

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 APRIL 10, 2008

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

- 8 MEMBERS PRESENT: Drew Kirkland, Chairman
- 9 Judy Dixon, Vice Chairman
- 10 David Appleby, Secretary
- 11 Gary Noffsinger, Director
- 12 Madison Silvert, Attorney
- 13 Tim Miller
- 14 Jimmy Gilles
- 15 Irvin Rogers
- 16 Wally Taylor
- 17 Keith Evans
- 18 Martin Hayden
- 19 Rita Moorman

20 * * * * *

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

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

26 CHAIRMAN: Our meeting is ten minutes delay.
27 The Board of Adjustments met before us so our meeting
28 could not convene until their meeting had ended. I
29 apologize for the delay for some of you, but this is

1 the best we could do under the circumstances. So now
2 we're ready.

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

6 (NO RESPONSE)

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

9 MS. DIXON: Move to approve.

10 CHAIRMAN: Motion for approval by Ms. Dixon.

11 MR. MILLER: Second.

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

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries unanimously.

16 Next item, please.

17 -----

18 ZONING CHANGES

19 ITEM 2

20 10363 Highway 54, 0.329 +/- acres
21 Consider zoning change: From R-1A Single-Family
22 Residential to R-3MF Multi-Family Residential
Applicant: Parkside Rentals, Inc.; Jerry Morris

23 MR. SILVERT: State your name, please.

24 MS. STONE: Becky Stone.

25 (BECKY STONE SWORN BY ATTORNEY.)

1 PLANNING STAFF RECOMMENDATIONS

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

7 CONDITIONS:

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

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

14 FINDINGS OF FACT:

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

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

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

23 4. With frontage on KY 54 which is a state
24 maintained roadway, the subject property is
25 major-street oriented.

1 MS. STONE: We'd enter this as Exhibit A into
2 the record.

3 CHAIRMAN: Is there anybody representing the
4 applicant?

5 (NO RESPONSE)

6 CHAIRMAN: Does anybody have any questions?

7 (NO RESPONSE)

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

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

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

15 MR. HAYDEN: Second.

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

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries unanimously.

20 Next item, please.

21 ITEM 3

22 10539 US Highway 431, 2.44 acres
23 Consider zoning change: From R-1A Single-Family
24 Residential and A-U Urban Agriculture to B-4 General
25 Business
26 Applicant: Robert G. and Nancy Grimsley

27 MR. SILVERT: State your name, please.

1 MR. WILLIAMS: Zack Williams.

2 (ZACK WILLIAMS SWORN BY ATTORNEY.)

3 PROPOSED ZONE & LAND USE PLAN

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

8 SPECIFIC LAND USE CRITERIA

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

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

23 (F) New locations in Rural Communities - In
24 Rural Community plan areas, new locations of General
25 Business zones should be "major-street-oriented" (D2)

1 and should be sited at corners of intersecting streets
2 if located in close proximity to existing dwellings.

3 APPLICANT'S FINDINGS

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

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

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

23 Findings:

24 1. The proposed rezoning is in compliance
25 with the applicable criteria as set forth in the

1 Comprehensive Land Use Plan.

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

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

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

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

22 2. The area south of the subject
23 property serves as a service center for the Utica
24 area. Three lots to the south on the east side of
25 Highway 431 is a commercial strip area with a

1 convenience store (known as the Utica Food Mart) which
2 is located at the intersection of US Highway 431 and
3 KY 140. The property is zoned B-4.

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

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

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

20 PLANNING STAFF REVIEW

21 The subject property is located in the 10501
22 block of US 431. Land use criteria applicable to this
23 proposal are reviewed below.

24 GENERAL LAND USE CRITERIA

25 Environment

1 According to a study prepared by the US
2 Department of Agriculture Soil Conservation Service
3 dated March 6, 1990, it appears that the subject
4 property is not located in a wetlands area. The
5 subject property is not located in a special flood
6 hazard area per FIRM Map 21059C0425 C. Based on the
7 preliminary FIRM maps dated July 7, 2007, the subject
8 property is not located in a special flood hazard area
9 per map 21059C0405 D. It appears that a portion of
10 the subject property is designated as prime
11 agricultural land according to the "Important
12 Farmlands" map created by the US Department of
13 Agriculture Soil Conservation Service dated March
14 1980. The developer is responsible for obtaining
15 permits as may be required by the Division of Water,
16 The Army Corp of Engineers, FEMA or other state and
17 federal agencies as may be applicable.

