

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 JULY 10, 2008

3 The Owensboro Metropolitan Planning Commission  
4 met in regular session at 5:30 p.m. on Thursday, July  
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 Wally Taylor
- 16 Keith Evans
- 17 Martin Hayden
- 18 Rita Moorman

19 \* \* \* \* \*

20 CHAIRMAN: I would like to welcome everybody  
21 to our July 10th meetings of the Owensboro  
22 Metropolitan Planning & Zoning Commission.

23 Will you please rise. Our invocation and  
24 pledge of allegiance will be given by Mr. Tim  
25 Miller.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

26 CHAIRMAN: This being our first meeting after  
27 the 4th of July a thought just occurred to me I  
28 remembered back from my days in American history.

29 Of the 56 signers of the American Declaration

1 of Independence, 9 of those men lost their lives in  
2 the war. Eight of those men their wives were tortured  
3 and lost their lives in the war. Twelve of them had  
4 their houses completely destroyed and burned to the  
5 ground. Seventeen of the members that signed the  
6 Declaration of Independence lost everything they had.  
7 One of the members lost 13 children and his wife,  
8 disappeared in a raid by the British and were never  
9 found.

10 As we embark upon the things that we face in  
11 life, we think of those guys that put their life,  
12 their family, their fortune on the line and gave us  
13 the freedoms that we have today. Not one of them  
14 recanted their position, changed their position,  
15 decided to get more information or look back. Thank  
16 God for those men that gave us what we have today.

17 A little flashback. I was thinking about  
18 American history.

19 Now we'll go on. Let's consider the minutes  
20 of the June 12th meeting. Are there any corrections,  
21 additions?

22 (NO RESPONSE)

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

25 MS. DIXON: Move to approve.

1 CHAIRMAN: Motion for approval by Ms. Dixon.

2 MR. TAYLOR: Second.

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

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries unanimously.

7 Next item.

8

9 PUBLIC HEARING

10 ITEM 2

11 Consider text amendment to Article 3 of the Owensboro  
12 Metropolitan Zoning Ordinance to permit an increased  
13 height of walls and fences in residential side and  
rear yards adjoining streets.

14 MR. SILVERT: State your name, please.

15 MS. STONE: Becky Stone.

16 (BECKY STONE SWORN BY ATTORNEY.)

17 MS. STONE: This text amendment has been  
18 prepared in order to clarify the heights of fences in  
19 residential zones and to be consistent with the  
20 Kentucky Building Code for pool enclosures.

21 What we are proposing currently fences cannot  
22 exceed a three foot height in front yards. The  
23 definition in the current ordinance of front yard also  
24 includes side yards and rear yards where they adjoin  
25 streets. So we're making this change so that the side

1 yard and rear yard where they adjoin streets can be  
2 four feet in height, which is consistent with the  
3 enclosure height requirement in the Kentucky Building  
4 Code.

5 The Planning Staff recommends the approval of  
6 the Zoning Text Amendment based upon the following  
7 Findings of Fact:

8 1. The current zoning ordinance requirement  
9 of a maximum front yard height of three feet for  
10 fences and walls has created unintended consequences  
11 as applied to side and rear street yards;

12 2. The proposed text amendment will allow  
13 reasonable heights in street side and rear yards for  
14 the purpose of residential privacy and enclosures for  
15 swimming pools and outdoor spaces;

16 3. The proposed text amendment will ensure  
17 consistency and interpretation of allowable fence and  
18 wall heights in residential zones for corner lots,  
19 double frontage lots and interior lots; and,

20 4. The number of variances requested and  
21 issued by the OMBA identifies the need to change the  
22 ordinance for practical application and fenced in wall  
23 heights consistent with the adopted building codes  
24 within the community.

25 MS. STONE: We'd like to enter the Staff

1 Report as Exhibit A.

2 If anybody has any questions, I'll be glad to  
3 answer them.

4 CHAIRMAN: Does anybody in the audience have  
5 any questions?

6 (NO RESPONSE)

7 CHAIRMAN: Does anybody on the commission have  
8 any questions?

9 (NO RESPONSE)

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

12 MR. MILLER: Motion to approve based on Staff  
13 recommendations and Findings of Fact 1 through 4.

14 CHAIRMAN: Motion for approval by Mr. Miller.

15 MR. APPLEBY: Second.

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

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries unanimously.

20 Next item, please.

21 ITEM 3

22 Consider text amendments to Article 8 of the Owensboro  
23 Metropolitan Zoning Ordinance to permit allowing  
24 limited retail uses as a conditional use in A-U Urban  
Agriculture zones.

25 MS. STONE: This text amendment is before you

1 as a request from the Daviess County Fiscal Court.

2 Currently the zoning ordinance allows limited  
3 retail uses within an A-R zone with the conditional  
4 use permit, but does not permit that within an A-U  
5 one.

6 This text amendment would amend the ordinance  
7 to allow conditionally permitted limited retail uses  
8 within the A-U zone.

