anticipated.

CHAIRMAN: Are we at the point, Mr. Howard, where we would want to hear Mr. Hayes' testimony? Have we to anybody in the audience from the neighborhood? Does anybody in the neighborhood -- do we have a single voice for the neighborhood that could summarize that would be very good at this point.

Yes, sir. Would you like to step to the podium, please. We want to be fair to the neighbors, but you can see if we have ten people saying redundant statements, it sort of loses itself.

MR. ELLIOTT: State your name, please.

MR. GORDON: My name is Greg Gordon.

(MR. GREG GORDON SWORN BY ATTORNEY.)
MR. GORDON: What I would like to say is I'm president of The Heartland Homeowners Association. I found out about all of this about it's been a week or so ago. We seen it in the paper. So that was the first. Matter of fact, I got a call and somebody tole me it was in the paper. So that's the first we heard of it.

I've heard that I guess it's been going on for awhile as far as planning all this stuff. So I'm coming up here totally uneducated about everything, except what I found out the past week. Along with a lot of neighbors that I went and knocked on their doors last night because I would say 80 to 85 percent of the people that I knocked on their door last night, which was about 30 homes, had no clue there was a plaza coming in. I feel like that they've, not necessarily the developers or whether be the board or the city, nobody has been informed in this neighborhood that you guys or that this has been brought to the table.

The biggest concern that I do find with this is the Summer Walk entrance. I have not found one person that wants that entrance in that part of the neighborhood.

One thing, and I'm not saying that you guys
haven't looked at the map, but this is the map that hooks to that map. That is the 850 homes that are in that neighborhood, that will be in that neighborhood. There's 650 developed. I'm guessing that these numbers, and don't hole me to them, they develop them constantly.

Summer Walk, you come and look through it right here, comes right here. If they do bring that all the way through, you've got home, after home, after home backed up to that street there. I don't know how many you all had the time to sit down and really look at it.

My biggest concern is the traffic flow through there. I think from the article in the newspaper said something about 45,000 cars or something goes down through there. If one percent comes out of the back of that neighborhood, that's one percent. That's right at 450 cars coming down that street.

CHAIRMAN: Excuse me, Mr. Gordon. Do you by chance in your summary, did you get names of neighbors, addresses, yes or no, or anything like that?

MR. GORDON: No, I did not. I do have some of them here that are represented here tonight that came because I came to their house and talked to them last
night.

CHAIRMAN: And their opposition is with the through street?

MR. GORDON: Yes. Yes. Everybody I've talked to does not want that street to come through. I did not have one person say, oh, I'd love to have that street come through.

CHAIRMAN: But as far as addresses and names, you do not have that?

MR. GORDON: No. I got on the ones that I talked to that were on Summer Walk and then Avenue of The Parks, criss-crosses. No, I didn't go down and take names. It comes down to a time factor of what a person can do in a short period of time. So I haven't had the time to really go out there so I don't have any strong numbers.

What I do know is that if the traffic comes through there, and like I said just one percent, that's 450 cars. That means that the people that have houses there with kids there, that means an extra 450 cars are going to come by their house every day.

CHAIRMAN: Would it be safe to summarize the neighborhood is not opposed to the development. The neighborhood is opposed to the development leaking into the neighborhood. Would that be a correct
statement?

MR. GORDON: Yes. I could say that's a fairly correct statement. There are people -- now, as the president of the association, I do represent, in that capacity I represent everybody in the neighborhood. Now, there are people that are opposed to the total development. So I can't sit here and say that all Heartland is okay with the neighborhood or the development, yet they don't want this street. So I can't sit here and say that because that wouldn't be true.

CHAIRMAN: That's basically not your issue though. Your issue is the street?

MR. GORDON: The issue is the street that is going to be stubbed in. I noticed on the print there it says, "stubbed in for later development." We want it to be a permanent deal. It is not a later development. That if this gets approved tonight, they build a plaza and then all of a sudden they say, we need to get a little more access there. So, boom, they cut the street through. I think it's going to affect the neighborhood. I think it's going to affect the value of the homes.

What he had said about it will be great for the residents. They could have access to go in there.
Well, that's fine except for you can go four blocks up the other way, which is up near another plaza and development there and there's no homes and that's where your access can be.

CHAIRMAN: Mr. Gordon, would you be opposed if I bring Mr. Howard back to address that? Because this, if I'm correct, your major issue is the connection. Would you mind if I bring Mr. Howard back, please.

Mr. Howard, would you address the situation there because it seems like this is an issue with the homeowners, the developer and the Planning Commission. I want to know exactly how we would stand, how this would affect us long-range.

MR. HOWARD: As far as access to the development, based on the developer's summary, they say they need three access points. So as far as an access to the development, I don't think that this would have an impact on the overall function of the development. Their access to Parrish Avenue, Kentucky 54, or their access to Byers Avenue. So I don't think it's going to hurt their development from that perspective.

CHAIRMAN: I was really interested in how it would affect the long range plan of the Planning
Commission. I think the developer has sort of said that they're not necessarily for it at all anyway.

MR. HOWARD: This is an instance where you have an opportunity to connect two neighborhoods. However, it's not an instance where if Summer Walk is stubbed to the property lines and it connects, that it has the futurability to stub to another adjoining farm that may development. This is bounded by the bypass which you're not going to have access to at any point. Then the rest of Heartlands is already developed. So it's not like there's a great foreseeable future for a road to keep extending say along the lines of Villa Point, as that has been a parallel street to Kentucky 54.

CHAIRMAN: So long range the connection of this is not really extremely crucial to the Planning Commission?

MR. HOWARD: I don't know that I would use the word crucial, no.

CHAIRMAN: Mr. Noffsinger.

MR. NOFFSINGER: I think Brian has done a fine job of conveying the message in what we're trying to achieve here.

It does disturb me that the applicant's traffic engineer is saying it's going to take three
access points to make this development work.

CHAIRMAN: We haven't actually brought the
traffic engineer up yet.

MR. NOFFSINGER: Well, it's been brought to
our attention. Mr. Meyer just stated that it's going
to take three access points to make this work and
making it look like they can't have this access point
going through this section of Heartlands that the
development can't function without the other two on
Byers. I see this street as a convenience and more
important to this neighborhood than I do whether or
not this development actually makes it or other people
from outside actually being able to get to the
development. Right now there are only four lots that
front this street. The rest of that property that
would front this street is undeveloped. There's not
preliminary plat submitted. I would pose the question
that if the neighborhood objects to a street there,
would the neighborhood object to a pedestrian access
for connection? Again, we see it and view it in our
planning training, if you will, that it's important
for neighborhoods to have connections to the adjoining
property.

CHAIRMAN: Let's hold just a minute and bring
Mr. Gordon.
Mr. Gordon, would you come back to the podium and we'll address that.

MR. GORDON: I notice he did keep talking about adjoining two neighborhoods. You're not adjoining two neighborhoods. You're adjoining a neighborhood with a big plaza is basically what you're doing. Just want to clarify what he had said.

CHAIRMAN: Right. But the question.

MR. GORDON: Me personally, I wouldn't be opposed to a bike trail going through there. I wouldn't be opposed to that. Now, I can't speak for anybody else in this room or anybody in the neighborhood.

CHAIRMAN: A pedestrian walkway, bike path, etcetera.

MR. GORDON: Everybody THAT I have talked to is firmly against having a traffic come through. See, as Byers gets developed and it does go on around to Copper Creek, everybody at Copper Creek or Old Hartford Road or all the other developments that will develop says, we're going to get a gallon of milk. Well, let's run right up here. They're going to cut right through our neighborhood and right through that street. So that 500 cars in 5 years or 10 years is going to turn into 1,000 cars.
CHAIRMAN:  You all presented your side.

MR. APPLEBY:  Mr. Chairman, we already have the provision and condition there that requires the Greenbelt connection on the west side of the development.

CHAIRMAN:  Yes.

MR. MEYER:  That was our point, yes. Exactly.

CHAIRMAN:  So leave it through the Greenbelt as it is.

MR. APPLEBY:  We're requiring them to provide a connection to the Greenbelt in this development.

MR. MEYER:  That will give you the pedestrian/bike connection.

CHAIRMAN:  Mr. Meyer, show where the Greenbelt connection would be?

MR. MEYER:  It's all on Byers Avenue. There's a little Number 13 on there, Friendship Drive.

CHAIRMAN:  Mr. Meyer, do you have your traffic man to make a brief summary?

MR. MEYER:  Yes. Mr. Bill Hayes. I believe that what you wish to focus on is the necessity of that entrance.

CHAIRMAN:  The one that's within the 1,000 feet.

MR. MEYER:  Right.
MR. ELLIOTT: State your name, please.

MR. HAYES: William Hayes.

(MR. WILLIAM HAYES SWORN BY ATTORNEY.)

MR. HAYES: I'll try to keep this very brief.

I think the focus obviously is on this particular access point that's between Friendship and Highway 54. Try to summarize basically from a traffic standpoint.

This site is going to generate about 30,000 vehicles a day. I'm not sure where the 45 came from. It's about 30,000. About 10 percent of that is going to be internal. In other words, somebody is going to go to a video store and then go by and get some groceries and something, and that's a trip, the way we calculate trips. It doesn't come outside. So you're actually looking at somewhere around 27,000 trips from the outside going in to the site.

The reason that this particular access point is critical is that when you only have two access points into a site, a main one coming on 54 and the side one onto Byers, first of all it's simple from a capacity standpoint. That puts things very tight. It puts a low level service at the Byers/Friendship intersection already.

If you have any emergency situation on your
main entry for emergency vehicles, anything else to
access, if there's an accident there and you are
suddenly dependent on that second access point that's
already level service D, you realize with the volume
we're talking about that becomes a very, very
difficult situation to manage, even though it's on an
incident level.

The other thing that we analyzed here was what
was the actual function classification of Byers
Avenue. I understand you have it classified as minor
arterial. From a traffic engineering standpoint,
arterials are pretty high level classification. We
would expect to see them in gaps of one every half a
mile. The arterial material normally does not split a
neighborhood. There's a neighborhood on one side and
an entirely different neighborhood on the other side
of an arterial.