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

22 URBAN SERVICES

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

1 DEVELOPMENT PATTERNS

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

9 A dilapidated structure is present on the
10 subject property but it appears to have been out of
11 use for several years. As stated by the applicant,
12 there have been various quasi-commercial uses on the
13 property since the applicant took ownership of the
14 property in 1997. However, unless there have been
15 consistent commercial related use of the property
16 since prior to zoning regulations in the late 1970s,
17 it's possible that the uses on the property have been
18 illegal. Regardless, the fact that there has been an
19 18 month gap in the use of the property, an existing
20 non-conforming status of the property has been lost
21 and the rezoning application must be reviewed as such.

22 There are two primary criteria in the
23 Comprehensive Plan for general business uses within a
24 Rural Community Plan Area. The first is a logical
25 expansion which is not applicable for the subject

1 property since the nearest B-4 General Business zoning
2 is located four tracts south at the corner of US 431
3 and KY 140. The second criteria states that new
4 locations of general business use should be
5 major-street oriented and be located at the corner of
6 intersecting streets if located in close proximity to
7 existing dwellings. With frontage on US 431, the site
8 is major-street oriented; however, the second portion
9 of the requirement is not met and not addressed by the
10 applicant in their findings. There are existing
11 dwellings on three sides of the subject property with
12 the property to the west being part of a large
13 agricultural tract with frontage on KY 140 East.

14 SPECIFIC LAND USE CRITERIA

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

21 PLANNING STAFF RECOMMENDATIONS

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

1 FINDINGS OF FACT:

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

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

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

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

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

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

22 MS. STONE: We would like to add for the
23 public these recommendations of these two zoning
24 changes will become final in 21 days, the OMPC's
25 recommendation, unless a request is filed before the

1 legislative body to hear the zoning change.

2 CHAIRMAN: Thank you.

3 Is there anybody representing the applicant?

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

6 (CHARLES KAMUF SWORN BY ATTORNEY.)

7 MR. KAMUF: I represent Bob and Nancy
8 Grimsley.

9 As indicated by the reader, the zoning
10 application is for a 2.4 acre tract. As you can see,
11 this is Utica. It's 431 where it intersects Highway
12 140.

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

19 As indicated in my findings of facts that I
20 prepared, since 1997 the subject property has been
21 owned by the applicants, the Grimsleys. It's been
22 used as a general service repair shop, a sales lot for
23 tractors, equipment and automobiles, a chimney sweep
24 operation, and a community retail sales lot to sell
25 equipment and vehicles.

1 Within the last 18 months sales activity has
2 been taken place. Members of the community have used
3 this lot to sell equipment.

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

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

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

16 Isn't that right, Mr. Cox?

17 MR. COX: Right.

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

23 CHAIRMAN: Mr. Cox, would you mind stepping to
24 the podium and being sworn in so we will have it on
25 the record that you commented affirmative to Mr.

1 Kamuf's comment?

2 MR. SILVERT: State your name, please.

3 MR. COX: Tony Cox.

4 (MR. TONY COX SWORN BY ATTORNEY.)

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

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

14 CHAIRMAN: Thank you, Mr. Kamuf.

15 Mr. Cox, would you comment.

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

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

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

25 CHAIRMAN: Couple of minutes.

1 MR. KAMUF: As short as I can.

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

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

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

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

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

21 CHAIRMAN: Thank you.

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

23 The subject property is located in a rural
24 community area. I think to fully understand and
25 comprehend exactly what that is, is the rural

1 community plan area is an area that you would have at
2 West Louisville or Sorgho or Thruston or some of these
3 areas. It's where you have a concentration of people.
4 The whole idea of a community, rural community area is
5 to have where you have the commercial activity in one
6 particular place. So what we have here is that you
7 can see at this intersection of 140 and Highway 431
8 there is a lot of commercial activity.

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

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

21 Now, this is this way it's stated in the
22 comprehensive plan at 4311. "Established rural
23 communities are designated as the areas to provide for
24 almost all small lot rural housing and other urban
25 related commercial industrial or similar activities

1 that may be needed in a rural area."

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

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

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

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

19 What we have is an unusual situation in that
20 it might be good business, but it's not necessarily
21 good maybe for everybody else. When this gentleman
22 bought this store, the Utica Food Mart, he put
23 restrictions on all of this property where at that
24 intersection there can never be any, and I'll pass
25 these out for you. "It is specifically understood and

1 agreed to that as a covenant running with the land, no
2 grocery store, convenient type food store or gas
3 station shall be constructed on the property." That's
4 in one of them. In the other deed it has pretty well
5 the same.

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

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

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

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

25 Our first choice in building the Dollar

1 General Store was at that intersection. Then we found
2 out that there were covenants that would prevent it so
3 what we've done is placed it someplace else.