9 If you've read your Staff Report, you will see  
10 from the Staff Report that there are bases in the  
11 comprehensive plan to recommend denial and we have  
12 proposed some findings in that event. However, there  
13 are reasons in the comprehensive plan that the text  
14 amendment may be approved also and the Staff would  
15 recommend your approval based on the request from  
16 Daviess County Fiscal Court with the following  
17 findings of fact:

18 1. The A-U Urban Agriculture zone is  
19 designated by the Owensboro Metropolitan Zoning  
20 Ordinance as a zone that is located in areas  
21 appropriate for conversion to urban development within  
22 the Urban Service Area and identified Rural  
23 Communities;

24 2. The Comprehensive Plan states that  
25 development policies for Rural Communities should

1 generally follow the development policies for the  
2 Urban Service Area;

3 3. The Comprehensive Plan contains an adopted  
4 goal to "Avoid the introduction of urban activities  
5 that would have a detrimental effect on residential  
6 activity, but allow some mixture of appropriate  
7 nonresidential uses";

8 4. Allowing conditionally permitted limited  
9 retail uses within an AU Urban Agriculture zone would  
10 promote the development of limited retail sales in  
11 Rural Communities and the Urban Service Area while  
12 providing protection to residential and agricultural  
13 uses in these areas by limiting the intensity of the  
14 allowable commercial activity; and,

15 5. The addition of a provision to  
16 conditionally permit limited retail sales in the AU  
17 zone will accommodate a less intense array of retail  
18 uses within the Rural Communities and the Urban  
19 Service Area, while still providing for a property  
20 owners' right to rezone to the more urban zone of B-4  
21 General Business if the criteria of the Comprehensive  
22 Plan can be met.

23 We'd like to enter this Staff Report as  
24 Exhibit B.

25 CHAIRMAN: Are there any questions?

1 (NO RESPONSE)

2 CHAIRMAN: Are there any questions from the  
3 commission?

4 (NO RESPONSE)

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

7 MR. APPLEBY: Motion for approval based on the  
8 Staff's Findings of Fact 1 through 5.

9 CHAIRMAN: Motion for approval by Mr. Appleby.

10 MR. GILLES: Second.

11 CHAIRMAN: Second by Mr. Gilles. All in favor  
12 raise your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries unanimously.

15 Next item, please.

16 -----

17 ZONING CHANGES

18 ITEM 4

19 Portion of 3275 Highland Pointe Drive, 2.387 acres  
20 Consider zoning change: From B-4 General Business to  
21 I-1 Light Industrial  
Applicant: Triple H&B Investments, LLC; Highland  
22 Pointe Holdings, LLC

23 CHAIRMAN: Mr. Noffsinger, I need to remove  
24 myself from this vote and turn the gavel over to Ms.  
Dixon.

25 MR. NOFFSINGER: Mr. Howard, would you please



1 state the appeal procedure.

2 MR. HOWARD: Sure.

3 MR. SILVERT: State your name, please.

4 MR. HOWARD: Brian Howard.

5 (BRIAN HOWARD SWORN BY ATTORNEY.)

6 MR. HOWARD: As a note, all four rezonings  
7 that will follow will become final based upon Planning  
8 Commission's recommendation 21 days from the meeting  
9 date, unless an appeal is filed. The appeal forms are  
10 on the back table. They're available on our website  
11 and available in the office. If an appeal is filed,  
12 then it will be forwarded to the appropriate  
13 legislative body whether the city commission or  
14 Daviess County Fiscal Court for final hearing.

15 So with that I'll read the Staff's  
16 Recommendation.

17 PLANNING STAFF RECOMMENDATIONS

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

23 CONDITIONS

24 A final development plan submitted and  
25 approved prior to the issuance of building permits.

1 FINDINGS OF FACT

2 1. The subject property is located in a  
3 Business Plan Area, where light industrial uses are  
4 appropriate in limited locations;

5 2. The subject property will be used as an  
6 Atmos Energy facility that will be nonresidential in  
7 nature.

8 3. The proposed rezoning is a logical  
9 expansion of existing I-1 Light Industrial zoning  
10 located immediately east of the subject property; and,

11 4. The I-1 Light Industrial expansion should  
12 not significantly increase the extent of the  
13 industrial uses that are located in the vicinity and  
14 outside of Industrial Parks and should not overburden  
15 the capacity of roadways and other necessary urban  
16 services that are available in the affected area.

17 MR. HOWARD: I would like to enter the Staff  
18 Report into the record as Exhibit C.

19 MS. DIXON: Does anyone in the audience have  
20 any questions or any concerns?

21 (NO RESPONSE)

22 MS. DIXON: Anyone on the commission have  
23 questions?

24 (NO RESPONSE)

25 MS. DIXON: If not the chair is ready for a

1 motion.

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

5 MR. MILLER: Second.

6 CHAIRMAN: Motion by Mr. Appleby. Second by  
7 Mr. Miller. Any questions on the motion?

8 (NO RESPONSE)

9 MS. DIXON: All in favor of the motion raise  
10 your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 MS. DIXON: Motion carries.

13 RELATED ITEMS:

14 ITEM 4A

15 Highland Pointe, 82.157 acres  
16 Consider approval of amended major subdivision  
17 preliminary plan.  
18 Applicant: Highland Pointe Holdings, LLC

19 MR. NOFFSINGER: Madam Chairman, this  
20 application has been reviewed by the Planning Staff  
21 and Engineering Staff. It's found to be in order.  
22 Its use is found to be consistent with the adopted  
23 comprehensive plan and the rezoning you just  
24 considered as well as the zoning ordinance and  
25 separates it.

MS. DIXON: Anyone in the audience have a

1 question or a concern to express?

2 (NO RESPONSE)

3 MS. DIXON: Any questions by any of the  
4 commissioners?

5 (NO RESPONSE)

6 CHAIRMAN: Hearing none the chair is ready for  
7 a motion.

8 MR. APPLEBY: Motion for approval.

9 MR. TAYLOR: Second.

10 MS. DIXON: Motion by Mr. Appleby. Second by  
11 Mr. Taylor. Any questions on the motion?

12 (NO RESPONSE)

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

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries.

