The Owensboro Metropolitan Planning Commission met in regular session at 5:40 p.m. on Thursday, April 10, 2008, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  Drew Kirkland, Chairman
                 Judy Dixon, Vice Chairman
                 David Appleby, Secretary
                 Gary Noffsinger, Director
                 Madison Silvert, Attorney
                 Tim Miller
                 Jimmy Gilles
                 Irvin Rogers
                 Wally Taylor
                 Keith Evans
                 Martin Hayden
                 Rita Moorman

* * * * * * * * * * * * * * * * * *

CHAIRMAN: I would like to welcome everybody to the April 10th meeting of the Owensboro Metropolitan Planning Commission. Will you please rise. Our invocation will be given by Mr. Irvin Rogers.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Our meeting is ten minutes delay. The Board of Adjustments met before us so our meeting could not convene until their meeting had ended. I apologize for the delay for some of you, but this is
the best we could do under the circumstances. So now we're ready.

Our first order of business is consider the minutes of the March 13, 2008 meeting. Any questions, additions?

(NO RESPONSE)

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

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

MR. MILLER: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

-------------------------------

ZONING CHANGES

ITEM 2

10363 Highway 54, 0.329 +/- acres
Consider zoning change: From R-1A Single-Family Residential to R-3MF Multi-Family Residential
Applicant: Parkside Rentals, Inc.; Jerry Morris

MR. SILVERT: State your name, please.

MS. STONE: Becky Stone.

(BECKY STONE SWORN BY ATTORNEY.)
PLANNING STAFF RECOMMENDATIONS

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

CONDITIONS:

1. All vehicular use areas shall be paved and appropriate vehicular use area screening shall be installed where adjacent to road right-of-way; and,

2. A site plan or final development plan shall be approved by the OMPC prior to the issuance of any building permits.

FINDINGS OF FACT:

1. The subject property is located in an Urban Residential Plan Area, where multi-family residential uses are appropriate in limited locations;

2. The use of the property as apartments conforms to the criteria for Urban Residential development;

3. The subject property is served by the City of Whitesville sanitary sewer system; and,

4. With frontage on KY 54 which is a state maintained roadway, the subject property is major-street oriented.
MS. STONE: We'd enter this as Exhibit A into the record.

CHAIRMAN: Is there anybody representing the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody have any questions?

(NO RESPONSE)

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

MR. ROGERS: Motion for approval based on Planning Staff Recommendation with the Conditions 1 and 2 and Findings of Fact 1 through 4.

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

MR. HAYDEN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 3

10539 US Highway 431, 2.44 acres
Consider zoning change: From R-1A Single-Family Residential and A-U Urban Agriculture to B-4 General Business
Applicant: Robert G. and Nancy Grimsley

MR. SILVERT: State your name, please.
MR. WILLIAMS: Zack Williams.

(ZACK WILLIAMS SWORN BY ATTORNEY.)

PROPOSED ZONE & LAND USE PLAN

The applicant is seeking a B-4 General Business zone. The subject property is located in a Rural Community Plan Area, where general business uses are appropriate in limited locations.

SPECIFIC LAND USE CRITERIA

(A) Building and lot patterns; outdoor storage area - Building and lot patterns should conform to the criteria for "Nonresidential Development" (D7), and outdoor storage yards with "Buffers for Outdoor Storage Yards" (D1).

(B) Logical zoning expansion of proportional scope - Existing General Business zones may be expanded onto contiguous land that generally abuts the same street(s). The expansion of a General Business zone should not significantly increase the extent of the zone in the vicinity of the expansion and should not overburden the capacity of roadways and other necessary urban services that are available in the affected area.

(F) New locations in Rural Communities - In Rural Community plan areas, new locations of General Business zones should be "major-street-oriented" (D2)
and should be sited at corners of intersecting streets if located in close proximity to existing dwellings.

APPLICANT'S FINDINGS

This zoning application is comprised of a tract of land containing 2.44 acres located on US Highway 431 near Utica, Kentucky. There is a small service building located on said property.

The subject property was part of a larger tract known as the Herschel Morgan Estate property. The Morgan Estate owned about 30 acres of ground. The house to the north was sold and the Morgan Estate still owns the property one lot north of the subject property which fronts on Highway 431. During the ownership by the Morgan Estate, the subject property was rented as a commercial repair shop, such as lawn mower repair service.

Since 1997, the subject property has been owned by the applicants. It has been used as a general service repair shop; a sales lot for tractors, equipment, and automobiles; a chimney sweep operation; and a community rentals sales lot to sell equipment and vehicles.

Findings:

1. The proposed rezoning is in compliance with the applicable criteria as set forth in the
Comprehensive Land Use Plan.

The rezoning proposal meets the requirements of the criteria as set out under Section 11 General Business of the Land Use Plan. The subject property is located in a Rural Community Plan area where commercial activities are appropriate in limited locations.

(A) Building and lot patterns; outdoor storage yards - Building and lot patterns conform to the criteria for "nonresidential development."

(F) New locations in rural communities - In Rural Community plan areas, new locations of General Business zones should be "major-street-oriented." As indicated in the background section above, the subject property has a long history of commercial use and would meet the requirement of a non-conforming use except for the fact that it has not been used as a commercial activity in the last eighteen months.

1. The rezoning proposal meets the "arterial-street-oriented" requirement. Highway 431 is a major arterial highway known as US Highway 431.

2. The area south of the subject property serves as a service center for the Utica area. Three lots to the south on the east side of Highway 431 is a commercial strip area with a
convenience store (known as the Utica Food Mart) which
is located at the intersection of US Highway 431 and
KY 140. The property is zoned B-4.

3. On the east side of the intersection
of US 431 and KY 140, there is a vacant tract zoned
B-4.

4. On the west side of the intersection
of US 431 and KY 140, there are two vacant tracts
zoned B-4.

5. All of the tracts of ground at the
intersection of US Highway 431 and KY 140 at one time
were owned by the Utica Food Mart owners. When these
owners sold the tracts of ground, they placed
restrictions on the property which would prohibit
grocery sales and gasoline sales. The applicants plan
to sell the property to Dollar General Company. This
is the only tract near the intersection that has no
restrictions and best suited for the Dollar General
Store use.

PLANNING STAFF REVIEW
The subject property is located in the 10501
block of US 431. Land use criteria applicable to this
proposal are reviewed below.

GENERAL LAND USE CRITERIA

Environment
According to a study prepared by the US Department of Agriculture Soil Conservation Service dated March 6, 1990, it appears that the subject property is not located in a wetlands area. The subject property is not located in a special flood hazard area per FIRM Map 21059CO425 C. Based on the preliminary FIRM maps dated July 7, 2007, the subject property is not located in a special flood hazard area per map 21059CO405 D. It appears that a portion of the subject property is designated as prime agricultural land according to the "Important Farmlands" map created by the US Department of Agriculture Soil Conservation Service dated March 1980. The developer is responsible for obtaining permits as may be required by the Division of Water, The Army Corp of Engineers, FEMA or other state and federal agencies as may be applicable.

It appears that the subject property is outside the Owensboro Wellhead Protection area according to a map created by the GRADD office dated March 1999.

**URBAN SERVICES**

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

The subject property is located in the rural community of Utica. In the vicinity of the subject property, all surrounding properties are zoned either R-1A Single-Family Residential or A-U Urban Agriculture. There are residences to the north, south and west of the subject property. The property to the west is agricultural in nature.

A dilapidated structure is present on the subject property but it appears to have been out of use for several years. As stated by the applicant, there have been various quasi-commercial uses on the property since the applicant took ownership of the property in 1997. However, unless there have been consistent commercial related use of the property since prior to zoning regulations in the late 1970s, it's possible that the uses on the property have been illegal. Regardless, the fact that there has been an 18 month gap in the use of the property, an existing non-conforming status of the property has been lost and the rezoning application must be reviewed as such.

There are two primary criteria in the Comprehensive Plan for general business uses within a Rural Community Plan Area. The first is a logical expansion which is not applicable for the subject
property since the nearest B-4 General Business zoning
is located four tracts south at the corner of US 431
and KY 140. The second criteria states that new
locations of general business use should be
major-street oriented and be located at the corner of
intersecting streets if located in close proximity to
existing dwellings. With frontage on US 431, the site
is major-street oriented; however, the second portion
of the requirement is not met and not addressed by the
applicant in their findings. There are existing
dwellings on three sides of the subject property with
the property to the west being part of a large
agricultural tract with frontage on KY 140 East.

SPECIFIC LAND USE CRITERIA

The applicant's proposal is not in compliance
with the Comprehensive Plan. The proposed use will be
non-residential in nature and major-street oriented
but is not located at the corner of intersecting
streets and is in close proximity to existing
dwellings.

PLANNING STAFF RECOMMENDATIONS

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

1. The subject property is located in a Rural Community Plan Area, where general business uses are appropriate in limited locations;

2. Although the subject property may have been used for quasi-commercial uses in the past, it has not been used in a similar manner over the past 18 months and therefore does not qualify as an existing, non-conforming use;

3. The subject property is not contiguous to existing B-4 zoning or use and is therefore not a logical expansion of existing B-4 General Business zoning;

4. The subject property is situated in close proximity to existing dwellings with residences located to the north, south and west of the subject property; and,

5. The subject property is not located at the corner of intersecting streets.

MR. WILLIAMS: We would like to enter the Staff Report into the record as Exhibit B.

MS. STONE: We would like to add for the public these recommendations of these two zoning changes will become final in 21 days, the OMPC’s recommendation, unless a request is filed before the
legislative body to hear the zoning change.

CHAIRMAN: Thank you.

Is there anybody representing the applicant?

MR. KAMUF: Yes, sir, Mr. Chairman. Charles Kamuf.

(Charles Kamuf sworn by attorney.)

MR. KAMUF: I represent Bob and Nancy Grimsley.

As indicated by the reader, the zoning application is for a 2.4 acre tract. As you can see, this is Utica. It's 431 where it intersects Highway 140.

All of the red is, this is the corner on the east side. This is on the southeast side and the other red is a vacant lot and also a bank on the far side. This is the proposed rezoning here that you see. The different color, purple color is the fire station.