In this case, Byers Avenue has residential
areas already developed that are pretty well as a unit
there and is also right up against an expressway. A
very high level arterial that doesn't have any
intermediate cross streets on it. So you really end
up not really having two separate neighborhoods there.
You have one neighborhood that the street goes
through. It is running parallel to a major
expressway. Almost functions as a frontage road. So from that standpoint, if I would look at this and no information about it other than what I have before me, I would classify that as a collector road.

In fact, other parts of Byers are classified as collector road by the Kentucky Transportation Cabinet. The only portion that is an arterial is between Frederica and New Hartford Road. So I would say from that standpoint that it's a collector street. Then on a collector street, of course, you have a different set of access guidelines.

Your access management is very commendable on what you ought to be doing. I just think that somewhere along the line this street got misclassified. If you look at the percentage for the entire Owensboro area, the percentages of minor arterial and major collector is weighed heavily toward minor arterial. So I'm thinking maybe somewhere along the line there's just a misappropriation of classification system there.

So with that I'll just stop and answer any questions on this.

CHAIRMAN: Does anybody in the audience or any of the members of the commission or Staff have any questions at this point?
MR. GORDON: Yes, sir.

CHAIRMAN: Mr. Gordon, you'll need to step to the podium, please.

MR. GORDON: I'd like to know if anybody did a study on Summer Walk and how much traffic would come through there?

MR. HAYES: I actually went over to Summer Walk and sat there for about 20 to 30 minutes just watching the neighborhood. As I said, my sense was, as someone who's not living in Owensboro, my sense was it's pretty much one neighborhood. Didn't see any separation on Byers one way or the other.

Our initial estimates when we were looking at a connection there were in the order of one, two, three percent. So I don't think we really have a disagreement in terms of what we assume versus what you, as the neighborhood representative, would assume would be there as a result.

The reason being you only have so many homes there. Some of them are going to go down Byers. They're going to have other trip purposes. Swing off one place and go on somewhere else. So they will not all go through Summer Walk.

I would caution you that if you eventually do extend Byers onto a connecting roadway, then you may
have more traffic that'd be attempted to use that as a back entrance as opposed to going on up to Byers, particularly if Byers and Friendship is your only other access on Byers. Naturally you're going to more prone to use Summer Walk in that case.

As it is now, it's not going to generate, it's not going to be a significant access point in terms of functioning within the development. It's not going to be an alternative for emergency access vehicles into the site.

CHAIRMAN: Mr. Gordon, do you have another question?

MR. GORDON: No, not on that.

CHAIRMAN: Mr. Bryant, would you step to the podium, please.

MR. ELLIOTT: State your name, please.

MR. BRYANT: Don Bryant.

(MR. DON BRYANT SWORN BY ATTORNEY.)

CHAIRMAN: Mr. Bryant, in looking at this drawing here, the Friendship Drive, I'll refer to that as your Friendship Drive exit and entrance --

MR. BRYANT: Are you looking at the original plan or the current plan?

CHAIRMAN: I'm looking at either one. I'm using this one right here regardless.
MR. BYRANT: Okay.

CHAIRMAN: Where Friendship Drive goes in and then the street ends right there as it goes in your alls development and ends. Why could that street not be continued onto and brought around? Instead of where you have the private drive going around, why could that not be your pain drive in through there? You see where it comes in? You're 1,000 foot from East Parrish Avenue.

MR. BRYANT: You're talking about the curvature on the internal street?

CHAIRMAN: Well, not the curvature, but just go ahead and connect with your street back here and make that where it goes straight on back.

MR. BRYANT: Actually that would be one option. We've looked at a number of layouts internally. Really at this point it's purely conceptual. In order to create some projections on what our uses are going to be so we can do a traffic report.

CHAIRMAN: That wouldn't change your division or your usage of the land or anything, would it, if you came straight on back that way?

MR. BRYANT: The connectivity here with the private drive is actually going to serve the same
purpose internally as it would with the street. There just won't be publically maintained thoroughfares.

CHAIRMAN: I realize that. What I was doing was in my mind trying to eliminate this entrance here that's less than 1,000 feet.

MR. BRYANT: I think what you're going to find, and I'll Bill address this. I'm not a traffic agent engineer. When this was looked at early on with just the two access points, basically this project would function as having a single entrance in affect with the very low percentage, maybe less than ten percent usage of the Friendship Drive access point, which would create some real problems on 54 even though they're doing as much as we can there in the way of additional lanes and turn lanes. That the level service out there will drop significantly, but I'll refer to Mr. Hayes on the details on that.

CHAIRMAN: You see where I'm heading with this? If we could consolidate, do away with one of those entrances and still keep the developer within -- MR. BRYANT: It's my understanding and based upon the information that we have in the traffic study, that this project will not function properly if we don't have three main access points. We need to utilize Byers Avenue to the greatest extent that we
can. In order to do that, we need the two access points.

What you need to remember, even classified as arterial, East Byers Avenue is a minor arterial. The same as Highway 54. The same as Fairview Drive. Access spacing, according to the manual, on 54 and Fairview Drive is not 1,000 feet. It's 500 feet. The distinction here is that the Byers Avenue facility is classified as a newly constructed roadway. Therefore, the spacing is doubled over what the other arterials are.

So actually if we could meet 500 foot spacing, we would meet the criteria for access points anywhere on Kentucky 54, East Parrish Avenue or Fairview Drive. Same classification. They're all minor arterials. The distinction is newly constructed roadway versus existing roadway.

I think the location on Street C is approximately 425 feet, plus or minus. This is conceptually laid out at this point. We are going to have to work with Malcolm on his access point and we may need to shift that somewhat to the south in order to make those two intersections line up.

CHAIRMAN: Which would put you down to close to 500 feet?
MR. BRYANT: Approaching 500 feet. I can't say that we can get exactly 500 feet. We're anticipating that if we do line up across the street, we are going to have to shift that access point at least little bit.

CHAIRMAN: Mr. Noffsinger.

MR. NOFFSINGER: Yes. I have a few comments and observations.

The next suggestion is, you know, do you absolutely have to have access to Kentucky 54? What would that do if you had two access points on Byers Avenue, no access on 54? Wouldn't that improve the situation in terms of the congestion of the traffic you mentioned on 54?

MR. BRYANT: I refer to Mr. Hayes on that.

MR. NOFFSINGER: We're showing Street C as 420 feet. Why didn't we put it at 500 feet? If you were going to make the argument that we need to and the spacing standard on 54 be 500 feet, why didn't you show it at 500 feet? This is a development plan that we need to rely on to address important issues related to this development. We realize it can change, but as you know access is very critical when we're considering a rezoning. There's going to be other issues that are going to be critical to the
neighborhood. We haven't gotten to those, but we're addressing the access right now.

MR. BRYANT: Well, based upon the traffic impact study, East Byers Avenue is functioning as a collector street. Our manual says the spacing requirement is 250 feet for collectors. So our 420 feet exceeds what the spacing should be based upon actual functional classification.

MR. NOFFSINGER: You say it is functioning that way. We're planning for the future. Are you saying in the future with the extension, as we know Byers is to go from Parrish Avenue all the way to Frederica Street?

MR. BRYANT: I'll refer Mr. Hayes for that, but I believe he will support that, yes. That he did take into consideration future plans for Byers Avenue and future development. I believe that's the case.

CHAIRMAN: Mr. Bryant, thank you.

Mr. Hayes, would you return and you're going to be addressing two questions. One, the spacing of the 425 foot of Street C and the closing of the entrance onto East Parrish Avenue 54.

MR. HAYES: Take the first one in terms of spacing.

Your access manual addresses, as I access
 manuals normally do, a horizontal situation. In other
words, 500 feet. There's not a magical thing about
500 versus 475. It's just an easy way to do it.

The problem is you also have got a vertical
dimension here. That road is not flat. It has a rise
and fall and you have sight visibility, stopping
distance issues of people turning out of the entrance
as well as turning in to it.

I went down there not knowing exactly where
everything was and actually did measurements on the
ground of the sight visibility at where this Street C
would be. 425 feet is pretty close to the place.
You've got a little range there to play with given the
speed on Byers. Not a big range. So I would advise
you, regardless of the standards, get your streets in
where you can maximize your stopping sight distance so
that you can avoid access at that location.

Friendship Drive which is on top of the hill
has sight visibility issues there. It's not idea, but
it does work with the speeds that you have there.

Again, in terms of the 425 feet versus 500
feet on Street C, I will simply advise you to focus on
the stop sight distance there in terms of locating
that.

With respect to the second one -- let me just
say also. Without Street C and that connection, when I talk about the level of service on Friendship Drive, this is regardless if anything happens on Summer Walk. Friendship Drive intersection functions at a level service D. That's just like a grade, A, B, C, D. It's a very poor level of service. Not something you normally desire on the street that's just been built like Byers.

The question of closing the main access on 54, just give you an idea of what that entrance is going to be. There will be two inbound-lanes, three outbound-lanes, and given the level of development posed, they would be at an acceptable level service, but the backup lane there will be 300 feet. That's as far as you can push the outbound lane without interfering with the streets within the subdivision. So it's a practical matter.

That entrance first of all will be at maximum capacity for the type of development you have. Secondly, you try to transpose that onto Byers you're going to end up having to put those same number of lanes at the intersection of Byers and 54. So basically you're going to transfer your -- in fact, put all the traffic on that. That would require a major reconstruction of Byers and 54. Not saying it
can't be done, but saying it's a major difference in
terms of what you have there now. That's the best I
can answer those two.

CHAIRMAN: Thank you.

Mr. Noffsinger, in regards to the situation,
they're looking for three entrances. One at 1,000,
one that is 425, and one onto East Parrish Avenue.

MR. NOFFSINGER: Yes, sir. That is correct.