17 ITEM 5

18 9401-9707 Blocks Highway 951, 5001-5101 Blocks Free  
19 Silver Road, 65.535 acres  
20 Consider zoning change: From A-U Urban Agriculture and  
21 EX-1 Coal Mining to A-U Urban Agriculture  
22 Applicant: Teresa Louise Millay Estate

23 PLANNING STAFF RECOMMENDATIONS

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

1 FINDINGS OF FACT:

2 1. The subject property is located in a Rural  
3 Community Plan Area where agricultural/forestry uses  
4 are appropriate in general locations;

5 2. All strip-mining activity has been  
6 completed and all disturbed areas have been reclaimed  
7 as open grasslands and woodlands; and,

8 3. The Owensboro Metropolitan Zoning  
9 Ordinance Article 12a.31 requires that property shall  
10 revert to its original zoning classification after  
11 mining.

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

14 CHAIRMAN: Ms. Dixon has returned the gavel to  
15 me and I will ask if there are any questions in the  
16 audience?

17 (NO RESPONSE)

18 CHAIRMAN: Does anybody on the commission have  
19 any questions?

20 (NO RESPONSE)

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

23 MR. HAYDEN: I make a motion to approve with  
24 Staff Recommendations and Findings of Fact 1 through  
25 3.

1           CHAIRMAN: We have a motion for approval by  
2 Mr. Hayden.

3           MS. DIXON: Second.

4           CHAIRMAN: We've got a second by Ms. Dixon.  
5 All in favor raise your right hand.

6           (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7           CHAIRMAN: Motion carries unanimously.

8           Next item, please.

9           ITEM 6

10          1313 Moseley Street, 0.794 acres  
11          Consider zoning change: From I-1 Light Industrial to  
12          B-5 Business/Industrial  
13          Applicant: Robert Higdon

14          PLANNING STAFF RECOMMENDATION

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

20          CONDITIONS

21                 1. All pavement within the road right-of-way  
22          shall be removed and the grass strip between the curb  
23          and sidewalk shall be replaced;

24                 2. Curb cuts cannot be located closer than 50  
25          feet to the property line at the intersection of  
26          Moseley Street and East 14th Street.

1           3. Vehicular use area screening shall be  
2 installed when adjoining road right-of-way to include  
3 a three foot element and one tree every 40 linear  
4 feet; and,

5           4. All vehicular use areas must be paved and  
6 traffic shall circulate on-site with no backing into  
7 the street permitted.

8 FINDINGS OF FACT

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

13           2. The subject property lies within an  
14 existing area of mixed industrial and commercial land  
15 uses;

16           3. The Comprehensive Plan provides for the  
17 continuance of mixed uses area; and,

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

22           MR. HOWARD: We would like to enter the Staff  
23 Report into the record as Exhibit E.

24           CHAIRMAN: Does anybody from the audience have  
25 a question?

1 (NO RESPONSE)

2 CHAIRMAN: Does anybody on the commission have  
3 a question?

4 (NO RESPONSE)

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

7 Ms. Dixon: Move for approval based upon  
8 Planning Staff Recommendations, Conditions 1 through 4  
9 and Findings of Fact 1, 2, 3 and 4.

10 CHAIRMAN: We've got a motion for approval by  
11 Ms. Dixon.

12 MR. HAYDEN: Second.

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

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries unanimously.

17 Next item, please.

18 ITEM 7

19 2601 Old Henderson Road, 2740 McFarland Avenue, 1.232  
20 acres  
21 Consider zoning change: From I-1 Light Industrial and  
22 R-4DT Inner-City Residential to I-1 Light Industrial  
23 Applicant: Unique Granite & Marble Shop; Rick Thomas  
24 Custom Builders, Inc.

25 PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal  
is in compliance with the community's adopted



1 Comprehensive Plan. The condition and findings of  
2 fact that support this recommendation include the  
3 following:

4 CONDITIONS

5 Install and maintain appropriate outdoor  
6 storage screening, including a six foot tall element  
7 and on tree every 40 linear feet.

8 FINDINGS OF FACT

9 1. The subject property is partially located  
10 in a Business Plan Area, where light industrial uses  
11 are appropriate in limited locations and partially  
12 located in a Central Residential Plan Area, where  
13 light industrial uses are appropriate in very-limited  
14 locations;

15 2. The subject property is currently used for  
16 a granite and marble business with outdoor storage  
17 which is nonresidential in nature;

18 3. The proposed rezoning is a logical  
19 expansion of existing I-1 Light Industrial zoning  
20 located immediately south and east of the subject  
21 property; and,

22 4. The I-1 Light Industrial expansion should  
23 not significantly increase the extent of the  
24 industrial uses that are located in the vicinity and  
25 outside of Industrial Parks and should not overburden

1 the capacity of roadways and other necessary urban  
2 services that are available in the affected area.

3 MR. HOWARD: We would like to enter the Staff  
4 Report into the record as Exhibit F.

5 CHAIRMAN: Does anybody in the audience have  
6 any questions?

7 MR. SILVERT: State your name, please.

8 MR. CLARK: My name is Tony Clark.

9 (TONY CLARK SWORN BY ATTORNEY.)

10 MR. CLARK: Tonight I'm here as an adjoining  
11 property owner. I own immediately east of this  
12 particular property and have owned it for probably 20  
13 years.

14 I have four duplexes right on that side of the  
15 street. The numbers go backwards. You're rezoning  
16 request is 2740, but at 2732, 2726, 2720 and 2714. In  
17 addition slightly west and across the street I also  
18 own 2747. I want to clarify something too. The  
19 property is owned by CTC Investments, LLC. and I am  
20 the managing member of that particular organization  
21 who owns title to that.

22 I called Rick yesterday, Rick Thomas. First  
23 of all a couple of weeks ago I did receive in the mail  
24 the notice. I set it aside because I like Rick  
25 Thomas, and this makes it tough. I don't want to do

1 anything to impede progress in the City of Owensboro,  
2 Kentucky. God knows we need to go forwards and not  
3 backwards.

4 Having 33 years experience in Owensboro,  
5 Kentucky in real estate, I have watched property by  
6 virtue of encroaching and something change and what it  
7 does to the adjoining property. Having owned these  
8 for many years, they came from McEroy & Partners is  
9 where it originally came from, McEroy & Partners. I  
10 happen to own it for many years. Spent a lot of money  
11 maintaining these four duplexes. On today's market  
12 value of about 75,000 on these specific four  
13 individually.

14 Both to the left and both to the right of the  
15 property the present zoning is RR-4DT. I'm confident  
16 you all have a copy of that. If you don't, I can show  
17 you a copy of the present use both to the east and  
18 both to the west of the properties that we presently  
19 manage and own.

20 For years the property to the east has always  
21 been mowed and maintained, well taken care of. The  
22 property to the west has just gradually encroached  
23 from the I-1 industrial off of McFarland Road  
24 continually forward to McFarland.

25 Again, I've never said anything even though

1       that I knew that the violation exist on that R-4DT  
2       lot.

3               Do you all have a copy of that?

4               MR. APPLEBY: We've got it.

5               MR. CLARK: You can see where the line  
6       presently is that shows the light industrial an then  
7       the front of it. Item Number 24 on that plat if  
8       you're looking at it, on the plat right there.

9               Well, that line has been, you know, obviously  
10       been used for some time. I went back this morning to  
11       take a good look, just to take a look myself. Quite  
12       honestly I didn't realize that it was there,  
13       encroaching toward the fence, etcetera.

14              Again, I called Rick and I talked to Rick  
15       yesterday about my concerns.

16              Again, after 33 years of experience, when I  
17       look at the property as the zoning changes into an  
18       unfavorable zoning, it has both positive and negative  
19       effects. Positive effects on the property because of  
20       the I-1 zoning, the limited amount of property  
21       available.

22              On a multi-family, on four nice duplexes, all  
23       brick, generate a fair amount of money, which is an  
24       income stream to the investment organization just like  
25       what Rick's is to his organization. It will devalue

1 the property.

2 Has anybody taken a look, Planning & Zoning,  
3 have you all been to specifically look and visit the  
4 site?

5 CHAIRMAN: Yes.

6 MR. CLARK: Drew has. Got it. I'm asking you  
7 to --

8 CHAIRMAN: Have you completed? Because now  
9 you've made a statement that it will depreciate the  
10 value of the property.

11 MR. CLARK: Just based upon 33 years of  
12 experience.

13 CHAIRMAN: That's a statement that I assume  
14 that you're making.

15 MR. CLARK: That's correct.

16 CHAIRMAN: We as a commission, you know, many  
17 people come before us and they make statements as  
18 such. Obviously with your 33 years of experience, I  
19 assume you know that no verbal appraisal cannot be  
20 entered without factual contents.

21 MR. CLARK: Correct.

22 CHAIRMAN: In today's housing market, and  
23 especially in today's rental market, to make a  
24 statement of such that any movement in that direction  
25 to depreciate property values is something, you know,

1 if you're going to make that statement before this  
2 board, we need to know what is the basis, other than  
3 your 33 years of experience.

4 MR. CLARK: As I look around through town,  
5 whether it's Crabtree Avenue or if it's Sweeny Street  
6 or Leitchfield Road, as you watch, again, I'm in favor  
7 of progress so please understand me. I definitely  
8 want that to happen. From a Progressive situation,  
9 but not at the cost of next-door.

10 When you look at the properties that I have  
11 seen, as they go up against Sweeny or whatever and  
12 suddenly you've got property and then all of a sudden  
13 adjoining property owners are buying. They may have a  
14 shot-gun house for 20,000, but before it's over they  
15 -- it's just by virtue of the nature of the  
16 adjoining.

17 Again, in my residential area, you know, I  
18 would not want that beside my home. That multi-family  
19 is a home. They do generate good dollars. They  
20 generate real good dollars.

21 CHAIRMAN: I hate to keep coming back to my  
22 same question, but I believe I will. What evidence do  
23 you have of your statement that it will depreciate the  
24 value of the property next door?

25 MR. CLARK: The value in rental property is

1 purely based upon basically one thing. That's income  
2 that is produced. The ability to produce the income  
3 based upon the desirability of the tenant who wants to  
4 live in a descent safe neighborhood free of rodents,  
5 trash. These units are good units. They're nice  
6 units. The visualization that I can see is that in A)  
7 not being able to rent or to lower the rent. As you  
8 lower the rent, you're devaluing the property just  
9 based upon the lowering of the rent.

10 Again, if you did go look and if you did look  
11 and decide, the various stacks of stone and the  
12 granite that are right up against it, I didn't realize  
13 it was that much there. Again, I have managers who  
14 manage the property for me. I'm not there on a  
15 day-to-day basis to look at that. Upon looking at it  
16 today, I have to be honest and tell you I do not think  
17 that it's been properly used based upon the zoning up  
18 to this point. Sorry to speak against the zoning.

19 CHAIRMAN: Excuse me. Once again, does this  
20 mean, in my understanding if the property devalues,  
21 then the only way that a true rent equation would work  
22 means that the rent would go down?

23 MR. CLARK: Correct.

24 CHAIRMAN: Have you had to lower your rent in  
25 this area on any of these properties?

1           MR. CLARK: You know, I really have not been  
2           able to increase the rent. I have not been able to  
3           increase it.

4           The issue I have concerned now is -- for Rick,  
5           I have no problem with Rick per se to do what he wants  
6           to do. He said he wanted to build a building there to  
7           contain it. I have a problem in the sale of that  
8           property. Once the zoning is done and the zoning is  
9           taken care of, that zoning is permanent for  
10          perpetuate.