As indicated in my findings of facts that I prepared, since 1997 the subject property has been owned by the applicants, the Grimsleys. It's been used as a general service repair shop, a sales lot for tractors, equipment and automobiles, a chimney sweep operation, and a community retail sales lot to sell equipment and vehicles.
Within the last 18 months sales activity has been taken place. Members of the community have used this lot to sell equipment.

At the present time on this property there is an old dilapidated house. Now, if the zoning is approved tonight, we plan to use it for a Dollar General Store.

I'll pass this around. This is what the store would look like.

One of the neighbors I talked to, Mr. Tony Cox, lives directly to the north. He has no objection to the rezoning. This is some type of screening that we will have. I think that in talking to him earlier tonight, he would like instead of a slat fence a closed fence.

Isn't that right, Mr. Cox?

MR. COX: Right.

MR. KAMUF: A closed fence on the north side. We will agree to that. It is somewhat similar to the fence he says that separates the property out by the Waffle House on Frederica Street. We're willing to do that.

CHAIRMAN: Mr. Cox, would you mind stepping to the podium and being sworn in so we will have it on the record that you commented affirmative to Mr.
Kamuf's comment?

MR. SILVERT: State your name, please.

MR. COX: Tony Cox.

(MR. TONY COX SWORN BY ATTORNEY.)

CHAIRMAN: Mr. Kamuf, would you restate your comment for the record, please.

MR. KAMUF: Mr. Cox asked me earlier tonight if we would be able to put up a full slat fence similar to the one at the Waffle House on Highway 431 there by Texas Gas, and we said we would. If that suits him, we'll put up this fence, if the board wants us to, but I think he would rather have a different type fence and we're willing to do that.

CHAIRMAN: Thank you, Mr. Kamuf.

Mr. Cox, would you comment.

MR. COX: If it's zoned commercial, I would like a solid fence the entire length of the property separating the two sides. There is one more issue as well that I need to comment on while I'm up here, if I may.

CHAIRMAN: Mr. Kamuf, are you ready for questions?

MR. KAMUF: I would like to develop it just a little more, if I could.

CHAIRMAN: Couple of minutes.
MR. KAMUF: As short as I can.

CHAIRMAN: Mr. Cox, be seated and we will hear Mr. Kamuf's presentation.

MR. KAMUF: He has another issue about the gas line and we're willing to deal with that also.

This shows a picture of the subject property. The picture was taken from the subject property looking at a southwardly direction along Highway 431. So as you can see, this property here right to the south is the Utica Food Mart.

CHAIRMAN: Mr. Kamuf, is that a sign? What's that in the upper right-hand corner?

MR. KAMUF: This is a sign that's on the property. It's an iron sign that's been on the property. It's my understanding, but Mr. Grimsley will talk in just a few minutes, that this is kind of a community lot that Mr. Grimsley lets people put cars on and this type of thing to sell them. It's been used that way for years. This is a sign that was on the property.

CHAIRMAN: Thank you.

MR. KAMUF: I'll put this over here.

The subject property is located in a rural community area. I think to fully understand and comprehend exactly what that is, is the rural
community plan area is an area that you would have at
West Louisville or Sorgho or Thruston or some of these
areas. It's where you have a concentration of people.
The whole idea of a community, rural community area is
to have where you have the commercial activity in one
particular place. So what we have here is that you
can see at this intersection of 140 and Highway 431
there is a lot of commercial activity.

We think there's a need for the Dollar Store,
a Dollar General Store in the Utica area. Especially
individuals would not have to drive to Owensboro to
pick up certain needs such as groceries, clothing,
health aids and beauty aids and household supplies.

Now, the finding of the Staff say that they
agree that this is a rural community plan area that we
have. So the question is: Why do they do that? The
whole idea is so that in a small area you will have
certain community oriented, maybe commercial
activities that these individuals would have so they
would have it in that locale.

Now, this is this way it's stated in the
comprehensive plan at 4311. "Established rural
communities are designated as the areas to provide for
almost all small lot rural housing and other urban
related commercial industrial or similar activities
that may be needed in a rural area."

So it's our contention that a Dollar General Store is needed in that area.

It's also noted in that same section, "that commercial activity should be discouraged outside of a designated rural community plan area."

So on this that we have, in this particular area here is the Utica convenient store. This is a vacant lot. Also to the southwest is a vacant lot and a bank. There is an existing fire station that you see in the purple.

The Staff Report indicates that the subject property is major-street-oriented. They agree with that. They agree that it's in a community rural service area. However, they disagree with the fact that the subject property is not located at this intersection, they say according to the comprehensive plan.

What we have is an unusual situation in that it might be good business, but it's not necessarily good maybe for everybody else. When this gentleman bought this store, the Utica Food Mart, he put restrictions on all of this property where at that intersection there can never be any, and I'll pass these out for you. "It is specifically understood and
agreed to that as a covenant running with the land, no
grocery store, convenient type food store or gas
station shall be constructed on the property." That's
in one of them. In the other deed it has pretty well
the same.

So it kind of defeats the whole idea of the
rural community plan because you can't put it at the
intersection because there are restrictions.

I would like to pass this out to give each one
of you so you can read this, and we'll put this in the
record.

If we put it down here, it would be in accord
with the comprehensive plan. If we put it at the
intersection of Highway 140 and 431, it would be in
accordance with the comprehensive plan; however, there
will never be a Dollar General Store in Utica at the
intersection of 140 and Highway 431 because it's
restricted by these covenants of record.

The comprehensive plan says this, you don't
want commercial activity outside of this area. So it
defeats the whole idea of the comprehensive plan to
have one of those restricted covenants because you can
never have a Dollar General Store in that particular
area.

Our first choice in building the Dollar
General Store was at that intersection. Then we found out that there were covenants that would prevent it so what we've done is placed it someplace else.

That is our argument as far as does it meet the criteria of the intersecting street? We think that it does because you can't put it at the intersection of the intervening street because of this restriction.

The next issue is whether there is a logical expansion. An integral part of the logical expansion is that you look at the entire area.

In 1993 I handled a case which was identical to this case at Thruston. What happened at Thruston is right before you get into Thruston going east someone wanted to put in a hardware store and a supply store. It was about a two acre tract of ground just as we have here. It met the community rural plan area because it was in it, but they said, you can't do it because there are three lots separating the B-4 and the proposed B-4. Just exactly like we have here. I think this is three or four lots that we have here.

Certainly the Planning Staff did what they're suppose to do. They looked at the land use plan. The land use plan says what? Logical expansion. So they said, here is what the Planning Staff report said.
"The property does not adjoin general existing business zone and therefore cannot be considered as a logical expansion of the zone."

This board with 9 to 0 vote decided this, they said that the rezoning of the property to general business was appropriate even though the property does not adjoin general business considering the use of the entire area. The requested zoning would be a logical expansion of the business and adjacent to the property.

So what this board has to do is interpret the land use plan. When you look at the entire area that you have here, the entire area, is there a logical expansion of an existing zone? We think we have made a case for that. The reason is that you look at the entire area. You don't say, hey, you've -- what if it was ten foot between here and that property? Would that be a logical expansion? I think it is about 250 foot from the end of the red to where we see the green.

So we think that the comprehensive plan should be flexible, it should be reasonable. You interpret it that way and it should not be a straight jacket to prevent somebody from having a rezone in a certain area just because there is a technicality that's not
So in conclusion let me say this: We think we are in accord with the comprehensive plan. We think that there is a need in the area for a Dollar General Store so people don't have to drive to Owensboro for different type of things. We think that we have met the logical expansion. I have that ruling that you all made if you would like to see it. I have read from it where you're talking about -- you look at the entire area.

I have met with Mr. Tony Cox. He has one other question for me, and I'll be glad to put that in the record as far as the gas line.

There is a gentleman that would like to speak. Mr. Grimsley would like to speak. If you have any questions of me I'll be glad to field them. I know I want to answer that question by Mr. Cox.

CHAIRMAN: Thank you, Mr. Kamuf. We've got your summary. Let me field questions and then we may call Mr. Grimsley and other people to the stand to answer those questions.

Is there anybody from the audience that has any questions at this time?

Yes, sir.

MR. SILVERT: State your name, please.
MR. STILWELL: David Stilwell.
(DAVID STILWELL SWORN BY ATTORNEY.)

MR. STILWELL: I've lived at the property adjacent to the said property since 1992. In that time I've made numerous improvements to my property. We've built a house. The appraisal that we've had on our property has been 166,000. I have an issue with putting a business next to my home as far as devaluate my property.

The main issues I have with the store, the Utica Fire Department has moved to Highway 140. The reason for them moving is because of traffic hazards. People come over that hill running excessive of the speed limit the majority of the time. I know there's been numerous times that I've been close to getting hit pulling out of my driveway. The said property is further north, closer to the top of the hill. I feel like you're creating a bad traffic situation if you allow this rezoning to happen. I think that's all I have to say.

CHAIRMAN: Do you have any questions of Mr. Kamuf or the applicant at this time?

MR. STILWELL: Not at this time.

CHAIRMAN: Thank you.

Is there anybody else that has questions or
issues they would like?
(NO RESPONSE)

CHAIRMAN: Mr. Kamuf has referred to somebody would have an issue with the gas line.
Yes, sir, would you come and address that issue, please.

MR. SILVERT: You've already been sworn in, but if you could just state your name again.

MR. COX: Tony Cox.

My gas meter is located down in that field there. What I'm concerned about should it be rezoned and construction start and somebody decides that my gas meter that supplies my natural gas is in the way of the driveway is going to have to be moved. I don't want somebody come and give me a bill for that. I don't want them to cut my gas off. That's a real issue with me because I have contacted the gas company and they said, yes, we'll come move your meter, but we'll give you the bill though.

CHAIRMAN: I think that's something for Mr. Kamuf and Mr. Grimsley to address because right now it's no issue.

Mr. Kamuf, would you address that issue or do you want Mr. Grimsley?

MR. KAMUF: Mr. Grimsley.
MR. SILVERT: State your name, please.

MR. GRIMSLEY: Robert G. Grimsley.

(ROBERT GRIMSLEY SWORN BY ATTORNEY.)

MR. GRIMSLEY: In the purchase agreement that we executed with Dollar General Store, I dealt with that specific issue, the gas line. At one time the whole property was owned by one estate and they just ran the gas line across their property to Mr. Cox's house. They're aware of it. I told them it's something we will have to deal with. We can assure Mr. Cox that it will be taken care of. The gas line will be moved off the subject property out to the right-of-way along 431 up to his house and then run into his house. That's a non-issue for us as far as taking care of that.

CHAIRMAN: Mr. Grimsley, would you mind stating that, that Mr. Cox will incur no expenses in this movement or transaction?

MR. GRIMSLEY: Yes, I will.

CHAIRMAN: You agree to that?

MR. GRIMSLEY: We agree that Dollar General or us will take care of that at no expense to him.

CHAIRMAN: Mr. Cox.

MR. COX: That's fine with me.

CHAIRMAN: Are there any other comments or
questions of the applicant from anybody else in the audience or anybody on the commission?

Yes, ma'am.

MR. SILVERT: State your name, please.

MRS. STILWELL: Cynthia Stilwell.

(CYNTHIA STILWELL SWORN BY ATTORNEY.)

MRS. STILWELL: Have you looked at the water run-off issue if you built a business there and what that would do to our property? After you took away all the topsoil there a few years ago. Having a business there and that would have to be built up and then the water run-off into our property?

CHAIRMAN: Mrs. Stilwell, address the questions to the chair and then I'll re-address because that keeps cross conflict from developing.

MRS. STILWELL: I'm sorry, Mr. Kirkland.

We own the property to the south of the proposed change. You just heard from my husband. Mr. Grimsley several years ago took all the topsoil off of the land and we had some water issues. I mean not anything too bad, but if someone has to go in and build that up, I would wonder about the run-off of the water and how that's going to be taken care of and not come on to our land and flood our front yard.

CHAIRMAN: We will check and I'll get that.
Do you have any other issues or questions you want resolved or answered?

MRS. STILWELL: The only other thing is if this proposed change goes through, I don't want the slatted fence nor do I want a wooden fence separating our property from that property. I want a nice fence. I want a vinyl fence. I want a white vinyl fence, and I want to be assured that they will maintain that fence, both sides of it, during the time that they would have it there.

CHAIRMAN: I'm not aware of a white vinyl fence.

MRS. STILWELL: Yes, I want a nice one. I don't want to devalue our property and I don't think the small wooden slatted fence that you saw the picture of a few moments ago would enhance our property and would keep prying eyes away and keep my children safe when they're in the front yard.

CHAIRMAN: Let me get a little clarification.

Mr. Noffsinger, are you familiar with the type of fence that she's referring to?

MR. NOFFSINGER: Yes, sir.

CHAIRMAN: Thank you.

Mr. Grimsley, I don't know if really this is the question for you or for Mr. Kamuf. I think it
might be in your best interest if Mr. Kamuf handles
the run-off issue. If you'd like to, I'd be happy to
question you about that.

MR. GRIMSLEY: I'd like to take a shot at it.

CHAIRMAN: You heard her question with regards
to the run-off. As either the developer, owner or
somebody on your side of the line will be responsible
for the run-off. I assume that plan will be or has
been addressed. Are you aware?

MR. GRIMSLEY: When I first started this
process, Mr. Chairman, I approached the neighbors and
I gave them copies of what the proposed store would
look like, the fencing and also a site plan that's
been developed by Bryant Engineering.

I would say that Bryant Engineering has
enough experience to be able to go in and do the site
development plan, and I do know that Dollar General
has contracted with them upon approval of the zoning
to do the site work. So I would like to refer that
expertise to Bryant Engineering and let them handle
the drainage issue.

CHAIRMAN: Is there a representative from
Bryant Engineering here?

MR. GRIMSLEY: Not that I'm aware of. I have
a copy of the site plan. The neighbors have a copy of
the site plan.

As far as the fence, no problem with that. We'll be in agreement to provide a vinyl fence if that's what they prefer.

Dollar General is very aggressive in making sure that everybody is pleased with the store that they're going to develop on the site. So I have all the assurances in the world from them that they will commit to doing that.

I don't know that we can commit or have them to commit to claiming both sides of the fence. That's the only issue that we haven't addressed.

CHAIRMAN: I think she was referring to maintaining. The fence would be your property to begin with. I don't think she expects you to come over and mow her side of the lot. I think she just is referring to maintenance of the fence.

Am I correct in that?

MRS. STILWELL: Yes, sir.

MR. GRIMSLEY: I have no problem with that.

CHAIRMAN: The things that she's requesting is things you would be responsible for.

The run-off issue and everything else is taken care of in the engineering plan. They are responsible for maintaining their run-off in their property.
That's something that they would be responsible for.

We've got an affirmative answer on the request for the
vinyl fence.

MR. APPLEBY: Would that site plan come before
this board? It wouldn't, would it?

MR. NOFFSINGER: No, sir.

MR. APPLEBY: But those issues, drainage
issues are addressed on the development plan, the site
plan?

MR. NOFFSINGER: Yes, sir.

MR. APPLEBY: They are required to handle all
the run-off on site. In theory they're not to put any
more water off that development, after it's developed
than to come off of it right now; is that correct?

MR. NOFFSINGER: In theory that is correct,
and it is not enforced through this office.

MR. APPLEBY: That would be through the county
engineer's office if there were a problem?

MR. NOFFSINGER: That would be through the
circuit court, between two private property owners.

CHAIRMAN: Does that resolve the issues you
have?

MRS. STILWELL: I have one more question.

CHAIRMAN: Yes, ma'am.

MRS. STILWELL: Has anyone done a traffic
study?

CHAIRMAN: Mr. Noffsinger, traffic study.

MR. NOFFSINGER: No, sir, there is not one.

There has not been one done.

CHAIRMAN: Is there a traffic study required?

MR. NOFFSINGER: No, sir.

CHAIRMAN: No traffic study is required.

Are you happy with issues that will be adjacent to your house, contiguous to your house in the proposed store? You'll get a fence and you would get an assurance that the storm water run-off would be, is what it is today and you will not have water problems from the construction and/or the --

MRS. STILWELL: Sir, we have several issues with this. Of course, the devaluation of our property. I don't know what kind of lights they're going to have that are going to shine into our house at night. I don't know how late they stay open at night. Truck traffic, large semi trucks that would be coming into that property. Turning in and the noise level and that sort of thing. I have issues about it becoming a hang out for people in the area.

I realize those are all probabilities, but I don't know how large of a sign the Dollar General Store is going to have, the height of it that will
shine into our little boy's bedroom at night. I don't know what the noise level is going to be. I don't know about the traffic.

CHAIRMAN: Those are issues and things that we can discuss at this time right now. I can get an answer or an assurance from them on that, as far as hours of operation, as far as the lighting. We've dealt with lighting issues before in other situations.

MRS. STILWELL: I don't know how to ask questions about those kind of things?

CHAIRMAN: We can ask him. What we want to do is before we vote, we want to see everybody's side of the issue. Either way we vote, if we vote for approval, we want to make sure that you have assurances that will be conducive for you. If we vote for denial, we want to have an adequate reasons why we voted it for denial. Let me see if I can get those issues resolved. Okay?

MRS. STILWELL: Thank you.

CHAIRMAN: Mr. Grimsley, do you want to handle those or do you want Mr. Kamuf to handle them?

MR. GRIMSLEY: I'll handle them.

CHAIRMAN: We've got a lighting issue as far as the shining and the brightness of the lights disturbing the neighbors. We've dealt with those
issues before.

MR. GRIMSLEY: When I spoke to Cindy before and was seeking their approval for this particular site, I indicated to her that now is the time for us to work together. I'm in a position where that I can make a light point maybe a different direction during the construction phase and keep it from shining on their house.

As far as the signage, it's a typical sign that they have on thousands of store across the country. I don't know the size or the wattage of the light what it may put out.

The other issue, what was the other issue that she had? The trucks and the noise?

CHAIRMAN: The trucks and the noise.

MR. GRIMSLEY: Right now their house and my property and all the houses along there are in close proximity to that highway. You've got truck traffic and noise right now.

On the site plan that I provided with them, it shows how the truck traffic and the parking and everything comes in and around the property. So I tried to address that, as far as the truck traffic coming in for unloading supplies.

Most of the parking is out on the front of the
building, which is directly away from their property.

CHAIRMAN: Is that adequate assurance to what you're looking for?

MRS. STILWELL: I know there will be a sign on the front of the store. I'm talking about something that's on a pole sticking up with lights in it to announce that it's there.

CHAIRMAN: I think I can answer the question for you.

Are we looking for a perpendicular sign or are we going to look for a parallel sign just on the building?

MR. GRIMSLEY: I know there will be one on the face of the building. I don't know this, because they haven't indicated, but there's probably going to be one on the highway that's a perpendicular sign. Does the picture show that?

CHAIRMAN: The picture does not show that. The picture just shows a parallel sign of a Dollar General which would not --

MR. APPLEBY: Have you got their preliminary site plan? Does it show a pole sign?

MR. GRIMSLEY: I was looking to see if we had the site plan. I thought we did.

Cindy, did you bring yours by chance?
MRS. STILWELL: Yes, and at the front it does have a sign, but it does not say.

CHAIRMAN: Would you bring that up and hand that to Mr. Appleby, please.

(MRS. STILWELL COMPLIES WITH REQUEST.)

CHAIRMAN: Mr. Appleby, what did you determine?

MR. APPLEBY: I just wanted to see. It shows a pole sign on it. Of course, it doesn't say anything about it.

CHAIRMAN: Does it say anything about the size?

MR. APPLEBY: No.

CHAIRMAN: Are there any other questions that you have in regards to this? Have your questions and ideas been met on what -- if we do go in favor of this, have you got all your questions answered that you feel comfortable with? Obviously we want -- he understands and I think Mr. Kamuf understands the illumination of the parking lot, etcetera.

What will be your hours of operation? Are you all aware of what the general --

MR. GRIMSMLEY: They've indicated to me that they will open at 9 and close at 8 or 9. He didn't know if it would be 9 to 9 or 8 to 9. On Sundays
they'll open at 1:00 and go until 8:00.

CHAIRMAN: If I'm looking at this correctly of the Dollar General, it appears that the sign will be perpendicular to 431, but be on the north side of the entrance. It appears to me that this drawing here, that the driveway parking, etcetera, is going to be on your south side. You live on the south side of the property?

MRS. STILWELL: Yes. That would be north of our property.

CHAIRMAN: Actually you'll have a buffer of the driveway, the sign and the entrance between you and where the sign. Did you see this, where the sign is located?

MRS. STILWELL: I thought the sign was on the other side?

CHAIRMAN: Not as the drawing. Would you like to step forward and take a look at this?

MR. APPLEBY: She has that.

CHAIRMAN: Mr. Miller, am I reading that correctly?

MR. MILLER: The sign is actually on the other side of the driveway from her property, but it is on the south side of the Dollar General store building.

CHAIRMAN: On this side. Right there. Then
this side is on the other side. If we ask them to
move it to the other end, then it comes a non-issue.
You see what I'm saying? I don't think that's going
to be an issue for them either. I don't think they
care one way or the other. If it'd make you happy, we
can move it down there. See what I'm saying? Then it
becomes a non-issue for you all. We'll ask for that
in your benefit.

MR. MILLER: Mr. Chairman, while you've got
that there, I just had a question about the
measurements of the lot. It may be a non-issue. The
measurements shown on this don't match what's on the
notification area map that we have. I don't know if
that means that they're not going to utilize the
entire lot.

MR. GRIMSLEY: That's what it means. They're
not going to use the entire lot.

MR. MILLER: This is showing like a 200 across
the back, 250 on one side. I don't know how far on
the other. Really that's inside whatever the 2.44
acres.

MR. GRIMSLEY: Yes.

CHAIRMAN: What would be the exact frontage
that they could have? How much frontage?

MR. APPLEBY: The lot is 250 feet.
MR. GRIMSLEY: It's 250 and I think they're taking 180, if I'm not mistaken.

MR. APPLEBY: They're buying the entire lot though?

MR. GRIMSLEY: No. They're just buying the site plan that you see there.

MR. NOFFSINGER: So we'd have potentially two commercial developments.

MR. GRIMSLEY: We're asking for zoning on all of that?

MR. NOFFSINGER: Yes. One behind the Dollar General Store.

MRS. STILWELL: So, Mr. Chairman, that would open up that should another business go in behind the Dollar General Store that the plan where the dumpsters are, I think, that would have to be opened up for another business to go back there?

CHAIRMAN: Let me ask Mr. Grimsley.

MR. GRIMSLEY: No. Cindy, we can't do that because in selling them the partial that they required, planning and zoning regulations come in and we're going to have a body of land that's going to have to be split and either sold to neighbors or I'll put a hook and join the 40 acre farm behind it.

So effectively that probably was an error in
saying we were asking for a B-4 zoning for the whole tract because we're not going to be able to use it as a B-4 tract. It's going to have to be hooked to adjoining residences or the farm in behind it. That's a plan that I'm going to have to do once the approval is done.

CHAIRMAN: So what you're saying is you will commit to not --

MR. GRIMSLEY: Developing the whole lot as a B-4 zone, yes.

CHAIRMAN: We were looking at the sign. The sign is right on the other side which would be the north side of the driveway, which is nearest to their home.

MR. GRIMSLEY: Should be vice versa. If it's on the north side of the driveway, it’s further from their home.

CHAIRMAN: I know, but what I'm saying is could we move it from the north side of the driveway to the far north side of the property on the other end of the front parking?

MR. GRIMSLEY: I don't have an issue with that.

CHAIRMAN: I don't know if you're capable of addressing that issue.
MR. GRIMSLEY: I think so.

MR. APPLEBY: Your lot is 430 feet deep and they've buying roughly an acre off the front?

MR. GRIMSLEY: Right. Exactly.

MR. APPLEBY: That's all you're trying to zone is this acre?

CHAIRMAN: I think the zoning calls for all of that.

MR. NOFFSINGER: They're proposing to rezone the entire acreage. If they're only going to develop a portion of it, that's the only portion that should be rezoned because we wouldn't want to have a piece of property there that's going to go with an agricultural lot that's zoned B-4 and you have no intentions of developing that.

MR. GRIMSLEY: We found this out once the site plan was developed. Dollar General called me and said, we're going to have to deal with this issue. That was after all the motion was in play for zoning the whole tract.

CHAIRMAN: Because then you'll have to come back and rezone the back half of that or I don't know if the neighbors on either side would be interested in that property. If you're going to connect it to the farm, then you've got an issue of -- now you have
another property that would be used.

MR. GRIMSLEY: Yes. Right now it's R-1A or
A-U so A-U can go to the farm or residential can go to
either property on each side.

CHAIRMAN: If we pass this tonight, then that
whole parcel becomes B-4, correct?

MR. NOFFSINGER: Correct. Well, after the 21
days lapse then it becomes all B-4.

CHAIRMAN: Let's see if we can sum this up and
make something.

Mr. Grimsley is agreeing to the -- Mr. Miller,
do you have a comment?

MR. MILLER: I just want to know if anyone
else wants to see this before I give it back.

CHAIRMAN: We've got a copy up here.

Mr. Grimsley agrees to Mr. Cox's incident of
the moving and/or any expenses that's incurred with
his gas line will be absorbed by either you or Dollar
General.

MR. GRIMSLEY: Yes.

CHAIRMAN: There will be a vinyl fence of nice
quality that's conducive to our neighbors here.

The signage which is to the north side of the
driveway will be moved to the far north end of the --
did you see the parking area? I would suggest moving
it to the north end of the parking area for them, which would get the signage, the perpendicular signage completely away from your house.

MRS. STILWELL: Yes, sir.

CHAIRMAN: The back part of the property that -- how are we going to handle this zoning of the whole area? Let them deal with that later?

MR. NOFFSINGER: Well, in the past what we have done is -- I think you can do a number of things. You can reduce the area of the zoning change, but you can't increase it. If you were going to make a recommendation for approval and your approval was for an area that you see on this site plan that's 200 by 250, I think it can be reduced. You just can't enlarge it. So I think you can probably address that issue here tonight. We've done that in the past as long as legal counsel is comfortable with it and we've kind of discussed it. We have done that before.

MR. KAMUF: We're willing to do that. That's not an issue.

It's my understanding also, Mr. Silvert, that you can't enlarge but you can cut down.

MR. SILVERT: Correct.

CHAIRMAN: We've got the signage moved.

One of the issues that I see that they did not
bring up, you've got your dumpsters, two dumpsters
back here. I know at the Dollar General you're not
going to have food or stuff like that to any great
extent. The dumpsters would be probably more
conducive rather than being right there to move them
to the back. Do you see that as a problem? You're
moving the dumpsters, the clanging and everything else
to the back of the building away from the neighbor's
property. Is your house on the front part of your
lot?

MRS. STILWELL: Yes, sir.

CHAIRMAN: Which would move the dumpsters to
the back. Would you be agreeable to that?

MR. GRIMSLEY: Sure.

CHAIRMAN: Mr. Kamuf, do you understand that?

MR. KAMUF: Yes, sir. The question about the
dumpster we agree.

CHAIRMAN: So we've got the gas line, the
fence, the moveage of the signage, and the moveage of
the dumpsters for our neighbors; is that correct?

MR. KAMUF: Correct.

CHAIRMAN: We've got that.

MR. HAYDEN: Did you mention parking lot
lights to them?

CHAIRMAN: The parking lights. Very good.
Give us a little insight on illumination of the parking lot.

MR. HAYDEN: Usually they're not very bright. Dollar General Store is not. Normally they put them on the side of the building.

MR. GRIMSLEY: Dollar General typically is pretty frugal in their operation so they're not going to want big glaring lights.

MR. NOFFSINGER: Mr. Chairman, what you might do and what the zoning ordinance requires is for the lighting to be pointed in a direction away from residential uses. That's typically found in the ordinance.

If approved should be made a part of the conditions, that all lighting be directed away from the adjoining residential uses.

MR. GRIMSLEY: We're willing to do that.

CHAIRMAN: Thank you, Mr. Grimsley.

Mr. Kamuf.

MR. GRIMSLEY: If I could, I would like to make one more statement.

CHAIRMAN: Certainly.

MR. GRIMSLEY: We have a tremendous amount of support from the local community for the Dollar General Store since they do have to travel to
Owensboro to get some of these needs and stuff that the Dollar General Store serves.

On behalf of the community and myself and my wife, we just ask for a favorable ruling from the Board and we'll try to work with Cindy and David and Mr. Cox in any way we can in the development of the property.

CHAIRMAN: I think you've shown the board that. I just want to make sure that Mr. Cox and your other neighbors are very much, feel like their needs have been met.

Mr. Cox.

MR. COX: I'm Tony Cox again. I would prefer a white vinyl fence myself.

CHAIRMAN: Now we've move to a consensus on the white vinyl fence.

MR. GRIMSLLEY: Mr. Cox, I don't have any problem agreeing with that.

CHAIRMAN: White vinyl fence. Would you all step back, one of you all.

In doing this, we've tried to bring together everybody. Hopefully everybody's needs are met. We can't meet everybody's needs, but hopefully you all are in a situation where your property value will be protected. The integrity of your home will be
protected, and the movement of certain situations due
to this plan, which they've greed to, which is on
public record, will be taken care of. We hope that
this gives you all a feeling of everybody working
together. That doesn't say how we're going to vote
one way or the other, but before we vote I want you
all to feel like you're in a good position as a
homeowner.

MR. STILWELL: I feel like we're probably
going to be the best we're going to be, but I still
feel pretty strong about the traffic issue because
there's been numerous times that I've been close to
getting hit by people coming over. As a matter of
fact, Tuesday night I pulled out of the driveway going
to church and before I got probably 50 foot past the
driveway, there was a Dodge pickup truck right behind
me.