Again, to my satisfaction I did not get my question
answered in terms of why did they not go with the 500
foot standard looking at that. I understand sight
distance is an issue, could be an issue, but then how
does that affect the intersection and traffic backing
up toward Parrish Avenue. The traffic engineer did
not address whether or not he took into account
current traffic and with this development or full
development of that corridor of Byers Avenue. I hear
that this functions more like a major collector today,
but we're planning for today, a building for today,
but we also have to plan for the future because we
want to avoid situations that we have out on Kentucky
54 and South Frederica Street where we developed with
access points every 250 feet. I can't disagree or
state facts that Byers Avenue at this location should
be or should not be a minor arterial, but I can tell
you this, GRADD, which is the transportation planning
agency for this community, has classified that roadway
as a minor arterial. They base that upon a good
study, I think, and projected traffic rounds. Sure,
Byers Avenue runs parallel with the bypass at this
location and very close, but as you get further away
and closer to Frederica or as you go to Frederica you
get away, further away from the bypass. The bypass
was constructed to move traffic. This roadway was
constructed or originally conceived to move traffic,
but we've had development occur. In fact, the roadway
wouldn't be there today if it were not for two
developments. That would be The Heartlands and
Friendship Drive. They met the 1,000 foot spacing
standards. I agree, 1,000 foot spacing standard is a
standard that's generally not met here. Because this
is a new roadway the standard applies. I would
certainly hope that we would maintain a 500 foot
spacing standard. If the location of this street at
500 feet does not provide good sight distance, I don't
think there should be this second access point on
Byers Avenue.

If we were to approve this development with
that second access point, I think GRADD, the MPO,
Transportation Advisory Committee and Policy Committee
should review the spacing standards as to the standard of 1,000 feet on new and reconstructed roadways. Because if we can't apply that standard here, where are we going to apply it. I'm not saying it absolutely has to be met. We're just working with what's been given to us in trying to enforce what's been given to us.

You have a traffic engineer that disagrees with the Planning Staff's recommendation. He is the expert. I understand the applicant's needs and desires. We're not totally disagreeing with him. We're just trying to following what's been handed to us.

CHAIRMAN: Mr. Meyer, in regards to your client's development, you see the position we're put in, as far as regulations we're trying to in future growth and development. How would you state or how would you rank your entrance situation, as far as A, B and C?

MR. MEYER: In terms of what's most critical to the development?

CHAIRMAN: Correct.

MR. MEYER: I would say that certainly the Highway 54 entrance design is by far way the most critical entrance.
CHAIRMAN: Access to and from Highway 54?

MR. MEYER: Yes. Remember there directly across from that entrance is the entry and exit ramps for the bypass. The reason there's going to be three lanes there is it's going to allow one line of traffic to turn right onto Byers and go east. It will allow one lane to turn left and essentially it's going to be able to go straight across and access the bypass. That's by far way the most critical entrance. I don't believe that we're in a position to say that we can -- somebody was intimating that maybe we could do away with that and run both of those through on Byers Avenue. I think traffic --

CHAIRMAN: We're putting that in your hands right now.

MR. MEYER: The traffic engineer addressed that and said that would be a fiasco. He didn't use that word, but that was obvious the situation. To that degree this project cannot succeed without an access point on 54 there.

With regard to these other two, whether we can giggle it back to make it 500 feet from the point of Byers Avenue. Maybe we ought to take a little brief recess and confer with regard to that. We're already committed to lining up with Malcolm Bryant, working
with him. We're apparently about 450 feet or so right now.

Certainly those three points -- they're all interrelated with each other. You start taking away one or moving one or changing one, it changes the traffic flow to the others.

CHAIRMAN: So you're saying that your entrance and exit on East Parrish Avenue/54 is absolute for development. Instead of rating the other two entrances and exits, you're saying they're almost one in the same. Is that what I'm summarizing or is that incorrect?

MR. MEYER: I think that the traffic studies with everything else and the projection are that the bulk of the traffic that turns onto Byers Avenue would use that entrance at what we call Street C.

CHAIRMAN: The one that's within 425 feet.

MR. MEYER: And it's projected use for people who turn that are traveling east on Byers Avenue. I'm sorry. They're traveling east on 54 coming up this way, the people who choose to turn here rather than use this main exit, I think the projections were somewhere in the neighborhood of maybe 10 to 15 percent of it would go down and use this exit.

CHAIRMAN: So 85 percent of your traffic would
be in those two -- Street C and --

MR. MEYER: Turn here. Doesn't take account the traffic coming in from Heartland and other directions here. So not 85 percent of the whole, obviously the whole traffic pattern flow into the facility. Of those people who are traveling east on Byers Avenue, it shows the -- I'm sorry, east on 54, it shows to turn on Byers Avenue and then enters the facility. I think the projections were about 85 percent would use that first entrance and maybe 10 to 15 percent use that second entrance. Is that correct?

MR. HAYES: The first entrance is the dominant entrance, if you have both of them available there. In fact, what happens is if you don't have the access point Street C, the one we're discussing, what we're projecting is people rather than go all the way down, you realize you've got, you've actually got a skew here. You actually look more than 90 degree to see that there's even an access point there. It's up on a hill. It's nearly 1,000 feet away. It's not a natural traveling to go to. So what people would do is go on down to the main entrance instead, which really negates the purpose of the right turn lane into Byers because you'll have a drop off there that really don't want any warrant or a turn lane there.
When you see an access into the development close by, visually you're there, you're more like to use it. If it's back far, you're less likely. The numbers are pretty significant going into there.

We have checked the -- in terms of what we assumed on Byers, we looked at four developments of everything been approved there. In terms of what might happen in five, ten years, we do not have access to those projections. I can run those, but we allow for some future growth in what we looked at.

CHAIRMAN: Mr. Hayes, I think we're at the point now where I think the commission is going to be faced with making a decision because I think we've had ample testimony.

MR. HAYES: I understand. I think what the point is we calculate 175 foot left turn lane for northbound traffic at the signal at Parrish Avenue. That's before development.

You can add more to that for future growth and still have room there for left turn. You're not going to interfere with Street C if you do have future growth.

CHAIRMAN: Thank you.

Does anybody else on the commission have any questions?
MR. APPLEBY: I have question of Mr. Bryant, if you would step up.

Is there a problem with pulling that access point back to 500 feet?

MR. BRYANT: Yes. Actually we're showing this conceptually at this location. We've indicated that actually in the wording of the conditions because we knew that we needed some flexibility to try to line up with the access across the road.

MR. APPLEBY: Well, there's no access across the road at present, right?

MR. BRYANT: Yes. There's nothing there. We're going to have to work that out in order to match up with what he can build on that side as an access point.

The distance from the center line on East Parrish Avenue and Friendship Drive is somewhat less than 1,000 feet. It's close, but it's somewhat less. I can see us maybe shifting Street C slightly to the south and I think we'll end somewhere splitting the difference between. So we're approaching 500 feet, but we can't get 500 feet both north and south because we don't have 1,000 feet to work with. You know, 500 feet, 475, I don't think there's going to be any difference in how these function. I think what's more
important here is that we come up with an access point that we can tie into a second access into The Springs and get as close as we can to an optimal space between the two existing access points. If it ends up being 430, 450 or even 500 feet.

MR. APPLEBY: Staff seems to think there's over 1,000 feet back to Friendship Drive. Are you not in agreement with that?

MR. BRYANT: I don't know the exact measurement. Understanding with it slightly short of it, but close.

CHAIRMAN: Mr. Noffsinger, did you have an amended proposal?

MR. NOFFSINGER: You know, we've worked on. This now for some time. We originally met with the developers. We recommended one access point on Byers Avenue, one access point on East Parrish Avenue and they comply with the standards of the Access Management Manual as well as the policy.

We invited GRADD transportation planner to attend this meeting, and I don't think he's here tonight, so we can't rely upon him.

Our Planning Staff has had numerous discussions with the city engineering office. We've involved the county engineers office. It's like I
said earlier, if we can't meet that 1,000 foot spacing standard here, we're not going to meet it anywhere. The neighbors aren't concerned about this issue. It appears that at this point the only concerns are being generated by the Planning Staff.

We recognize based upon the expert testimony by the traffic engineer that, you know, the standard may need to be changed. In fact, we may need to do away with the 1,000 foot standard all together, if we can't meet it.

In light of what's been presented here tonight, the Planning Staff would recommend or amend their motion or amend out condition, if you will, to allow the access point at Friendship Drive, as well as the second access point which is referred to as Street C, but that access point be spaced no closer than 500 feet to the center line of Parrish Avenue as well as no closer than 500 feet to Friendship Drive. I can justify that based upon the fact that that's the standard we're applying on Kentucky 54, Frederica Street, and other roadways that are carrying this type of development or this type of traffic. A 1,000 foot spacing for this commercial development we realize would be tough. That doesn't mean this property has to be used for commercial purposes, but we have a
plan. I think we have good plan. We're concerned about economic development and moving forward, then this is one way we can allow it to happen and move it forward. This is all based upon the traffic impact study and my discussions with the city engineer in the office, the state transportation office.

CHAIRMAN: Mr. Noffsinger, what about the connection of the --

MR. NOFFSINGER: I think for the benefit of that neighborhood, we should consider a pedestrian walkway, bikeway, if you will, from the Heartlands development to this development. I think you have situations where you want to go back and forth. That allows for the pedestrian access, convenient access.

CHAIRMAN: And eliminate the street access.

MR. NOFFSINGER: And eliminate the street access. It's really there for the convenience of that neighborhood. The developer doesn't want it. We envisioned, and to help you out a little bit here, we envisioned that that corner piece that you see adjoining the Heartlands would develop as part of the Heartlands and residential. It just so happens that this piece is going with this shopping center development. Since it's not going to be residential, then I think we look at it differently.
CHAIRMAN: Thank you, Mr. Noffsinger.

Let me bring Mr. Meyer to the podium for the last time hopefully.

Mr. Meyer, did you understand the amendments of the proposal and the conditions by the director?