11          CHAIRMAN: Mr. Clark, I hate to go back to  
12          this again. In today's economy and today's market, if  
13          I am to assume all of these properties are full; is  
14          that correct? It's an assumption I'm making.

15          MR. CLARK: They continually -- again, on that  
16          particular spot there's eight units. Generally  
17          there's just one turning all the time. So that gives  
18          you about, what, a 75 percent occupancy.

19          CHAIRMAN: Which is excellent. I know the job  
20          you do. I've known you for years. I know the way you  
21          keep your property. I know the way you manage your  
22          business. I know your upkeep and everything else.

23          The thing this board is faced with, as you  
24          realize, we've got contiguous property that is running  
25          one beside the other. If one party cannot show, you



1 know, you can make a statement of such about  
2 decreasing value and property value, but if there's  
3 nothing that we've got to go on, if you've got  
4 problems with what he's doing as far as his possible  
5 screening and things that we can definitely enforce  
6 upon him that will clean up this area, which is within  
7 our power to do.

8 I can't take a rash statement the property did  
9 going to go heck in a hand basket, we're going to have  
10 to devalue property. We're going to have vacant  
11 properties. We're not going to be able to rent them.  
12 If this has not occurred over the past some time, it's  
13 tough to use that statement. But if you've got  
14 specific instances where things that need to be  
15 sheered up, cleaned up, then we can obviously deal  
16 with those.

17 MR. CLARK: I believe in time I could bring  
18 that to you. I cannot do it tonight.

19 The issue, you know, through the years here as  
20 I look back and I've had on the Kamuf property to the  
21 west, whenever South Central Bank wanted to rezone, we  
22 had to sign off on that and we did sign off of it. It  
23 was a good thing. The bank is a good thing.

24 The industrial zoning on it, when you look at  
25 parcel 115 or Number 37 on that map, what's the zoning

1 of that one?

2 MR. NOFFSINGER: Mr. Chairman, I believe  
3 Mr. Clark is referring to a map that you do not have.  
4 The map you have is different. That's why you're not  
5 going to be able to find those numbers.

6 CHAIRMAN: We've got a five.

7 MR. APPLEBY: You've got street address.

8 CHAIRMAN: Which is 2732 McFarland. We've got  
9 have 4 which is 2505 Old Henderson Road. We have a 1  
10 which is 2725.

11 MR. CLARK: What I'm referring to the property  
12 that's immediately west of the subject property  
13 requesting rezoning.

14 CHAIRMAN: Which would be Number 7, 2725.

15 MR. CLARK: Well, my numbers aren't matching  
16 with those numbers.

17 CHAIRMAN: Those are street addresses.

18 MR. CLARK: There's no street address on what  
19 I have.

20 Parcel Number 1.

21 MR. APPLEBY: It's commercial, B-4.

22 MR. CLARK: Correct. B-4 there to that. Then  
23 you've got R-4DT to the north and you have that also  
24 to the east.

25 CHAIRMAN: If you've completed your

1 statements, what I would like to do is why don't we  
2 bring the applicant before us. Is Mr. Thomas here?

3 MR. THOMAS: Yes, sir.

4 CHAIRMAN: Why don't we bring Mr. Thomas  
5 before us and let's see if some of these concerns and  
6 situations, which are things that are very important  
7 to you and to us as a commission, and see if we can  
8 address those.

9 MR. CLARK: Thank you.

10 CHAIRMAN: Mr. Thomas.

11 MR. SILVERT: State your name, please.

12 MR. JACOBS: Marty Jacobs.

13 MR. SILVERT: Mr. Jacobs, I recognize the oath  
14 you took as an attorney.

15 CHAIRMAN: We better swear in Mr. Thomas.

16 MR. THOMAS: Rick Thomas.

17 (RICK THOMAS SWORN BY ATTORNEY.)

18 MR. JACOBS: Mr. Chairman, with your  
19 permission, I'd like to distribute a color coded plat  
20 which I think better sets forth what the zoning is in  
21 the area.

22 CHAIRMAN: Thank you, Mr. Jacobs. While  
23 you're doing that, Mr. Thomas, would you mind taking  
24 the stand there and address a few questions.

25 Do I need to restate concerns or would you

1 just like to address the concerns yourself? Did you  
2 hear Mr. Jones (sic)?

3 MR. THOMAS: Yes, I did.

4 CHAIRMAN: Would you like to just take those  
5 or would you like me to categorize them?

6 MR. THOMAS: He had mentioned the value of the  
7 property going down. Like I say, I don't understand  
8 that. I don't see where that would change at all.  
9 We've had the same use that it's been used for 20  
10 years or more. It's all been fenced in one unit for a  
11 long time. I've been in that area around 13 years and  
12 it's been fenced in a lot longer than that in one unit  
13 with all the same use.

14 Mr. Chairman, what other concerns?

15 CHAIRMAN: He was saying about the possible  
16 upkeep being questionable. The pieces of granite that  
17 are laying around, but that obviously is the business  
18 that you're in.

19 MR. THOMAS: Yes. We do have stone around,  
20 pallets of stone, rack of stone. They are all within  
21 the fence line and we do have a screen on the fence.  
22 It's 88 percent blockage on the screen.

23 The outside, we had trouble with neighbor cars  
24 parking between the fence and the street so we keep  
25 all of that killed down to where there's not any

1 growth up in that area. I'm not really sure what the  
2 maintenance issues would be other than that. The  
3 fence has some age to it, but the screen is new. Just  
4 a couple of years old.

5 CHAIRMAN: Mr. Jones (sic), would you like to  
6 return and be specific. We've got him under oath and  
7 we could get you to make your charges of what his  
8 direct problems are. We're not going to go back and  
9 forth. I'll come back to you.

10 MR. CLARK: Tony Clark.

11 CHAIRMAN: I'm sorry.

12 MR. CLARK: Specifically -- can I ask a  
13 question?

14 CHAIRMAN: Absolutely.

15 MR. CLARK: Is a multi-family home considered  
16 residential use?

17 CHAIRMAN: Mr. Noffsinger.

18 MR. NOFFSINGER: Yes, sir, it is.

19 MR. CLARK: Thank you. Can you put a junk  
20 yard next to a residential use?

21 MR. NOFFSINGER: If the property is zoned I-2  
22 heavy industrial and a conditional use permit is  
23 approved by the Board of Adjustment, you could place a  
24 junk yard next to a residential use, and provide the  
25 Board of Adjustment approves a variance to allow you

1 to have the junk yard within 300 feet of a residential  
2 zone. I think I covered all of it.

3 MR. CLARK: I am as much concerned of the  
4 future as I am the present. Your position is to look  
5 out for the citizens of Daviess County. I do  
6 understand. I applaud you for doing your job there.

7 The other side of the story, I've got to look  
8 out for the investments that we have. I ask the  
9 question because I live at 1204 Wood Bridge Trail. I  
10 wouldn't want the junk yard next to me and I really  
11 don't want the industrial zoning with the piles and  
12 everything right next-door to me too. I speak  
13 honestly, I like Rick Thomas or I would have already  
14 some time ago taken action.

15 MR. APPLEBY: I would like to hear from  
16 Mr. Jacobs with regards to your zoning map.

17 MR. CLARK: I did not see the map.

18 CHAIRMAN: Mr. Clark, I do apologize, but I  
19 think you got my slip. You know I know better.

20 MR. CLARK: You're fine.

21 MR. JACOBS: Folks, what I've done is I've  
22 distributed a color coded plat which I think better  
23 shows what the various mixed uses that are in this  
24 area.

25 The property that's at issue consist of two

1 lots which have historically been used together. They  
2 are the ones that are shown across hatch on this plat.  
3 They're identified as Tract 1 and Tract 2.

4 Now, Tract 1 has always been zoned I-1. Tract  
5 2, which faces on McFarland, is zoned R-4DT. This  
6 property was owned by Imperil Construction Company  
7 from 1973 to 1998. It's been owned by the current  
8 owner since 1998.

9 It is also, if you go out there and look at  
10 it, it is fenced in as if it were one unit. That  
11 fence I understand has been there at least 20 or 25  
12 years. For all practical purposes it has been used as  
13 one lot for the same use over that very long period of  
14 time.

15 The problem we have, of course, is the tract  
16 that faces Old Henderson is I-1. The part on  
17 McFarland R-4DT.

18 What Mr. Thomas intends to do is to have it  
19 consolidated once the zoning change was approved. He  
20 can then go in and build a storage building on the  
21 back to house the various granite and other materials  
22 that they work in the shop. He, of course, cannot get  
23 a permit at this time to do that without the zoning  
24 change. So what he will end up doing is converting  
25 mostly outside storage to insides storage, which

1       frankly should improve the looks in the area as to  
2       what's going on right now.

3               Couple of the points --

4               CHAIRMAN: Mr. Jacobs, do you have any idea of  
5       what the exterior of this new construction would be?  
6       Maybe we should ask Mr. Thomas.

7               MR. JACOBS: I assume it will be a metal  
8       building.

9               MR. THOMAS: It would be a white metal  
10       building similar to the two buildings that's on the  
11       lot now.

12              CHAIRMAN: Thank you.

13              MR. JACOBS: Couple of things that Mr. Clark  
14       said that I'd like to respond to specifically.

15              One is he talks about I-1 adjoining his four  
16       properties and how that's going to devalue them. If  
17       you will look at the plat, there's already I-1 that  
18       runs all the way along the back of those properties.  
19       I think that's owned by Mr. Higdon that's there.

20              Also he makes kind of the same argument that,  
21       well, I'm okay with it right now, but what's going  
22       happen down the road. Well, that's the same question  
23       that you can ask with any request for a rezoning,  
24       assuming that those future uses come within the  
25       classification.



1           I think what we have to look at is what has  
2 happened in the past. This property has been used,  
3 was used by a construction company for 25 years. It's  
4 now used by this basically granite counter top maker  
5 for the last ten. I think that's all we can look at.  
6 We could speculate all day as to what a potential  
7 future use might be.

8           What we're essentially asking, to make it  
9 pretty simple, if you look on the color coded plat  
10 there. Tract 2, what is crossed in yellow would  
11 become orange and join the other I-1 properties that  
12 are in that area.

13           CHAIRMAN: Mr. Clark, their intentions really  
14 are, in my estimation, are actually to improve the  
15 property. One of your concerns about exterior storage  
16 would now in some period of time, we cannot put  
17 parameters on the application, but it sounds like at  
18 some reasonably quick period of time it's going to be  
19 going from exterior to interior storage. Which would  
20 in my estimation probably improve the whole situation  
21 down there.

22           MR. APPLEBY: Tony, I understand your  
23 concerns. The way I look at it you are already  
24 adjoined by light industrial all the way across the  
25 back of those lots to begin with.

1 MR. CLARK: On the back, that's correct.

2 MR. APPLEBY: Your concern is what happens  
3 when this frontage becomes I-1. By the same token  
4 they could ask for it to be rezoned B-4 and a B-4 up  
5 against that property, I don't know which is better,  
6 which is worse.

7 MR. CLARK: B-4 is better.

8 MR. APPLEBY: Well, B-4 definitely is going to  
9 be more traffic. Is traffic good for bad for  
10 residential property?

11 MR. CLARK: Traffic is good. It brings  
12 tenants.

13 MR. APPLEBY: But it is a logical expansion of  
14 an existing zone.

15 CHAIRMAN: Could I just for a second.

16 That's correct. Logical expansion. Then  
17 immediately to the east of the property then it would  
18 be logical that also that R-4DT to the east, which  
19 comes to an end. There's nothing there. That would  
20 make logical sense to rezone that also.

21 Mr. Jacobs made a statement a second ago that  
22 it's been used for years. So zones really doesn't  
23 matter? Because basically it's been used illegal for  
24 years by having the outside -- the product is being  
25 used. The product is industrial.

1           CHAIRMAN: I think Mr. Jacobs made the  
2 statement that it was used as a construction company  
3 for years. Is that what you're referring to as the  
4 illegal?

5           MR. CLARK: No. I'm just saying that if in  
6 fact zoning matters, for the years that I've been  
7 there or the years I've been there, what was grown in  
8 the early years was nothing but grass was grown. Was  
9 tall and always over the fence. In other words, did  
10 not look good. I'm simply saying that if that's the  
11 case, then the product of being used in an illegal  
12 zoning, in an R4-DT for some time and apparently we've  
13 turned our head from that. We've been doing that.

14           I guess the question I have for you, most  
15 zoning on industrial usually handles in areas that are  
16 not as nice of areas that you all like to live in.  
17 Including me.

18           This may not be the appropriate question. But  
19 if I was rezoning Goetz Drive tonight next to Sydney  
20 Lane, the apartments over there and I was going to  
21 bring it in, do you think, and you don't have to  
22 answer it, but do you think that your feelings would  
23 be the same or would you say, maybe the west side here  
24 is not as good, whatever, on that point?

25           CHAIRMAN: Mr. Clark, I think that's totally

1 out of line. I think that's totally out of line. I  
2 think this commission has a history of looking at each  
3 individual, but we do not let any arbitrary statements  
4 stand without being questioned and backed up with the  
5 facts.

6 MR. CLARK: Again, the conversation is that it  
7 appears to be all right, it appears to be all right.

8 Again, I guess where I'm thinking about it,  
9 that be the case, the consideration for the adjoining  
10 property owner in this particular case, which happens  
11 to be us, I'm not so sure that you're giving the  
12 proper consideration for the other. I'd ask you to  
13 shun it tonight.

14 MR. JACOBS: We would like the board to  
15 consider it tonight. We don't know what Mr. Clark has  
16 in mind other than some delay. I think he's had  
17 certainly an opportunity to have his say and Staff has  
18 looked at it. We would like the board to act, if  
19 you're inclined to do so.

20 CHAIRMAN: Thank you, Mr. Jacobs.

21 Mr. Noffsinger.

22 MR. NOFFSINGER: Thank you, Mr. Chairman.

23 CHAIRMAN: Wait a minute, Mr. Noffsinger. I  
24 have a question before you make your statement.

25 Mr. Clark made the statement that the place

1 was overgrown and there was problems in the past. Do  
2 you have of record any complaints that were lodged  
3 against this property or anything of record?

4 MR. NOFFSINGER: No, sir, not to my  
5 knowledge.

6 CHAIRMAN: Thank you.

7 MR. NOFFSINGER: Mr. Jacobs, a question in  
8 terms of how you plan to develop the property. Do you  
9 plan to have vehicular access to McFarland Avenue?

10 MR. JACOBS: No.

11 MR. NOFFSINGER: I understand you're proposing  
12 a building to the rear of the property. You're not  
13 going to have any vehicular access to McFarland Avenue  
14 and that's going to be totally screened and closed  
15 off?

16 MR. JACOBS: It will be screened as is  
17 necessary. Depending on what is -- I know the  
18 screening requirements as it regards being next to  
19 residential as opposed to B-4. That would, of course,  
20 be different. We talked about it this afternoon.  
21 Mr. Bryant is here and we've talked about the  
22 consolidation plat. The plan is we are not asking for  
23 access on McFarland. Traffic will come in on Old  
24 Henderson and come book out on Old Henderson Road.

25 MR. NOFFSINGER: The Reason I ask that

1 question is because it has to do with orientation of  
2 the property and the development. If you're going to  
3 access off of Old Henderson Road and that becomes your  
4 front door, that's where the industrial traffic will  
5 be coming from and then no access to McFarland Avenue.  
6 Therefore you are orienting that development toward  
7 what appears to be a street that has more  
8 industrial/nonresidential activities on it.

9 MR. JACOBS: Yes.

10 MR. NOFFSINGER: Thank you.

11 CHAIRMAN: Mr. Clark, is there any specific  
12 screening or anything that you would --

13 MR. CLARK: Rick and I have talked about that.  
14 How close to the line, you know, will the building be?  
15 What type of building will it be? Some other  
16 variables.

17 I speak openly against it. I own four  
18 duplexes. I do understand society and government.  
19 The only comment I make is that I think you need to  
20 take a good look at all parties involved. Take a good  
21 look at all parties involved.

22 Again, when there's benefit there's also --  
23 this is part of progress. When there's benefit to  
24 society, it's a detriment to the others. That's why  
25 I'm here.

1           CHAIRMAN:  Would you explain the detriment,  
2           please?

3           MR. CLARK:  I explained it earlier.  When an  
4           industrial building comes right beside my apartment  
5           building, suddenly the building is new and nice.  It  
6           looks good.  Three years later, whatever happens to  
7           the industry, it goes down.  For me to maintain my  
8           buildings, you are right.  I do maintain my buildings.  
9           I'm not a slum landlord.  I would live in anything  
10          that we have anywhere in the city.  Period.

11          I feel that the negative effect, with the  
12          proximity right beside, I don't have any problem  
13          behind it.  I don't have any problem at all behind it,  
14          but I do have a problem on either side.  Either east  
15          or west.  As I think the negative reaction for the  
16          tenants peaceful and quiet enjoyment of their  
17          residential lifestyle will be altered.

18          CHAIRMAN:  Does anybody else in the audience  
19          have a question or comment?

20          (NO RESPONSE)

21          CHAIRMAN:  Does anybody on the commission have  
22          any questions or comments?

23          (NO RESPONSE)

24          CHAIRMAN:  Mr. Clark, please be seated.

25          Mr. Jacobs.

1           MR. JACOBS: We have nothing further at this  
2 time, Mr. Chairman.

3           CHAIRMAN: Mr. Jacobs and Mr. Thomas, please  
4 be seated. Thank you very much.

5           I think we've heard both sides of this issue.  
6 As we on the commission realize, there's certain  
7 findings of facts and certain rules in and order that  
8 we have to follow. With that being said, the chair is  
9 ready for a motion.

10          MR. HAYDEN: I make a motion we accept the  
11 Staff Recommendations with the Conditions and Findings  
12 of Fact 1 through 4.

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

15          MR. EVANS: Second.

16          CHAIRMAN: We've got a second by Mr. Evans.  
17 All in favor raise your right hand.

18                 (BOARD MEMBERS TIM MILLER, JIM GILLES, DAVE  
19 APPLEBY, DREW KIRKLAND, JUDY DIXON, WALLY TAYLOR,  
20 KEITH EVANS AND MARTIN HAYDEN RESPONDED AYE.)

21          CHAIRMAN: All opposed.

22                 (NO RESPONSE)

23          CHAIRMAN: We have eight for and we had one  
24 abstain.

25          Next item, please.



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2 MINOR SUBDIVISIONS

3 ITEM 8

4 6080 Jack Hinton Road, 7061 Highway 54, 6.820 acres  
5 Consider approval of minor subdivision plat.  
6 Applicant: Kenneth R. & Rebecca B. Onstott

7 MR. HOWARD: This plat comes before you this  
8 evening because it is in violation of the three to one  
9 ratio. It greatly exceeds that. The long skinny lot  
10 was created by the Planning Commission plat approval  
11 in June of last year. At which time the Planning  
12 Staff recommended denial of the plat due to the  
13 creation of the long skinny double frontage lot.

14 Based upon the current configuration with the  
15 excess length to width ratio, Staff still can't make a  
16 positive recommendation on the plat. It comes before  
17 you as an exception and for your consideration.

18 CHAIRMAN: Do we have any questions or anybody  
19 representing the applicant?

20 APPLICANT REP: Yes.

21 CHAIRMAN: Anybody from the commission?

22 (NO RESPONSE)

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

25 MR. APPLEBY: Does this improve the situation  
or make it worse? I don't see that it makes it any

1 worse. It actually makes the two lots closer in  
2 compliance, doesn't it?

3 MR. NOFFSINGER: I think you answered your own  
4 question, Mr. Appleby.

5 MR. APPLEBY: Motion for approval.

6 CHAIRMAN: Mr. Appleby, this has been pretty  
7 much your specialty, Mr. Appleby.

8 We have a motion for approval by Mr. Appleby.

9 MR. HAYDEN: Second.

10 CHAIRMAN: We've got a second by Mr. Hayden.  
11 All in favor raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimously.

14 Next item, please.

15 ITEM 9

16 5380 Lee Rudy Road, 3.838 acres  
17 Consider approval of minor subdivision plat.  
18 Applicant: Joe L. Rudy, Jr., et al.

19 MR. NOFFSINGER: Mr. Chairman, this plat comes  
20 before you tonight because it does create a lot that  
21 will exceed the three to one depth to width ratio if  
22 you expand its size. It's not creating an additional  
23 lot. It's just making an existing lot larger.  
24 However, it exceeds that three to one and it's a plat  
25 that I could not sign in-house, but we would recommend  
that you grant approval.

1 CHAIRMAN: Somebody representing the  
2 applicant?

3 APPLICANT REP: Yes.

4 CHAIRMAN: Does anybody have any questions of  
5 the applicant?

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 MS. MOORMAN: Second.

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

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries unanimously.

16 Next item, please.

17 ITEM 10

18 6194 Old Highway 54, 4700 Philpot Heights, 13.526  
19 acres

20 Consider approval of minor subdivision plat.

21 Applicant: Jackie W. & Susan Floyd

22 MR. NOFFSINGER: Mr. Chairman, this plat comes  
23 before you. It does take an existing lot of record  
24 and makes it larger. However, when you enlarge the  
25 lot it exceeds the three to one depth to width ratio.  
However, we're not creating any additional tracts and

1       it basically doesn't make the situation any worse or  
2       really any better, but it was when the plat was  
3       approved there were lots today and it will be two lots  
4       tomorrow. So with that we would grant approval.

5               CHAIRMAN: Any questions from anybody in the  
6       audience?

7               (NO RESPONSE)

8               CHAIRMAN: Commission?

9               (NO RESPONSE)

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

12              MS. DIXON: Move to approve.

13              CHAIRMAN: Motion for approval by Ms. Dixon.

14              MR. HAYDEN: Second.

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

17              (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18              CHAIRMAN: Motion carries unanimously.

19              I believe we have one final motion.

20              MS. DIXON: Move to adjourn.

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

23              MS. MOORMAN: Second.

24              CHAIRMAN: Second by Ms. Moorman. All in  
25       favor raise your right hand.

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries. We are

3 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 45 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 July, 2008.

18

19

\_\_\_\_\_  
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22

COMMISSION EXPIRES: DECEMBER 19, 2010

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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