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

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

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

22 Certainly the Planning Staff did what they're
23 suppose to do. They looked at the land use plan. The
24 land use plan says what? Logical expansion. So they
25 said, here is what the Planning Staff report said.

1 "The property does not adjoin general existing
2 business zone and therefore cannot be considered as a
3 logical expansion of the zone."

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

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

21 So we think that the comprehensive plan should
22 be flexible, it should be reasonable. You interpret
23 it that way and it should not be a straight jacket to
24 prevent somebody from having a rezone in a certain
25 area just because there is a technicality that's not

1 met.

2 So in conclusion let me say this: We think we
3 are in accord with the comprehensive plan. We think
4 that there is a need in the area for a Dollar General
5 Store so people don't have to drive to Owensboro for
6 different type of things. We think that we have met
7 the logical expansion. I have that ruling that you
8 all made if you would like to see it. I have read
9 from it where you're talking about -- you look at the
10 entire area.

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

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

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

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

24 Yes, sir.

25 MR. SILVERT: State your name, please.

1 MR. STILWELL: David Stilwell.

2 (DAVID STILWELL SWORN BY ATTORNEY.)

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

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

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

23 MR. STILWELL: Not at this time.

24 CHAIRMAN: Thank you.

25 Is there anybody else that has questions or

1 issues they would like?

2 (NO RESPONSE)

3 CHAIRMAN: Mr. Kamuf has referred to somebody
4 would have an issue with the gas line.

5 Yes, sir, would you come and address that
6 issue, please.

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

9 MR. COX: Tony Cox.

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

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

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

25 MR. KAMUF: Mr. Grimsley.

1 MR. SILVERT: State your name, please.

2 MR. GRIMSLEY: Robert G. Grimsley.

3 (ROBERT GRIMSLEY SWORN BY ATTORNEY.)

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

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

19 MR. GRIMSLEY: Yes, I will.

20 CHAIRMAN: You agree to that?

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

23 CHAIRMAN: Mr. Cox.

24 MR. COX: That's fine with me.

25 CHAIRMAN: Are there any other comments or

1 questions of the applicant from anybody else in the
2 audience or anybody on the commission?

3 Yes, ma'am.

4 MR. SILVERT: State your name, please.

5 MRS. STILWELL: Cynthia Stilwell.

6 (CYNTHIA STILWELL SWORN BY ATTORNEY.)

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

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

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

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

25 CHAIRMAN: We will check and I'll get that.

1 Do you have any other issues or questions you want
2 resolved or answered?

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

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

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

19 CHAIRMAN: Let me get a little clarification.

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

22 MR. NOFFSINGER: Yes, sir.

23 CHAIRMAN: Thank you.

24 Mr. Grimsley, I don't know if really this is
25 the question for you or for Mr. Kamuf. I think it

1 might be in your best interest if Mr. Kamuf handles
2 the run-off issue. If you'd like to, I'd be happy to
3 question you about that.

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

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

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

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

22 CHAIRMAN: Is there a representative from
23 Bryant Engineering here?

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

1 the site plan.

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

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

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

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

18 Am I correct in that?

19 MRS. STILWELL: Yes, sir.

20 MR. GRIMSLEY: I have no problem with that.

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

23 The run-off issue and everything else is taken
24 care of in the engineering plan. They are responsible
25 for maintaining their run-off in their property.

1 That's something that they would be responsible for.
2 We've got an affirmative answer on the request for the
3 vinyl fence.

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

6 MR. NOFFSINGER: No, sir.

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

10 MR. NOFFSINGER: Yes, sir.

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

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

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

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

21 CHAIRMAN: Does that resolve the issues you
22 have?

23 MRS. STILWELL: I have one more question.

24 CHAIRMAN: Yes, ma'am.

25 MRS. STILWELL: Has anyone done a traffic

1 study?

2 CHAIRMAN: Mr. Noffsinger, traffic study.

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

4 There has not been one done.

5 CHAIRMAN: Is there a traffic study required?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: No traffic study is required.

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

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

23 I realize those are all probabilities, but I
24 don't know how large of a sign the Dollar General
25 Store is going to have, the height of it that will

1 shine into our little boy's bedroom at night. I don't
2 know what the noise level is going to be. I don't
3 know about the traffic.

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

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

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

19 MRS. STILWELL: Thank you.

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

22 MR. GRIMSLEY: I'll handle them.

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

1 issues before.

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

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

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

15 CHAIRMAN: The trucks and the noise.

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

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

25 Most of the parking is out on the front of the

1 building, which is directly away from their property.