MR. MEYER: I believe we did. I'd like to have just a moment or a few moments to talk with my client with regard to it because we're concerned with regard to what that total distance is and whether we can do exactly what you're talking about, meeting the 500 foot to 500 foot spacing requirement. We've been at this thing or the commission hearing since 5:30, so if it's appropriate and you all are ready for a break anyway maybe we can take a five minute recess and come back.

CHAIRMAN: Mr. Meyer, why don't you go ahead. I can summarize it very quickly. One, the condition will be to move to the first entrance and exit will be 500 foot, the second one will be 1,000 foot. We will not have the extension of the drive into the neighborhood, and have only a walkway. Why don't you take a minute, huddle with your clients. You know, it's not a major change in what we're doing. We'll bring this to a vote.

MR. MEYER: Thank you.
MR. MILLER: Mr. Chairman, question for you in what you're saying. If we're going to require a 500 foot from center line of East Parrish Avenue, what if that does not line up? What if that goes beyond the other entrance to The Springs?

MR. APPLEBY: There's not an entrance there now.

MR. MILLER: I thought that was the rear.

MR. APPLEBY: I think they would like to have one, but they don't have any access to it.

MR. MILLER: I think that's where I'm a little lost. Is Friendship Drive now a rear excel from The Springs medical facility?

MR. NOFFSINGER: Yes.

MR. MILLER: Okay. That clears it up for me.

CHAIRMAN: Are you okay now?

MR. MILLER: Yes. I understand now.

CHAIRMAN: What that will do, Mr. Miller, that would put the line up on the other side of the street.

MR. MILLER: I did have a question. I'll just throw this out.

On the original drawing that we have, I think you brought it out earlier. The main street comes in off of East Parrish Avenue, it just shows it stubbed off. The new drawing they gave us it's a cul-de-sac.
CHAIRMAN: Correct. It will be a cul-de-sac. The exit will be through a bike path/pedestrian.

MR. MILLER: I'm talking here. I'm talking on Street A, on the main street coming in. The initial drawing shows it just stopped, squared off. The second drawing that he just passed out it's showing as a cul-de-sac. So originally was that --

CHAIRMAN: Mr. Howard is going to get that one, Mr. Miller.

MR. HOWARD: Right. I think initially they didn't know exactly what was going to happen with the development. After we met with them, we told them that it should be turned into a cul-de-sac and they showed a cul-de-sac on the revised drawing.

MR. MILLER: I just wanted to be clear what that was.

CHAIRMAN: Yes, sir.

MR. ELLIOTT: State your name, please.

MR. BILL JAGOE: Bill Jagoe.

(MR. BILL JAGOE SWORN BY ATTORNEY.)

MR. BILL JAGOE: Mr. Chairman, I'm really happy to see that you're stopping that street from coming through us. I also say that we've got a Greenbelt to handle traffic, foot traffic, bicycle traffic, whatever, and would come up to and all along
the side of Byers Avenue of commercial property. I really don't want to see a sidewalk coming through between two homes there. Those two homeowners will not like that because of the access to the public through their backyard or side yard or whatever. I would oppose that.

MR. NOFFSINGER: I'm sorry, Mr. Jagoe. I stepped out. The pedestrian connection --

MR. BILL JAGOE: We already have the Greenbelt coming through there. The Greenbelt will connect all the way up through there on the side of their property, the commercial property. That's enough sidewalk access for bikers and walkers. To come in here and say, okay, we're going to run an access up through here which may wind up in a parking lot behind an office space or whatever. We don't know what that will wind up being behind nor do they I don't imagine. We'd just rather not see that happen.

MR. NOFFSINGER: Mr. Jagoe, I respect your opinion. You are the expert in terms of that development, in residential developments, and if you say it's not necessary, again, it's a convenience for that neighborhood. The Planning Staff will support what you say.

CHAIRMAN: Mr. Miller has a question.
MR. MILLER: I have a question on the berm that's it's talking about. I don't guess I understand that placement of fence. I know what it is. I don't understand why someone would prefer that.

MR. APPLEBY: It's just got to be a six foot continuous element. I guess what it boils down to what the neighborhood desires.

MR. MILLER: Do we specify one or the other as a condition?

MR. NOFFSINGER: No, sir. No, sir. We only specified a six foot high continuous element. I think this condition per the applicant's submittal includes the berm. That's not our recommendation, but certainly berms are acceptable means of buffering. If that satisfies the neighborhood, then we're certainly open to that.

MR. MILLER: How does that affect drainage to that area? Seems like you're building a pond there, if you build a berm around this entire development.

MR. NOFFSINGER: That has to take into consideration, you're correct. The city engineer's office is represented here tonight to review the development. I'm not sure that they took a berm into consideration or considered the fence. That'd be a question that we need to address to them.
CHAIRMAN: Did you have a comment?

MR. EVANS: Yes, Mr. Chairman. My name is Wayne Evans.

(MR. WAYNE EVANS SWORN BY ATTORNEY.)

MR. EVANS: Mr. Chairman, I'm a homeowner. If you look at the plot plan, my plot is Number 13 in the Heartland part area. Just to kind of address some of the questions that were just asked about the berm versus the 8 foot high plastic fence that's been proposed as an alternate.

I believe I can speak for the people along that road, at least on both sides of me and maybe a few more down, that we would prefer the berm. Specifically because the way the property as it appears, and that's another issue I'd like to address in a second, but we see it with a temporary layout, which is at best highly theoretical right now. I think we'll agree that it may not end up looking exactly like this.

With the way we see it, it looks like there's going to be an extreme amount of cut and fill to make this property work as though as it's proposed right now. Being a structural civil engineer, I'm a little familiar with cut and fill. We believe if this property is developed as is shown now, there's going
to be a significant cut in the area behind that stretch really from lot 11 --

CHAIRMAN: Mr. Evans, I believe the berms is the preferred method anyway.

MR. EVANS: Yes, sir.

CHAIRMAN: If that be the case, that's already in there.

MR. EVANS: There was a question by one of the planning members.

CHAIRMAN: He was just wondering about the pond issue and the pond issue was cleared up by virtue of the city and county engineer will look into that.

MR. EVANS: The second question that I have here is I'm really neither for or against to be honest with you the way it's being proposed simply because I don't have enough information. I sympathy with the Planning Commission because we're sitting here, we don't have a final grading plan. There could be some significant issues that come up once the final grading plan is developed. I would just like to make sure that the Planning Commission has taken that into account.

In making a decision as to whether to go or no go, especially tonight with no more information than we have and the fact that the number one problem I
believe that we've discussed tonight is the means of egress. That's highly theoretical as I'm sure you fellows know that.

I'm just proposing that there be more time to put together a final grading plan that we could actually see what in fact would be the final proposal before this decision is made. That's just a recommendation.

CHAIRMAN: Mr. Evans, this commission is not qualified to look at a grading or a drainage plan. That's something that the city and the county engineers handle for us. It must meet their specifications and recommendations. It's not something arbitrarily that this commission will look at.

MR. EVANS: Well, with that said, with the development that was put in by Mr. Jagoe that we were discussing here, was that also looked at by the engineers?

CHAIRMAN: Absolutely.

MR. EVANS: I can tell you as a homeowner, again, when I moved there I had an extremely serious drainage problem that took two years to correct. The best of planning a lot of times misses major impacts like that.
CHAIRMAN: Mr. Evans, I obviously sympathize with your situation. That's something this board is not qualified to make that call. It goes to the city and county engineer and then they make the recommendations to us. None of us are trained engineers.

MR. EVANS: Okay.

CHAIRMAN: Mr. Meyer.

MR. MEYER: Yes, sir. We believe that we can move that entry point back to a 500 foot spacing. We're prepared to go with your recommendation.

CHAIRMAN: The amended recommendation as stated by the director?

MR. MEYER: Let me make sure we understand this.

It might be advantageous if we read that back.

CHAIRMAN: Why don't I just have Mr. Noffsinger summarize that.

MR. NOFFSINGER: 500 foot spacing of Street C and Friendship. The second access point will be at Friendship Drive, in alignment with Friendship Drive on Byers Avenue. Street C shall be a minimum of 500 feet from center line of the Friendship Drive and a minimum of 500 feet from center line of East Parrish Avenue. So you have a 500 foot spacing is what it is.
Now, you will have right tapers at those two access points as per what has been discussed. I think the city engineer recommended. Both Byers Avenue access points. No pedestrian connection to the Heartlands from where we had talked about a stub street.

MR. MEYER: That's agreeable. For the commission's benefit, by the engineer's measurement that would put the center line of the street about right here.

CHAIRMAN: Now, the chair is ready for a motion.

MR. NOFFSINGER: No. I say, no. I'm not sure that they've addressed all of their issues. Maybe they have. I hope we have.

CHAIRMAN: I think we've recognized everybody. Does anybody have any further comments, or suggestions, or questions?

(NO RESPONSE)

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

MR. APPLEBY: I'm not sure how to make it.

MR. NOFFSINGER: You only have 14 conditions to choose from.

MR. APPLEBY: I would make a motion for
approval based on Planning Staff Recommendations with Conditions 1 through 5, and 7 through 9, and 11 through 14, and with the further condition that the access point between 54 and Friendship Drive will be a minimum of 500 feet from the center line of Friendship to the center line of 54. Byers Avenue entrances will be, the first entrance will be at least 500 feet from the center line of Kentucky 54 and at least 500 feet from the center line of Friendship Drive.

CHAIRMAN: We have a motion.

MR. BILL JAGOE: And the elimination of the connecting --

MR. APPLEBY: That was the other condition that I skipped, 10.

CHAIRMAN: We have a motion.

MR. EVANS: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT - WITH THE DISQUALIFICATION OF SCOTT JAGOE - RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

Related Item:

ITEM 3A

2404, 2412 East Parrish Avenue, 65.327 acres
Consider approval of preliminary development plan.
Applicant: 54 Property Management, LLC; Kathleen Nelson Revocable Trust
MR. NOFFSINGER: Mr. Chairman, this plan has been reviewed by the Planning Staff and Engineering Staff. It is a preliminary development plan. This plan is ready for approval subject to the modifications, if any, that were just approved with the rezoning. I'll have to ask Staff. Brian Howard is shaking his head.

