

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 APRIL 12, 2007

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

8 MEMBERS PRESENT: Drew Kirkland, Chairman
Gary Noffsinger
9 Judy Dixon
Dave Appleby
10 Scott Jagoe
Tim Miller
11 Jimmy Gilles
Irvin Rogers
12 Keith Evans
Wally Taylor
13 Stewart Elliott, Attorney
Madison Silvert, Attorney
14

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

20 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

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

24 (NO RESPONSE)

25 CHAIRMAN: If not the chair is ready for a

1 motion.

2 MR. JAGOE: Move to approve.

3 CHAIRMAN: Motion for approval by Mr. Jagoe.

4 MS. DIXON: Second.

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

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously.

9 Next item.

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11 ZONING CHANGE

12 ITEM 2

13 1601 J.R. Miller Boulevard, 1620 Guenther Alley,
1.242 acres
14 Consider zoning change: From I-1 Light Industrial to
B-5 Business/Industrial
15 Applicant: Frank Carrico

16 MR. ELLIOTT: State your name, please.

17 MR. HOWARD: Brian Howard.

18 (MR. BRIAN HOWARD SWORN BY ATTORNEY.)

19 PLANNING STAFF RECOMMENDATIONS

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

25 CONDITIONS:

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

4 FINDINGS OF FACT

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

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

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

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

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

20 CHAIRMAN: Anybody here representing the
21 applicant?

22 (NO RESPONSE)

23 CHAIRMAN: Does anybody have any questions or
24 comments?

25 (NO RESPONSE)

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

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

6 MR. JAGOE: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 Next item, please.

13 ITEM 3

14 2404, 2412 East Parrish Avenue, 65.327 acres
15 Consider zoning change: From A-U Urban Agriculture
16 and R-1A Single-Family Residential to B-4 General
17 Business

18 Applicant: 54 Property Management, LLC; Kathleen
19 Nelson Revocable Trust

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

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

24 PLANNING STAFF RECOMMENDATIONS

25 With a single access point to East Byers
Avenue and construction of necessary roadway
improvements, the Staff recommends approval because

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

5 CONDITIONS:

6 1. The existing center turn lane on East
7 Parrish Avenue shall be striped for 450' of turn lane
8 storage with a 180' taper for westbound traffic
9 approaching the new access point on East Parrish
10 Avenue (access #1);

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

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

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

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

23 6. Access to East Byers Avenue shall be
24 limited to a single access point in alignment with
25 Friendship Drive;

1 7. A right turn decel and storage lane should
2 be constructed at the access point in alignment with
3 Friendship Drive on East Byers Avenue;

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

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

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

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

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

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

25 14. Submittal and approval of a preliminary

1 subdivision plat showing required roadway, sanitary
2 sewer and water line improvements prior to any
3 construction activities.

4 FINDINGS OF FACT:

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

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

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

18 4. The proposal also meets criteria for a new
19 location of General Business zoning in that it is over
20 15 acres in size and is major street oriented; and,

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

1 the affected area.

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

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

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

16 "* 54 Properties will leave the existing
17 natural buffer between our two properties.

18 "* 54 Properties is going beyond the
19 requirements and will add an eight foot tall vinyl
20 fence along the southern boundary of their
21 development, which is adjacent to the Heartlands
22 Subdivision or a six foot berm where requested by
23 Heartlands.

24 "* 54 Properties has restricted the use of all
25 land within 100 feet of their southern boundary, which

1 is adjacent to the Heartlands Subdivision to
2 Professional use.

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

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

1 greater.

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

9 "As stated we are excited about the efforts of
10 54 Properties to help protect Heartland and as the
11 developer of Heartlands Subdivision, I ask you to
12 grant both access points on East Byers Avenue and
13 eliminate the Summer Walk access. This keeps all
14 traffic from traveling to the commercial area through
15 Heartland on Byers Avenue and off streets faced by
16 homes."

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

1 "* 54 Properties is planning their Byers
2 Avenue ingress/egress appropriately.

3 "*54 Properties is meeting the need of the
4 community with this commercial development.

5 "*54 Properties is planning high quality
6 entrances to their development.

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

13 "It is my understanding, as a result of the
14 Traffic Study, 54 Properties is requesting two access
15 points off of East Byers Avenue, one at Friendship
16 Drive and another between Friendship Drive and the
17 East Parrish Avenue/East Byers intersection. As the
18 developer of The Springs Health Centre, we fully
19 support the additional access point on East Byers
20 Avenue. We also believe that should the northernmost
21 access point to the development on East Byers Avenue
22 be allowed that it should line up with a potential
23 access point to The Springs Health Centre directly
24 across the street. If the additional access point is
25 not granted then the use and demand for the access

1 points closer to the residential development will be
2 far greater. The access points on this section of
3 East Byers is more restrictive than any other part of
4 this street which runs from Frederica Street to New
5 Hartford Road, through a section of Copper Creek, and
6 continues on Ragu Drive after crossing East Parrish
7 Avenue.

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

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

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

20 CHAIRMAN: Thank you, Brian.

21 Do we have anybody representing the applicant?

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

24 (MR. TOM MEYER SWORN BY ATTORNEY.)

25 MR. MEYER: Unfortunately, I can't talk as

1 quickly as Brian, but I will make it as prompt as I
2 can when conducting this presentation.

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

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

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

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

20 This property is represented by East Parrish
21 Avenue running along the bypass as it heads in a
22 northerly direction. The property, this 65 acres is
23 also bounded by East Byers Avenue here and as further
24 mentioned the property itself is boarded to the south
25 by The Heartlands Subdivision.

1 The proposal as submitted by the applicant has
2 for entranceway here on East Parrish Avenue, which we
3 sometimes refer to as the Number 1 entrance. Two
4 entrances here on East Byers Avenue and originally and
5 is what the Staff has recommended is an entrance that
6 would come on down here and go into The Heartlands and
7 tie in with I think Summer Wind is the residential
8 road that runs through that particular property.

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

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

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

23 Brian previously presented to you the Staff
24 Recommendations and whatever. The second document
25 that I have given you all this evening is a comparison

1 sheet for your alls convenience. You will see as you
2 go over this comparison sheet that the applicant's
3 proposal and the Staff Recommendations are pretty much
4 identical for many of these items as we're in
5 agreement with regard to that. The Staff has
6 recommended that this be rezoned B-4 as requested.

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

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

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

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

25 We strongly, as Bill Hayes will testify to,

1 that the access point for this third -- the third
2 access point is critical to this development project.
3 We certainly believe that it should be on that
4 particular location.