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

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

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

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

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

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

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

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

25 Cindy, did you bring yours by chance?

1 MRS. STILWELL: Yes, and at the front it does
2 have a sign, but it does not say.

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

5 (MRS. STILWELL COMPLIES WITH REQUEST.)

6 CHAIRMAN: Mr. Appleby, what did you
7 determine?

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

11 CHAIRMAN: Does it say anything about the
12 size?

13 MR. APPLEBY: No.

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

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

23 MR. GRIMSLEY: They've indicated to me that
24 they will open at 9 and close at 8 or 9. He didn't
25 know if it would be 9 to 9 or 8 to 9. On Sundays

1 they'll open at 1:00 and go until 8:00.

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

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

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

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

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

19 MR. APPLEBY: She has that.

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

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

25 CHAIRMAN: On this side. Right there. Then

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

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

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

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

22 MR. GRIMSLEY: Yes.

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

25 MR. APPLEBY: The lot is 250 feet.

1 MR. GRIMSLEY: It's 250 and I think they're
2 taking 180, if I'm not mistaken.

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

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

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

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

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

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

18 CHAIRMAN: Let me ask Mr. Grimsley.

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

25 So effectively that probably was an error in

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

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

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

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

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

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

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

24 CHAIRMAN: I don't know if you're capable of
25 addressing that issue.

1 MR. GRIMSLEY: I think so.

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

4 MR. GRIMSLEY: Right. Exactly.

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

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

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

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

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

1 another property that would be used.

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

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

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

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

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

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

15 CHAIRMAN: We've got a copy up here.

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

20 MR. GRIMSLEY: Yes.

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

23 The signage which is to the north side of the
24 driveway will be moved to the far north end of the --
25 did you see the parking area? I would suggest moving

1 it to the north end of the parking area for them,
2 which would get the signage, the perpendicular signage
3 completely away from your house.

4 MRS. STILWELL: Yes, sir.

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

8 MR. NOFFSINGER: Well, in the past what we
9 have done is -- I think you can do a number of things.
10 You can reduce the area of the zoning change, but you
11 can't increase it. If you were going to make a
12 recommendation for approval and your approval was for
13 an area that you see on this site plan that's 200 by
14 250, I think it can be reduced. You just can't
15 enlarge it. So I think you can probably address that
16 issue here tonight. We've done that in the past as
17 long as legal counsel is comfortable with it and we've
18 kind of discussed it. We have done that before.

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

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

23 MR. SILVERT: Correct.

24 CHAIRMAN: We've got the signage moved.

25 One of the issues that I see that they did not

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

11 MRS. STILWELL: Yes, sir.

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

14 MR. GRIMSLEY: Sure.

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

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

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

21 MR. KAMUF: Correct.

22 CHAIRMAN: We've got that.

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

25 CHAIRMAN: The parking lights. Very good.

1 Give us a little insight on illumination of
2 the parking lot.

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

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

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

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

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

18 CHAIRMAN: Thank you, Mr. Grimsley.

19 Mr. Kamuf.

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

22 CHAIRMAN: Certainly.

23 MR. GRIMSLEY: We have a tremendous amount of
24 support from the local community for the Dollar
25 General Store since they do have to travel to

1 Owensboro to get some of these needs and stuff that
2 the Dollar General Store serves.

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

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

12 Mr. Cox.

13 MR. COX: I'm Tony Cox again.

14 I would prefer a white vinyl fence myself.

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

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

19 CHAIRMAN: White vinyl fence.

20 Would you all step back, one of you all.

21 In doing this, we've tried to bring together
22 everybody. Hopefully everybody's needs are met. We
23 can't meet everybody's needs, but hopefully you all
24 are in a situation where your property value will be
25 protected. The integrity of your home will be

1 protected, and the movement of certain situations due
2 to this plan, which they've agreed to, which is on
3 public record, will be taken care of. We hope that
4 this gives you all a feeling of everybody working
5 together. That doesn't say how we're going to vote
6 one way or the other, but before we vote I want you
7 all to feel like you're in a good position as a
8 homeowner.

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

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

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

24 CHAIRMAN: I think we all have a concern about
25 public safety. We just in this issue, this could be a

1 thing that is a useful benefit for the community.
2 Gives a shopping opportunity for the community and
3 maybe it will keep more people from traveling up and
4 down 431 to have to travel elsewhere to get basic
5 necessity needs. I hope this board has done enough to
6 accommodate you and your wife and your family on this
7 situation.

8 MR. STILWELL: Thank you.

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

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

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

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

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

24 MR. NOFFSINGER: Excuse me. We need to be
25 definite on that.

1 MR. APPLEBY: I think it shows 200 by 250. Is
2 that the lot they're buying?

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

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

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

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

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

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

16 MR. MILLER: No, sir.

17 MR. GRIMSLEY: I have a specific number for
18 you, Mr. Chairman.

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

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

25 MR. APPLEBY: It's your question.

1 Conditions will be:

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

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

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

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

12 7. The sign will be relocated to the northern

13 --

14 CHAIRMAN: Northern most end of the front
15 parking lot.

16 MR. APPLEBY: The northern end of the
17 property.

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

20 MR. APPLEBY: Northern end of the parking lot.

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

24 9. All other agreed to conditions as stated
25 in the record, if I missed anything.

1 CHAIRMAN: Thank you, Mr. Appleby.

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

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

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

23 CHAIRMAN: You brought up a very good point,
24 Mr. Miller. We don't want to do it and make it where
25 they can't get to it.

1 MR. MILLER: Unless Mr. Grimsley wants to go
2 push the dumpsters out once a week on wheels where
3 they can access it.

4 MR. GRIMSLEY: Probably not.

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

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

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

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

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

20 MR. GRIMSLEY: I want to do that.

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

23 CHAIRMAN: They're either going to have to
24 slide the building or move that exit to the other side
25 and flip flop the building.

1 MR. GRIMSLEY: Could we add or change the
2 record to state that we might need 270 foot of depth.
3 That would add 20 feet to the back line.

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

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

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

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

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

1 back and accomplish the same thing.

2 MR. MILLER: Agree.

3 CHAIRMAN: Thank you.

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

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

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

11 CHAIRMAN: Yes, ma'am.

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

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

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

23 MR. NOFFSINGER: Extend north.

24 MS. STONE: On the conditions, since we'll be
25 sending this to the county recommendation tomorrow,

1 you had paving of the parking area, the vehicular use
2 area. Was that Number 1?

3 MR. APPLEBY: Yes. The original condition.

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

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

7 CHAIRMAN: Those were the applicant's
8 conditions.

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

12 MR. APPLEBY: No, but isn't that by ordinance?
13 It's a six foot requirement?

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

15 MR. APPLEBY: Does that need to be stated?

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

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

22 MR. MILLER: I have a question on the fence.
23 I don't have it clear in my head. Does that go just
24 the length of the zoned distance? Does it go the
25 entire length of the property?

1 MR. NOFFSINGER: I would think it would go the
2 length of the zoned property because there's going to
3 be a lot division.

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

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

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

9 MR. NOFFSINGER: The rear, yes.

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

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

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

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

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

24 MR. GRIMSLEY: Their choice.

25 MR. APPLEBY: Because the zoning ordinance

1 wouldn't require them to fence it all the way to the
2 back corner of this two acre tract.

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

5 MR. APPLEBY: Certainly.

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

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

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

20 MR. NOFFSINGER: Yes, they would. Here is
21 what we don't want to get into. The enforcement end
22 of it would be for this commission to sit a condition
23 that it's for the entire length and then for the fence
24 to only go in a portion of that property and then ten
25 years from now the Stilwells sell, someone else comes

1 in and finds out there should be a fence along that
2 entire property line. They come to us, well, why is
3 there not a fence? Well, there was suppose to be. We
4 just need to document what you're going to do.

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

10 CHAIRMAN: Thank you.

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

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

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

19 MR. APPLEBY: Yes.

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

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

1 CHAIRMAN: Thank you, sir.

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

4 MR. APPLEBY: I think I am.

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

7 MR. HAYDEN: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

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

16 Next item.

17 -----

18 COMBINED DEVELOPMENT PLAN/MAJOR SUBDIVISIONS

19 ITEM 4

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

25 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

1 board at our May meeting.

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

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

6 CHAIRMAN: Motion to postpone by Ms. Moorman.

7 MR. HAYDEN: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously. The
12 item is postponed.

13 Next item.

14 Related Items:

15 ITEM 4A

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

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

25 CHAIRMAN: Chair is looking for a motion.

MR. GILLES: Motion to postpone.

CHAIRMAN: Motion for postponement by Mr.

1 Gilles.

2 MR. MILLER: Second.

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

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries unanimously. The
7 item is postponed.

8 Next item, please.

9 -----

10 MINOR SUBDIVISIONS

11 ITEM 5

12 5191 Roby Road, 4.144 acres
13 Consider approval of minor subdivision plat.
14 Applicant: Joseph Martin Cecil and Patricia Ann Cecil

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

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

CHAIRMAN: Are you getting ready to read a

1 portion of --

2 MR. WILLIAMS: He's covered it well.

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

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

8 CHAIRMAN: Is there anybody here representing
9 the applicant?

10 MR. CECIL: Yes.

11 CHAIRMAN: Would you all like to make a
12 comment?

13 MR. SILVERT: State your name, please.

14 MR. CECIL: Martin Cecil.

15 (MARTIN CECIL SWORN BY ATTORNEY.)

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

19 I know the board doesn't have the opportunity
20 to see the terrain on this land. My son, Damon, wants
21 to build a house back where the property is. He
22 presently has a trailer back there. When he went to
23 get approval from the appropriate people, the health
24 department said that that was essentially about the
25 only place he could get the perk test past. This

1 property immediately in front of his house is a hill.
2 It goes downhill toward a very large ditch which is
3 sketched on your plot plan.

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

12 We've had a lot of problems with that ditch.
13 It's the type of soil that easily erodes.

14 I don't know if the board is even interested
15 in it. Mr. Kamuf had a tremendous display of
16 pictures. We have some small pictures showing that
17 ditch and some of the other features about it, which
18 you can look at and pass around while we're talking.

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

21 MR. CECIL: Yes.

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

25 MR. CECIL: Yes, that is correct.

1 CHAIRMAN: Maybe I do not follow you, but the
2 triangle between this driveway or whatever and the gas
3 line, is that something that could be suitable?

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

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

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

25 MR. APPLEBY: I don't think it's so much where

1 he puts the house. It's just how the lot is shaped
2 and what happens with regards to future development of
3 the property. I think that's the biggest concern.

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

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

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

25 MR. CECIL: On the other side of Mr. Jones?

1 CHAIRMAN: Yes, sir.

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

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

13 MR. CECIL: Which one is that?

14 MR. APPLEBY: To the rear.

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

21 MR. APPLEBY: I guess what I'm getting at is
22 20 years from now somebody decides they can develop
23 that piece back behind this trailer, there's no way to
24 get to it. We can't make another lot back there. We
25 don't have enough frontage, enough depth along that

1 road frontage there to put a public road back there.

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

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

14 MR. CECIL: Absolutely.

15 MR. APPLEBY: Does that make sense?

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

25 MR. CECIL: What do you mean by the entire

1 property? The farm is like 126 acres.

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

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

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

11 MR. CECIL: Yes.

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

14 MR. CECIL: It all joins. This property
15 you're looking at is -- well, it's really not clear up
16 there on the other site. What you're looking at is 42
17 acres. Apparently when we purchased it, it was deeded
18 that way and it's separate from the other. There's an
19 86 acre parcel on the left that we own. We live on
20 that.

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

23 MR. NOFFSINGER: The 42 acre tract would be
24 limited to, you could not create any other lots on
25 that 42 acres. I don't advise you to go that route.

1 I would advise you to go more toward putting together
2 a ten acre parcel here. Adding six acres to this lot
3 and create it as a separate tract and stand alone and
4 you don't have to tie up the balance of the property.
5 That's up to you. I think you've got a couple of
6 options there.

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

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

23 MR. HAYDEN: Let me make a statement. I'm
24 familiar with the property real well. What Mr. Cecil
25 said, it is steep. You can't build unless you do a

1 lot of dirt work. In the front it is a lot of sinks
2 and washes out in front. That road, when it rains
3 like we got the other day, it fills all that bottom up
4 with water. So if he did develop that piece of
5 property, and I know it's a flag lot, but there's not
6 much you can do from the Jones property to where his
7 right-of-way is up through there. There's not much
8 you can do to it.

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

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

14 MR. APPLEBY: All of Knottsville is like that.

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

22 CHAIRMAN: Mr. Cecil, what we're trying to do
23 is to give you the best opportunity for your property
24 and for the future. Mr. Appleby and Mr. Hayden are
25 both trying to give you good advice as far as if we

1 can do certain things to get you into a ten acre plot,
2 and even do away with this area up here. Maybe you
3 have a better building site on other properties that
4 you have. Because what this is going to do, this is
5 going to completely tie you, your heirs and whoever
6 else owns that property, on that 40 acres, on what can
7 be done forever. Our best advice to you is to try to
8 work around that situation. I know what you're trying
9 to do. You're trying to help your son. You're trying
10 to put him in a house. We all sympathize with that.
11 The way you're going about it, I don't think is going
12 to be the best for your family in the future or your
13 son or any of your future heirs.

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

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

20 MR. APPLEBY: Just on the 42 acres.

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

23 MR. APPLEBY: I don't think there's any
24 dispute that he wants that building site. It's not a
25 matter of us telling him where to build out there. If

1 he says that's the only place to build, that's the
2 only place to build. It's just how to best
3 accommodate him and not to cause a problem in the
4 future with cutting off another lot somewhere else.

5 CHAIRMAN: I agree.

6 Would you like to step to the podium, please.

7 MR. SILVERT: State your name, please.

8 DAMON CECIL: Damon Cecil.

9 (DAMON CECIL SWORN BY ATTORNEY.)

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

12 Three years ago we approached the conservation
13 office. There's a ditch -- it's not on your plat. I
14 drew this by hand a few minutes ago. Just north of
15 the Jones property, about halfway between the Jones
16 property and where I suggest this plat be is a ditch
17 that's probably 15 feet wide. We had the conservation
18 office come out and give us some advice on how we can
19 control the erosion. They had an engineer come out.
20 No recommendations other than slap concrete down a 15
21 foot wide ditch and make a culvert out of it. We're
22 talking about extreme amounts of expense. Not to
23 mention from that ditch it's about 600 feet up hill to
24 where the south end of my plat should be or is
25 proposed. In the middle, this wide open pasture,

1 which I have a picture of, we are constantly battling
2 erosion.

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

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

18 You're concerned about further development. I
19 think it's going to be extremely hard to overcome
20 because of the soil type, the topography and the
21 county even allowing a septic tank to be built.
22 Because they wouldn't allow me to put my septic tank
23 any further down the hill because of the perk. I was
24 forced up there to begin with just because of the perk
25 test.

1 You've got us listed under minor subdivision.
2 I think in order to develop this land, you're looking
3 at somebody with millions of dollars to come in and
4 make a major subdivision out of this, which would then
5 I assume come back to you all as a rezoning issue. In
6 order to develop this, this is probably going to come
7 back to you all again if we had tried or attempted to
8 develop it or if we sold it to Dollar General and they
9 wanted to develop it. It's going to come back to you
10 because anybody with less than a couple of million
11 won't have the ability to develop this land because of
12 the topography and soil type.

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

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

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

24 DAMON CECIL: At this point it is not. The
25 reason being that, again, my brothers and sisters on

1 the other 86 acres are considering building or putting
2 a house there. It is our contention as potential
3 heirs, we don't want this land out of the family. I
4 don't want any more land in my name than I have to.
5 Let's say I get sued and I lose my home. I don't want
6 to lose ten acres. Something freak happens, I only
7 want to lose what I'm going to lose. No, I don't want
8 ten acres. It would sure benefit me as a write off, a
9 farm write off. Again, I'm looking long-term. If
10 something bad happens to me and we lose the house, I
11 don't want to lose the acres. I'm only losing four
12 and not ten. It's not a matter of what we can and
13 can't develop with it. There's no development
14 intentions to it. Our family would never have the
15 money to make anything other than pasture land out of
16 it.

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

23 In one of those pictures you can see we've got
24 a pile of rift-raft in the middle of the field just
25 for that purpose. So when something happens, we can

1 go and push it in.

2 CHAIRMAN: We were just trying to help you in
3 the future. You can protect yourself with liability
4 and umbrella insurance.

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

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

18 DAMON CECIL: Sure.

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

21 DAMON CECIL: Like I said, I certainly
22 understand your concerns for public service vehicles
23 getting in there and multiple people using the same
24 driveway. Again, there's no way to develop that land
25 unless you pour several million into it. If that's

1 the case, I assume that you all are going to hear from
2 whoever is going to want to development that land.

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

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

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

9 CHAIRMAN: Mr. Miller.

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

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

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

19 CHAIRMAN: As far as development absolutely.

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

23 DAMON CECIL: And we've discussed that amongst
24 the brothers and sisters. We all have the same
25 feeling. Nobody wants to develop this land. We want

1 it to stay agricultural. We want to continue to raise
2 cattle.

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

5 Mr. Miller.

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

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

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

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

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

22 CHAIRMAN: Turn that over to Mr. Noffsinger.

23 MR. NOFFSINGER: No. What we're saying is if
24 you do a ten acre lot and the issue of the shape of
25 the lot is no longer an issue. Your surveyor would

1 correct this survey to show the ten acres submitted to
2 us. We'd sign off on it as we've reviewed, it's
3 recorded, and you're done. No further restrictions on
4 your property or the balance.

5 CHAIRMAN: That is the best long term.

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

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

14 DAMON CECIL: He's explaining potential
15 division here. Any potential division that the
16 commission is proposing is well over ten acres.
17 Again, this wouldn't apply if I came anywhere near to
18 what you're asking for. Again, my contention is that
19 this land is not developable. Putting a restriction
20 on it is not necessary. Again, we're talking somebody
21 with a million dollars, multiples of millions to be
22 able to develop this. The restrictions aren't
23 necessary because it's not developable by anybody
24 that's got less than several millions.

25 CHAIRMAN: Mr. Miller, thanks for your

1 comments. I think this board, we've done our job and
2 now we need to make a decision on this irregular
3 shaped lot. Thank you.

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

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

11 CHAIRMAN: Do they have to --

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

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

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

21 MR. NOFFSINGER: Right.

22 CHAIRMAN: Mr. Cecil.

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

1 CHAIRMAN: All right, sir.

2 Mr. Appleby.

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

7 CHAIRMAN: Is that a motion for denial?

8 MR. APPLEBY: Yes.

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

11 MS. DIXON: Second.

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

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

17 CHAIRMAN: All opposed.

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

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

22 Next item, please.

23 ITEM 6

24 4559 Thruston Dermont Road, 0.981 acres
25 Consider approval of minor subdivision plat.
Applicant: Steve A. & Peggy B. Stemle

1 MR. NOFFSINGER: Mr. Chairman, Staff is here
2 to describe what is proposed.

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

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

25 CHAIRMAN: Thank you.

1 Do we have anybody representing the applicant?

2 MR. SILVERT: State your name, please.

3 MR. STEMLE: Steve Stemle.

4 (STEVE STEMLE SWORN BY ATTORNEY.)

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

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

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

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

22 The part that we built on, the extra, is
23 further north. There's a rise in the road where our
24 original driveway was. This puts you further north
25 and gives you more time if someone is flying over the

1 hill, it gives you more time to get out of the way.

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

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

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

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

13 CHAIRMAN: Our regulation states?

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

16 MR. MILLER: Same property owner?

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

19 MR. WILLIAMS: True.

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

22 MR. WILLIAMS: Yes.

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

25 MR. WILLIAMS: Correct.

1 CHAIRMAN: Has the residence been this way,
2 how long did you say you've had the horseshoe drive?

3 MR. STEMLE: Since '96.

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

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

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

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

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

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

20 MRS. STEMLE: Yes.

21 MR. SILVERT: State your name, please.

22 MRS. STEMLE: Peggy Stemle.

23 (PEGGY STEMLE SWORN BY ATTORNEY.)

24 MRS. STEMLE: When we come across Thruston
25 Dermont Road or come down Thruston Dermont Road we're

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

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

21 CHAIRMAN: What is the Staff proposing?

22 Mr. Noffsinger, do you have a comment?

23 MR. NOFFSINGER: Mr. Chairman, what we had
24 proposed was that we understand that it's unsafe to
25 back out onto Thruston Dermont Road. Would not

1 recommend that. That the two driveways be closed and
2 there be one single driveway. You bring one of the
3 driveways into the other driveway and then come out at
4 one point rather than have two separate points.

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

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

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

20 CHAIRMAN: Well, it triggers --

21 MR. STEMLE: I understand that.

22 CHAIRMAN: That's the problem.

23 MRS. STEMLE: There are at least six others, I
24 have three pictures, of at least six other houses on
25 Thruston Dermont Road with the same driveways. So are

1 you going to -- that's an issue you have to think
2 about.

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

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

9 MR. NOFFSINGER: We would not have known.

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

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

20 MRS. STEMLE: That's right.

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

24 MRS. STEMLE: That was the original driveway.

25 MR. STEMLE: Since '72.

1 MR. NOFFSINGER: I understand why the other
2 one is there. Because it is too close.

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

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

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

15 MR. STEMLE: Why is that recommendation?
16 Because they're too close?

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

1 the appropriate location.

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

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

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

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

19 MRS. STEMLE: Yes.

20 MR. APPLEBY: Is chair ready for a motion?

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

23 MR. APPLEBY: Motion for approval.

24 MR. ROGERS: Second.

25 CHAIRMAN: We've got a motion for approval by

1 Mr. Appleby. We have a second by Mr. Rogers. All in
2 favor raise your right hand.

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: Motion carries unanimously.

5 You are approved.

6 Any new business?

7 MR. NOFFSINGER: No.

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

10 MR. GILLES: Motion to adjourn.

11 CHAIRMAN: Motion by Mr. Gilles to adjourn.

12 MS. DIXON: Second.

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

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: We are adjourned.

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

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

16 WITNESS my hand and notary seal on this the
17 30th day of April, 2008.

18

19

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202 WEST THIRD STREET, SUITE 12
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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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