Is that a true statement?

MR. HOWARD: I believe that's correct, yes. With the conditions that you all just put on the rezoning. When those changes are made this plan should be in order.

CHAIRMAN: Are there any questions?

(NO RESPONSE)

MR. APPLEBY: Chair ready for a motion?

CHAIRMAN: I'm ready for a motion, Mr. Appleby.

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MR. MILLER: Second.

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

(ALL BOARD MEMBERS PRESENT - WITH THE DISQUALIFICATION OF SCOTT JAGOE - RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously. Thank
COMBINED DEVELOPMENT PLAN/MAJOR SUBDIVISIONS

ITEM 4

Keeneland Trace, 114.70 acres
Consider approval of amended major subdivision
preliminary plat/final development plan.
Applicant: Thompson Homes, Inc.

MR. NOFFSINGER: Mr. Chairman, this plan has
been reviewed by the Engineering Staff and Planning
Staff. It's found to be in order and it's ready for
consideration.

CHAIRMAN: Do we have any questions?

(NO RESPONSE)

CHAIRMAN: If we have no questions, chair is
ready for a motion.

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MR. ROGERS: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

MINOR SUBDIVISION
ITEM 5

96, 102, 106, 112, 116 Boothfield Road, 49.65 acres
Consider approval of minor subdivision plat.
Applicant: Robert Wimsatt, Joel Osbourne, Chad & Stacey Ayer, Jerry Morgan

MR. NOFFSINGER: Item 5 the applicant has requested by letter that his application be postponed until the May meeting of the Planning Commission which will occur the second Thursday of May.

CHAIRMAN: We need a motion on that.

MS. DIXON: Motion to postpone.

CHAIRMAN: Motion for postponement by Ms. Dixon.

MR. MILLER: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously. This item is postponed.

Next item.

ITEM 6

8834 Cummings Road, 1.002 acres
Consider approval of minor subdivision plat.
Applicant: Douglas Dant, Jr. and Rebecca Dant

MR. NOFFSINGER: Mr. Chairman, this plan has been reviewed by the Planning Staff and Engineering Staff. The plan is found to be in order.
It does come to you as an exception to the subdivision regulations in that it creates a tract of land that does not have frontage on public right of way. It has an ingress/egress easement out to Cummings Road.

The subdivision regulations will require that this property have a minimum of 50 feet of frontage on public right of way. However, the parent tract doesn't have property on the public right of way and there is an existing residence on the property.

The applicant has agreed by notation that this property that's being created, as well as the parent tract, will not be further subdivided to create lots that wouldn't be conformance with the subject division regulations and there will be -- the development on the remaining property will be limited to one additional dwelling unit in the future.

So with that it's ready for consideration. I think it would be consistent with the exceptions this commission has made in the past for existing residences.

CHAIRMAN: Is the applicant here?

MR. DANT: Yes.

CHAIRMAN: Would you step to the podium for just a moment.
MR. ELLIOTT: State your name, please.

MR. DANT: Douglas Dant, Jr.

(MR. DOUGLAS DANT, JR. SWORN BY ATTORNEY.)

CHAIRMAN: Mr. Dant, I'm just going to go over with you. You've heard and understand the conditions being placed upon you?

MR. DANT: Yes, I agree.

CHAIRMAN: You're in agreement with it?

MR. DANT: Yes.

CHAIRMAN: That's all. I just wanted to make sure. Thank you.

With that the commission is ready for a motion.

MR. MILLER: Motion to approve.

CHAIRMAN: Motion for approvement by Mr. Miller.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 7

5048, 5062 Free Silver Road, 7.297 acres
Consider approval of minor subdivision plat.
Applicant: Kelly Bartlett
MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff and Engineering Staff. The application is in order. However, it does come to you as an exception to the approved subdivision regulations.

Mr. Brian Howard is here to describe to you what that exception is.

MR. HOWARD: Certainly. There's an existing tract they're proposing to divide that into two. Tract one, which they are creating has an existing residence on it. The other tract is coming before you tonight because it creates what would be considered a flag lot. They have provided it with a 100 feet of road frontage, a little over. I think it's 102 feet, which meets the minimum requirement based upon the zoning classification, but it does exceed the three to one depth to width requirement. It comes before you tonight to be considered for an exception to that rule.

CHAIRMAN: Thank you, Mr. Howard.

Mr. Appleby.

MR. APPLEBY: Staff doesn't have a problem with this as I understand it? I mean there's no other way to divide this property that I can see.

MR. NOFFSINGER: That is correct. There's an
existing residence on the property. It's a large tract. I don't think they're trying to circumvent the subdivision regulations. It is limited to no more development on the property. It has a 102 feet to the back lot. Really I don't think it's that much of an extension of the intent of the sub regs.

MR. APPLEBY: I make a motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MR. GILLES: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 8

2759 KY 140 East, 1.454 acres
Consider approval of minor subdivision plat.
Applicant: James and Edna Goodall

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff and Engineering Staff. It's found to be in order. It does come to you as an exception to the subdivision regulations in that it creates a rather odd-shaped lot.

What they're doing is the frontage on the property, which exist, is about 50 feet. That 50 feet
goes back to a tract that's about 38, 39 acres. What they're doing is creating a 1.454 acre tract which will have frontage, 50 feet of frontage, and then they're taking the balance of the property and consolidating it with a larger tract that has frontage on public road.

Although this does create a development tract, which is under ten acres, that is an odd-shaped lot, a flag-shaped lot. It's not creating a new situation where you have irregular frontage. The frontage is really the irregularity here. Seeing how there's not any additional lots being created that would not meet the frontage requirements, we would recommend its approval.

CHAIRMAN: Chair is ready for a motion.

MR. GILLES: Motion to approve.

CHAIRMAN: Motion for approval by Mr. Gilles.

MR. ROGERS: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

I believe the chair is ready for one final motion.

MR. NOFFSINGER: Mr. Chairman, I recommend we
go into closed session to discuss personnel issues.  
We will have to come back and adjourn this meeting.  
However, we will not take any action other than  
adjournment when we do come back out.  

MR. ELLIOTT: Mr. Chairman, Mr. Noffsinger  
came to my office on May 27th and requested my  
resignation. I feel that that's what this closed  
session is all about if you're talking about  
personnel. I'm requesting that this be heard out in  
the open. That we have it as an open meeting. Not as  
a closed session. That is a right that I have under  
the statute. So I'm asking that it be held in open,  
that the court reporter stay here and that this be  
transcribed, if that's what this is concerning.  

Is that right, Mr. Noffsinger?  

CHAIRMAN: Mr. Noffsinger.  

MR. NOFFSINGER: Mr. Chairman, we do have two  
personnel issues to deal with. One of which will  
involves Mr. Elliott. Second of which is another  
employee.  

MR. ELLIOTT: As far as I'm concerned, I'm  
requesting an open meeting.  

CHAIRMAN: Mr. Noffsinger.  

MR. NOFFSINGER: I have no problem with that,  
if that's what Mr. Elliott is requesting.
CHAIRMAN: What about the other issue?

MR. NOFFSINGER: The other issue, again, is a personnel issue that I need to share with you, but it does not involve Mr. Elliott.

CHAIRMAN: Would it be appropriate to do one in closed session and we'll do the other one in open session?

MR. NOFFSINGER: We can do that, yes.

CHAIRMAN: Let's recess and do the closed session first.

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

CHAIRMAN: We're back in session.

MR. MEYER: During the break it's come to the attention with the assistance of some of your counsel that when the conditions were originally stated it was stated as 1 through 5 of the Staff Recommendations. Actually should have been 1 through 5 except for 5 being modified to basically pick up the applicant's submittal with the 500 foot spacing. Because if you picked up the Staff Recommendation on Number 5, that was the point where there wouldn't be two access points. We just wanted to clarify that into the record.

CHAIRMAN: Do we need to amend and take another vote?
MR. SILVERT: You need to do a motion to amend. If you want to amend the motion as stated.

MR. MEYER: Which may be more in the nature of a clarification than anything else because it came back and addressed the 500 foot spacing.

CHAIRMAN: Mr. Appleby made the motion.

MR. JAGOE: Mr. Chairman, is this relating to the item that I --

CHAIRMAN: Yes.

MR. JAGOE: Then I need to excuse myself again.

CHAIRMAN: This is a little housekeeping.

MR. NOFFSINGER: Planning Commission has already acted on this rezoning. The point of clarification, I think it would be a point of clarification that you're going to be allowed to have two access points on Byers Avenue at the spacing standard that they stated. That was I believe the intent and what Mr. Appleby believed was his motion.

CHAIRMAN: And he did read into the record the exact footage of it.

MR. MEYER: Exactly.

CHAIRMAN: I think without opening up another amendment, amend the amendment, I think we're all in agreement.
MR. APPLEBY: I don't understand what needed to be clarified. Explain to me what your thoughts were there.

MR. MEYER: I guess as stated by the applicant's submittal where the developer shall construct access located at the intersection of Street C and East Byers Avenue as shown conceptually hereon. Whereas, I think when you stated, the motion included Items 1 through 5 of the Staff's Recommendations. The Staff's Recommendation there was no access point at that point, at that juncture. You did obviously when you came back and referred to the spacing requirements, there wouldn't be any spacing requirements if there weren't two access points.

CHAIRMAN: I think he went into great detail about the center line of 500 foot and then another. I think it's well documented.

MR. MEYER: I do too. There was concern expressed by your counsel.

MS. STONE: Are we talking about condition 9? That's no access to Street A. It's not the access plan. There's no access on Street A from East Parrish. Between East Parrish and Street C, that still should be --

MR. APPLEBY: All that was --
MS. STONE: It's not relative to an access point. It's access to the property from Street A.