CHAIRMAN: You have to understand the traffic
issue is something we have no control over. It's 431
there. That's not an issue that we can deal with. We
have no control over that issue.

MR. STILWELL: I just have a concern about the
public safety.

CHAIRMAN: I think we all have a concern about
public safety. We just in this issue, this could be a
thing that is a useful benefit for the community. 

Gives a shopping opportunity for the community and maybe it will keep more people from traveling up and down 431 to have to travel elsewhere to get basic necessity needs. I hope this board has done enough to accommodate you and your wife and your family on this situation.

MR. STILWELL: Thank you.

CHAIRMAN: At this time unless there are any further comments or questions, the board is ready for a motion.

MR. APPLEBY: Mr. Chairman, I'm going to make a motion for approval based on the applicant's findings with the conditions that:

1. All vehicular use area shall be paved for vehicular use, area screening shall be installed where adjacent to the road right-of-way.

2. That a site plan or final development plan shall be approved by the OMPC prior to issuance of any building permits.

3. The area to be rezoned will be reduced to approximately 200 by 250 feet as shown on the applicant's preliminary --

MR. NOFFSINGER: Excuse me. We need to be definite on that.
MR. APPLEBY: I think it shows 200 by 250. Is that the lot they're buying?

MR. MILLER: It's shown plus or minus. I'd be afraid to be --

MR. NOFFSINGER: You've got to be definite on that because you've got to know what you're rezoning. You've got to be definite on the size. You can't be vague. You have to be specific.

CHAIRMAN: Mr. Appleby, in your proposal would you mind stating the fence and the screening.

MR. APPLEBY: I've got it on my list.

MR. NOFFSINGER: I interrupted him, Mr. Chairman. We've got to get that dimension right.

CHAIRMAN: Mr. Miller, did you come up with an exact figure there by chance?

MR. MILLER: No, sir.

MR. GRIMESLEY: I have a specific number for you, Mr. Chairman.

What we're seeing is we're seeing bleeding off of the original survey that this site plan was laid over. The contract calls for and is exactly 250 feet deep and 200 feet in with.

CHAIRMAN: Mr. Miller, does that satisfy your question?

MR. APPLEBY: It's your question.
Conditions will be:

3. That the area to be rezoned will not exceed 200 feet frontage by 250 feet of depth as shown on the preliminary development plan.

4. That both sides of the property adjoining the residential properties the applicant will agree to install and maintain vinyl, white vinyl fence.

5. The dumpster pads be relocated to the rear of the building.

6. All lighting will be directed away from the residential properties.

7. The sign will be relocated to the northern --

CHAIRMAN: Northern most end of the front parking lot.

MR. APPLEBY: The northern end of the property.

CHAIRMAN: Excuse me, Mr. Appleby. It was the northern end of the front parking lot.

MR. APPLEBY: Northern end of the parking lot.

8. That there are any cost, that the applicant will absorb any cost incurred and relocate any gas line to the adjacent residential property.

9. All other agreed to conditions as stated in the record, if I missed anything.
CHAIRMAN: Thank you, Mr. Appleby.

MR. MILLER: Mr. Chairman, that was a fine job, Mr. Appleby. I just want to point one thing out. I think it was Condition 5 where we said something about the dumpster pad behind the building. As drawn if you do that, there is no way the trucks can get in there to empty them. There will be no access -- I'm going by what I think the distance will be behind the building.

MR. GRIMSLEY: I might suggest that we either increase the depth of the lot a little bit on our rezoning or make a statement that the dumpsters be located away from the residence to the south. That may be over on the front side of the building. I don't know. That's something that Dollar General may have to deal with.

If I make it specifically clear that that's one of the conditions for the zoning, they'll work with me on making sure they get that done. It may be that we might have to increase the depth of the lot by another 20 feet or so in order for them to get in behind.

CHAIRMAN: You brought up a very good point, Mr. Miller. We don't want to do it and make it where they can't get to it.
MR. MILLER: Unless Mr. Grimsley wants to go push the dumpsters out once a week on wheels where they can access it.

MR. GRIMSLEY: Probably not.

MR. APPLEBY: Let's amend Condition 5 to read that the dumpster pad will be located as far from the residential property line as is feasible.

CHAIRMAN: Mr. Miller, do you think we'll just leave that and put it at the rear of the building and we'll let the engineers and Dollar General worry with putting the building on the plot to make that work out?

MR. MILLER: If that's agreeable to the applicant, sure.

MR. GRIMSLEY: I think that's what -- I'm not an expert in the engineering field and I think we should refer to their expertise.

CHAIRMAN: All we're trying to do is protect the next door residence from trucks pulling up.

MR. GRIMSLEY: I want to do that.

MR. MILLER: We also don't want to tie your hands. We put it in writing here, you're committed.

CHAIRMAN: They're either going to have to slide the building or move that exit to the other side and flip flop the building.
MR. GRIMSLEY: Could we add or change the record to state that we might need 270 foot of depth. That would add 20 feet to the back line.

CHAIRMAN: I think Mr. Noffsinger is having a problem with that issue.

Mr. Noffsinger, we're talking about extending their request to a possible 270 foot depth instead of a 250 foot depth for this change in this requirement here.

MR. APPLEBY: I don't know that 20 feet cures the problem either.

MR. NOFFSINGER: You just need to determine the exact depth. Whether it's 250 or 270 feet. It may be that just moving the dumpsters over toward the building and extending the asphalt over to that takes care of it. Even if they're behind the building, you can still extend the asphalt to the dumpster pad. You can stick with --

CHAIRMAN: Mr. Miller, I think the dumpsters would be straight in. I see what you're thinking. The left-hand turn there looks great on paper, but can't be made physically. Where if they just extend that pad to the west I would think, if they extend the pad to the rear part of the property, then maybe they can just put those dumpsters to the left side and on
back and accomplish the same thing.

MR. MILLER: Agree.

CHAIRMAN: Thank you.

Mr. Appleby, sorry for our interruptions. I know your mind is right on track. Have we got the conclusion of the motion?

MR. APPLEBY: I'm not going to change it I don't think.

MS. STONE: Could I ask a question about the size of the lot?

CHAIRMAN: Yes, ma'am.

MS. STONE: We didn't get a site plan submitted with the zoning application so we don't know if that 200 feet is from which property line. We need maybe a new exhibit submitted in order for us to get that zoning correctly, to locate it on our map.

MR. NOFFSINGER: Becky, what you're not seeing and I'm seeing is the 200 feet would run parallel with the roadway, with the 250 or 270, what they agree on would go perpendicular to the roadway. It starts on the southwest property corner.

MS. STONE: That's what I needed to know.

MR. NOFFSINGER: Extend north.

MS. STONE: On the conditions, since we'll be sending this to the county recommendation tomorrow,
you had paving of the parking area, the vehicular use
area. Was that Number 1?

MR. APPLEBY: Yes. The original condition.

MR. NOFFSINGER: We didn't have any
conditions.

MS. STONE: We didn't have any conditions.

CHAIRMAN: Those were the applicant's
conditions.

MS. STONE: I see. Site plan. Two was the
site plan and final development plan. Did you have
any conditions on the height of the fence?

MR. APPLEBY: No, but isn't that by ordinance?

It's a six foot requirement?

MS. STONE: It's a six foot requirement, yes.

MR. APPLEBY: Does that need to be stated?

MS. STONE: Did you have a condition on the
trees or the buffering that's required by the
ordinance or just screening as required by the
ordinance?

MR. APPLEBY: Just the screening as required
by the ordinance.

MR. MILLER: I have a question on the fence.

I don't have it clear in my head. Does that go just
the length of the zoned distance? Does it go the
entire length of the property?
MR. NOFFSINGER: I would think it would go the length of the zoned property because there's going to be a lot division.

MS. STONE: They'll have to create a lot.

MR. NOFFSINGER: They're going to have to a lot division.

MR. APPLEBY: It will be screened across the rear of it too since it's not --

MR. NOFFSINGER: The rear, yes.

MR. APPLEBY: It will have to be fenced on three sides.

MR. GRIMSLEY: I think Mr. Cox's understanding was the whole property line on his side was going to be a white vinyl fence.

MR. MILLER: And that's why I brought that up. That's what he said.

MR. GRIMSLEY: He's left. That's what I agreed to do. If the Stilwells want the same thing. The Stilwells and the Coxes are going to become my best prospects on the sale of this other property.

MR. APPLEBY: Let's be clear then. The Stilwells be interested, you would want that fence the entire distance of your property?

MR. GRIMSLEY: Their choice.

MR. APPLEBY: Because the zoning ordinance
wouldn't require them to fence it all the way to the back corner of this two acre tract.

MR. STILWELL: That's something we could negotiate with Mr. Grimsley at a later date?

MR. APPLEBY: Certainly.

CHAIRMAN: Right now on the record we have it where it could be down the back, down both sides and across the back.

MR. STILWELL: For the record why don't we do it across the back and then at a later date when me and Mr. Grimsley get together and we decide to go down the property line. Like he said, at some point we could desire to buy the remaining part of the property. If we did that, we wouldn't want the fence all the way back.

CHAIRMAN: Mr. Noffsinger, would they need to come into the office for a revision in writing of that? Because the enforceable part of the agreement would be to the back part.

MR. NOFFSINGER: Yes, they would. Here is what we don't want to get into. The enforcement end of it would be for this commission to sit a condition that it's for the entire length and then for the fence to only go in a portion of that property and then ten years from now the Stilwells sell, someone else comes
in and finds out there should be a fence along that
entire property line. They come to us, well, why is
there not a fence? Well, there was suppose to be. We
just need to document what you're going to do.

I think you said it as a full condition, but
then if they come in, the Stilwells as the owners and
say, look, we're willing to agree to a lesser amount.
We have that in writing. We can attach it to the file
and we can point to that. I think we're fine.

CHAIRMAN: Thank you.

MR. APPLEBY: You understand that? We're
going to require them to do it at this point, but if
you agree to negotiate something out with him, you can
come down and put that in writing.

MR. NOFFSINGER: It's or a lesser amount
agreed to in writing by the Stilwells.

MR. STILWELL: We're going to the maximum
amount. If we want to go minimum later, we can --

MR. APPLEBY: Yes.

CHAIRMAN: Mr. Kamuf, do you understand that
agreement?

MR. KAMUF: I understand. If they want to
change, we'll enter into a written contract. We'll
come down and file in record and be part of record at
no cost.
CHAIRMAN: Thank you, sir.

Mr. Appleby, thanks for your patience and your motion. I think you're at a completion point?

MR. APPLEBY: I think I am.

CHAIRMAN: Mr. Appleby has made a motion for approval. Now we are looking for a second.

MR. HAYDEN: Second.

CHAIRMAN: Mr. Hayden has second it. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

I would like to thank the Staff, Mr. Grimsley, Mr. Kamuf, and both property owners for working together on this. We appreciate it very much. Thank you.

Next item.

COMBINED DEVELOPMENT PLAN/MAJOR SUBDIVISIONS

ITEM 4

Horizon Place, 3.28 acres
Consider approval of major subdivision preliminary plat/final development plan.
Applicant: Wabuck Development Company, Inc.; The Learning Villa, Limited

MR. NOFFSINGER: Mr. Chairman, the applicant has ask that you take a vote to postpone this item and that it is not in order and it come back before this
board at our May meeting.

CHAIRMAN: Ms. Moorman, did you have a motion for approval?

MS. MOORMAN: Yes. I make a motion for postpone this item.

CHAIRMAN: Motion to postpone by Ms. Moorman.

MR. HAYDEN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously. The item is postponed.

Next item.

Related Items:

ITEM 4A

Owensboro Scholarhouse, 10.83 acres
Consider approval of amended major subdivision final plat.
Surety (Letter of Credit) posted: $32,404.75
Surety previously posted: $370,747.95
Applicant: Clayton Watkins Construction

MR. NOFFSINGER: Mr. Chairman, this applicant has requested a postponement on this item until the May meeting.

CHAIRMAN: Chair is looking for a motion.

MR. GILLES: Motion to postpone.

CHAIRMAN: Motion for postponement by Mr.
MR. MILLER: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously. The item is postponed.

Next item, please.

MINOR SUBDIVISIONS

ITEM 5

5191 Roby Road, 4.144 acres
Consider approval of minor subdivision plat.
Applicant: Joseph Martin Cecil and Patricia Ann Cecil

MR. NOFFSINGER: Mr. Chairman, this plat comes before you in that they're asking for an exception to the subdivision regulations. This does create a lot that has 50 feet of frontage on public right-of-way and extends back a distance of about 916 feet and then opens up to about a four acre parcel.

Staff does not recommend approval of this lot division in that it does create a lot that excessively goes beyond the three to one depth to width ratio that is included in the ordinance and would recommend it not be approved.

CHAIRMAN: Are you getting ready to read a
MR. WILLIAMS: He's covered it well.

CHAIRMAN: Mr. Noffsinger, I believe we have a term for that type of lot.

MR. NOFFSINGER: We call those flag-shaped lots. This is definitely a flag-shaped lot in that it has quite a bit of a pole there.

CHAIRMAN: Is there anybody here representing the applicant?

MR. CECIL: Yes.

CHAIRMAN: Would you all like to make a comment?

MR. SILVERT: State your name, please.

MR. CECIL: Martin Cecil.

(MARTIN CECIL SWORN BY ATTORNEY.)

MR. CECIL: We're asking for an exception on this. I was thinking whatever the board makes here in salary that you certainly deserve it.

I know the board doesn't have the opportunity to see the terrain on this land. My son, Damon, wants to build a house back where the property is. He presently has a trailer back there. When he went to get approval from the appropriate people, the health department said that that was essentially about the only place he could get the perk test past. This
property immediately in front of his house is a hill. It goes downhill toward a very large ditch which is sketched on your plot plan.

As you can see, there's a gas line that crosses that property. Mr. Jones' property has a gas line to that, to his house. That's not on the plot. So that plot from Mr. Jones on down to the road, actually off from the ditch onto the road really would not be suitable for a house. I don't think the health department or anybody else would approve a house there for those reasons.

We've had a lot of problems with that ditch. It's the type of soil that easily erodes. I don't know if the board is even interested in it. Mr. Kamuf had a tremendous display of pictures. We have some small pictures showing that ditch and some of the other features about it, which you can look at and pass around while we're talking.

CHAIRMAN: Mr. Cecil, may I ask a question of you?

MR. CECIL: Yes.

CHAIRMAN: I assume this is your property off of, completely encompasses Mr. Jones' property; is that correct?

MR. CECIL: Yes, that is correct.
CHAIRMAN: Maybe I do not follow you, but the triangle between this driveway or whatever and the gas line, is that something that could be suitable?

MR. CECIL: No. It's not big enough for a house. Not only that, near the end of his property his gas line goes to the Atmos gas line which is a large gas line. So you couldn't build over his gas line either or that gas line either.

That area from Mr. Jones' property on to Roby Road is simply not suitable for a house. I don't think -- one of those pictures reflects water coming down and running over the road. In fact, there's still some water left in the road in one of those pictures. That was taken yesterday I believe it was. The 9th is shown on the picture.

CHAIRMAN: What this commission has tried to do with the so-called flag lots is, for obvious purpose, is to try to eliminate them. You've got a piece of property way back here in the back. You've got a little spindly road that leads back there to them. I know obviously you're not going to cut your son off. Since you have all of this property here, isn't there anywhere where he could put a house, square it up to the road and make life easy for us?

MR. APPLEBY: I don't think it's so much where
he puts the house. It's just how the lot is shaped and what happens with regards to future development of the property. I think that's the biggest concern.

MR. NOFFSINGER: There's plenty of land there to add frontage so that you have a lot that's better proportioned, utilized in that area, the low land, the gas line. You have a lot that's probably over ten acres in size if you attach that to it, this wouldn't be an issue. Or you could go to the rear of the property and add some additional land to make it ten acres. It may very well be the best location to build a home on this property. That is not the issue. It's more in terms of creating a lot and the potential for creating additional lots in the future on this property. So there's land there that you could tie to it and make the exception go away.

MR. CECIL: I understand your concern. I guess what I was trying to say is I couldn't really see any opportunities to build a lot because if you come from that ditch that's sketched out there to Roby Road, it's either wet or it's got a gas line on it. There really isn't any appropriate place there.

CHAIRMAN: What about on the other side of Mr. Jones' property?

MR. CECIL: On the other side of Mr. Jones?
CHAIRMAN: Yes, sir.

MR. CECIL: That's a hill. I mean it's not really that suitable. It's very steep on the other side. I don't think those pictures do justice to it. I would have to explain to you which direction you're looking at too. On the other side of Mr. Jones it's very steep. There's some wooded area over there. There's also erosion problems on the other side of that.

MR. APPLEBY: What about to the rear of the property there? What's back there? Is that just wooded back there?

MR. CECIL: Which one is that?

MR. APPLEBY: To the rear.

MR. CECIL: Yes. That's just wooded. It's got springs in it. It's got erosion problems back there because those springs runs all year long. That is strictly wooded. It's a very steep decline. Declines right behind this area. In fact, the wood area starts right behind that property there.

MR. APPLEBY: I guess what I'm getting at is 20 years from now somebody decides they can develop that piece back behind this trailer, there's no way to get to it. We can't make another lot back there. We don't have enough frontage, enough depth along that
road frontage there to put a public road back there.

MR. CECIL: I don't see how you could ever develop that behind there. When I say it's steep, it's hard to walk down. It's wooded, but it's very steep. I don't see how you could ever develop it. There's nothing flat back there behind it.

MR. APPLEBY: Would you be willing to -- I don't know the lay of the land exactly, and I don't know if there are other lots that could be cut off of it. It sounds to me like you're saying this is the only place that's developable on it, but are you willing to put that notation on the plat, that this is the only lot you'd want to cut off of that tract?

MR. CECIL: Absolutely.

MR. APPLEBY: Does that make sense?

MR. NOFFSINGER: If the applicant is willing to show the balance of the property, plat the balance of the property. I'm not saying a survey, but actually redo this drawing to where you plat the entire property by deed and you put a restriction on that remaining property that there will be no further divisions of that property. No additional lots created and it's irrevocable. I think that limitation is there.

MR. CECIL: What do you mean by the entire
property? The farm is like 126 acres.

MR. APPLEBY: That's not what we're showing on this particular drawing. It shows it as a portion of -- how big is this tract?

MR. CECIL: Forty-two acres. That was purchased in two separate parts. One was 86 and the other was 42, I think.

MR. APPLEBY: I think that's what we're getting at. You have additional property that adjoins this big tract all the way around it?

MR. CECIL: Yes.

MR. APPLEBY: Is it all consolidated now into one?

MR. CECIL: It all joins. This property you're looking at is -- well, it's really not clear up there on the other site. What you're looking at is 42 acres. Apparently when we purchased it, it was deeded that way and it's separate from the other. There's an 86 acre parcel on the left that we own. We live on that.

MR. APPLEBY: I think what we're getting at is what we're dealing with is this 42 acre tract.

MR. NOFFSINGER: The 42 acre tract would be limited to, you could not create any other lots on that 42 acres. I don't advise you to go that route.
I would advise you to go more toward putting together a ten acre parcel here. Adding six acres to this lot and create it as a separate tract and stand alone and you don't have to tie up the balance of the property. That's up to you. I think you've got a couple of options there.

MR. CECIL: The only other really logical place to put a lot would to be the left of Mr. Jones, but there's a barn there that I need pretty badly.

MR. APPLEBY: That's the issue. If we put that restriction on here where you can't use this, you can't further subdivide this 42 acres, at some point down the road, 20 years from now, and this gets -- you want to take a piece of that other 86 acres and tie it in with that piece next to Mr. Jones' house and that barn is no longer there, you wouldn't be able to do that if we put that restriction on there. We wouldn't want to prohibit you from developing a good lot along that road by taking some additional property off your other farm. Maybe we're better off to look at what Gary is suggesting. To make this one work as an ag tract and not encumber the balance of the property.

MR. HAYDEN: Let me make a statement. I'm familiar with the property real well. What Mr. Cecil said, it is steep. You can't build unless you do a
lot of dirt work. In the front it is a lot of sinks and washes out in front. That road, when it rains like we got the other day, it fills all that bottom up with water. So if he did develop that piece of property, and I know it's a flag lot, but there's not much you can do from the Jones property to where his right-of-way is up through there. There's not much you can do to it.

MR. APPLEBY: What about on the other side of the Jones property where he's talking about that barn?

MR. HAYDEN: It's steep. It goes right straight up a hill. You've got to understand this is Knottsville.

MR. APPLEBY: All of Knottsville is like that.

MR. HAYDEN: What he says is right. If there's a way that he can maybe get a section in the back or a section to the side between those two pieces to make it where he can do something. Get a 10 acre lot would be better. Wouldn't have any recourse from somebody else later on coming down the road. What he says with the property is right.

CHAIRMAN: Mr. Cecil, what we're trying to do is to give you the best opportunity for your property and for the future. Mr. Appleby and Mr. Hayden are both trying to give you good advice as far as if we
can do certain things to get you into a ten acre plot, and even do away with this area up here. Maybe you have a better building site on other properties that you have. Because what this is going to do, this is going to completely tie you, your heirs and whoever else owns that property, on that 40 acres, on what can be done forever. Our best advice to you is to try to work around that situation. I know what you're trying to do. You're trying to help your son. You're trying to put him in a house. We all sympathize with that. The way you're going about it, I don't think is going to be the best for your family in the future or your son or any of your future heirs.

MR. CECIL: Well, if you spent enough money I guess anything could be developed, but it would take more money than I'd be willing to spend.

CHAIRMAN: But you don't know what the future will hold. That would leave the option open for the future. This will close the door on anything.

MR. APPLEBY: Just on the 42 acres.

CHAIRMAN: Just on the 42 acres, but if you could move him maybe on some --

MR. APPLEBY: I don't think there's any dispute that he wants that building site. It's not a matter of us telling him where to build out there. If
he says that's the only place to build, that's the
only place to build. It's just how to best
accommodate him and not to cause a problem in the
future with cutting off another lot somewhere else.

CHAIRMAN: I agree.

Would you like to step to the podium, please.

MR. SILVERT: State your name, please.

DAMON CECIL: Damon Cecil.

(DAMON CECIL SWORN BY ATTORNEY.)

DAMON CECIL: I grew up on this farm. I've
spent a lot of time getting this plot set up.

Three years ago we approached the conservation
office. There's a ditch -- it's not on your plat. I
drew this by hand a few minutes ago. Just north of
the Jones property, about halfway between the Jones
property and where I suggest this plat be is a ditch
that's probably 15 feet wide. We had the conservation
office come out and give us some advice on how we can
control the erosion. They had an engineer come out.

No recommendations other than slap concrete down a 15
foot wide ditch and make a culvert out of it. We're
talking about extreme amounts of expense. Not to
mention from that ditch it's about 600 feet up hill to
where the south end of my plat should be or is
proposed. In the middle, this wide open pasture,
which I have a picture of, we are constantly battling erosion.

Like my father alluded to, when I went to the health department to get a perk test, he recommended that we go to the top of the hill. We looked at the rest of the survey. He said, I wouldn't approve a perk test. So I'm left with a decision that the county won't even let anybody build there to begin with because the ground won't perk right. So if we wanted to develop it, I'm not sure the county is going to let us because the land doesn't perk right. Again, you're on the side of a hill.

I'm fine with putting the limitations on it as an heir to the property. I've got three brothers and sisters. If this locks us into this forever and ever, that's fine. This is meant to be a family farm. Not to be sold period. I don't mind the limitations.

You're concerned about further development. I think it's going to be extremely hard to overcome because of the soil type, the topography and the county even allowing a septic tank to be built. Because they wouldn't allow me to put my septic tank any further down the hill because of the perk. I was forced up there to begin with just because of the perk test.
You've got us listed under minor subdivision. I think in order to develop this land, you're looking at somebody with millions of dollars to come in and make a major subdivision out of this, which would then I assume come back to you all as a rezoning issue. In order to develop this, this is probably going to come back to you all again if we had tried or attempted to develop it or if we sold it to Dollar General and they wanted to develop it. It's going to come back to you because anybody with less than a couple of million won't have the ability to develop this land because of the topography and soil type.

The restrictions to me will be fine. If he wants to do it and it locks us in, that's fine. We're planning on living there forever anyway. If I die, I want my son to have it.

Development, I understand your concern. Multiple people being able to use that same driveway or getting cut off, but you're looking at a very major amount of money to develop any of that land.

CHAIRMAN: Is the ten acres something that you would want to consider doing to make it a little bit more --

DAMON CECIL: At this point it is not. The reason being that, again, my brothers and sisters on
the other 86 acres are considering building or putting
a house there. It is our contention as potential
heirs, we don't want this land out of the family. I
don't want any more land in my name than I have to.
Let's say I get sued and I lose my home. I don't want
to lose ten acres. Something freak happens, I only
want to lose what I'm going to lose. No, I don't want
ten acres. It would sure benefit me as a write off, a
farm write off. Again, I'm looking long-term. If
something bad happens to me and we lose the house, I
don't want to lose the acres. I'm only losing four
and not ten. It's not a matter of what we can and
can't develop with it. There's no development
intentions to it. Our family would never have the
money to make anything other than pasture land out of
it.

In the middle of this land that looks so
vasty, we continually fight erosion issues in the
middle of the pasture. There's good grass growing
now. You get a good rain, there's a trench this wide
and ten feet long so we've got to go in and put
rift-raft.

In one of those pictures you can see we've got
a pile of rift-raft in the middle of the field just
for that purpose. So when something happens, we can
CHAIRMAN: We were just trying to help you in the future. You can protect yourself with liability and umbrella insurance.

DAMON CECIL: My contention is that there's not any real potential for development. There's not anybody that's going to use that driveway except for me. I understand you can put more lots between that plot and the road, but you're talking major money to do that. The county wouldn't allow it because they wouldn't put a septic tank.

CHAIRMAN: We were trying to give you our best advice. If that be the case and the situation that you want to face, then that's totally up to you all. I think it's time for this board to make a motion and make a decision then. We were just trying to do our job to help you all.

DAMON CECIL: Sure.

CHAIRMAN: To make it better for you overall in the long run.

DAMON CECIL: Like I said, I certainly understand your concerns for public service vehicles getting in there and multiple people using the same driveway. Again, there's no way to develop that land unless you pour several million into it. If that's
the case, I assume that you all are going to hear from
whoever is going to want to develop that land.

CHAIRMAN: If we do these restrictions, we
won't be hearing from anybody.

MR. NOFFSINGER: Irrevocable restriction on
that property, no future lot division.

MR. MILLER: Mr. Chairman, could I ask
something of Mr. Noffsinger?

CHAIRMAN: Mr. Miller.

DAMON CECIL: Let me ask you this: That would
actually help me for my future references. Because
like I said, as a heir I don't want to be able to sell
this land.

CHAIRMAN: It would definitely keep the value
of this farmland absolute.

DAMON CECIL: It would lock this into farmland
that would potentially useless to anybody else; is
that correct?

CHAIRMAN: As far as development absolutely.

MR. NOFFSINGER: Your brother and sisters
would not have an opportunity to have a lot on this 42
acres.

DAMON CECIL: And we've discussed that amongst
the brothers and sisters. We all have the same
feeling. Nobody wants to develop this land. We want
it to stay agricultural. We want to continue to raise
cattle.

CHAIRMAN: We understand. We were just trying
to do our job also and try to make it easier for you.

Mr. Miller.

MR. MILLER: I want to throw this out. With
what has been said, is it possible there is a remedy
to this that would not require action by this
commission even tonight or in the future? In other
words, is there something they can work out?

MR. APPLEBY: You're talking like an ag
division. It would have to be a ten acre division,
which they don't want to do.

CHAIRMAN: That's what we were trying to get
to.

What we were trying to do is get you an ag
division and get you away from a lot of restrictions
and put you into the farm business.

DAMON CECIL: You're telling me that if we do
ten acres, at that point they'll have no jurisdiction
over --

CHAIRMAN: Turn that over to Mr. Noffsinger.

MR. NOFFSINGER: No. What we're saying is if
you do a ten acre lot and the issue of the shape of
the lot is no longer an issue. Your surveyor would
correct this survey to show the ten acres submitted to us. We'd sign off on it as we've reviewed, it's recorded, and you're done. No further restrictions on your property or the balance.

CHAIRMAN: That is the best long term.

MR. APPLEBY: It wouldn't restrict any of the balance of it if you did want to put part of that frontage with the adjacent property. You'd be able to do that.

MR. MILLER: That's what I was getting at. If you don't want to do that, you've made our mind up for us. Just want to make sure you understand that that is a possibility.

DAMON CECIL: He's explaining potential division here. Any potential division that the commission is proposing is well over ten acres.

Again, this wouldn't apply if I came anywhere near to what you're asking for. Again, my contention is that this land is not developable. Putting a restriction on it is not necessary. Again, we're talking somebody with a million dollars, multiples of millions to be able to develop this. The restrictions aren't necessary because it's not developable by anybody that's got less than several millions.

CHAIRMAN: Mr. Miller, thanks for your
comments. I think this board, we've done our job and now we need to make a decision on this irregular shaped lot. Thank you.

We're faced with an irregular shaped lot. The chair is ready for a motion.

MR. APPLEBY: I would make a motion for approval based on the applicant's statement that they're willing to replat and resubmit this plat for the 42 acre tract with the notation that there'd be no further divisions within that 42 acres.

CHAIRMAN: Do they have to --

MR. APPLEBY: They don't have to resurvey it. Just have to replat it, wouldn't they?

MR. NOFFSINGER: They would replat it and draw the balance of the 42 acres by deed and it would be a restriction, irrevocable restriction that no further divisions of this property shall occur. That's the total 42 acres.

MR. APPLEBY: Wouldn't effect the remaining 85 acres?

MR. NOFFSINGER: Right.

CHAIRMAN: Mr. Cecil.

MARTIN CECIL: I don't think Damon wants to do the irrevocable restriction. I don't think he's interested in doing that.
Mr. Appleby.

MR. APPLEBY: As I see it, it's going to have to be redrawn somehow. It's going to have to come closer to meeting our -- I would not recommend approval for it like this as submitted.

CHAIRMAN: Is that a motion for denial?

MR. APPLEBY: Yes.

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

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT - TIM MILLER, IRVIN ROGERS, DAVE APPLEBY, DREW KIRKLAND, JUDY DIXON, WALLY TAYLOR, KEITH EVANS AND RITA MOORMAN - RESPONDED AYE.)

CHAIRMAN: All opposed.

(BOARD MEMBERS JIMMY GILLES AND MARTIN HAYDEN RESPONDED NAY.)

CHAIRMAN: Eight in favor of denial and two against. The motion for denial carries eight to two.

Next item, please.

ITEM 6

4559 Thruston Dermont Road, 0.981 acres
Consider approval of minor subdivision plat.
Applicant: Steve A. & Peggy B. Stemle
MR. NOFFSINGER: Mr. Chairman, Staff is here to describe what is proposed.

MR. WILLIAMS: The subject property was developed such that the house was built over a property line. The applicant desires to consolidate the two tracts so as to conform to the zoning regulations.

The property is located in the urban service area and is along a major collector street which requires no less than 250 feet between their access points. The property has two access points located no more than 50 feet apart. The OMPC Staff has requested that the applicant close one of these access points in order to comply with the Access Manual Regulations and to increase safety along this roadway. This roadway is well developed and has many access points. It is true that the subject access point has been in existence for many years; however, it is a common practice that when a non-conforming lot is developed or further altered, that the applicant is required to bring the lot into conformance where able. If the applicant would close one access point, the Planning Staff could approve this subdivision in-house as requested. The Planning Staff recommends denial.

CHAIRMAN: Thank you.
Do we have anybody representing the applicant?

MR. SILVERT: State your name, please.

MR. STEMLE: Steve Stemle.

(STEVE STEMLE SWORN BY ATTORNEY.)

MR. STEMLE: I guess first of all I say we can't hardly believe we're here for this.

The reason we did the horseshoe drive, we've lived there now since '77. We lived there 20 years on a half acre lot. So we bought the other half beside us.

If anybody has driven along Dermont Thruston Road and knows where we live, the speed limit is 35, but a lot of times that's not how fast people are going.

We built the other driveway in '96 when we had finished paying for that lot and we added onto the house. We did that for safety. That's the only reason we did that. Because if people come see us, we would not let them back out onto that road. That's why we built the horseshoe driveway, was to let them come up. We've got some pictures.

The part that we built on, the extra, is further north. There's a rise in the road where our original driveway was. This puts you further north and gives you more time if someone is flying over the
hill, it gives you more time to get out of the way.

When we did this, we had no idea that you had
to be so far apart. We really don't -- we built it
because of safety. That's why we built it. Here's
some pictures.

CHAIRMAN: How far apart? Would you step back
to the stand.

Give me a little help on this. What are we
doing? We're dealing with how far apart are their
drives?

MR. WILLIAMS: The two drives are
approximately 50 feet apart.

CHAIRMAN: Our regulation states?

MR. WILLIAMS: Require 250 feet between drive
access points.

MR. MILLER: Same property owner?

MR. APPLEBY: They're just consolidating some
properties.

MR. WILLIAMS: True.

MR. APPLEBY: That's triggered bringing it
into compliance?

MR. WILLIAMS: Yes.

MR. APPLEBY: But this is the existing
residence. Nothing has changed on it?

MR. WILLIAMS: Correct.
CHAIRMAN: Has the residence been this way, how long did you say you've had the horseshoe drive?

MR. STEMLE: Since '96.

CHAIRMAN: In '96 we were okay with it the way it was or it just developed?

MR. WILLIAMS: In '96 we were not aware of it.

CHAIRMAN: We just all of a sudden we had two driveways.

MR. STEMLE: Peggy took some pictures. There's like five or six others on Dermont Thruston Road that has got -- they're not 250 feet apart. If we're in trouble, you've got a few other ones out there that are in trouble.

Like I say it come that we're adding on. It come around with the survey here. All of a sudden we've got too many driveways. We don't know. It's not safe without another driveway there.

CHAIRMAN: Mrs. Stemle, do you want to take the stand?

MRS. STEMLE: Yes.

MR. SILVERT: State your name, please.

MRS. STEMLE: Peggy Stemle.

(PEGGY STEMLE SWORN BY ATTORNEY.)

MRS. STEMLE: When we come across Thruston Dermont Road or come down Thruston Dermont Road we're
heading north and we're getting ready to turn into our driveway, I hold my breath every time. I look in back, in my rear view mirror to see if anyone is behind me. We start -- I actually start turning on my signal at the fire department on Thruston Dermont. If someone is speeding behind me, I have actually driven past my house and turned around and come back and head south to enter. That's how dangerous it is.

I can't tell you how many times that there have been very close incidents of accidents of people pulling in or pulling out. The other reason for putting that driveway further north, when you're pulling out you can't see and you're heading north, you can't see what's coming across the hill. So if you're pulling north, you have to pull out and hit it and go. Even then somebody is coming across that hill. There's been times that we've almost been hit. It's a safety issue is what it is. Anybody that lives on Thruston Dermont Road and knows that road it is dangerous to drive. People don't go 35.

CHAIRMAN: What is the Staff proposing?

Mr. Noffsinger, do you have a comment?

MR. NOFFSINGER: Mr. Chairman, what we had proposed was that we understand that it's unsafe to back out onto Thruston Dermont Road. Would not
recommend that. That the two driveways be closed and
there be one single driveway. You bring one of the
driveways into the other driveway and then come out at
one point rather than have two separate points.

Back in '96 had we reviewed the driveways at
that time, that would have been a recommendation,
instead of having two. It's okay to have a horseshoe
or a modified horseshoe. It's just that one of those
drives would -- it'd be more like a circle, if you
would. Then one opening to Thruston Dermont Road.

When we saw this plat and knew they were going
to do an addition, then we had to address access
because we realized it was an issue. That's why
they're here tonight. Because I could not sign this
plat as a consolidation because of the location of the
access points.

MR. STEMLE: When you said "the addition,"
we're adding a 12 foot room on the back of the house.
It has nothing to do with the driveway, does it?

CHAIRMAN: Well, it triggers --

MR. STEMLE: I understand that.

CHAIRMAN: That's the problem.

MRS. STEMLE: There are at least six others, I
have three pictures, of at least six other houses on
Thruston Dermont Road with the same driveways. So are
you going to -- that's an issue you have to think about.

MR. NOFFSINGER: We would address those driveways as we become aware of something triggering us to become involved in the location of those driveways, just as we have here.

MR. STEMLE: If we wouldn't have added on, you guys wouldn't never know.

MR. NOFFSINGER: We would not have known.

MRS. STEMLE: It's still making it loop around when we have eight cars and family in the driveway and stuff like that. It then becomes very difficult to still enter and go back out on Thruston Dermont Road safely.

MR. NOFFSINGER: It looks like the driveway that is, on one end of your property it looks like it's probably the southern end of your property, probably a very dangerous location because of the hill.

MRS. STEMLE: That's right.

MR. NOFFSINGER: That's the one that we likely would not have approved on the basis of stopping sight distance. It's just sight distance and visibility.

MRS. STEMLE: That was the original driveway.

MR. STEMLE: Since '72.
MR. NOFFSINGER: I understand why the other one is there. Because it is too close.

MRS. STEMLE: That's why we purchased that half acre. So that we could make that driveway more safely. It has helped tremendously. Because we've avoided many, many, many accidents. Several close calls.

CHAIRMAN: Does the Staff have a recommendation, Mr. Noffsinger?

MR. NOFFSINGER: Yes, sir. Mr. Williams stated that our recommendation is that the one access point be closed and the other remain in use or it be relocated so that there's no more than one driveway on that property is our recommendation.

MR. STEMLE: Why is that recommendation?

Because they're too close?

MR. NOFFSINGER: The driveways do not meet the spacing standards of the Access Management Manual, which I believe calls for a 250 foot spacing of driveway. This is the first time we've become aware that the driveways existed. When you submitted the consolidation plat, then that triggered -- with the locations of the driveways on this plat, that triggered us having to take a look at the driveways and make sure that they were legally permitted and in
the appropriate location.

You're probably not going to meet a 250 foot spacing and we understand that; however, you do have an existing lot and you're entitled to access to your property and will be afforded that, but it's a matter of where on the lot it is best to locate it. Since you don't have enough frontage for two driveways, it brings you down to one access point.

MR. APPLEBY: However, if they didn't own that other lot next-door and someone came in made an application or permitted the house over there, they would get a driveway on that lot?

MR. NOFFSINGER: If that were a separate lot and there were no access points to it and that's the only way to get to it, yes.

CHAIRMAN: They do have two separate entrances actually. The line is literally right down the middle. It encompasses part of your house.

MRS. STEMLE: Yes.

MR. APPLEBY: Is chair ready for a motion?

CHAIRMAN: I think you're getting there, Mr. Appleby.

MR. APPLEBY: Motion for approval.

MR. ROGERS: Second.

CHAIRMAN: We've got a motion for approval by
Mr. Appleby. We have a second by Mr. Rogers. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

You are approved.

Any new business?

MR. NOFFSINGER: No.

CHAIRMAN: It looks like the chair is ready for one final motion.

MR. GILLES: Motion to adjourn.

CHAIRMAN: Motion by Mr. Gilles to adjourn.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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

I, LYNNETTE KOLLER FUCHS, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Planning Commission meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 90 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 30th day of April, 2008.

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

COMMISSION EXPIRES:  DECEMBER 19, 2010
COUNTY OF RESIDENCE:  DAVIESS COUNTY, KENTUCKY