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

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

20 As you previously heard from the two letters
21 presented by Mr. Jagoe and by Malcolm Bryant, both of
22 those parties who have substantial interest in
23 adjoining properties are in agreement that there
24 should be two entrances there and not an entrance down
25 there in the Summer Wind.

1 Turning to Item Number 7 there, the developer
2 shall construct a right turn taper at each of the
3 Byers Avenue access points versus the language which
4 the Staff has recommended concerning a single decel
5 and storage lane to be constructed at that.

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

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

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

25 MR. MEYER: That will be fine.

1 CHAIRMAN: Brian, would you come back and
2 address these issues, please.

3 MR. HOWARD: Certainly.

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

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

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

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

23 It is true that the city engineer's office did
24 recommend tapers if both access points go in. We
25 recommended that with our recommendation a single

1 access point that they put in a right turn decel and
2 storage lane since it will be funneling and focusing
3 all traffic as a single access point.

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

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

10 MR. NOFFSINGER: I do.

11 CHAIRMAN: Mr. Noffsinger.

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

15 MR. HOWARD: Correct.

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

22 MR. HOWARD: Sure. The first letter was from
23 Mr. Jagoe. It basically stated that they're in
24 support of the development. They're in support to two
25 access points to Byers Avenue and their in opposition

1 to the connectivity between Heartland Subdivision and
2 through Summer Walk Court. I believe that's the crux
3 of that one.

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

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

23 MR. HOWARD: Correct.

24 MR. NOFFSINGER: If they were to meet a 500
25 foot standard, would that give Mr. Bryant the

1 opportunity to have access to his development?

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

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

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

19 MR. HOWARD: Certainly.

20 This road is classified as a minor arterial
21 roadway. There's several classifications of roadways.
22 Freeways or expressways are the most restricted on
23 access. Then you have principle arterials, minor
24 arterials, and then collective roadways. So this is a
25 minor arterial roadway.

1 New street construction for a road that's
2 classified as minor arterial in the access management
3 manual there is a 1,000 foot spacing standard.

4 However, on an existing minor arterial
5 roadway, if someone were to request an access point,
6 there would be a 500 foot spacing. The reason being
7 that as new streets are constructed, it's easier to
8 implement greater distances between access points. It
9 can be argued that the more distance between access
10 points that the less or the fewer conflicts that you
11 have, fewer locations for accidents, things like that.

12 So that's why we have historically on this
13 section of Byers Avenue implemented 1,000 foot spacing
14 standard versus up say a 500 foot standard for any
15 other minor arterial that is in existence.

16 If someone went on 54, a 500 foot spacing
17 center would apply the same along Frederica Street or
18 any other major roadways.

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

24 MR. HOWARD: Right. It's my understanding
25 that the Access Management Manual and the spacing

1 centers that are included within are approved through
2 or developed the GRADD office and then taken before
3 the MPO's tact and policy committees for adoption.
4 The Access Management Manual that's in place now was
5 last adopted in 1991, I believe, when these standards
6 were put into affect.

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

12 CHAIRMAN: Thank you, Mr. Howard.

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

15 MR. MEYER: I've been told that before?

16 In the Item Number 10 that you see there on
17 your list as being somewhat different with each other,
18 it's pointed out there that's the stubbing of this
19 road down here.

20 If you extended this street be all the way
21 down the stubbing to tie into Summer Wind would be
22 here. What we are proposing, the homeowners people
23 are very much in accordance with this, that is Mr.
24 Jagoe or whatever, is that there be no stubbing there.
25 That road not connect. That's all we're talking

1 about.

2 In Item Number 11, the difference there, I
3 think the applicant's language is a little more
4 specific. It allows for a six foot berm or an eight
5 foot vinyl fence, which by the way is two feet higher
6 than what the Planning & Zoning Staff is recommending
7 or requiring. We're willing to put up an 8 foot vinyl
8 fence.

9 Recently we had a meeting with the landowners
10 on Monday night. They seemed to be lobbying strongly
11 for a berm, an earth berm, which we're willing to do.
12 So we have modified the language there to permit for
13 either a six foot berm or this eight foot fence.
14 That's the only difference in the language.

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

25 All we're trying to do with that clarification

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

14 CHAIRMAN: Mr. Howard.

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

24 They've clarified a little bit more detail as
25 far as the landscaping buffer. They put in more

1 restrictive requirements than the zoning ordinance
2 would allow. Our requirements is just the minimum. I
3 agree with their summation on the 20 percent cost of
4 the land improvements. That would be determined by
5 the Kentucky Transportation Cabinet what that cost
6 would be.

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

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

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

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

1 neighborhoods.

2 CHAIRMAN: Hold that just a moment.

3 Mr. Meyer.

4 MR. MEYER: Yes.

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

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

18 As far as you mentioned up on the Byers Avenue
19 entrance, the one that's the furthestest to the north
20 is one that perhaps is at issue. There's a little
21 dotted line on your plat that shows where the
22 retention basin is on Mr. Bryant's property. It
23 basically turns right there. So we're committed to
24 working with Mr. Bryant in lining up that entry point
25 so that it accommodates any entry point that he would

1 have on the other side of his property. See the
2 dotted line? That's basically where that retention
3 basin stops. Understand there may be some filling may
4 be going on in there anyway.

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

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

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

18 MR. MEYER: Right.

19 CHAIRMAN: Then the second one is within that
20 1,000 foot criteria on to, you know, nearest to
21 Highway 54.

22 MR. MEYER: There are a number of exceptions
23 and we drove up and down there today out on Highway 54
24 and go on over to the bypass, go on out, all the way
25 out to Franey's and the GD Ritzy's out there where

1 J.D. and I ate lunch this afternoon and came back in.
2 There are a great number of entry points that would be
3 similar to what we're proposing here.

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

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

13 CHAIRMAN: Are we at the point, Mr. Howard,
14 where we would want to hear Mr. Hayes' testimony?

15 Have we to anybody in the audience from the
16 neighborhood? Does anybody in the neighborhood -- do
17 we have a single voice for the neighborhood that could
18 summarize that would be very good at this point.

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

23 MR. ELLIOTT: State your name, please.

24 MR. GORDON: My name is Greg Gordon.

25 (MR. GREG GORDON SWORN BY ATTORNEY.)

1 MR. GORDON: What I would like to say is I'm
2 president of The Heartland Homeowners Association.

3 I found out about all of this about it's been
4 a week or so ago. We seen it in the paper. So that
5 was the first. Matter of fact, I got a call and
6 somebody tole me it was in the paper. So that's the
7 first we heard of it.

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

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

25 One thing, and I'm not saying that you guys

1 haven't looked at the map, but this is the map that
2 hooks to that map. That is the 850 homes that are in
3 that neighborhood, that will be in that neighborhood.
4 There's 650 developed. I'm guessing that these
5 numbers, and don't hold me to them, they develop them
6 constantly.

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

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

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

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

1 night.

2 CHAIRMAN: And their opposition is with the
3 through street?

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

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

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

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

22 CHAIRMAN: Would it be safe to summarize the
23 neighborhood is not opposed to the development. The
24 neighborhood is opposed to the development leaking
25 into the neighborhood. Would that be a correct

1 statement?

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

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

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

24 What he had said about it will be great for
25 the residents. They could have access to go in there.

1 Well, that's fine except for you can go four blocks up
2 the other way, which is up near another plaza and
3 development there and there's no homes and that's
4 where your access can be.

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

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

15 MR. HOWARD: As far as access to the
16 development, based on the developer's summary, they
17 say they need three access points. So as far as an
18 access to the development, I don't think that this
19 would have an impact on the overall function of the
20 development. Their access to Parrish Avenue, Kentucky
21 54, or their access to Byers Avenue. So I don't think
22 it's going to hurt their development from that
23 perspective.

24 CHAIRMAN: I was really interested in how it
25 would affect the long range plan of the Planning

1 Commission. I think the developer has sort of said
2 that they're not necessarily for it at all anyway.

3 MR. HOWARD: This is an instance where you
4 have an opportunity to connect two neighborhoods.
5 However, it's not an instance where if Summer Walk is
6 stubbed to the property lines and it connects, that it
7 has the futurability to stub to another adjoining farm
8 that may development. This is bounded by the bypass
9 which you're not going to have access to at any point.
10 Then the rest of Heartlands is already developed. So
11 it's not like there's a great foreseeable future for a
12 road to keep extending say along the lines of Villa
13 Point, as that has been a parallel street to Kentucky
14 54.

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

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

20 CHAIRMAN: Mr. Noffsinger.

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

24 It does disturb me that the applicant's
25 traffic engineer is saying it's going to take three

1 access points to make this development work.

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

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

24 CHAIRMAN: Let's hold just a minute and bring
25 Mr. Gordon.

1 Mr. Gordon, would you come back to the podium
2 and we'll address that.

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

8 CHAIRMAN: Right. But the question.

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

14 CHAIRMAN: A pedestrian walkway, bike path,
15 etcetera.

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

1 CHAIRMAN: You all presented your side.

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

6 CHAIRMAN: Yes.

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

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

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

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

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

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

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

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

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

25 MR. MEYER: Right.

1 MR. ELLIOTT: State your name, please.

2 MR. HAYES: William Hayes.

3 (MR. WILLIAM HAYES SWORN BY ATTORNEY.)

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

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

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

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

25 If you have any emergency situation on your

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

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

18 In this case, Byers Avenue has residential
19 areas already developed that are pretty well as a unit
20 there and is also right up against an expressway. A
21 very high level arterial that doesn't have any
22 intermediate cross streets on it. So you really end
23 up not really having two separate neighborhoods there.
24 You have one neighborhood that the street goes
25 through. It is running parallel to a major

1 expressway. Almost functions as a frontage road. So
2 from that standpoint, if I would look at this and no
3 information about it other than what I have before me,
4 I would classify that as a collector road.

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

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

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

23 CHAIRMAN: Does anybody in the audience or any
24 of the members of the commission or Staff have any
25 questions at this point?

1 MR. GORDON: Yes, sir.

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

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

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

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

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

24 I would caution you that if you eventually do
25 extend Byers onto a connecting roadway, then you may

1 have more traffic that'd be attempted to use that as a
2 back entrance as opposed to going on up to Byers,
3 particularly if Byers and Friendship is your only
4 other access on Byers. Naturally you're going to more
5 prone to use Summer Walk in that case.

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

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

13 MR. GORDON: No, not on that.

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

16 MR. ELLIOTT: State your name, please.

17 MR. BRYANT: Don Bryant.

18 (MR. DON BRYANT SWORN BY ATTORNEY.)

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

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

24 CHAIRMAN: I'm looking at either one. I'm
25 using this one right here regardless.

1 MR. BYRANT: Okay.

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

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

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

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

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

24 MR. BRYANT: The connectivity here with the
25 private drive is actually going to serve the same

1 purpose internally as it would with the street. There
2 just won't be publically maintained thoroughfares.

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

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

18 CHAIRMAN: You see where I'm heading with
19 this? If we could consolidate, do away with one of
20 those entrances and still keep the developer within --

21 MR. BRYANT: It's my understanding and based
22 upon the information that we have in the traffic
23 study, that this project will not function properly if
24 we don't have three main access points. We need to
25 utilize Byers Avenue to the greatest extent that we

1 can. In order to do that, we need the two access
2 points.

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

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

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

24 CHAIRMAN: Which would put you down to close
25 to 500 feet?

1 MR. BRYANT: Approaching 500 feet. I can't
2 say that we can get exactly 500 feet. We're
3 anticipating that if we do line up across the street,
4 we are going to have to shift that access point at
5 least little bit.

6 CHAIRMAN: Mr. Noffsinger.

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

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

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

16 MR. NOFFSINGER: We're showing Street C as 420
17 feet. Why didn't we put it at 500 feet? If you were
18 going to make the argument that we need to and the
19 spacing standard on 54 be 500 feet, why didn't you
20 show it at 500 feet? This is a development plan that
21 we need to rely on to address important issues related
22 to this development. We realize it can change, but as
23 you know access is very critical when we're
24 considering a rezoning. There's going to be other
25 issues that are going to be critical to the

1 neighborhood. We haven't gotten to those, but we're
2 addressing the access right now.

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

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

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

18 CHAIRMAN: Mr. Bryant, thank you.

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

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

25 Your access manual addresses, as I access

1 manuals normally do, a horizontal situation. In other
2 words, 500 feet. There's not a magical thing about
3 500 versus 475. It's just an easy way to do it.

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

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

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

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

25 With respect to the second one -- let me just

1 say also. Without Street C and that connection, when
2 I talk about the level of service on Friendship Drive,
3 this is regardless if anything happens on Summer Walk.

4 Friendship Drive intersection functions at a
5 level service D. That's just like a grade, A, B, C,
6 D. It's a very poor level of service. Not something
7 you normally desire on the street that's just been
8 built like Byers.

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

18 That entrance first of all will be at maximum
19 capacity for the type of development you have.
20 Secondly, you try to transpose that onto Byers you're
21 going to end up having to put those same number of
22 lanes at the intersection of Byers and 54. So
23 basically you're going to transfer your -- in fact,
24 put all the traffic on that. That would require a
25 major reconstruction of Byers and 54. Not saying it

1 can't be done, but saying it's a major difference in
2 terms of what you have there now. That's the best I
3 can answer those two.

4 CHAIRMAN: Thank you.

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

8 MR. NOFFSINGER: Yes, sir. That is correct.
9 Again, to my satisfaction I did not get my question
10 answered in terms of why did they not go with the 500
11 foot standard looking at that. I understand sight
12 distance is an issue, could be an issue, but then how
13 does that affect the intersection and traffic backing
14 up toward Parrish Avenue. The traffic engineer did
15 not address whether or not he took into account
16 current traffic and with this development or full
17 development of that corridor of Byers Avenue. I hear
18 that this functions more like a major collector today,
19 but we're planning for today, a building for today,
20 but we also have to plan for the future because we
21 want to avoid situations that we have out on Kentucky
22 54 and South Frederica Street where we developed with
23 access points every 250 feet. I can't disagree or
24 state facts that Byers Avenue at this location should
25 be or should not be a minor arterial, but I can tell

1 you this, GRADD, which is the transportation planning
2 agency for this community, has classified that roadway
3 as a minor arterial. They base that upon a good
4 study, I think, and projected traffic rounds. Sure,
5 Byers Avenue runs parallel with the bypass at this
6 location and very close, but as you get further away
7 and closer to Frederica or as you go to Frederica you
8 get away, further away from the bypass. The bypass
9 was constructed to move traffic. This roadway was
10 constructed or originally conceived to move traffic,
11 but we've had development occur. In fact, the roadway
12 wouldn't be there today if it were not for two
13 developments. That would be The Heartlands and
14 Friendship Drive. They met the 1,000 foot spacing
15 standards. I agree, 1,000 foot spacing standard is a
16 standard that's generally not met here. Because this
17 is a new roadway the standard applies. I would
18 certainly hope that we would maintain a 500 foot
19 spacing standard. If the location of this street at
20 500 feet does not provide good sight distance, I don't
21 think there should be this second access point on
22 Byers Avenue.

23 If we were to approve this development with
24 that second access point, I think GRADD, the MPO,
25 Transportation Advisory Committee and Policy Committee

1 should review the spacing standards as to the standard
2 of 1,000 feet on new and reconstructed roadways.
3 Because if we can't apply that standard here, where
4 are we going to apply it. I'm not saying it
5 absolutely has to be met. We're just working with
6 what's been given to us in trying to enforce what's
7 been given to us.

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

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

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

22 CHAIRMAN: Correct.

23 MR. MEYER: I would say that certainly the
24 Highway 54 entrance design is by far way the most
25 critical entrance.

1 CHAIRMAN: Access to and from Highway 54?

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

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

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

21 With regard to these other two, whether we can
22 giggle it back to make it 500 feet from the point of
23 Byers Avenue. Maybe we ought to take a little brief
24 recess and confer with regard to that. We're already
25 committed to lining up with Malcolm Bryant, working

1 with him. We're apparently about 450 feet or so right
2 now.

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

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

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

17 CHAIRMAN: The one that's within 425 feet.

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

25 CHAIRMAN: So 85 percent of your traffic would

1 be in those two -- Street C and --

2 MR. MEYER: Turn here. Doesn't take account
3 the traffic coming in from Heartland and other
4 directions here. So not 85 percent of the whole,
5 obviously the whole traffic pattern flow into the
6 facility. Of those people who are traveling east on
7 Byers Avenue, it shows the -- I'm sorry, east on 54,
8 it shows to turn on Byers Avenue and then enters the
9 facility. I think the projections were about 85
10 percent would use that first entrance and maybe 10 to
11 15 percent use that second entrance. Is that correct?

12 MR. HAYES: The first entrance is the dominant
13 entrance, if you have both of them available there.
14 In fact, what happens is if you don't have the access
15 point Street C, the one we're discussing, what we're
16 projecting is people rather than go all the way down,
17 you realize you've got, you've actually got a skew
18 here. You actually look more than 90 degree to see
19 that there's even an access point there. It's up on a
20 hill. It's nearly 1,000 feet away. It's not a
21 natural traveling to go to. So what people would do
22 is go on down to the main entrance instead, which
23 really negates the purpose of the right turn lane into
24 Byers because you'll have a drop off there that really
25 don't want any warrant or a turn lane there.

1 When you see an access into the development
2 close by, visually you're there, you're more like to
3 use it. If it's back far, you're less likely. The
4 numbers are pretty significant going into there.

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

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

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

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

23 CHAIRMAN: Thank you.

24 Does anybody else on the commission have any
25 questions?

1 MR. APPLEBY: I have question of Mr. Bryant,
2 if you would step up.

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

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

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

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

16 The distance from the center line on East
17 Parrish Avenue and Friendship Drive is somewhat less
18 than 1,000 feet. It's close, but it's somewhat less.
19 I can see us maybe shifting Street C slightly to the
20 south and I think we'll end somewhere splitting the
21 difference between. So we're approaching 500 feet,
22 but we can't get 500 feet both north and south because
23 we don't have 1,000 feet to work with. You know, 500
24 feet, 475, I don't think there's going to be any
25 difference in how these function. I think what's more

1 important here is that we come up with an access point
2 that we can tie into a second access into The Springs
3 and get as close as we can to an optimal space between
4 the two existing access points. If it ends up being
5 430, 450 or even 500 feet.

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

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

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

14 MR. NOFFSINGER: You know, we've worked on.

15 This now for some time. We originally met
16 with the developers. We recommended one access point
17 on Byers Avenue, one access point on East Parrish
18 Avenue and they comply with the standards of the
19 Access Management Manual as well as the policy.

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

23 Our Planning Staff has had numerous
24 discussions with the city engineering office. We've
25 involved the county engineers office. It's like I

1 said earlier, if we can't meet that 1,000 foot spacing
2 standard here, we're not going to meet it anywhere.
3 The neighbors aren't concerned about this issue. It
4 appears that at this point the only concerns are being
5 generated by the Planning Staff.

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

11 In light of what's been presented here
12 tonight, the Planning Staff would recommend or amend
13 their motion or amend out condition, if you will, to
14 allow the access point at Friendship Drive, as well as
15 the second access point which is referred to as Street
16 C, but that access point be spaced no closer than 500
17 feet to the center line of Parrish Avenue as well as
18 no closer than 500 feet to Friendship Drive. I can
19 justify that based upon the fact that that's the
20 standard we're applying on Kentucky 54, Frederica
21 Street, and other roadways that are carrying this type
22 of development or this type of traffic. A 1,000 foot
23 spacing for this commercial development we realize
24 would be tough. That doesn't mean this property has
25 to be used for commercial purposes, but we have a

1 plan. I think we have good plan. We're concerned
2 about economic development and moving forward, then
3 this is one way we can allow it to happen and move it
4 forward. This is all based upon the traffic impact
5 study and my discussions with the city engineer in the
6 office, the state transportation office.

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

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

15 CHAIRMAN: And eliminate the street access.

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

1 CHAIRMAN: Thank you, Mr. Noffsinger.

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

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

6 MR. MEYER: I believe we did. I'd like to
7 have just a moment or a few moments to talk with my
8 client with regard to it because we're concerned with
9 regard to what that total distance is and whether we
10 can do exactly what you're talking about, meeting the
11 500 foot to 500 foot spacing requirement. We've been
12 at this thing or the commission hearing since 5:30, so
13 if it's appropriate and you all are ready for a break
14 anyway maybe we can take a five minute recess and come
15 back.

16 CHAIRMAN: Mr. Meyer, why don't you go ahead.
17 I can summarize it very quickly. One, the condition
18 will be to move to the first entrance and exit will be
19 500 foot, the second one will be 1,000 foot. We will
20 not have the extension of the drive into the
21 neighborhood, and have only a walkway. Why don't you
22 take a minute, huddle with your clients. You know,
23 it's not a major change in what we're doing. We'll
24 bring this to a vote.

25 MR. MEYER: Thank you.

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

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

8 MR. MILLER: I thought that was the rear.

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

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

14 MR. NOFFSINGER: Yes.

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

16 CHAIRMAN: Are you okay now?

17 MR. MILLER: Yes. I understand now.

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

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

22 On the original drawing that we have, I think
23 you brought it out earlier. The main street comes in
24 off of East Parrish Avenue, it just shows it stubbed
25 off. The new drawing they gave us it's a cul-de-sac.

1 CHAIRMAN: Correct. It will be a cul-de-sac.
2 The exit will be through a bike path/pedestrian.

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

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

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

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

17 CHAIRMAN: Yes, sir.

18 MR. ELLIOTT: State your name, please.

19 MR. BILL JAGOE: Bill Jagoe.

20 (MR. BILL JAGOE SWORN BY ATTORNEY.)

21 MR. BILL JAGOE: Mr. Chairman, I'm really
22 happy to see that you're stopping that street from
23 coming through us. I also say that we've got a
24 Greenbelt to handle traffic, foot traffic, bicycle
25 traffic, whatever, and would come up to and all along

1 the side of Byers Avenue of commercial property. I
2 really don't want to see a sidewalk coming through
3 between two homes there. Those two homeowners will
4 not like that because of the access to the public
5 through their backyard or side yard or whatever. I
6 would oppose that.

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

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

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

25 CHAIRMAN: Mr. Miller has a question.

1 MR. MILLER: I have a question on the berm
2 that's it's talking about. I don't guess I understand
3 that placement of fence. I know what it is. I don't
4 understand why someone would prefer that.

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

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

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

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

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

1 CHAIRMAN: Did you have a comment?

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

4 (MR. WAYNE EVANS SWORN BY ATTORNEY.)

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

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

20 With the way we see it, it looks like there's
21 going to be an extreme amount of cut and fill to make
22 this property work as though as it's proposed right
23 now. Being a structural civil engineer, I'm a little
24 familiar with cut and fill. We believe if this
25 property is developed as is shown now, there's going

1 to be a significant cut in the area behind that
2 stretch really from lot 11 --

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

5 MR. EVANS: Yes, sir.

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

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

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

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

23 In making a decision as to whether to go or no
24 go, especially tonight with no more information than
25 we have and the fact that the number one problem I

1 believe that we've discussed tonight is the means of
2 egress. That's highly theoretical as I'm sure you
3 fellows know that.

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

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

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

20 CHAIRMAN: Absolutely.

21 MR. EVANS: I can tell you as a homeowner,
22 again, when I moved there I had an extremely serious
23 drainage problem that took two years to correct. The
24 best of planning a lot of times misses major impacts
25 like that.

1 CHAIRMAN: Mr. Evans, I obviously sympathize
2 with your situation. That's something this board is
3 not qualified to make that call. It goes to the city
4 and county engineer and then they make the
5 recommendations to us. None of us are trained
6 engineers.

7 MR. EVANS: Okay.

8 CHAIRMAN: Mr. Meyer.

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

12 CHAIRMAN: The amended recommendation as
13 stated by the director?

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

16 It might be advantageous if we read that back.

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

19 MR. NOFFSINGER: 500 foot spacing of Street C
20 and Friendship. The second access point will be at
21 Friendship Drive, in alignment with Friendship Drive
22 on Byers Avenue. Street C shall be a minimum of 500
23 feet from center line of the Friendship Drive and a
24 minimum of 500 feet from center line of East Parrish
25 Avenue. So you have a 500 foot spacing is what it is.

1 Now, you will have right tapers at those two
2 access points as per what has been discussed. I think
3 the city engineer recommended. Both Byers Avenue
4 access points. No pedestrian connection to the
5 Heartlands from where we had talked about a stub
6 street.

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

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

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

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

19 (NO RESPONSE)

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

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

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

25 MR. APPLEBY: I would make a motion for

1 approval based on Planning Staff Recommendations with
2 Conditions 1 through 5, and 7 through 9, and 11
3 through 14, and with the further condition that the
4 access point between 54 and Friendship Drive will be a
5 minimum of 500 feet from the center line of Friendship
6 to the center line of 54. Byers Avenue entrances will
7 be, the first entrance will be at least 500 feet from
8 the center line of Kentucky 54 and at least 500 feet
9 from the center line of Friendship Drive.

10 CHAIRMAN: We have a motion.

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

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

15 CHAIRMAN: We have a motion.

16 MR. EVANS: Second.

17 CHAIRMAN: All in favor raise your right hand.

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

20 CHAIRMAN: Motion carries unanimously.

21 Next item, please.

22 Related Item:

23 ITEM 3A

24 2404, 2412 East Parrish Avenue, 65.327 acres
Consider approval of preliminary development plan.
25 Applicant: 54 Property Management, LLC; Kathleen
Nelson Revocable Trust

1 MR. NOFFSINGER: Mr. Chairman, this plan has
2 been reviewed by the Planning Staff and Engineering
3 Staff. It is a preliminary development plan.

4 This plan is ready for approval subject to the
5 modifications, if any, that were just approved with
6 the rezoning. I'll have to ask Staff. Brian Howard
7 is shaking his head.

8 Is that a true statement?

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

13 CHAIRMAN: Are there any questions?

14 (NO RESPONSE)

15 MR. APPLEBY: Chair ready for a motion?

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

18 MR. APPLEBY: Motion for approval.

19 CHAIRMAN: Motion for approval by Mr. Appleby.

20 MR. MILLER: Second.

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

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

25 CHAIRMAN: Motion carries unanimously. Thank

1 ITEM 5

2 96, 102, 106, 112, 116 Boothfield Road, 49.65 acres
3 Consider approval of minor subdivision plat.
4 Applicant: Robert Wimsatt, Joel Osbourne, Chad &
5 Stacey Ayer, Jerry Morgan

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

10 CHAIRMAN: We need a motion on that.

11 MS. DIXON: Motion to postpone.

12 CHAIRMAN: Motion for postponement by Ms.
13 Dixon.

14 MR. MILLER: Second.

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

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: Motion carries unanimously. This
19 item is postponed.

20 Next item.

21 ITEM 6

22 8834 Cummings Road, 1.002 acres
23 Consider approval of minor subdivision plat.
24 Applicant: Douglas Dant, Jr. and Rebecca Dant

25 MR. NOFFSINGER: Mr. Chairman, this plan has
26 been reviewed by the Planning Staff and Engineering
27 Staff. The plan is found to be in order.

1 It does come to you as an exception to the
2 subdivision regulations in that it creates a tract of
3 land that does not have frontage on public right of
4 way. It has an ingress/egress easement out to
5 Cummings Road.

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

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

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

22 CHAIRMAN: Is the applicant here?

23 MR. DANT: Yes.

24 CHAIRMAN: Would you step to the podium for
25 just a moment.

1 MR. ELLIOTT: State your name, please.

2 MR. DANT: Douglas Dant, Jr.

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

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

7 MR. DANT: Yes, I agree.

8 CHAIRMAN: You're in agreement with it?

9 MR. DANT: Yes.

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

12 With that the commission is ready for a
13 motion.

14 MR. MILLER: Motion to approve.

15 CHAIRMAN: Motion for approvment by Mr.
16 Miller.

17 MS. DIXON: Second.

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

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries unanimously.

22 Next item, please.

23 ITEM 7

24 5048, 5062 Free Silver Road, 7.297 acres
Consider approval of minor subdivision plat.
25 Applicant: Kelly Bartlett

1 MR. NOFFSINGER: Mr. Chairman, this
2 application has been reviewed by the Planning Staff
3 and Engineering Staff. The application is in order.
4 However, it does come to you as an exception to the
5 approved subdivision regulations.

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

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

20 CHAIRMAN: Thank you, Mr. Howard.

21 Mr. Appleby.

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

25 MR. NOFFSINGER: That is correct. There's an

1 existing residence on the property. It's a large
2 tract. I don't think they're trying to circumvent the
3 subdivision regulations. It is limited to no more
4 development on the property. It has a 102 feet to the
5 back lot. Really I don't think it's that much of an
6 extension of the intent of the sub regs.

7 MR. APPLEBY: I make a motion for approval.

8 CHAIRMAN: Motion for approval by Mr. Appleby.

9 MR. GILLES: Second.

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

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimously.

14 Next item, please.

15 ITEM 8

16 2759 KY 140 East, 1.454 acres
17 Consider approval of minor subdivision plat.
18 Applicant: James and Edna Goodall

19 MR. NOFFSINGER: Mr. Chairman, this
20 application has been reviewed by the Planning Staff
21 and Engineering Staff. It's found to be in order.

22 It does come to you as an exception to the
23 subdivision regulations in that it creates a rather
24 odd-shaped lot.

25 What they're doing is the frontage on the
property, which exist, is about 50 feet. That 50 feet

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

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

15 CHAIRMAN: Chair is ready for a motion.

16 MR. GILLES: Motion to approve.

17 CHAIRMAN: Motion for approval by Mr. Gilles.

18 MR. ROGERS: Second.

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

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 I believe the chair is ready for one final
24 motion.

25 MR. NOFFSINGER: Mr. Chairman, I recommend we

1 go into closed session to discuss personnel issues.
2 We will have to come back and adjourn this meeting.
3 However, we will not take any action other than
4 adjournment when we do come back out.

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

15 Is that right, Mr. Noffsinger?

16 CHAIRMAN: Mr. Noffsinger.

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

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

23 CHAIRMAN: Mr. Noffsinger.

24 MR. NOFFSINGER: I have no problem with that,
25 if that's what Mr. Elliott is requesting.

1 CHAIRMAN: What about the other issue?

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

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

8 MR. NOFFSINGER: We can do that, yes.

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

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

12 CHAIRMAN: We're back in session.

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

24 CHAIRMAN: Do we need to amend and take
25 another vote?

1 MR. SILVERT: You need to do a motion to
2 amend. If you want to amend the motion as stated.

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

6 CHAIRMAN: Mr. Appleby made the motion.

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

9 CHAIRMAN: Yes.

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

12 CHAIRMAN: This is a little housekeeping.

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

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

22 MR. MEYER: Exactly.

23 CHAIRMAN: I think without opening up another
24 amendment, amend the amendment, I think we're all in
25 agreement.

1 MR. APPLEBY: I don't understand what needed
2 to be clarified. Explain to me what your thoughts
3 were there.

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

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

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

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

25 MR. APPLEBY: All that was --

1 MS. STONE: It's not relative to an access
2 point. It's access to the property from Street A.

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

6 MS. STONE: Yes.

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

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

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

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

1 confusion there and they wanted some clarification.

2 CHAIRMAN: Mr. Meyer, are you satisfied?

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

5 CHAIRMAN: The record is clear as stated.

6 MR. MEYER: Yes.

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

10 MR. MEYER: Right.

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

13 MR. MEYER: Thank you.

14 CHAIRMAN: Mr. Noffsinger.

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

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

1 hiring and firing of the executive director.

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

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

16 When Madison Silvert brought on to this
17 Commission, and let me just state that we have no
18 contract with Mr. Elliott nor do we have a contract
19 with Mr. Silvert. When Mr. Silvert was brought on to
20 the Planning Commission it was understood that at some
21 point in time he was being brought on as a trainee, if
22 you will, and understand the operations of the
23 Planning Commission. At some time we would be looking
24 at only one attorney and not having two. He was not
25 brought on because of a workload increase. He was

1 brought on, on the basis of having to have someone in
2 a position for this commission and for the Staff to
3 rely upon at all times and in the future. At some
4 point in time, Mr. Elliott's employment with the
5 Planning Commission would no longer exist.

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

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

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

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

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

24 I do have examples of the work that's been
25 done that I can cite which includes training of board

1 of adjustment members and planning commission members
2 as well. That's my point.

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

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

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

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

1 represent the Planning Staff.

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

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

13 Now, as far as my duties, I guess I have to
14 work on my math some. I didn't know I was just doing
15 35 percent of the work. Because if I'm just doing 35
16 percent of the work, it's because I'm not requested to
17 do the other 65 percent of it. I think that they have
18 taken Mr. Silvert and given him more work in order to
19 make my credibility not as high.

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

25 Now, he was scheduled to be in court and he

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

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

23 Now, occasionally there is attorneys on the
24 other side like J.D. Meyer was on one for the board of
25 adjustment. There are occasions when the other

1 attorney takes a leave. They should take a leave
2 because it's their client and their case is involved.

3 I challenge him to challenge any work I've
4 done over the past 30 years. For him to be more
5 specific on what cases he's talking about and where
6 Madison is doing 65 percent of the work and I'm doing
7 35 percent of the work.

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

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

24 I realize when Madison was appointed that he
25 was going to be coming in and filling my shoes. I

1 knew it was just a matter of time, but I'm saying the
2 time is not right at this moment. I do not think that
3 Madison is ready to assume the role as your attorney,
4 but there will be a day when he will be. He's an
5 exceptionally good lawyer.

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

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

1 like as chairman or as board members we needed to be
2 involved in the hiring of the employees.

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

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

25 With that I'll turn to Mr. Noffsinger and ask:

1 Do you have the specifics?

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

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

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

23 He brought up the case with the auto accident.
24 I did my part in gathering the information for the
25 accident. Turned it over to authorities. Got the

1 police report, which I think anyone would do. The
2 state subpoenaed me to be a witness on behalf of them.
3 I have a right to appear in court.

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

18 When I went to Stewart's office after 1:00, I
19 said, why didn't I have to go to court? He said,
20 there's been a deal cut and the charges were reduced.
21 I said, what about restitution? I said, our insurance
22 pay, but there's a deductible too. I said, how can
23 you just cut a deal? Well, that's the way the system
24 works. That didn't set well with me. I'm looking for
25 restitution. He said, I'll check into that. The

1 accident happened in November. The court date was in
2 January. In March I still haven't heard anything.

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

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

21 Another example is Mr. Elliott is to appear at
22 monthly meetings. When he doesn't appear, I do not
23 get a call. Not one call. I don't know. I don't
24 know what to report to this board, whether Mr. Elliott
25 is going to be here or not.

1 In terms of case load, let me just go over a
2 few things. We had litigation with the Board of
3 Adjustment on Recovery Kentucky project that the
4 commission is familiar with. The applicant has
5 carried about 99 percent of that case.

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

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

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

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

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

25 This is about the wise use of the public's

1 money and the representation that this board gets as
2 well as the Planning office. What I see as necessary
3 adjustments that need to be made.

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

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

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

23 MR. ELLIOTT: As far as the district court,
24 I'm not going to dwelling on that because I don't
25 think it's that significant.

1 In district court if you are charged with no
2 insurance and you produce an insurance card saying I
3 had insurance, they dismiss it. That's what happened
4 in that case. Gary was subpoena to be there at 1:30.
5 I went over there earlier that morning and talked to
6 the prosecutor. I talked to him about the case. I
7 called Gary to save him the inconvenience of going to
8 court and having it continued one more time and to
9 dispose of the matter. That afternoon Gary was in my
10 office.

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

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

20 I can't sit here all night long and defend all
21 my action. I know I've served this board and I answer
22 to this board. I do not answer to Mr. Noffsinger. He
23 does not have the right to fire me. He didn't have
24 the right to hire me. He doesn't have the right to
25 fire me. I ask the board not to consider his

1 recommendation. I realize that my time on this board
2 is going to come to an end. I'm not ready for it to.
3 I don't want to go out as being fired. I don't want
4 to resign. I'm asking the board for some resolution.
5 I offered to Mr. Noffsinger the fact is, I said, I
6 realize that Madison is going to have to have more
7 responsibilities. I'd like to stay on as a consultant
8 and consult with him. I'll the reduction in salary.
9 I won't take the reduction in salary for the remainder
10 of this year which goes from June to June, but I'll
11 take the reduction salary next year and stay on as a
12 consultant and it will be over with. No, that wasn't
13 good enough. He came back with some other proposal
14 similar to that which I rejected. I still am
15 maintaining the board hired me and the board has to
16 terminate me or do something with my job. That it's
17 not up to him. I think you've got serious problems if
18 you allow your director to do the hiring and firing of
19 your attorney.

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

25 As chairman, based on the information that I

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

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

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

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

22 MR. APPLEBY: I'm making one.

23 CHAIRMAN: I say it's a comment because I
24 don't think the board needs to get into the day-to-day
25 hiring and firing. That's as I understood it. That's

1 what I'm asking each one you.

2 MR. APPLEBY: What I'm asking you then why did
3 we take action on Madison?

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

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

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

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

24 CHAIRMAN: Mr. Appleby, you think this is a
25 situation where Mr. Noffsinger and Mr. Elliott need to

1 discuss this further?

2 MR. APPLEBY: I think all the board members
3 probably could use a little more time. That's my
4 opinion.

5 MR. JAGOE: I agree.

6 CHAIRMAN: Ms. Dixon.

7 MS. DIXON: I do.

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

16 MR. JAGOE: I agree with that, with the way
17 that you stated that. I guess maybe what I heard is
18 Mr. Elliott would like to find some middle ground.

19 Did I hear that correctly, Mr. Elliott?

20 MR. ELLIOTT: Yes.

21 CHAIRMAN: Mr. Elliott, you see my position is
22 as chairman, as what Gary stated. Those are specific
23 questions that I asked when I became chairman because
24 I did not feel like the board should ever be in this
25 situation with any employee.

1 MR. ELLIOTT: I disagree with him saying I'm
2 an independent contractor. I'm the attorney for the
3 board. That's what I was hired as. That's what I am.
4 Now, independent contractor if we had a case where I
5 had a conflict of interest, it gives him authority to
6 go out and hire an attorney to represent him as to
7 that one single case, but not as the board's attorney.
8 That's been my classification for 30 years. I'm the
9 board's attorney. That's the way I perceive it. I'm
10 the board of adjustment's attorney. I'm not Gary
11 Noffsinger's attorney. I'm not this Planning Staff's
12 attorney. I'm the board's attorney. The board does
13 the hiring and the board does the firing.

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

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

25 Mr. Jagoe, do you see that as Noffsinger and

1 maybe Mr. Elliott working this situation out and the
2 board removing ourselves from it?

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

7 MR. MILLER: That's my concern.

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

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

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

18 CHAIRMAN: Right. Exactly.

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

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

25 MR. JAGOE: Those could be certainly parts of

1 it.

2 CHAIRMAN: The way it's read, you know, the
3 board is responsible for it. If that's not clear,
4 then I agree with everybody's consensus. That's what
5 I'm trying to get. Not take a motion on it. Just
6 leave it with Mr. Noffsinger and leave it with them to
7 come back with a definitive answer on whose
8 responsibility. If it's our responsibility, then
9 we'll take it up and then we'll move forward.

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

12 MR. APPLEBY: Yes.

13 CHAIRMAN: Ms. Dixon.

14 MS. DIXON: When I served on the committee
15 that hired Gary, I was under the assumption that that
16 was our duty. That was our pain person to hire was
17 the director of the Planning Commission.

18 I guess I'm like you, Drew. I had assumed all
19 along that --

20 CHAIRMAN: We were very specific.

21 MS. DIXON: That was an important role because
22 that person would be responsible for the day-to-day
23 management and that we would not be micromanaging.
24 I'm going to go with the consensus and let Gary and
25 Stewart work it out.

1 MR. APPLEBY: Or at least let's have a
2 consensus for the board members that either Gary is in
3 charge or it's our responsibility.

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

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

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

10 MS. DIXON: Yes.

11 CHAIRMAN: That's what got us to serve.

12 Let's just leave it like that then. No action
13 from the board. We'll leave it with Mr. Noffsinger
14 and Mr. Elliott.

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

20 MR. ELLIOTT: Okay.

21 CHAIRMAN: It's my opinion, and let me get
22 this consensus with the board. If Mr. Elliott and Mr.
23 Noffsinger work out a situation, do we expect Mr.
24 Noffsinger to bring that situation back to the
25 board?

1 MR. JAGOE: I think you have two issues. I
2 think you --

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

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

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

21 MR. MILLER: Is an agreement possible?

22 CHAIRMAN: That's between them.

23 MR. NOFFSINGER: I would like to speak to that
24 because when I asked Mr. Elliott for his resignation
25 he indicated that he would like to serve out the

1 remainder of this fiscal year and the next fiscal
2 year. I talked with Mr. Elliott about a compromise in
3 terms of a phase out over that period of time. That
4 was shortly after March 24th. I waited until the day
5 before, I think it was yesterday, and had not -- he
6 told me he would get back with me. I had not heard
7 from him. When I called him yesterday --

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

10 CHAIRMAN: Wait just a minute, Mr. Elliott.
11 Let him finish.

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

23 MR. JAGOE: I would hope you would work with
24 this board, Mr. Noffsinger, because we are clear on,
25 and I did serve on the selection committee as well and

1 do understand that. I think that the only, I think
2 that there are some board members that are sitting
3 here feel that you have complete autonomy to hire and
4 fire employees and subcontractors. I think there are
5 others sitting here on the board that are unsure about
6 that with relation to Mr. Elliott. I think that the
7 board would like to have clarity on that. I'm not
8 sitting here and I don't think anybody sitting here is
9 saying one opinion is correct and one opinion is
10 incorrect. Let's just get clarity on that.

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

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

23 Mr. Elliott, represents us and he's telling us
24 it's one way. Mr. Noffsinger, who is employed by this
25 board, is telling us it is a different way.

1 CHAIRMAN: Mr. Jagoe, I think if Mr. Elliott
2 and Mr. Noffsinger can come to a workable conclusion
3 and Mr. Elliott said he was willing, and I'm not going
4 to ask him at this time, I think it will be unfair,
5 but I think if he and Mr. Noffsinger would sit down a
6 few days in the future together and work this out and
7 come to that conclusion, I think the board can work on
8 this other situation in the future and not muddle the
9 two issues.

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

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

15 CHAIRMAN: I'm open either way.

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

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

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

22 CHAIRMAN: Do we not have Mr. Elliott and Mr.
23 Noffsinger to hold a conversation to see if they can
24 consider what Mr. Elliott said he wanted to talk about
25 a compromise or do we do this other issue first as far

1 as determining?

2 MR. JAGOE: I would think that you would ask
3 both of them to do that?

4 CHAIRMAN: To get together?

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

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

9 Mr. Elliott, are you agreeable to that?

10 MR. ELLIOTT: Yes.

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

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

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

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

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

20 MR. ELLIOTT: Right.

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

25 MR. NOFFSINGER: Yes, sir.

1 CHAIRMAN: With that does the board have any
2 other suggestions or ideas?

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

6 CHAIRMAN: Exactly.

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

9 CHAIRMAN: Exactly.

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

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

14 CHAIRMAN: I think at this time I don't think
15 --

16 MR. APPLEBY: Get an independent outside
17 counsel.

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

21 MR. ROGERS: And hoping they work something
22 out.

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

25 CHAIRMAN: I think at a date we will discuss

1 on how to handle that issue. I think possibly an
2 avenue, my thought would be maybe using the city
3 attorney who is actually removed from this situation.

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

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

14 CHAIRMAN: I think that would be good.

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

24 CHAIRMAN: As a subcontractor.

25 MR. JAGOE: As a subcontractor. We could, as

1 the board take action to do, give Mr. Noffsinger that
2 authority in the future and I think that that may
3 clear it up. I don't know that without going through
4 the bylaws and reading the policy and so forth, I
5 can't answer that immediately, but I can't imagine why
6 we can't use one of the two attorneys that we have on
7 staff now that we're paying. Maybe I'm wrong. I
8 don't know that we necessarily end up at the end of
9 the day here with a grievance.

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

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

18 CHAIRMAN: Correct. Exactly. Yes.

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

21 MS. DIXON: Move to adjourn.

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

24 MR. APPLEBY: Second.

25 CHAIRMAN: Second by Mr. Appleby. All in

1 favor raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: We are adjourned.

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