MR. APPLEBY: Establishing how far back the first access would be on Street A. Wasn't that what it was about?

MS. STONE: Yes.

MR. MEYER: That reference as the Staff made it couldn't be to Street A to begin with I don't believe. It doesn't make sense.

MS. STONE: I think what we were trying to accomplish with that condition is that internal to the development that there be no access point between where Street C was shown on the preliminary development plan and East Byers Avenue. So when you come in Street A you cannot access to that lot until you get to Street C. Whether or not there's an access point to Street C, there's Street C across that roadway as well. So it's saying for that distance back until you get to Street C, you can't access those lots off of Street A. That's my understanding.

MR. APPLEBY: That's the way I read it.

MR. SILVERT: I think that there was just some confusion there given the way that they had written their modification really didn't have anything to do with our recommendations. I think there was some
confusion there and they wanted some clarification.

CHAIRMAN: Mr. Meyer, are you satisfied?

MR. MEYER: Yes. I think the record will be clear.

CHAIRMAN: The record is clear as stated.

MR. MEYER: Yes.

MR. APPLEBY: It was the intention of the board to allow the additional access point of 500 foot spacing.

MR. MEYER: Right.

CHAIRMAN: The motion and second as stated stands. Thank you.

MR. MEYER: Thank you.

CHAIRMAN: Mr. Noffsinger.

MR. NOFFSINGER: Mr. Chairman, this part of the meeting is to discuss the employment as an independent contractor of Mr. Stewart Elliot with the Planning Commission. Mr. Elliott has been with the Planning Commission for a number of years. He's considered to be an independent contractor.

The personnel policies of the Planning Commission indicate that the executive director of the Planning Commission has the sole authority in terms of the hiring and firing of employees with the Planning Commission. The Planning Commission handles the
hiring and firing of the executive director.

On March 24th I went to Mr. Elliott's office and discussed with Mr. Elliott or gave him an opportunity to provide his resignation to me from the Planning Commission. For about a year and a half now, it will be two years in September, the Planning Commission has employed two independent contractors as attorneys. The case load or the workload for these two attorneys was based upon the split of say 75, 80 percent to 20 percent.

Since that time the case load has actually split in a different manner. The case load/workload has actually gone to about a 65 percent for the new attorney, Mr. Madison Silvert, and about 35 percent to Mr. Elliott.

When Madison Silvert brought on to this Commission, and let me just state that we have no contract with Mr. Elliott nor do we have a contract with Mr. Silvert. When Mr. Silvert was brought on to the Planning Commission it was understood that at some point in time he was being brought on as a trainee, if you will, and understand the operations of the Planning Commission. At some time we would be looking at only one attorney and not having two. He was not brought on because of a workload increase. He was
brought on, on the basis of having to have someone in
a position for this commission and for the Staff to
rely upon at all times and in the future. At some
point in time, Mr. Elliott's employment with the
Planning Commission would no longer exist.

Mr. Elliott has served this commission well
over the years. However, I find it unnecessary to
retain two attorneys for the Planning Commission.

The last few items that I've asked Mr. Elliott
to handle for me he has simply not handled those items
in a satisfactory manner.

Most of our cases that involve district court
I have Mr. Jim Mischel representing this office on.
Mr. Jim Mischel is here to testify that that is true.

In most cases that we have before the circuit
court, those cases are generally handled by an outside
attorney, as well as items, one particular case we
have in federal court.

My asking Mr. Elliott for his resignation
comes because of my feelings that Mr. Elliott has not
satisfied what I expect of him. That Madison Silvert
in this position is actually doing the bulk of the
workload.

I do have examples of the work that's been
done that I can cite which includes training of board
of adjustment members and planning commission members
as well. That's my point.

I have to make the decisions in terms of
budgeting and recommending to this board how we
proceed in the future and what I see our needs are. I
can no longer justify having two attorneys serve on
this board. Ultimately, I would prefer to this
commission in terms of what your feelings are or if
you have a feeling that I'm not proceeding in the
right direction. Certainly Mr. Elliott is here that
would like to speak, and I certainly respect him and
appreciate what he's done.

With that I'll turn it over to Mr. Elliott and
the board.

MR. ELLIOTT: First I'd like to say that I
don't feel like that Gary has any respect for me
whatsoever. He came to my office on March 27th and
asked for my resignation. I have to point out that I
work for the board. I do not work for Mr. Noffsinger.
The board appointed me some 30 years ago as their
attorney and I represent the board.

There's been several occasions when the
Planning Staff has made recommendations to this board
and the board has gone against their recommendation.
When I go to court I represent the Board. I don't
represent the Planning Staff.

Gary does not have the right to fire or hire me. I was appointed by the board and the board has the authority to terminate that employment. He does not have that right. I would be a little upset if I were on the board if my director would go to one of my employees that has been there for 30 some years and ask for their resignation without the board's approval. That's what he did.

Now, he does not have the right to hire and fire me like he says. I'm an attorney for this board, for the board of adjustments, and that's my function.

Now, as far as my duties, I guess I have to work on my math some. I didn't know I was just doing 35 percent of the work. Because if I'm just doing 35 percent of the work, it's because I'm not requested to do the other 65 percent of it. I think that they have taken Mr. Silvert and given him more work in order to make my credibility not as high.

As far as those instances in district court, I can tell you the last one that prompted Mr. Noffsinger coming to my office and asking for my resignation had to do with a traffic accident that he was involved in with a vehicle that is owned by the Planning Staff.

Now, he was scheduled to be in court and he
was subpoenaed to be in court. He called me and he said, put this on your calendar to be court. I put it down. I went to court on that date. It had to do with a traffic accident. They dismissed it for failure to have insurance because the lady came to court with an insurance card that she had insurance. I related that information to Mr. Noffsinger. It had been to the insurance company. I haven't heard another word from it. That's an example of where he said there's lack of communication. I felt that as the director of the Planning Commission it's not his responsibility to go to district court to try to collect on a traffic accident that was not his fault. That the insurance company had already paid. That he was getting a significant salary to be the Director of the P Commission and he didn't need to spend his time in district court. That's one of the instance where he says that I failed in my responsibility.

I would challenge him on any of the other cases in circuit court to show me where I did not do my job. I did not represent the board and we didn't have a successful outcome of it.

Now, occasionally there is attorneys on the other side like J.D. Meyer was on one for the board of adjustment. There are occasions when the other
attorney takes a leave. They should take a leave
because it's their client and their case is involved.

I challenge him to challenge any work I've
done over the past 30 years. For him to be more
specific on what cases he's talking about and where
Madison is doing 65 percent of the work and I'm doing
35 percent of the work.

When Madison came on, I was told by Mr.
Noffsinger, said, you're to guide him, and you're to
direct him, and you're not to give him any
responsibility. You're not to let him take the lead.
You're still our main attorney. He's just going to be
there in case that you cannot be there and to train
him. I expected this day was coming, but I didn't
like the way that it came about. I didn't like the
manner in which it was handled. I still don't like
the way it was handled.

I'm asking the board for consideration of the
time I've spent over here. I realize that my days are
numbered and I don't have long and I realize that, but
to terminate my employment at this stage is not going
to fit in with the plans that I have and it doesn't
suit with my planning.

I realize when Madison was appointed that he
was going to be coming in and filling my shoes. I
knew it was just a matter of time, but I'm saying the
time is not right at this moment. I do not think that
Madison is ready to assume the role as your attorney,
but there will be a day when he will be. He's an
extremely good lawyer.

If you have any questions, I'll be glad to
answer them.

CHAIRMAN: There's two situations that the
board is faced with. One, actually how does it come,
how is your position actually stated, Mr. Elliott?
This is something the board I really don't think has
to decide, but it needs to be determined if whether A)
you are an employee of the board, but when I became
chairman I was under the understanding that the board
hired the director. Then after the board hired the
director, the director was in charge of hiring of the
other employees. That was my understanding as
chairman as I took over because I specifically wanted
to know my responsibilities and the responsibility of
the board because I was involved in the hiring of the
director. That's an issue. I'm not even questioning
your position at all. I'm questioning the position,
the board's position and the director. I specifically
asked that question when I became chairman because I
was very concerned about that because I didn't feel
like as chairman or as board members we needed to be involved in the hiring of the employees.

MR. ELLIOTT: When I was appointed I came before the board and it took a majority vote of the board to hire me as their attorney. If you'll look back most recently when Madison Silvert was appointed on September 5th, he came before the board. The board had to approve his employment. It wasn't up to Gary Noffsinger to hire him. This board, if you hire someone, I think you should also discharge them or fire them. So I represent the Board. I don't represent Mr. Noffsinger. When Mr. Noffsinger comes to me and says you're fired, I don't pay any attention to that because he doesn't have that authority. He says he does, but I disagree with that. That's a point we have to litigate. I'm the board attorney.

CHAIRMAN: That's a very important point. It was very important to me when I became chairman because I did not feel like the board nor me as chairman should be in this situation because the day-to-day operation of the Planning Commission we're removed from. We're just not aware of the day-to-day. That's something that I thought the director was charged with.

With that I'll turn to Mr. Noffsinger and ask:
Do you have the specifics?

MR. NOFFSINGER: Yes. Mr. Chairman, the personnel policies of the Planning Commission state this: "Filling of vacant employment positions: The OMPC Director shall be the chief executive officer of the Staff of the Owensboro Metropolitan Planning Commission and charged with the responsibility for its day-to-day operation. The OMPC director shall be employed by and serve the pleasure of the OMPC. Other employee positions authorized by the Owensboro Metropolitan Planning Commission shall be filled or vacated by the OMPC Director." It's very clear.

Under employment classifications we have several of them. Regular full-time, probationary, temporary. We have independent contractors, which I believe Mr. Elliott is. It summarizes that they are an independent contractor fall under the employment categories. I believe that I have that authority.

Now, on March 24th I went to Mr. Elliott's office, expressed my displeasure and asked Mr. Elliott for his resignation. Mr. Elliott denied to give that to me. Now, that's why we are here.

He brought up the case with the auto accident. I did my part in gathering the information for the accident. Turned it over to authorities. Got the
police report, which I think anyone would do. The state subpoenaed me to be a witness on behalf of them. I have a right to appear in court.

I talked to Mr. Elliott and asked Mr. Elliott if he should go with me, because I'm not that experienced in court. I think he should be there with me. I am prepared to go to court. About 11:45 I get a message, and I'm to appear in court at 1:00 or 1:15, that I don't have to go to court, and it's from Stewart Elliott. That the case has already been settled. They cut a deal. I wasn't involved in that deal. I had very important information that could have been provided in the case. Because the individual that hit the vehicle did not have insurance. The individual presented that they had insurance to law enforcement, but in my research and contacting the insurance company they didn't.

When I went to Stewart's office after 1:00, I said, why didn't I have to go to court? He said, there's been a deal cut and the charges were reduced. I said, what about restitution? I said, our insurance pay, but there's a deductible too. I said, how can you just cut a deal? Well, that's the way the system works. That didn't set well with me. I'm looking for restitution. He said, I'll check into that. The
The accident happened in November. The court date was in January. In March I still haven't heard anything.

So I called Mr. Elliott's office and the secretary said, well, that case is on his desk. I'll have him call you. It was a week later or so I didn't hear anything. Not a thing. Then I received in the mail a packet of papers that I submitted to Mr. Elliott to take the court sent back to me saying that the individual was insured. I should file the necessary paperwork with their insurance.

Mr. Elliott is right. I shouldn't have to do all of that. That's why I have him to do it for me, but he didn't do it. Had I had the opportunity to appear in court, which I had already shared with Mr. Elliott that this individual did not have insurance, we wouldn't have gotten back to square one because here I am calling the same insurance company that I had called before and getting the same answer, that the individual didn't have insurance. That's just one example.

Another example is Mr. Elliott is to appear at monthly meetings. When he doesn't appear, I do not get a call. Not one call. I don't know. I don't know what to report to this board, whether Mr. Elliott is going to be here or not.
In terms of case load, let me just go over a few things. We had litigation with the Board of Adjustment on Recovery Kentucky project that the commission is familiar with. The applicant has carried about 99 percent of that case.

I got another case that involves the Board of Adjustment that to my knowledge in terms of the litigation 100 percent of the work done on, Watson versus OMBA, was by Madison Silvert.

The review of the alternate zoning ordinance, which was just approved by the Planning Commission, was handled by Madison Silvert.

The Boulware Center Mission was handled 50 percent by counsel on the opposing side and then also by Madison Silvert.

The building lease we're under with Chase was handled 100 percent by Madison Silvert.

We have another case that's ongoing that comes before this Commission next month that was postponed tonight that my Staff worked with Mr. Elliott on to try to bring to some satisfaction for several months with no success. It was turned over to Madison Silvert and Madison is now bringing that case to closure.

This is about the wise use of the public's
money and the representation that this board gets as
well as the Planning office. What I see as necessary
adjustments that need to be made.

Mr. Elliott states that he doesn't answer to
me. He answers to this board. However he just stated
to you earlier that "when Madison Silver was brought
on Mr. Noffsinger layed out how it was going to be."
That should give you some indication that the Planning
Director is in charge of the day-to-day operations and
is responsible for the hiring and termination of all
employees, including independent contractors.

I simply asked for the resignation. Tonight
I'm prepared to terminate Mr. Elliott's business
relationship with this Commission with this
commission effective May 1, 2007. That is my what I
feel is in the best interest of this board and our
customers.

Now, I'm certainly open to any thoughts the
Planning Commission has or any ideas in terms of how
I'm proceeding with this matter. I've got a
responsibility to bring this at some point to a
closure. I think that's where we are.

MR. ELLIOTT: As far as the district court,
I'm not going to dwelling on that because I don't
think it's that significant.
In district court if you are charged with no insurance and you produce an insurance card saying I had insurance, they dismiss it. That's what happened in that case. Gary was subpoena to be there at 1:30. I went over there earlier that morning and talked to the prosecutor. I talked to him about the case. I called Gary to save him the inconvenience of going to court and having it continued one more time and to dispose of the matter. That afternoon Gary was in my office.

About these other matters, I can take them down case by case and tell you what I have done, what I haven't done.

The case that he's talking about Madison handled 100 percent of it, I was in an automobile accident. I was in the hospital for a week. All this was done during my absence when I wasn't available in the office. It was disposed of in a good manner. I've heard that tonight.

I can't sit here all night long and defend all my action. I know I've served this board and I answer to this board. I do not answer to Mr. Noffsinger. He does not have the right to fire me. He didn't have the right to hire me. He doesn't have the right to fire me. I ask the board not to consider his
recommendation. I realize that my time on this board is going to come to an end. I'm not ready for it to. I don't want to go out as being fired. I don't want to resign. I'm asking the board for some resolution. I offered to Mr. Noffsinger the fact is, I said, I realize that Madison is going to have to have more responsibilities. I'd like to stay on as a consultant and consult with him. I'll the reduction in salary. I won't take the reduction in salary for the remainder of this year which goes from June to June, but I'll take the reduction salary next year and stay on as a consultant and it will be over with. No, that wasn't good enough. He came back with some other proposal similar to that which I rejected. I still am maintaining the board hired me and the board has to terminate me or do something with my job. That it's not up to him. I think you've got serious problems if you allow your director to do the hiring and firing of your attorney.

CHAIRMAN: As chairman, Mr. Elliott, I've dealt with you and known you a good portion of the time that you've been in town. At no time have I ever heard Mr. Noffsinger in my presence speak of you in a disrespectful manner.

As chairman, based on the information that I
was given when I became chairman, I'm under the understanding and after Mr. Noffsinger read that and those the exact words that I read when I accepted the chairmanship, this board, as I foresee it, cannot be involved in the hiring and firing or the day-to-day operation. I think that is the job of director.

At this point in time I think that is a situation for Mr. Noffsinger to handle. Until I am told differently, I think as chairman I think the board does not have a part in this decision. At this point in time, Ms. Dixon or Mr. Appleby --

MR. APPLEBY: Well, I'm not sure that I agree whether the board has or doesn't have a say in this or not. I would like to give this a little thought. I would -- if you're asking for a motion, I'm going to make a motion we don't take any action and we don't authorize Gary to take any action. Now, whether or not that's within our purview or not, I don't know, but that's what my motion is going to be.

CHAIRMAN: I'm not asking for a motion. I'm asking for comment.

MR. APPLEBY: I'm making one.

CHAIRMAN: I say it's a comment because I don't think the board needs to get into the day-to-day hiring and firing. That's as I understood it. That's
MR. APPLEBY: What I'm asking you then why did we take action on Madison?

CHAIRMAN: As far as Madison being presented to the board?

MR. APPLEBY: Authorizing Gary to hire Madison. This board did take some action.

MR. NOFFSINGER: The board had to take some action on that because it was an action where we were creating another position that was not in the budget, would be my response to that. That we were bringing on a second counsel. We're talking about a difference there creating a new position that is a highly visible position that folks may question, why are you hiring an additional attorney? It was brought to this board to approve that in terms of the budget and to create that position.

MR. APPLEBY: That may have been the issue there, but at this point I'm not sure I've heard all I want to hear about this yet. I think it would be my suggestion to the boards and to you that you postpone any decision on this until we've discussed this further. I want to give this some more thought.

CHAIRMAN: Mr. Appleby, you think this is a situation where Mr. Noffsinger and Mr. Elliott need to
I think all the board members probably could use a little more time. That's my opinion.

I agree.

Ms. Dixon.

I do.

Okay. Based on my interpretation of this not being a board issue, then instead of the board taking any action at this point in time, whether it be a board decision or not be a board decision, I think we just ask Mr. Noffsinger to work with or discuss with Mr. Elliott any future plans. That way the board is not taking any action on this situation.

I agree with that, with the way that you stated that. I guess maybe what I heard is Mr. Elliott would like to find some middle ground. Did I hear that correctly, Mr. Elliott?

Yes.

Mr. Elliott, you see my position is as chairman, as what Gary stated. Those are specific questions that I asked when I became chairman because I did not feel like the board should ever be in this situation with any employee.
MR. ELLIOTT: I disagree with him saying I'm
an independent contractor. I'm the attorney for the
board. That's what I was hired as. That's what I am.
Now, independent contractor if we had a case where I
had a conflict of interest, it gives him authority to
go out and hire an attorney to represent him as to
that one single case, but not as the board's attorney.
That's been my classification for 30 years. I'm the
board's attorney. That's the way I perceive it. I'm
the board of adjustment's attorney. I'm not Gary
Noffsinger's attorney. I'm not this Planning Staff's
attorney. I'm the board's attorney. The board does
the hiring and the board does the firing.

You can go back to the minutes when I was
hired. I remember them because I came before the
board. It's that been several, several years ago.
I'm sure that we still have the minutes of those
minutes. I can look at those and see, show you where
I was hired by the board.

CHAIRMAN: At this junction the board will not
take any action because I feel that it's an issue that
possibly you and Mr. Noffsinger can work out. If
board, if that's agreeable, then we'll just sort of
step back from it.

Mr. Jagoe, do you see that as Noffsinger and
maybe Mr. Elliott working this situation out and the
board removing ourselves from it?

MR. APPLEBY: I think we need to be clear in
our minds if the board is doing the hiring and firing
or if Gary is doing the hiring and firing and I'm not
sure.

MR. MILLER: That's my concern.

MR. APPLEBY: If that's the case, then the
board will make the decision.

MR. MILLER: That is my concern also. If it
comes to it, maybe we need independent counsel brought
in to go through and read the statutes and make a
determination.

If Gary does have sole responsibility and he
follows through with this and we have a problem with
that, then our issue is with him. We need to be
clear. We need to be clear.

CHAIRMAN: Right. Exactly.

MR. JAGOE: Not saying one opinion is correct
and one opinion is incorrect. We may need to clarify,
change, amend the bylaws as a board.

CHAIRMAN: To be clearer on the issue of who
is an employee of the board and who is an employee of
the staff?

MR. JAGOE: Those could be certainly parts of
CHAIRMAN: The way it's read, you know, the board is responsible for it. If that's not clear, then I agree with everybody's consensus. That's what I'm trying to get. Not take a motion on it. Just leave it with Mr. Noffsinger and leave it with them to come back with a definitive answer on whose responsibility. If it's our responsibility, then we'll take it up and then we'll move forward.

MR. JAGOE: I think that's what Mr. Appleby was saying.

MR. APPLEBY: Yes.

CHAIRMAN: Ms. Dixon.

MS. DIXON: When I served on the committee that hired Gary, I was under the assumption that that was our duty. That was our pain person to hire was the director of the Planning Commission. I guess I'm like you, Drew. I had assumed all along that --

CHAIRMAN: We were very specific.

MS. DIXON: That was an important role because that person would be responsible for the day-to-day management and that we would not be micromanaging. I'm going to go with the consensus and let Gary and Stewart work it out.
MR. APPLEBY: Or at least let's have a consensus for the board members that either Gary is in charge or it's our responsibility.

MR. GILLES: That needs to be a cleared first.

MR. APPLEBY: Let's get that cleared before any decision is made.

CHAIRMAN: You see where Ms. Dixon and I were coming from on this. We were very specific on that.

MS. DIXON: Yes.

CHAIRMAN: That's what got us to serve. Let's just leave it like that then. No action from the board. We'll leave it with Mr. Noffsinger and Mr. Elliott.

Mr. Elliott, you understand that the board is taking no action because we're not sure of our actual role in the action. It's not that we're not taking action. We're not sure if it's our role to take action.

MR. ELLIOTT: Okay.

CHAIRMAN: It's my opinion, and let me get this consensus with the board. If Mr. Elliott and Mr. Noffsinger work out a situation, do we expect Mr. Noffsinger to bring that situation back to the board?
MR. JAGOE: I think you have two issues. I think you --

CHAIRMAN: Because at that point in time we don't know whether it's the board's decision or --

MR. JAGOE: Right. I think you have one issue that's an employment/subcontract issue, and I think you have a separate issue of who has the authority.

CHAIRMAN: Let me propose this to the board. If Mr. Noffsinger and Mr. Elliott come to a joint conclusion, Mr. Elliott agrees, Mr. Noffsinger agrees, then I think at that point in time the board should back away and let Mr. Elliott and Mr. Noffsinger handle that. Then as a separate issue we could get clarification on where the board stands. Because we would just -- then if we took that on and we didn't, you know -- does everybody agree with that situation? If Mr. Noffsinger and Mr. Elliott come to a joint conclusion, then that is the conclusion. Then the board will separately seek advice or counsel on exactly where we stand on a future issue.

MR. MILLER: Is an agreement possible?

CHAIRMAN: That's between them.

MR. NOFFSINGER: I would like to speak to that because when I asked Mr. Elliott for his resignation he indicated that he would like to serve out the
remainder of this fiscal year and the next fiscal
year. I talked with Mr. Elliott about a compromise in
terms of a phase out over that period of time. That
was shortly after March 24th. I waited until the day
before, I think it was yesterday, and had not -- he
told me he would get back with me. I had not heard
from him. When I called him yesterday --

MR. ELLIOTT: You were out of town, Gary, for
over ten day.

CHAIRMAN: Wait just a minute, Mr. Elliott.

Let him finish.

MR. NOFFSINGER: Stewart, you have access to
me 24/7. Cell phone, home phone, office phone, and I
have voice mail. You did not make an attempt to my
knowledge to get back with me. When I called you
yesterday morning to ask you what your thoughts were
on what we talked about, you said, "No, I'm not going
to do it. If the board wants my resignation, let them
take it from me." That's exactly what you said. So
I'm not sure that at this point, as far as it's gone,
that we can do that. I certainly will work with this
board.

MR. JAGOE: I would hope you would work with
this board, Mr. Noffsinger, because we are clear on,
and I did serve on the selection committee as well and
do understand that. I think that the only, I think that there are some board members that are sitting here feel that you have complete autonomy to hire and fire employees and subcontractors. I think there are others sitting here on the board that are unsure about that with relation to Mr. Elliott. I think that the board would like to have clarity on that. I'm not sitting here and I don't think anybody sitting here is saying one opinion is correct and one opinion is incorrect. Let's just get clarity on that.

I think the second issue is about the employment which may or may not come to a compromise. We're not saying that it will come to a compromise or will not come to a compromise sitting here at this table tonight.

Have I'm assuming, I mean that's the feeling that I'm getting from some of the others. Two commissioners have said that they feel that when they came on that that's the way they understood it, but I'm hearing from some other commissioners that aren't quite sure about that. I think we're just asking that we get clarity on that.

Mr. Elliott, represents us and he's telling us it's one way. Mr. Noffsinger, who is employed by this board, is telling us it is a different way.
CHAIRMAN: Mr. Jagoe, I think if Mr. Elliott and Mr. Noffsinger can come to a workable conclusion and Mr. Elliott said he was willing, and I'm not going to ask him at this time, I think it will be unfair, but I think if he and Mr. Noffsinger would sit down a few days in the future together and work this out and come to that conclusion, I think the board can work on this other situation in the future and not muddle the two issues.

MR. APPLEBY: That may or may not work. What Scott is saying is right. We need to know where we are on this.

MR. JAGOE: Exactly, or do we need to take action to --

CHAIRMAN: I'm open either way.

MR. APPLEBY: Until we've got this cleared up, I don't think anything should be done.

MR. JAGOE: You believe that the two items earlier that you pointed out should be done?

MR. APPLEBY: Right. With regards to this point.

CHAIRMAN: Do we not have Mr. Elliott and Mr. Noffsinger to hold a conversation to see if they can consider what Mr. Elliott said he wanted to talk about a compromise or do we do this other issue first as far
MR. JAGOE: I would think that you would ask both of them to do that?

CHAIRMAN: To get together?

MR. JAGOE: Certainly in their minds both of them feel that you have the authority to do that.

CHAIRMAN: Then the board will take that authority and ask both of them.

Mr. Elliott, are you agreeable to that?

MR. ELLIOTT: Yes.

CHAIRMAN: Because that was actually your proposal. You said you had of compromise that you would like to talk to Mr. Noffsinger about.

MR. ELLIOTT: I've talked to him and he --

CHAIRMAN: Wait a minute. Let's don't get any personalities into it.

MR. ELLIOTT: I would open to it, yes.

CHAIRMAN: Maybe a time in the future, maybe a few days later down the road.

MR. ELLIOTT: Right.

CHAIRMAN: Mr. Noffsinger, would you be agreeable to meet with Mr. Elliott to hear his compromise out and maybe you all work this issue out and the board can --

MR. NOFFSINGER: Yes, sir.
CHAIRMAN: With that does the board have any other suggestions or ideas?

MR. EVANS: In the meantime, do we need to have an outside counsel to tell us what's what on this? In the future we need to know.

CHAIRMAN: Exactly.

MR. EVANS: If this comes up again, we need to know.

CHAIRMAN: Exactly.

MR. GILLES: We may need to know this sooner than later.

MR. APPLEBY: Madison is on the payroll. Let's get his opinion.

CHAIRMAN: I think at this time I don't think --

MR. APPLEBY: Get an independent outside counsel.

MR. EVANS: That would clear the situation up. Either it's the board's decision or it's Gary's. At that point we make a decision.

MR. ROGERS: And hoping they work something out.

MR. ELLIOTT: I don't know if they still have the minutes when I was appointed or not.

CHAIRMAN: I think at a date we will discuss
on how to handle that issue. I think possibly an
avenue, my thought would be maybe using the city
attorney who is actually removed from this situation.

Does anybody have any other thoughts? Would
you rather use outside independent counsel to research
it? But I think the city counsel would be more in
line with the hiring of the city government.

MR. JAGOE: I would think that going forward
that if this board wanted to take care of any
employment issues that it has it could and then make
policy or bylaws of how it would operate in the future
that would make it very clear to everybody in the
future.

CHAIRMAN: I think that would be good.

MR. JAGOE: I think that you could probably do
that, I don't think you necessarily need an attorney
to give an opinion on what we're going to do. I think
we need to be able to go to a point forward here and
make sure that we do what we would need to do. The
board could easily relieve Mr. Elliott of his duties
as he thinks, as he feels the board can do. Mr.
Noffsinger could hire him back under some contractual
agreement.

CHAIRMAN: As a subcontractor.

MR. JAGOE: As a subcontractor. We could, as
the board take action to do, give Mr. Noffsinger that
authority in the future and I think that that may
clear it up. I don't know that without going through
the bylaws and reading the policy and so forth, I
can't answer that immediately, but I can't imagine why
we can't use one of the two attorneys that we have on
staff now that we're paying. Maybe I'm wrong. I
don't know that we necessarily end up at the end of
the day here with a grievance.

CHAIRMAN: I think at this point if Mr. Noffsinger and Mr. Elliott can come to an agreeable
conclusion between the two of them and then this other
issue will either do it by contractual agreement or
we'll get an interpretation of the statute of what we
have.

MR. JAGOE: But we do have another attorney
that we have in the same situation possibly.

CHAIRMAN: Correct. Exactly. Yes.

If there are no further comments or
suggestions, the chairman is ready for a motion.

MS. DIXON: Move to adjourn.

CHAIRMAN: Motion for adjournment by Ms. Dixon.

MR. APPLEBY: Second.

CHAIRMAN: Second by Mr. Appleby. All in
favor 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 117 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 1st day of May, 2007.

LYNNETTE KOLLER FUCHS
OHIO VALLEY REPORTING SERVICES
202 WEST THIRD STREET, SUITE 12
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COMMISSION EXPIRES: DECEMBER 19, 2010
COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY