The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, August 14, 2008, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

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

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CHAIRMAN: I would like to welcome everybody to the August 14th meeting of the Owensboro Metropolitan Planning Commission.

Will you please rise for our invocation. It will be given by Ms. Judy Dixon.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Our first order of business will be to consider the minutes of the July 10, 2008 meeting. Are there any additions, corrections?

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

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

MR. HAYDEN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, Mr. Noffsinger.

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CELLULAR TELECOMMUNICATIONS FACILITIES PER KRS 100.987

ITEM 2

895 Highway 140 West
Consider approval of a wireless telecommunications tower
Applicant: Larry A. Ratliff, GTE Wireless of the Midwest, d/b/a Verizon Wireless

MR. SILVERT: State your name, please.

MR. HOWARD: Brian Howard.

(BRIAN HOWARD SWORN BY ATTORNEY.)

MR. HOWARD: I'll enter a Staff Report into the record. I'll note that the application was submitted on July 21, 2008. The Planning Commission has 60 days upon which to act. The last day that they could act would be September 15, 2008.

This application comes before you as a
cellular tower. The proposed tower type is a lattice
self-supporting structure. The tower height is 195
feet. 185 foot tower with a 10 foot lightening
arrestor on top.

The zoning of the property is A-R Rural
Agriculture and all surrounding properties are zoned
the same.

The application was submitted and has been
done so in meeting all the requirements of our zoning
regulations. They do ask for one waiver on setbacks.
The zoning ordinance requires a setback to be half the
height of the tower, due to the lease area of the lot
which is 100 feet by 100 feet. The setback would be
98 feet, and they can't meet that; however based upon
the distance from the leased property to the parent
tract boundary, they do meet the setback requirements
and that is the waiver that's been typical of other
cell towers of this type locating in the county.

They do have a screening plan that calls for
an 8 foot tall chain-link fence around the property
with a row of 6 foot tall pines staggered at 15 foot
intervals. They propose no signs on the property.

The tower is designed to accommodate three
additional co-locators for four total on a tower.

They also submitted a minor subdivision plat
to create the 100 foot by 100 foot lease area for the property which is on the agenda as a related item.

MR. HOWARD: Would like to enter that Staff Report into the record as Exhibit A.

As well we've been given a packet of information from an adjoining property owner which the Planning Commissioners have been given a copy of. I'm going to enter a copy of that into the record as well along with the Staff's response to those questions in there. With that I'll be glad to entertain any questions that you might have.

CHAIRMAN: Do we have anybody representing the applicant?

MR. POTEAT: Yes.

MR. SILVERT: State your name, please.

MR. POTEAT: Steve Poteat.

MR. SILVERT: I recognize the oath you took as an attorney.

MR. POTEAT: Mr. Chairman, Board Members, I am here on behalf of GTE Wireless and Midwest, doing business as Verizon.

You've heard Mr. Howard and his report. We have with us today Ms. Traci Preble who is the project manager for GTE Wireless/Verizon, and Bill Duffy, the design engineer, to answer any questions that you may
I'm not going to lengthen this by going over what we've got in our application. Everything is in order in the application. We believe it's appropriate, but we will try to answer any questions that may come up.

CHAIRMAN: Mr. Poteat, you've been here before. I think what we'll do is we'll just ask you to be seated and let your Staff address questions, whoever the question may be address to, if there are questions.

MR. POTEAT: Sure. Thank you.

CHAIRMAN: Are there any questions from the audience?

(NO RESPONSE)

CHAIRMAN: Are there any questions from the staff?

MR. PAYNE: I certainly have something to say.

CHAIRMAN: Sir, that was covered under does anybody have any questions. You may step to the microphone and be sworn in.

MR. PAYNE: Thank you very much. I appreciate that.

MR. SILVERT: State your name, please.

MR. POTEAT: My name is Larry Payne.
MR. PAYNE: I think I heard mention that there was some information that we had submitted earlier that's in the record. I would like to suggest to you that information is probably outdated and we would like to distribute some information at this time.

CHAIRMAN: Mr. Payne, just hand one to the first person and he'll distribute them. You can return to the microphone.

MR. PAYNE: Thank you.

My name is Larry Payne. My wife is Ann. We're here tonight to contest and suggest to this board that this cell phone tower should not be approved here. So we're going to present some information to support that.

Just a couple of comments about Verizon just to get us to think about who these folks are.

Last year, as a matter of fact, June of this year Verizon is $2 billion company. $200 billion. They're on track this year after they pay their taxes and their shareholders, whatever, all their expenses to put away about $7.2 billion.

What we're going to ask for here tonight is an adjustment to their plans, and the cause of which really is outside of the purview, I think, of this
group to consider, but even if you do it's a grain of sand.

CHAIRMAN: Mr. Payne, I appreciate what you're doing, but if you would, for the benefit of all the people in the audience and the Staff and our commission, would you please get to your findings of facts. As far as their financial statement and what they make, really has no bearing on this board.

MR. PAYNE: From a freedom of speech standpoint I can't make comments about --

CHAIRMAN: You can make any comments you want to, but I'm asking you to stay on track.

MR. PAYNE: I think I am. This is this way of introduction, if you please.

A little bit about the book that we handed out. There's a table of contents. Throughout this presentation I'm going to ask you to refer to certain pages inside there.

Just to get us started I would ask you to turn to Page 12 in your handout. It looks like this.

MR. POTEAT: Mr. Chairman, would it be possible for us to --

CHAIRMAN: Excuse me. I'm going to ask him if he does have any specific questions so we can get to your people first. We're going to let him go on this
track for some time.

MR. POTEAT: I understand. I just want to know if we can get a copy of the booklet.

CHAIRMAN: Absolutely.

Mr. Poteat, just so we'll have it for the record.

Mr. Payne, will you sit down just a moment, please.

Would you step to the podium and make your request.

MR. POTEAT: Mr. Chairman, I would just like to request a copy of the handout that he gave to the board members so that we can review it as he's making his arguments to you or his questions to you?

CHAIRMAN: Thank you.

Mr. Payne.

MR. PAYNE: What you have in front of you, if you turn to Page 12, it's a satellite image of the parcels of land in question here.

If you'll look straight down the middle of the page there's a red line. That depicts the property line between the Ratliff property and our property.

The little green stick pin represents the location of the cell phone tower. Our residence is shown in yellow stick pins as the "Payne Residence"
and "Payne Shop."

In the back at the top of your page, there is an orange stick pin that we're going to recommend would be the least impact site or the lowest impact site for a cell phone tower in that area.

Also on this page there's notated some distances, etcetera, as far as the distance from our property line. We're going to call into question, I think I heard a plat mentioned awhile ago, about the validity of the plat as been presented by Verizon.

This kind of orients you into the area out there of what's going on.

I would like to begin by saying that we did attempt to establish communication with Verizon through GPD. I've never met Ms. Preble, but she was on the letter that we sent. We did send a certified letter back in February. In that letter we suggested a modification to their cell phone site. That letter was signed for. If you care to look at that letter it's Page 6 and the signed receipt is Page 7. You can look at it later. It's just there for your documentation.

That effort to establish this conversation was rejected. We further learned in the last week that that cell phone site was put under contract sometime
in January well before the conclusion of the
permitting process and certainly well before it came
before this board for approval. So it was a foregone
collection on the part of Verizon that they would get
this rubber stamped here tonight. We certainly hope
that's not the case.

    Findings of Fact 2 is that we did become
knowledgeable that there was going to be a hearing
here tonight. We got the letter just like everybody
else did. It was about two weeks ago. So Jennie and
I asked for and received a meeting with the OMPC
Staff. Bruce Kunze, the commissioner, was present and
the attorney for Verizon was there.

    As was done tonight by the Verizon attorney,
it was made perfectly clear to us that they had dotted
all their i's, crossed all their t's and we couldn't
fool with them. In other words, there's nothing we
could do. We asked them to delay this meeting	onight. Give us a little bit more time to get our
ducks in a row. They said, we can't do that.

    In this meeting, I don't know exactly who
brought it up, but the Telecommunications Act of 1996
was mentioned as a reason to why you guys couldn't
deny this request here tonight. Whoever makes that
assumption is wrong. I would like to point out to you
that the Department of Justice in a brief that they
submitted to the Supreme Court and relevant to about
three or four cases actually said that specific states
and the authorities associated with those like this
board and the local zoning ordinances, etcetera, that
you are permitted to grant or deny permits on any
other basis other than those associated with concerns
about RF radiation.

(JIMMY GILLES JOINS MEETING AT THIS TIME.)

MR. PAYNE: On Page 8 there is the extract
from that brief, and I won't read the whole thing to
you in the hence of brevity. It says in part that,
"Indeed, congress expressly provided that with the
exception of RF and a few other matters nothing shall
limit or affect the authority of a State or local
government or instrumentality thereof over decisions
regarding the placement, construction, and
modification of personal wireless service facilities.
That provision leaves intact all other bases for land
use decisions, such as aesthetics or neighborhood
character or other local zoning laws. Local
authorities throughout the country," - this is them
talking. Not me - "has successfully rejected tower
site proposals on such grounds."

You may think your hands are tied, but they're
not.

Point 3, the intent of the Telecommunications Act in part was to create a grid of cell phone communications across this nation as quickly as possible.

Clearly with south and west sections of Daviess County is already adequately served by cell phone service. So from a public service perspective, there's really no need for another cell phone tower in the area.

I'm going to respectfully suggest to you guys that the OMPC is under no obligation to underwrite Verizon's attempt to capture more of the market share at the expense of a community and certainly not of me and Jenny's expense.

Item 4 I'd like to speak to co-location. I remember hearing Brian mentioning that awhile ago.

A little research of the area shows that there's several towers already in existence within the area. Kenergy has got two towers. One is 92 foot tall. It's located within 1.9 miles. I'm not sure what the elevation that it's built on is. They have another one that's 215 feet tall. It's located within 2.7 miles. Crown Castle USA has got a 289 foot tower. It's located within 2.9 miles. Muhlenberg
Broadcasting Company has got a 679 foot tower. It's located within 3.6 miles. Clearly the opportunity to co-locate the equipment should be pursued.

Item 5. Like most of you, Jenny and I's wealth is for the most part tied up in our real estate. In years to come we'll probably have to draw that wealth down in order to take care of ourselves in our old age.

It was suggested by the Staff, and rightly so, that we should have an appraisal done of our property and relevant to devaluation because of external inferences pertaining to cell phone towers. We totally agree an appraisal should be done, but we really disagree that it should be our burden to do that. We're going to suggest that this group consider that as a matter of course appraisals that need to be done on adjoining property owner's land that's going to be devalued or potential to be devalued, they should be tended to by the OMPC Staff. It should be done by impartial appraisers, of course. We're going to suggest to you that the impact and the burden of impact of assessing that impact should fall upon those that want to have an adverse effect on the community. In this case it would be Verizon.

I could trot in here many real estate agents
and each one of them I'm confident would tell you that
they'd much rather list than try to sell a piece of
property that doesn't have a cell phone tower next to
it as opposed to one that does.

I would ask you to find Page 9, if you don't
mind. It looks like this.

Real briefly what that is, it's a preliminary
plan to subdivide our property. Joe Simmons sketched
this out for us. It's in a preliminary stage, but we
feel we meet the setback requirements as it's been
designed.

What we're going to say to you again is in
relationship to devaluation of our property. If we
put a cell phone tower or somebody does right here
within 100 feet or so of our property line, it's going
to be an influence that will have a devaluated effect
on our property.

I would call to your attention the fact that
recently there was a court decision in Bunker Hill
Village, Texas where a couple filed suit against the
city and against the cell tower owner because they
placed the cell phone tower in their backyard. It
devalued their property. The couple received a $1.2
million settlement from the cell tower owner and there
was an undisclosed settlement from the city.
So court cases have been tested on this. It calls in to your consideration, why do you want to go there anyway? There are judges that will rule in our favor in this case.

Number 7, I'm not going to spend a lot of time on this. It has to do with camouflaging towers. A lot of pro-active planning commissions throughout the country have wrote zoning ordinances that require that when you put up a tower, especially that's free-standing, that you make the things look like something else. They make them look like pine trees. They make them look like palm trees. You can go on the internet and find them that they look like silos. So the aesthetic beauty needs to be looked at and preserved. I know that you guys have ordinances here in the city that requires certain things to be done as a part of rezoning activity and as a part of building permits.

I would remind the group again that the OMPC is under no obligation to consider the cost of construction for a private enterprise such as Verizon Wireless in their deliberation here tonight.

Number 8, I won't worry you on with that. It has to do with the fact that there is some impediments that Verizon feels like they probably covered that
I'll show you here in a few minutes that they probably haven't. Jenny and I have enjoined Verizon any of their agents, Kenergy, whoever else from the use of our property as a means of egress/ingress or passage. In order to get power to this thing, I'm pretty sure they intend to cross our property line. It's not going to happen. I think they have moved the outlet road to compensate for that fact and I'm not sure they have.

Just want to call to your consideration one more time that the location of that green pin doesn't look like much on this Page 12, but it's close to our property line. If this thing falls, and it will. If you've lived out there as long as Jenny and I have, you'll know the kind of storms that race across the top of it. When it falls, it's going to be on my property. That's going to be not a good thing.

Item 10 is something I don't know if this board has ever considered. I don't know if the Staff has ever considered this, but it's something I would suggest that would be a good idea to consider.

To my knowledge Verizon has not provided for demolition and removal of this cell phone tower when it becomes obsolete, and they will be obsolete. Technology is around the corner where it will make
these towers no longer needed. I would suggest that they should be required to purchase a bond for the removal of these towers.

I would ask you to turn to Page 13. It looks a lot like the other satellite image. It shows a more expanded area. What we were told at the meeting last Friday was that when we asked them to look at other sites they said, well, they had. Nobody wanted them. Well, I didn't quite believe that so I done a little canvassing of my own. You'll see some names around on this image. These are people that I contacted individually. All of these people, as you can see from the elevations on these sites, have got some low impact remote high elevation cell phone tower sites. So I asked each one of them. I said, did Verizon contact you? No. I asked two or three of them, I said, would you be interested in a cell phone tower site? The Evans family, the Willis family, and the Edmonson family expressed a lot of interest.

So you've got to bear one thing in mind. Jenny and I are going to be the first most impacted people by virtue of the cell phone tower. So it's in our best interest to get out and see if we can find other people that might want to have one of these things, and we did. Why didn't Verizon?
I know that the Telecommunications Act precludes us from talking about the health implications of cell phone towers and cell phones. If anybody wants to know the reap of benefit of my research on that, however, meet me afterwards and I'll tell you about it.

Safety is another issue. The horrific storms that work their way up out of the flat lands around where we are out there is pretty significant. Having lived there for 23 years, we can attest to that.

When you've got a 185 or 195 foot tower up there, it's a giant lightening rod. There's no accounting for what direction a lightening bolt might take once it's attracted. It could very well wind up at 200 yards away vaporizing my home and Jenny and I inside of it. I would ask the OMPC not to subject us to that.

I would like before anybody's patience wears out too much here is to read a letter that I think -- I don't know if Gary can answer this. I don't know if this letter from the Daviess County Attorney is knowledge to the board members.

MR. NOFFSINGER: Yes, sir, it is.

MR. PAYNE: Just briefly. Because I had called into question the fact that everything appeared
to be a foregone conclusion as far as these cell phone
towers are concerned. I've raised that concern with
the county commission. Their attorney has suggested
that we enter into a modification of a zoning
ordinance that would require for the most part that
Verizon or Cingular or anybody else wanting to build a
cell phone tower will give notification to the
Planning & Zoning Board at the same time they apply
for an FCC license. What that will do is give the
general public an opportunity to have an impact before
you get steam rolled over. Quite honestly, folks, we
feel like we're being steam rolled here. This is in
the record. I want to make sure that it's read into
the record.

I'm going to be doing a little switching here
on you. I'm going to be referring to Pages 10, 14 and
15.

This particular finding of fact calls into
question the quality, number one, of the notification
was sent to the adjoining property owners. This is
Page 14. This is what it looks like. This was sent
out to all the adjoining property owners in
preparation for this meeting so that they could figure
out where this cell tower was going to be and make
their own decision about it.
I would challenge anyone to look at this, especially if you look in the upper right-hand corner of this piece of paper. One of the adjacent land owners said, well, to me, are they going to put that in the middle of 140? Really if you look at that, that's exactly where it appears to be. I think they could do a lot better job of that than what they're doing.

CHAIRMAN: Mr. Payne, let me stop you right there.

Mr. Noffsinger, was this piece of information, was that sent out by our office?

MR. NOFFSINGER: No, sir. That's required as a part of the uniform application requirement contained in state statute. We do not send out any notification. That's all sent out by the applicant as required by state statute.

CHAIRMAN: Mr. Payne, you've got several questions here. Before we linger on any further, let's start getting some answers to some of these questions before we get too far removed from the beginning question.

Do you have witnesses or expert testimony to back up some of your statements?

MR. PAYNE: Not unless you would classify me
as an expert having done the research I've done over
the last few weeks.

CHAIRMAN: Do you have a degree in engineering
that covers any of these statements that you've made?

MR. PAYNE: No, I don't.

CHAIRMAN: Let me ask you to sit. We'll let
you come back, but I'm going to --

MR. PAYNE: I've got one more point I want to
make.

CHAIRMAN: Is it very brief? You want to go
ahead and do that? Because what I want to do is bring
some of these other people up.

MR. PAYNE: In the interest of brevity then, I
want to make sure that this document that is handed
out here tonight gets read into the record as it is.
If we don't get a chance to go through all my 17
points, I want to make sure that this document that's
been handed out becomes a part of the permanent
record. Is that okay?

CHAIRMAN: Mr. Silvert.

MR. SILVERT: If you just ask that it be
submitted as an exhibit to the record, then it will be
a permanent part of the record tonight.

CHAIRMAN: Thank you.

MR. PAYNE: I would refer you to page 15 in
your handout and also to Page 10. I know they're different locations.

What you see here, I think it's a plat or a site plan that should be familiar with most people. It's prepared by the Benchmark Services, Inc. It attempts to locate that cell phone tower relative to the property line. The property line that is shown on this is completely wrong. Nothing right about it.

If you look at Page 10, you'll get some indication this is a certified recorded survey. If you look at Page 10 at this right-hand property line, you'll see this offset that's about 371 feet back to a point.

If you go back to Page 15, if you look at the left-hand side, which is suppose to be the property line that I just showed you on this other one, you'll see that it's basically a straight line.

I went to my surveyor today, Mr. Joe Simmons, and I said, Joe, what is this? He said, I don't know. Let me look at it. So he did. He said, well, Larry, at best it might be an exhibit. It is certainly not a survey document.

So they can present this to you guys and suggest to you that they know exactly where that cell phone tower is going to be, but that boundary line is
Chairman: Thank you.

Do we happen to have in the audience, do we have the next-door neighbor where the property, where the cell phone tower is to be placed?

Mr. Payne: That would be me.

Chairman: The cell phone is going to be placed on your property?

Mr. Payne: No. You said the next-door neighbor.

Chairman: I'm sorry. Your next-door neighbor.

Mr. Payne: He's an absentee landowner. He doesn't live out there. I don't know.

Mr. Poteat: Mr. Ratliff is not here tonight. He does work for the state. He was working when I tried to get with him on Monday. He's not working in Daviess County right now.

Chairman: Your oath as a lawyer has been accepted.

Mr. Poteat: Yes.

Chairman: Several questions that I have.

Mr. Ratliff that owns the property, he obviously has agreed to this?

Mr. Poteat: Yes. The lease that he signed is
in our application. He has signed off on the survey
that has been submitted as Item 2. Signed off on it
the day before yesterday.

CHAIRMAN: Now about the right-of-way. I
assume you have right-of-way to get to service to
construct?

MR. POTEAT: According to the survey we have.
I'm not getting into a land dispute before this board.
If there's a dispute as to the boundary --

CHAIRMAN: No, I'm sorry. My question had to
do with, do you have proper right-of-way? He was
questioning your right-of-way.

MR. POTEAT: Yes. It's set forth in the lease
agreement as well.

CHAIRMAN: Then the alternate locations of the
cell tower would you address?

MR. POTEAT: I can address part of it and then
I may get one of the others to address part of it as
well.

CHAIRMAN: Thank you.

MR. POTEAT: Verizon did have alternate sites.
In fact, this was not the first site they chose. The
first site they chose and started proceeding on was
somewhere around April or May of '07. They went
through their process on that one. They filed their
application with the federal agency that they're required to. They're doing their due diligent studies, their geo studies and others. They ran into a historical problem. There was a cemetery that no one knew about. That killed that one. This one started after that. I can't tell you when that one was done, when that was done, but it was I'm going to say it was probably either sometime this past winter or back in the fall of '07 is when that was discovered. That stopped that one.

They did contact other land owners. I can't tell you how exactly they choose their sites.

Obviously they want their sites as high ground as they can get it, but also with the radio frequency studies that they do, they want the one that's going to give the best overall coverage that they need.

They didn't contact everybody in Utica. I don't think they're required to first of all. They did not. But in the area they were looking at putting this cell tower for the best coverage for Southwest Southern Daviess County. There were others that they did contact and they were told no. That's in our application as well. We went ahead and filed that document in there as well.

No, we didn't talk to everybody out there.
The first choice didn't happen. They went to the second choice. The second choice was Mr. Ratliff. That's the one we're here on today.

CHAIRMAN: As you know, Mr. Poteat, you've been up on other cell towers instances. We do try to get bundling sharing for obvious reasons. Property owners, landscape, everything going on. Did you all pursue this issue of other towers that --

MR. POTEAT: Co-location?

CHAIRMAN: Well, no, not other locations. Other cell towers.

MR. POTEAT: Co-location.

CHAIRMAN: Right.

MR. POTEAT: We did do that. I believe, and I may have to refer this to Mr. Duffy. I believe the closest tower that they could co-locate on was about four, somewhere around four miles away.

CHAIRMAN: This board's situation we've been in with these cell towers before. There is a very tight band of actually where the cell tower can be located; is that correct?

MR. POTEAT: That's correct. That's my understanding, yes.

CHAIRMAN: Maybe we're at the point where maybe we need to dismiss you and bring the expert,
unless you want to personally address some of these
other questions that he brought up.

MR. POTEAT: If I could do that first. There
are some that they will not be able to answer.
There's some I can't.

CHAIRMAN: What I want to do is while you're
up here go ahead and answer the questions you can and
then bring them up and answer the questions which they
can.

MR. POTEAT: I don't quite know where to begin
on some of those.

I will start with first of all he's asked that
this commission amend its comprehensive plan to add
some item. That's certainly within this board and the
Planning Staff's ability to recommend that, but that's
not something that could be done tonight.

We complied and we've applied in compliance
with Kentucky Statute which is KRS 100.965.

CHAIRMAN: Mr. Poteat, that's not even in
question.

MR. POTEAT: The other thing I can't answer is
the Texas. It doesn't have any bearing on us. I'm
sorry. Whatever happened in Texas, don't know any
circumstance surrounding it. Can't respond to it.

The things that I said that I can, you know,
most of him he's told you himself that maybe they
shouldn't be here. I think the things we can answer
is best left for our Staff as far as the engineering
of this. I do have some handouts that I could give
you all on the radio frequency before this tower goes
up versus after the tower goes up and on fall zone,
but I'll leave that up to Mr. Duffy.

CHAIRMAN: Mr. Poteat, isn't the need for the
tower actually not -- Verizon applies for, but doesn't
the FCC have to approve and doesn't the FCC also state
a narrow area which this tower must be located?

MR. POTEAT: I'm going to let him answer that.
Yes, they do require that. The FCC does, and they
have a lot of control over this. I'm not going to get
into the legal arguments. That's a lot maybe what I
perceive that he's raised except as to the
engineering, design, where it's going, distances and
things of that nature. That's what I have them for.

CHAIRMAN: Why don't you bring forward the
next, one of your expert witnesses in regards to some
of the other questions that I've raised of who should
go first.

MR. DUFFY: Mr. Chairman, Members of the
Board, my name is Bill Duffy.

(BILL DUFFY SWORN BY ATTORNEY.)
CHAIRMAN: Mr. Duffy, these are actually questions that the neighbor has in regards to the cell tower. I'm sure you're familiar with them. I'll restate some of them. They aren't necessarily question of the board. They're just questions we want answered in regard to this application.

MR. DUFFY: I understand.

CHAIRMAN: One was in regards to, well, actually it was more my question than Mr. Payne's. Is the selection of the location. You all applied to the FCC and then the FCC, you all apply and they grant you a certain area because of your application of where this cell tower must go; is that correct? If that would be correct, then would you elaborate on how this specific area was chosen as opposed to being co-existing with another tower that was within the area or other spots.

MR. DUFFY: So I can understand you I want to restate this question. You want to know if the FCC tells me where to put my cell phone towers?

CHAIRMAN: Correct. They don't say it has to be in this exact spot, but you apply and you're given, there's a certain area where this cell tower has to go to be effective?

MR. DUFFY: Oh, yes, most definitely.
CHAIRMAN: Did I state it correctly?

MR. DUFFY: Let me speak to that point and I believe I can clear it up. Not in a quick blurb or
anything by any means.

I believe you have some maps in your possession. If you don't, I believe we can get these
to you.

My job as a design engineer is to take the existing network of cell phone towers that are in this
area that are serving where we're standing this evening and to move coverage out to areas where there
are problem areas. Where if someone were to pick up their phone, have an accident, try to dial 911 and
they go to push "send" on their phone and they're not getting any help because there is no coverage in this
area. There's a highly competitive environment I'm in or highly competitive business I'm in. It's our job
to provide the best service that we can to people.

So I take our existing network that's on there. Our future plans for a site -- I was here I think it was three months ago for another site like four miles away where we're building another tower. We got approval for that one. Now I'm building out in this area because this is a problem area. There's no cell phone coverage in this area. We're trying to
improve that.

CHAIRMAN: Why could you not have co-shared a
tower with somebody within a reasonably close area?

MR. DUFFY: I simply didn't see any other
towers. I know Mr. Payne stated that there were
towers in the vicinity, but I simply don't see these
towers. A 70 foot tall tower isn't going to work. It
was a stretch to get a 108 foot tower to work. I
prefer a 300 foot tower so that I can get as many
co-locators as I can on there so that we can get --
down where Mr. Payne lives, I'm sure you're aware of
it, there's gently rolling hills, and 70 foot on a
gently rolling hill I'm not going to get two or three
miles before my signal is cut off and I'm going to
have to build three or four more towers if I go on a
70 foot tower.

CHAIRMAN: So if your tower goes up, how many
feet do you want this tower to go up?

MR. DUFFY: If there weren't the restrictions,
I would prefer around a 300 foot tower.

CHAIRMAN: But there are restrictions.

MR. DUFFY: There are restrictions. When I
considered the community and different things, I asked
myself, you know, these towers are expensive. A 300
foot tower would require a big bright light on top. I
don't like to do that to landowners because a lot of landowners have adjacent landowners take issue with the blinking light.

CHAIRMAN: So this one is going to be how tall?

MR. DUFFY: As tall as I can get it and stay under the limit of having to be lit on top. It's 185 foot top of the structure and a 10 foot lightening rod on top. The tallest point is 195 feet.

CHAIRMAN: So to keep other towers from having to be built in this area, you all will obviously to your advantage financially let other people use your tower also?

MR. DUFFY: Yes. I prefer to use towers when they're available. I wouldn't be standing before you this evening if there was one in this area I could go on.

CHAIRMAN: This is based on just your --

MR. DUFFY: It's a prediction tool I have. I plug in what my frequency is, what powers I'm allowed to transmit in certain counties. Daviess County, I don't know what this population is for this county, but if it's less than 100 people per square mile, I have a certain amount that I can transmit. If it's more than 100 people per square mile, then an interest
in safety I have to stay under 500 watts. There are
different considerations and different environments
and this is one where I can meet the needs and stay
underneath the FAA limit and not have a light on top.

CHAIRMAN: The falling tower, Mr. Payne said
that these towers fall, have you been associated with
any damage or any structures that have come down?

MR. DUFFY: I have not. I can't speak very
well to that. I'm not a structural engineering. I
design the radio waves. I don't know if Traci can
speak to that or not.

MS. PREBLE: I can share some thoughts on
that.

CHAIRMAN: Would you be seated. We'll bring
her. I'm just about finished with the questions that
he brought up.

MR. MILLER: Mr. Chairman, before he sits down
just in all fairness to the commission and to Mr.
Payne. Could he state his qualifications.

CHAIRMAN: Thank you, Mr. Miller.

Did you hear Mr. Miller's questions? He
asked, Mr. Duffy, if you would state your
qualifications. What degree you have.

MR. DUFFY: I have a bachelor's degree and I'm
currently pursuing a master's degree.
CHAIRMAN: In what field?


Is that sufficient?

MR. MILLER: Thank you.

CHAIRMAN: Thank you.

Mr. Poteat, I believe your other person is going to address one of the questions.

MR. POTEAT: We are. He mentioned a moment ago the coverage area. If the board would like, I will hand these out. These are reports that Mr. Duffy prepared and that he alluded to at the beginning showing what the coverage is now. That's this first one I will hand out. You can see the white area on there very clearly shows there's not much coverage out there.

CHAIRMAN: Do you want one for the record also?

COURT REPORTER: Yes.

MR. POTEAT: The second one shows the coverage once this tower goes up.

MS. PREBLE: Good evening. My name is Traci Preble. I am with GPD Group.

(TRACI PREBLE SWORN BY ATTORNEY.)

MS. PREBLE: Couple of things I wanted to address. One was the lightening issue. This tower,
again, being 185 foot with a type of lightening rod.
Actually it's the tallest thing in the area. So it is
going to attract the lightening. We then have a
grounding system because obviously Verizon does not
want their building, their equipment, their tower to
be damaged as well as the other carriers that we hope
to come to this site. So there's a grounding system
that then takes that, if it is hit, takes it down into
the ground and it dissipates.

Then I want to talk about the falling of the
tower. Just as the FCC regulates the height of the
tower and other things such as that, there is a
building code that we have to abide by for the tower
structure itself. It's the EIA Code. That is based
on the wind speed and ice, 70 mile an hour wind, half
and inch of ice. So the towers are designed to
withstand that. Anything above that would be a
tornado situation and they are not required nor is it
-- they're not designed and required to be anything
beyond that.

Verizon, as being a good neighbor, has agreed
to construct or to purchase a tower that has been in
essence over-designed so that it has a fall zone of --
this being a 185 foot tower. The fall zone is about
135 feet. So if it did fall, which they don't, but if
it didn't just fall the distance of the 185 feet. It would collapse on a place that it was designed to collapse on and fall in that 135 foot. We have a letter we call fall zone letter that we have and that we can provide to the board.

CHAIRMAN: Thank you.

Does anybody have any questions of Ms. Preble?

(NO RESPONSE)

CHAIRMAN: Does anybody have any further questions of Mr. Duffy? I dismissed him to bring her up to fill in some blanks on some questions. Does anybody have any questions of Mr. Duffy?

MR. PAYNE: I've got a question. May I ask?

CHAIRMAN: Of course.

MR. SILVERT: If you could just state your name again.

MR. PAYNE: My name is Larry Payne. I had a question of Mr. Duffy about the coverage map that he distributed. Is that Verizon's coverage map or is that also all cell phone carrier's coverage map?

CHAIRMAN: Mr. Duffy.

MR. DUFFY: It's just Verizon's coverage, sir.

CHAIRMAN: Thank you.

Does anybody in the audience have a question
of Mr. Duffy?

(NO RESPONSE)

CHAIRMAN: Thank you, Mr. Duffy. Why don't you just sit close in case anybody from the commission or anybody else does have another question.

Does anybody from the board have a question?

(NO RESPONSE)

CHAIRMAN: Are there any questions from anybody --

MR. APPLEBY: Was Mr. Payne finished with his statement there?

MR. PAYNE: No. I'd like to sum up, if I could.

CHAIRMAN: Go ahead.

MR. PAYNE: Thank you.

Just not in rebuttal because that's not what this is about. If you go to antennasearch.com, you can find every antenna that was ever constructed. It's real easy to find these antennas that was talked about earlier.

Just in closing, what we attempted to do back in February through the certified letter was to have an impact on where this thing was going to go. We were trying to be reasonable and be a good neighbor. Ms. Preble got a copy of this letter. She chose not
to respond. The Akron office of GPD got a letter.
They chose not to respond.

We were really trying to be reasonable. Our first request was simply to move this tower 100 yards, that's 100 yards a little to the northeast. Get it a little further away from our back door.

CHAIRMAN: Would that have still been on Mr. Ratliff's property?

MR. PAYNE: Absolutely. Actually the elevation out there is higher than where they want to put it. It's clear hill top.

CHAIRMAN: Let me ask Mr. Duffy. That seems like a viable question of Mr. Duffy.

Were you aware of this request and if this request is viable, what would 100 foot, whichever direction.

MR. PAYNE: One hundred yards.

CHAIRMAN: One hundred yards, I'm sorry. One hundred yards in a different direction, what affect would that have on your coverage?.

MR. DUFFY: It wouldn't have very much of an affect. When I received it via e-mail from Mr. Payne, and I stopped what I was doing for about a day and a half and I seriously considered his request. I understand because I walk out my front door every
morning walking my dog and I see a cell tower blinking
right in my front door.

So I sympathize with him, but on the other
hand I have to do my job and make these towers overlap
as I spoke to earlier.

Considering all things that he may or may not
know about all the consideration that go into the
design of these networks, this location was just as
good as 100 yards away.

I mis-said that last part. This spot was the
best spot where we needed to put it. Granted it
wouldn't affect it too much if we didn't. I can't say
that it would because when you take into the margin of
error and the propagation maps and the prediction maps
that are before you, those are just mathematical
equations that we do every day. There could be a
margin of error in any study. I can't speak that I
wouldn't be able to make a phone call. No, I
couldn't.

CHAIRMAN: Did you respond to his request?
MR. DUFFY: I responded. I don't know if it
went directly to him or not.

CHAIRMAN: What was your response?
MR. DUFFY: This was about a few months ago.
I believe the questions were something about he wanted
to enter into some sincere negotiations to put the
cell tower on his property. So I looked at other
locations. When I looked at the location that I
believe was proposed, it was quite a bit to the north,
if my orientation of his property is correct.

So when I look to the north there is maybe not
a significant decrease in elevation, but as I spoke to
earlier I'm as high as I can go and not pass my
mandate to have it lit. If I do lose elevation, I
have to build a taller tower. It was pushing it to
try to get the coverage maps that you see before you
at 185 feet.

CHAIRMAN: I'm confused. I thought he said he
was going to move it on Mr. Ratliff's property.

MR. DUFFY: There was many requests. That's
what I was speaking to. It took quite a bit of time
to look at all of his proposals.

CHAIRMAN: Not without me getting into dollars
and cents. Don't you all pay for these locations?

MR. DUFFY: I don't deal with money. I know
that we do have --

CHAIRMAN: Well, wait a minute. I think Mr.
Poteat can probably handle that.

MR. DUFFY: Mr. Poteat, would you mind.

MR. POTEAT: Certainly they do. They have to
lease this property.

   CHAIRMAN: Yes. I don't need to know. That's all I need to know.

   Mr. Duffy, obviously if you and the property owner could have worked out a movement, as long as Mr. Ratliff has the idea location and would have been in the loop, that would have been a very simple situation for all of us.

   MR. DUFFY: I believe the one sticking point that I believe was his biggest concern at the time was, and this must have been before he did his homework about the health concerns. His concern was that he spends the majority of his time in his shop. He was concerned about the radio waves causing a harmful affect on his health.

   CHAIRMAN: But then he proposed, one of his proposals was to put it on his property.

   MR. DUFFY: Well, it was further away from the shop where he spends his time. So I understand what he's saying. The fact that it's on his property is irrelevant. I don't see the money from the leases. It has nothing to do with, money has nothing to do with how I design the network. My job is to design the best network and the people that count the money have to deal with the budgets. They bring me in when
I can't, when I'm costing too much money. That's how it works.

I did consider the health concern. You may have this before you as a matter of record. I don't know. It wasn't data submitted. We paid a consulting firm. I told them my antenna height, the powers I was going to be using, the frequencies of the antennas. All this data I submitted with this firm, RSI. It's a contracting firm. They submitted this study back to me so that I could verify that it would not cause a harmful affect to his health. The fact that it would not cause a harmful affect and the fact that if I were to move it to where he wanted me to move it, I would have to build a taller tower and I would have to have a light on top. This was the all-around best choice and best place for this tower.

CHAIRMAN: The health issue is something this board is not qualified to deal with.

MR. DUFFY: I understand.

MR. HAYDEN: I've got a question. I didn't really understand. I understand Mr. Payne said if they moved it 100 yards away from his property, they've got a higher elevation.

MR. DUFFY: I don't think that's true.

MR. HAYDEN: That's the way I understood it.
MR. DUFFY: I went out there. I live north of Indianapolis. So when I got this letter from Mr. Payne, I drove down here and I looked at this property myself. There was a stake out there in the ground where the tower is going to go. I looked over 100 yards in every which way and there is no ground higher in that area. If you can show me a survey where it shows this, I'd like to look at it, but there is none.

MR. HAYDEN: I haven't seen the property. I'm just going by what Mr. Payne said.

MR. DUFFY: I seriously considered this. It's something that I got in my car and I drove four hours to look at it myself.

CHAIRMAN: When you looked at that alternate location, did you have Mr. Payne with you by chance?

MR. DUFFY: I saw him over at his property, but I thought it best not to approach him since he was an upset adjacent landowner.

CHAIRMAN: Thank you.

I think we've heard many --

CHAIRMAN: Mr. Poteat, do you want to make another comment?

MR. POTEAT: I just wanted to respond to his question, if I could.

CHAIRMAN: Surely.
MR. POTEAT: As part of the application, you'll see these documents in there. They show the elevation. And as you move to the north and east, the elevation actually does drop off. This is part of the original application.

MR. PAYNE: Two minute summary to address a couple of these things. Just two minutes.

CHAIRMAN: You're on the clock.

MR. PAYNE: First of all, I think it's pretty obvious we don't want this cell phone tower anywhere around us. We only offered that site on the back of our property because it's 377 yards away from our house.

Number two, anybody can go on google earth and there's really excellent tools and you can see elevations of everything including the ditch in your backyard. I can assure you that the site plan that they're using and the survey, I've already called into question, it's not valid. You can just kind of take that out of your mind.

I can assure you the 100 yard site, the 100 yard distance was an additional 10 foot higher elevation. It's a completely hilltop. You can see that from the imagine that I've given to you.

Really now we would like to see it in the back
of that property. It only means that they have to build the cell phone tower as high as Verizon has built theirs. Verizon doesn't have a big bright light on top of theirs. Thank you very much for your time.

CHAIRMAN: You met your requirement. Very good. Please be seated.

Mr. Payne, I have to remind you that Mr. Poteat and all the people that testified were under oath and the application that they made they signed. They did provide a survey. Which your testimony versus their application versus their survey is the situation that must take precedence in this situation because it's under oath and they do have a survey.

MR. PAYNE: I submitted a survey. It's in your --

CHAIRMAN: Does anybody else have any other questions or any comments?

(NO RESPONSE)

CHAIRMAN: I think we've heard this issue. I think at this point in time the chair is ready for a motion.

MR. APPLEBY: Mr. Chairman, I think that Mr. Payne has made a pretty good argument and he's given us a lot of information. I don't know about the rest
of the board, but I've not had time to actually read it all. If you're looking for a motion, I would move that we postpone this for 30 days and give us a chance to all look at everything that they've submitted and visit it again next month.

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

MR. EVANS: Second.

CHAIRMAN: We have a second by Mr. Evans. All in favor raise your right hand.

(BOARD MEMBERS TIM MILLER, IRVIN ROGERS, JIMMY GILLES, DAVE APPLEBY, JUDY DIXON, WALLY TAYLOR, KEITH MARTIN AND MARTIN HAYDEN RESPONDED AYE.)

CHAIRMAN: All opposed.

(DREW KIRKLAND RESPONDED NAY.)

CHAIRMAN: The motion will be postponed.

Next item.

Related Items:

ITEM 2A

895 Highway 140 West, 0.230 acres
Consider approval of minor subdivision plat.
Applicant: Larry A. Ratliff

MR. NOFFSINGER: Mr. Chairman, given the fact that Item 2 was postponed, the Staff would recommend that you consider postponing this item since it is related to the cell tower site.
CHAIRMAN: The chair would need a motion?

MR. NOFFSINGER: Yes, the chair would need a motion. Would like to hear from the applicant as well.

MR. POTEAT: Obviously if you're postponing this, we would request that that be postponed until that time as well.

CHAIRMAN: Okay. The applicant request postponement.

MS. DIXON: Move to postpone.

CHAIRMAN: Move for postponement by Ms. Dixon.

MR. TAYLOR: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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ZONING CHANGE

ITEM 3

4751 Free Silver Road, 6.657 acres
Consider zoning change: From EX-1 Coal Mining to A-R Rural Agriculture
Applicant: Kenneth J. Hodgkins

MR. HOWARD: I will note that all of the rezonings heard here tonight will be final 21 days
after the Planning Commission hearing unless an agreed property owner or the applicant files a petition with our office or the local legislative body files papers in our office to allow them to hear it.

PLANNING STAFF RECOMMENDATIONS

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

FINDINGS OF FACT:

1. The subject property is located in a Rural Maintenance Plan Area where rural large-lot residential uses are appropriate in limited locations;

2. All strip-mining activity has been completed and all disturbed areas have been reclaimed; and,

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

MR. HOWARD: I would like to enter the Staff Report into the record.

CHAIRMAN: Do we have anybody representing the applicant?

APPLICANT REP: That's me, sir.
CHAIRMAN: Do we have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Does the applicant want to make a statement?

APPLICANT REP: No.

CHAIRMAN: The chair is then ready for a motion.

MS. DIXON: Move to approve based on Planning Staff Recommendations. It's in compliance with the Comprehensive Plan and based upon Findings of Fact 1, 2 and 3.

CHAIRMAN: We have a motion for approval by Ms. Dixon.

MR. EVANS: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 4

Portion of 10088 Highway 144, 0.357 acres
Consider zoning change: From B-4 General Business to A-R Rural Agriculture
Applicant: Doris Ann Cecil

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

CONDITION:

Submission of a division and consolidation plat to consolidate the subject property with the adjoining tract also owned by the applicant.

FINDINGS OF FACT:

1. The subject property is located in a Rural Maintenance Plan Area where rural large-lot residential uses are appropriate in limited locations;

2. The subject property will be consolidated with an existing, adjoining tract;

3. Once consolidated, the tract will be a separate, well-proportioned lot; and,

4. The consolidated property will have road frontage on a state maintained roadway and no new streets are proposed as part of this rezoning.

MR. HOWARD: I would like to enter the Staff Report into the record.

CHAIRMAN: Do we have anybody representing the applicant?

APPLICANT REP: Yes.
CHAIRMAN: Do we have any questions of the applicant?
(NO RESPONSE)
CHAIRMAN: Does the applicant wish to make a statement?
(NO RESPONSE)
CHAIRMAN: If not the chair is ready for a motion.
MR. MILLER: Mr. Chairman, motion to approve based on Planning Staff Recommendations, the one condition as stated and the Findings of Fact 1 through 4.
CHAIRMAN: We have a motion for approval by Mr. Miller.
MR. HAYDEN: Second.
CHAIRMAN: Second by Mr. Hayden. All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries unanimously.
Next item, please.

ITEM 5

Portion of 10363 Highway 54, 0.143 +/- acres
Consider zoning change: From R-1A Single-Family Residential to R-3MF Multi-Family Residential
Applicant: Parkside Rentals, Inc.

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

CONDITION:

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

2. Submission of a division and consolidation plat to combine the two tracts of land.

FINDINGS OF FACT:

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

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

3. A portion of the subject property is currently zoned R-3MF Multi-Family Residential;

4. At 0.143 +/- acres, the proposed rezoning should not overburden the capacity of roadway and other necessary urban services that are available in the affected area.

MR. HOWARD: I would like to enter the Staff
Report into the record.

CHAIRMAN: Do we have someone representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Do we have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Does the applicant wish to make a statement?

APPLICANT REP: No.

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

MR. HAYDEN: I make a motion for approval with Staff Recommendations and Conditions 1 and 2 and Findings of Fact 1 through 4.

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

MR. TAYLOR: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

(IRVIN ROGERS LEAVES MEETING AT THIS TIME.)
ITEM 6

Hialeah Park of Lakeside at the Downs, 1.13 +/- acres
Consider approval of amended major subdivision
preliminary plat/final development plan.
Applicant: Thompson Homes, Inc.

MR. NOFFSINGER: Mr. Chairman, Mr. Howard from Planning Staff has a Staff Report to read into the record.

CHAIRMAN: Mr. Noffsinger, I need to remove myself from this case and hand the gavel over to Ms. Dixon.

MR. HOWARD: I will go through the Staff's recommendations as far as this plan goes.

The staff is in opposition to the proposed termination of Calumet Trace. We feel that it should be connected as has been planned since 1995.

A little history. The preliminary plat for the property was approved October 15, 1995. At that time Calumet Trace was proposed to connect to Fairview Drive, which is a minor arterial roadway, and Pleasant Valley Road, which is a minor arterial roadway.

The final plat for the property was approved October 14, 2004. At that time $93,050.68 was posted for surety. Of that amount $81,300.68 was for streets and sidewalks. That surety was transferred to the
county engineer on October 13, 2006.

As far as the roadway design goes, Calumet Trace is classified as a collector roadway. Has a 60 foot right-of-way and a 37 foot pavement improvement.

AASHTO, which is the American Association of State Highway and Transportation Officials, they have a book called the Green Book, which was referenced by the transportation engineers. It establishes minimum design standards for collective type roadways within an urban setting. Within an urban setting, lane widths for the travel lane should be between 10 and 12 feet. In a residential area, on-street parking shall also be taken into consideration. Parallel parking lane on either one or both sides of the street is a possibility. If it is present, that lane should be seven to eight feet in width.

Based upon that information and the pavement width of the roadway, if you have a 7 1/2 foot parking lane, which would be in the middle of the AASHTO Green Book standards, that leaves you with a 10 1/2 foot travel lane which, again, is within the minimum requirements of AASHTO.

A little bit of research. Looking at the state roads in Daviess County, any road that is classified as a state route, I looked the information
up on that. There are 178 miles of state roads within Daviess County that are narrower than 10 1/2 feet. Only 79 miles have a width that's greater than 10 1/2 feet.

When The Downs was planned in '95, commercial growth was anticipated along KY 54. The majority of that property was in a business plan area. We anticipated that there would be commercial growth in that area. That's why Calumet Trace was designed to a higher standard than what the other streets in the subdivision were. Like I said it had a 60 foot right-of-way and a 37 foot pavement width. The rest of the streets, with the exception of Fairview Drive, within that subdivision have a 50 foot right-of-way and either a 31 or 34 foot improvement. That was due to the anticipated traffic.

The street was designed with some traffic calming criteria built into it. Traffic calming is a term that is used to describe ways that traffic can be slowed or impeded so that it does create a more safe situation. It has design with on-street parking with some curbs and some street medians, all of which can be considered traffic calming devices.

On-street parking serves as a neckdown point or a choke point which can serve to slow down traffic.
Chicanes, which are often installed after the fact on roadways, that's a purposeful gentle curving of a roadway. A lot of times roads are retrofit with that type of thing. This road was designed with some curvature.

There are some center island medians, especially at the intersections, which also help to slow down traffic at the intersection locations.

As far as the Comprehensive Plan goes, from the statements of the goals and objectives, there are several things that we've looked towards in regards to subdivisions and connections and things like that.

One would be say to minimize the time need for police and fire protection to respond to emergencies. That's from 4.1.2.3.

5.1.1 says to provide for the movement of people and goods from one place to another in a safe and efficient manner.

5.1.1.1 says to reduce travel time and costs by integrating or interconnecting the various modes of transportation where possible.

5.2.1 says to provide for the movement of people and goods from one place to another in a safe, efficient, and cost-effective manner.

As far as roadway connections go, we feel that
roadway connections between and among developments, especially residential developments, is a key factor within our community. Historically, subdivisions have been required to connect to each other. Subdivision don't develop in isolation. They are connected and it is essential that they do that. That way people that travel from one area to another don't have to get out on the main roads in order to get from one point to the other. The subdivision was designed with an access point to Kentucky 54, via Fairview Drive and Pleasant Valley Road via Calumet Trace. The subdivision also included for future extension of Fairview Drive to the north. There are also four other streets within the subdivision that were stubbed to the property line that would also provide for future interconnection. The subdivision was designed with all of these connections to promote connectivity and interconnection. It wasn't design with the idea that some might connect and some might not. They were all looked at for a purpose.

Some examples of historical connections that the Planning Commission required. Weikel Drive was required to connect to Kipling Drive when that area was developed. At that time there were some neighbor opposition and a city commissioner that didn't want to
see that connection made.

Wilderness Trace and Scotty Lane were both connected to the Landsdowne Subdivision. Those connected to Old Hartford Road and Fairview Drive, which are both major roadways.

Southeastern Parkway that runs through the Landsdowne Subdivision, which is the major connector between Old Hartford Road and Scotty Lane has a pavement width of 31 feet.

Lake Forest and Brooks Subdivision connect. Lake Forest and Steeplechase Subdivision have proposed connections. Thoroughbred East provides connection between 54 and Thruston-Dermond Road. Fiddlestick Subdivision connects J.R. Miller and Veach Road. When that subdivision was proposed, they didn't want to provide any connection to Veach Road, but they did.

In regard to future development in the area, there are two major projects that are at least talked about if not proposed at this point. Those are the Gateway Commons, which is the former TIFF site, and then the hospital. If and when those projects are developed, they will both be required to do a Traffic Impact Study. The intent of the Traffic Impact Study is to look at the amount of traffic that those uses will generate and then assign those to the roadways,
determine what type of roadway improvements might be needed to mitigate the traffic that they will generate. Those will be looked at in the future. We don't want the future development to adversely impact the existing roadway.

Looking at it from a public safety standpoint. With a single access point there are approximately 260 lots within the subdivision. If for some reason the main access point through Fairview Drive were blocked, the emergency vehicle access to that property would be a concern.

The Owensboro Metropolitan Subdivision Regulation limits the distance of a cul-de-sac to 1,000 feet. Without another access point, without another way in or out, in essence the subdivision would act as a long cul-de-sac. So without another connection that would be in violation of the subdivision regulations maximum length on cul-de-sacs.

Every community handles the way the subdivision and roadways connect differently. I've done some research in regards to other communities within the State of Kentucky and how they view roadway connections and access points of subdivisions.

For example, in Lexington, when reviewing subdivision plats, when they get to a threshold of 35
to 40 lots, they look for a second access point to a development.

Bowling Green, after 50 lots requires a Traffic Impact Study to evaluate the needs for a second access point.

Georgetown has theirs set at 300.

Oldham County and Elizabethtown both do it based on AADT, which is an average annual daily traffic county. They use 2,000, which institutes transportation engineer's average for single-family residences. Ten trips per day as far as the number of trips it generates. So that would be approximately 200.

Louisville is 200 lots.

Hopkinsville has a requirement that a cul-de-sac can have a maximum of 14 lots on it before they require some type of a connection.

In order to look at it from the public safety perspective, we did contact the sheriff's office, the fire department and the ambulance service to see if we could get some feedback from them.

The sheriff gave a statement which is attached to the information that will be entered into the record. He listed out the pros and cons. He saw that there was some benefit and some distraction to the
proposed connection.

The county fire department said that they primarily use Thruston-Dermont Road to get to that area. So this connection wouldn't impact their routes one way or the other.

We didn't receive a response from the ambulance service.

We also contacted the school, the school board to find their comments. Basically they said that they were in favor of the connection. That they had done a lot of research as far as location of the new school and assumed a lot based upon that access. They did state that they would prefer to see Fairview Drive connected though.

That's the information that we've been able to do as far as research goes. We've listed out some findings of fact that support these that I've gone over. I've addressed each of those as a statement through the Staff Report.

As I said, in the back you will see the letter from the school board. You will see a letter from the information from Sheriff Cain. Then there's also a letter that was issued from the county engineer, Sinan Rayyan, to Mr. Thompson in regards to the connection of that subdivision. Basically stating that he's
contacted members of the Fiscal Court, Planning &

Zoning and interested citizens to discuss the issue.
The majority if not all of them believe that this
connection should be made. He's issued that letter to
the developer as well.

So with that I'll enter our Staff Report and
our information into the record. Be happy to answer
any questions you might have.

MS. DIXON: At this time I realize that there
are probably people who wish to speak in favor of the
approval and in favor of a denial. I would ask that
you approach the microphone. Limit your comments to
the point they are not repetitive. We'll sort of do a
trade off back and forth.

Does anybody in the audience wishing to speak
in approval of the amended plan?

MR. NOFFSINGER: Madam Chairman, if I may
before we do that. I think Brian should read the
findings of fact.

MR. HOWARD: I was negligent in reading those
into the record so I'll go ahead and address those.

FINDINGS OF FACT

1. The Comprehensive Plan encourages the
connection of neighborhoods and street networks.

2. The Calumet Trace connection has been
planned for since 1995 and been assumed as part of the transportation network.

3. At the time of approval in 1995, commercial growth was anticipated along the KY 54 corridor with a significant portion of the property in the vicinity within a business plan area.

4. The anticipated growth along the KY 54 corridor resulted in a wide main corridor through The Downs Subdivision (Fairview Drive) and a collector roadway designation for Calumet Trace.

5. Calumet Trace was designed as an Urban Collector Roadway with a 60 foot right-of-way and 37 foot pavement width.

6. The 37 foot pavement width is sufficient to allow an 7.5 foot parking lane and 10.5 foot travel lane in each direction which meets the minimum design guidelines of the AASHTO "Green Book" for Collector Roadways and Streets in an urban area.

7. With 10.5 foot travel lane on Calumet Trace, the lane width is wider than 178 miles of State Highway routes within Daviess County compared to 79 miles of State Highway routes that are wider than 10.5 feet wide.

8. The roadway was designed with on street parking, street medians and roadway curvature which
are all considered as traffic calming devices which may promote slower speeds.

9. The termination of the connection may increase travel and response times for emergency services.

10. If Calumet Trace is not connected, the single access to The Downs Subdivision would act as a large cul-de-sac that is longer than the 1000 foot length maximum as established in the Subdivision Regulations.

11. The Downs Subdivision was designed with two access points, one to KY 54 and the other to Pleasant Valley Road. The design also included the provision for the future extension of Fairview Drive to the north along with four other streets that were stubbed to the property line for future connections. All were considered to be part of the transportation network to promote connectivity and it was not set up as an either/or situation where some might connect and others might not.

I will enter that into the record.

MS. DIXON: Thank you, Mr. Howard.

Mr. Thompson.

MR. SILVERT: State your name, please.

MR. THOMPSON: Tommy Thompson.
MR. THOMPSON: Madam Chair, Members of the Board, just a quick opening comment.

The objective of this request tonight has been expressed is to ask the board to consider reversing the mandate that was established back in 1995 dealing with the connectivity of Calumet Trace into Pleasant Valley Road.

This is spawn primarily by good concerns of resident in The Downs who as a result, I believe, of some very intense development over the last few years that has taken place in the region. Certainly the expected development to take place has caused them to have concerns that address their safety and their quiet enjoyment in this area.

They initially took those concerns to the Daviess County Fiscal Court about three weeks ago and had a good discussion there, but as you well know the fiscal court has no jurisdiction in that issue. So told the resident that. As was chronicled in the Owensboro paper following that meeting, the fiscal court encouraged the neighborhood to petition us, the developer, to ask you to consider amending the plan because they didn't have that authority and only you do. Subsequent to that meeting with the fiscal court
we've had meetings with the neighbors. It's been made quite clear to us, as a matter of fact there was a vote taken by the members of the association that lives in the most affected area, the north end of The Downs, the Hialeah and Lakeside section. The vast majority if not all of the neighbors that live in that section voted not to or would desire for the road not to be connected. They came to us with that huge majority and asked us if we would petition the board so that they could be heard. I think we would all agree that the most significant stakeholders in this whole issue are those individuals, those good residents that live in The Downs.

Just in conclusion, I want to make it clear also that our objective is not to relieve ourself, the developer, from any financial obligation because whether the road is connected or whether the road is made a cul-de-sac, we will have to do that and are prepared to do that. Certainly are on the record tonight that whatever the decision of this board is we will follow that directive and so do that.

The real objective is to allow the residents of The Downs to have a forum because if we did not petition you for the plan to be amended as the fiscal court has suggested, they wouldn't have a forum for
their good concerns to be heard. That's why we're doing this. Out of respect to their concerns and also out of the suggestion of fiscal court. I'll certainly yield the rest of my time. I think there's a number of residents here that can better expand on their concerns of addressing this issue.

MS. DIXON: Do any of the commissioners have any questions of Mr. Thompson at this point?

(NO RESPONSE)

MS. DIXON: Is there anyone else that wishes to speak in favor, approval of the amended plan? Come to the microphone one at a time, please.

MR. SILVERT: State your name, please.

MR. ROBERTS: My name is Anthony Roberts.

(ANTHONY ROBERTS SWORN BY ATTORNEY.)

MR. ROBERTS: My purpose of being here is to connect the road, Calumet Trace to Pleasant Valley Road. It's been on the plat as stated since about 1995.

I have a daughter that bought a house at The Downs, Saratoga Court. Bought it I think in 2001. She has boy in a wheelchair. I've been going around Pleasant Valley Road hoping that one day that this becomes a reality. It shows on the map, Castlen's map. It's been around for I don't know how long. I
don't see any reason why we can't follow through and
get this accomplished. I know it's an inconvenience
on certain people, but progress always has a price.
Thank you.

MS. DIXON: Thank you.

MR. SILVERT: State your name, please.

MS. STEIN: Sheila Stein.

(SHEILA STEIN SWORN BY ATTORNEY.)

MS. STEIN: I live in The Downs. The only
reason why I bought a house in The Downs is because I
thought the street was going to go through because
that's what we were told. It was on our plat. It was
on our plan. I do have a physically challenged child.
Because I am a single mother and work outside the
home, I do have to depend on my family to help him.
They would only be one mile from him if that road
would go through. I do have that concern. I am
concerned for my other children too that there is only
one way to get in and out of the subdivision, if there
were an emergency. I would like to see it go through.
Thank you.

MS. DIXON: Thank you.

Is there anyone else wishing to speak either
way?

MR. SILVERT: State your name.
MR. GLOVER: Gerald Glover.

(GERALD GLOVER SWORN BY ATTORNEY.)

MR. GLOVER: I live on Eastland Drive. It's about two blocks away from where the entrance is suppose to be. Now I have to drive three times as far. Imagine a rectangle and starting off at one corner. Instead of going the short corner up one side, I have to go down the other three sides to get where I want to go. My neighbor across the street from me has family that lives a few blocks across in another subdivision, in The Downs Subdivision. He says when his grandkids come see him they ride a bicycle, but when he wants to go see them he has to drive all the way around and it's almost four miles to get there.

I bought my house five and a half years ago. I bought it with a realtor's map and I looked it over and I asked the realtor, I said, where are these two roads? He said, well, they're in the plan. They'll be built any time in the near future. I bought my house with that in mind. Thinking I could go through it. It goes to the south end of town in a shopping area, which it's even better more so than 54 now. I think it's terrible to have to wait as long. Maybe the Planning Commission in the future might want to
have the roads made in advance to help construction
and workers. With the energy price, we're wasting a
lot of gas, everybody is, when they have to drive all
the way around. I don't mind driving a little far if
I can drive cheaper to go.

We've also got the new hospital coming. We've
got the school that was in their plans. The buses are
going to have to drive quite a bit more and run up the
expense of driving the buses. I don't see what the
wait is? We don't finish it up, vote on it, and next
week start building a road that should have been built
two years ago. Thank you.

MS. DIXON: Thank you, Mr. Glover.

Anyone else wishing to address the issue?

MR. SILVERT: State your name, please.

MR. BRUSHAUER: Matthew Brushauer.

(MATTHEW BRUSHAUER SWORN BY ATTORNEY.)

MR. BRUSHAUER: I've lived on Pleasant Valley
Road for about five years now. This would be very
convenient.

Everybody that has bought in The Downs they --
this is not about a new proposal. If it was, I could
see why we'd be here. Everybody that bought into The
Downs knew when they bought the house that this road
was suppose to go through. That's the point that I
would like to make. They bought the house in The Downs knowing that this road is going to go through. Now we have a change of heart. That's all I'd like to say. Thank you.

MS. DIXON: Thank you.

Yes, ma'am.

MR. SILVERT: State your name, please.

MS. HAGAN: My name is Linda Hagan.

(LINDA HAGAN SWORN BY ATTORNEY.)

MS. HAGAN: I speak on behalf of the neighbors in the HiHaeh Park and Lakeside area. Here I have a petition that we, the members of the board and the officers of the homeowner's association did.

We visited 61 homes and we have 95 signatures in protest of the opening.

Yes, we did buy and build our homes with the knowledge that the road was going to go through. We're not objecting to an opening onto Pleasant Valley Road because really there should be some sort of through street due to the hospital and the school, but we're just asking that it not go through our neighborhood. That we take an alternate route.

We feel that we have the safety of our children. Our families are at stake. There are
several families with small children that live on
Calumet Trace. In fact, there are approximately 11
children under the age of 5 right on Calumet Trace.
They play in their yards and on the sidewalks. There
are a lot of people that walk in the early morning and
the late evening. We feel that we would lose a sense
of security. We pretty well know now that anybody
that comes through our neighbored lives in our
neighborhood.

If the road is open, we won't know who is
going through our neighborhood. This opening will not
benefit as many people on our side as it will on the
other side of the ditch or the road.

Only those wanting to get to work quicker,
take a short cut or not have to contend with traffic
from Franey's to Wal-Mart of a morning. I know that
is absolute murder from there all the way to Highland
School or to the bypass.

In 1995 when Mr. Thompson proposed the plans
for this subdivision, we didn't have Wal-Mart or no
restaurants, no strip malls. There was no school and
there was no proposal for the new hospital. Traffic
was nothing like it is now day and night. Who would
have ever thought that 54 would have grown as fast and
as big as it did?
If you were to drive through the subdivision,
I don't know how many of you have, you will find that
Calumet Trace is a narrow street. It widens through
The Downs. It has two curves that if I'm standing on
the sidewalk in front of my home, I cannot see around
to three houses because of the curve that's there, and
back the other way because there is a hill and a
curve. The new proposed opening, if you see, has
somewhat of a curve in it.

Families living on Calumet Trace they park
their vehicles on both sides of the street leaving
only one comfortable lane for two-way traffic. On the
other hand, Calumet Trace does not appear to have been
a street that was designed for heavy traffic. As they
stated, it was a connecter road being 33 feet on the
flat surface, from the back of the curve is 37 feet
wide.

On the other hand, Fairview Drive appears to
have been constructed for heavier traffic. It's
marked for two-way traffic and it's an actual straight
shot from 54 to Pleasant Valley Road. And to Hayden
Road eventually probably Highway 60.

You know, just what price do we really place
on a human life? The speed limit on Calumet Trace is
35 miles per hour. We feel if it is made a through
street there will be people speeding to get to their
destination for various reasons. They'll be late for
work, late for an appointment or just wanting to get
somewhere a little quicker.

Can you honestly say that you would not care
if this street were going to be in front of your home?
It's going to be in front of my home. I live right on
Calumet Trace.

The safety of our children and our families is
our main concern. I'm pleading with you to vote for
this not to happen.

If Fairview Drive is going to be open
eventually, why not do it now. I'm not in the
construction business so I don't know the process, but
the papers do say Fairview Drive is going to be open.
Take that as the alternate to Calumet Trace. Why not
do it now and not risk something happening, you know.
Our families and our children, they're very valuable
to us.

Again, we plead that you vote not to let this
happen. Thank you.

MS. DIXON: Did you want your petition to be a
part of the record?

MS. HAGAN: I would.

MR. SILVERT: I would like to remind the
commission that while the formal rules of evidence
don't apply here, petitions are specifically excluded
under common law. Any type of binding authority on
this commission should not be considered as any kind
of binding evidence.

MS. DIXON: Thank you.

Anyone else?

MR. SILVERT: State your name, please.

MR. HAGAN: My name is Phillip Hagan.

(PHILLIP HAGAN SWORN BY ATTORNEY.)

MR. HAGAN: I want to reiterate what Linda has
said. Everything she said is true about The Downs.
We do see a need for an opening through The Downs.
Why Calumet Trace? Everybody says, well, it's been on
the plans for 5 years or 13 years. Why can't these
plans be changed? It's not written in stone that
Calumet Trace has to be opened before school starts or
because Daviess County School wants it open for
Meadowlands or because somebody has to drive all the
way around from Pleasant Valley Road to 54 to get to
Wal-Mart.

I mean Linda asked that we open Fairview Drive
now. Let Calumet Trace be closed. That's what all of
the residents want. Why not open Fairview Drive now?
Is it because of the money? Is that what it is? Or
is it just because Calumet Trace has been on the map
for 13 or 15 years and it has to be open because
that's the way it was planned? I don't see that. You
people don't live in The Downs. You could care less
about the traffic that goes through there. All you're
wanting is an opening. Well, you can have that
opening with Fairview Drive. Fairview Drive is built
to hold the traffic. This gentleman here said that
Calumet Trace was built for a minimum. That's true.
It's minimum. You put two cars parked along the side
of the street, there's one lane open for traffic.
We're going to have traffic going back and forth
through Calumet Trace. Calumet Trace was not built
for flow-through traffic from 54 to Pleasant Valley
Road. I know the traffic on Pleasant Valley Road is
pretty stiff in the mornings and the evenings. I don't
know if you know what 54 is like. Like Linda said,
there's traffic on 54 day and night just like
Frederica Street. Why you're determined to open
Calumet Trace just because it's been on the plat is
beyond me. We agree that we need an opening, but why
not Fairview Drive? Fairview Drive is right there.
It's already been made. It's already made for three
lane traffic. Everybody is determined to open Calumet
Trace because it's on the plat. It has to be open.
That's all I have to say.

MS. DIXON: Thank you.

Yes, sir.

MR. SILVERT: If you could state your name again, sir.

MR. GLOVER: Gerald Glover.

I just want to comment on some of the things he said.

I agree that Fairview Drive is a logical move, if it could be started this fall. If it can't be started this fall, which I'm sure it can't, the expense or the land or if Tommy Thompson owns the land around, surrounding it already, I think that we should go ahead and open this one and then work to get Fairview Drive. When it gets Fairview Drive open, that will take most of the traffic back off of Calumet Trace. That's just another incentive to get Fairview Drive finished like it should be. I don't know anything about Mr. Thompson's dealing, whether he owns the land. If it's going to be bought in the future, it ain't going to get any cheaper. I think it needs to go ahead and built Calumet Trace and start working on the other as soon as possible before it gets to where you can't afford that. We need to make progress in our community. Thank you.
MS. DIXON: Thank you.

Anyone else wishing to address this?

MR. SILVERT: State your name, please.

MR. MARKS: Steve Marks.

(STEVE MARKS SWORN BY ATTORNEY.)

MR. MARKS: The issue of safety that's been brought up. Thruston-Dermont Road is a heavily traveled road. A lot of us that live on the other side will start going through Calumet Trace. There's been several accidents on Thruston-Dermont Road in the last few years. I think there was a fatality not too long ago on Thruston-Dermont Road.

This is going to take some of the burden off Thruston-Dermont Road. I think we need to have it open. It's going to be safer. My wife and I, we walk to Wal-Mart, and I ride my bike and I have to get off my bike and cut through a guy's backyard to go through the Downs. I think we need the road open and I think it will be better for safety for everybody.

MS. DIXON: Thank you.

Is there anyone else wishing to be heard?

MR. MILLER: Madam Chair, I wonder if we could have someone to address the Fairview Drive issue? Whether it be Mr. Noffsinger or maybe Mr. Thompson. Someone that maybe has knowledge of potential future
plans or who owns the property.

MS. DIXON: Mr. Howard, could you address that?

MR. HOWARD: To the best of my knowledge Fairview Drive is in the roadway improvement plan. It states so that it's going to be developer driven as far as when the connection is made. In order for the connection to be made right now, my understanding of the way the process would work is that the county would have to go through a condemnation process and domain and construct the roadway at their expense. That's my understanding of the way the process would work.

MS. DIXON: Thank you.

Mr. Thompson, do you have any expertise to share on this?

MR. THOMPSON: The only thing, Madam Chair, is Fairview Drive, we were mandated to put Fairview Drive in when we started The Downs and built it to minor arterial specifications. We took it all the way to the limits of our property. So for it to be continued as the transportation plan calls for it to be to Pleasant Valley Road, it would have to go through property that we have no control over and do not own. We don't have any control over it. I think the only
two options for it to be extended, as the gentleman
just said, is for the county to condemn the land,
build the road or wait for someone to develop it.
Like when we developed The Downs we had to build the
road at our expense. Whoever ultimately develops the
land, the continuation of it would be forced I'm sure
by the Planning Commission to build it to specks to
take it all the way out to Pleasant Valley. We have
no control over that.

MS. DIXON: Thank you.

Yes, sir.

MR. SILVERT: If you could just state your
name again.

MR. ROBERTS: Anthony Roberts.

On this map that I have from Castlen, I don't
know how official it is, but it shows Calumet Trace
tying in to Pleasant Valley Road. It also shows
Fairview Drive extended to Hayden Road, but it also
says "future." "Future." Whereas Calumet Trace
doesn't say anything about future on this.

MS. DIXON: Thank you.

Anyone else wishing to address?

MR. GLOVER: Gerald Glover.

I know people are concerned about their kids.

They like to walk the streets and all like that. I'm
on Eastland Drive just like the other lady. I live
right on Eastland Drive. We also have walkers. We
have kids riding bicycles, tricycles and all kind of
things running down the street. We may have it in the
future. Our street is safer than theirs. It's not
designed for safety like theirs, curbs and what. Not
as wide, but as far as I know there hasn't been an
accident since I've lived there five and a half years,
but we watch out for our people. It's a 35 mile an
hour speed limit, same as theirs, and we haven't had
this problem. I'm sure everybody on our street like
to go through Wal-Mart and 54 without driving all the
way around. Thank you.

MS. DIXON: Anyone else?

Yes, sir.

MITCHELL HOWARD: My name is Mitchell Howard.

(MITCHELL HOWARD SWORN BY ATTORNEY.)

MITCHELL HOWARD: I would like to ask how many
of you all here tonight have driven on Calumet Trace.

(ALL COMMISSIONERS RESPOND AYE.)

MITCHELL HOWARD: So all of you have. Good.

If you had young children like many of the
families do out there, do you think that it would be
safe and appropriate to open up the road?

No comment. Okay.
Mr. Shelton was quoted in the paper this morning about the school being built because of Calumet Trace being open. In my thoughts when I read that this morning, I think, well, would it be safer to take a bus load of children through a narrow curvy winding road with a median in the middle of it or would it be safer to go around the bypass, 54, where there's a four lane highway? Which would be safer?

In my view, I think it would be much safer to take a bus load of children through a main road that is designed for heavy traffic instead of through a winding narrow road.

Also Commissioner Kunze said at the fiscal court meeting that it was on the books somewhere that Fairview Drive would be open within four years, I believe. I'm pretty sure that's right. I may be mistaken. That the county was going to see about opening up Fairview Drive if a developer did not within four years. I believe Fairview Drive is a straight shot from Settles Road all the way to Hayden Road or Pleasant Valley Road would be much safer than opening up Calumet Trace.

One other thing I would like to ask. This I'm not for sure about. Maybe Mr. Howard can tell us a little bit about this.
Said Calumet Trace has a 60 foot right-of-way. I think there's also 30 foot setback per the home from the road; is that correct? Is that normal, a 30 foot setback? I think it's 30 if you look it up. It's what I looked up.

If you measured between a couple of those houses out there, I don't think you can come up with 120 feet.

MR. APPLEBY: It's 60 foot right-of-way.

MITCHELL HOWARD: Sixty foot right-of-way. He said earlier that the road, Calumet Trace, has a 60 foot right-of-way. If there's a 30 foot setback from the road to build a home, I don't think there's that much distance between there. That's something I think needs to be looked into before a decision can be made.

Also, as far as the fire department goes, we have two stations on Highway 54. One at Countryside Drive there. Then we also have one on East Parrish Avenue, which is a lot closer than the one on Thruston-Dermont Road. It would probably be quicker to get there in my opinion than one from Thruston-Dermont Road.

I ask the commission to table this and take a look at the footage as far as the right-of-way and the setback and see if there is appropriate footage there.
that's required before a decision is made. Thank you for your time.

MS. DIXON: Mr. Howard, can you address that?

MR. HOWARD: I believe I looked at the copy of the map that we have. It is a 25 foot building setback line along Calumet Trace. All of those distances and measurements would have been taken into consideration. As they were shown on the preliminary plat, they would have also been shown on the final plat. All building permits for residences along Calumet Trace would have been issued based upon the 60 foot total right-of-way, which would be 30 foot half right-of-way on each side, and with a 37 foot improvement. You know, you're looking at the property line being maybe 12 feet or thereabouts beyond the boundary of the curb. Then the building setback line would be from the property line. Any resident that has been built there, both the right-of-way width and building setback line has been taken into consideration. Otherwise, they wouldn't have been able to have been issue a building permit.

MS. DIXON: Thank you, Mr. Howard.

Anyone else have anything different to add?

Yes, ma'am.

MR. SILVERT: State your name, please.
MS. ROBERTS: Elizabeth Roberts.

(ELIZABETH ROBERTS SWORN BY ATTORNEY.)

MS. ROBERTS: When these people moved there they knew this was going to be built. Now, this street is really crooked and hilly. So I don't think there's going to be any speeding going through there. I just drove through there. School buses do go through The Downs to pick up children for Meadowland. So why not extend the road and go on through? They're going through there and coming back out on 54. The paper stated this morning there was enough room for two lanes of traffic and people to park their cars. So why are we contradicting this? It was in the paper this morning. Thank you.

MS. DIXON: Thank you.

Anyone else?

Yes, sir.

MR. ADAMS: My name is Gary Adams.

(GARY ADAMS SWORN BY ATTORNEY.)

MR. ADAMS: Madam Chair and Planning Commission, I was one of the planners that was on the Staff with the Planning Commission when this plan was originally developed.

One of the strategies, as Mr. Howard had mentioned, Fairview Drive extension is a staged
construction project. Meaning we don't know when it's going to happen. It would likely be when that property develops. When we were dealing with The Downs, we knew it was going to develop because Mr. Thompson was planning a subdivision. Of course, we didn't know it would take 13 years to get to this point.

One thing I wanted to bring to the Planning Commission's attention is, of course, Fairview Drive is going to be needed. Calumet Trace is needed too to connect to Pleasant Valley Road because it's 3,000 feet from Fairview Drive to Calumet Trace and Pleasant Valley Road. Then it's another 1,000 feet or so back Claiborne Run to what is now a cul-de-sac, but that's also a connector in to the adjoining farm. The design philosophy for this subdivision was we need to make it work for an indefinite period of time not knowing when Fairview Drive would be extended.

I think that Mr. Howard and the statement of Findings of Fact have many good points. I just wanted to add those to it. I fully endorse the Planning Commission proceeding with the opening of that street. Thank you.

MS. DIXON: Thank you, Mr. Adams.

Does anyone else have anything to add that is
different?

Yes, ma'am.

MR. SILVERT: State your name, please.

MS. HALL: Martha Hall.

(MARTHA HALL SWORN BY ATTORNEY.)

MS. HALL: Just to elaborate a little bit on some of the other.

We live in The Downs. The back of our house actually faces Pleasant Valley Road. When we're speaking about traffic, you would not believe. We have called, and called, and called the sheriff's department. My husband has asked to have one of those radar signs put out there. I tell you, you would not believe. We have people driving on that road, on Pleasant Valley Road at 60, 70 mile an hour. I mean sometimes you can't even see them they're such a blur. If they're coming there and turning, they're going to be right there close to our property when that road gets put through there. They're going to be driving that fast coming through there. That's an accident looking for a place to happen.

As far as some of the others talking about they've got to go all the way around. My son lives on Graham Lane. I have to go all the way around Thruston-Dermont Road and through there, and so does
he when he visits, which is three or four times a week. I'm at his place maybe three or four times a week. So I have to go all the way around, but I prefer to do that in order to have a safe neighborhood to live in.

Like I say, we're not objecting to the road going through there. It would be really nice for myself, but we would like to have it at another location. Preferably Fairview Drive. Thank you.

MS. DIXON: Thank you.

Anyone else before we wrap this up?

Yes, sir.

MR. SILVERT: State your name, please.

MR. LASHBROOK: Greg Lashbrook.

(GREG LASHBROOK SWORN BY ATTORNEY.)

MR. LASHBROOK: I've been divorced for seven years. I drive to Sorgho at least twice a week and then on weekends, but there's times -- you know, she's 13. She don't get along with her mom. Pick her up. You know, constantly running back and forth. People has got kids and stuff. You try your best to give them what they want. It would be really nice if you just shoot across there, go to Wal-Mart. You know, take my kids. I live off Pleasant Valley. We ride our bikes and stuff. It just seems really convenient.
I work out towards Masonville. It would be really nice to cut through there for that reason.

Being a single father, you know, you want to do your best for your kids. Well, I've got back problems. I cannot drive out there all the time. That will cut several minutes off just cutting through there. I don't want anybody feeling pity on me or anything but, you know, it would be really nice just to have it open.

In our neighborhood, I think there's people calling the sheriff's department because people do speed up and down that road. There's sitting out there in the summertime picking people up. That's called helping out the neighbors. We all pitch in. We try to slow people down. Many times I see somebody speeding, I'll ride my bike out in the middle of the road and say, slow down. I'm not scared speaking out, you know, about people speeding a stuff. If I can help somebody from not getting hurt, you know, I would do it. That's all I've got to say.

MS. DIXON: Thank you.

Is there anyone else?

Yes, sir.

MR. SILVERT: If you would just restate your name.
MITCHELL HOWARD: My name is Mitchell Howard.

I would just like for the record, Mr. Howard did say at the fiscal court meeting that there was a 30 foot setback. Brison Young, if you review the tape, asked about that. He did say that there was a 30 foot building setback. I would like to clarify that for the record. Thank you.

MS. DIXON: Thank you.

Anyone else?

Yes, sir.

MR. SILVERT: State your name, please.

MR. WILKENBERG: Bill Wilkenberg.

(MR. WILKENBERG SWORN BY ATTORNEY.)

MR. WILKENBERG: I'll keep this brief.

I think it's very clear we need an opening between Pleasant Valley and 54. It's very apparent everybody agrees on that. It's just where it goes I think is one of the issues.

I been living in Eastland Drive Subdivision for almost 30 years. It was not open when I moved to that subdivision. I did not want it open.

It was a greater fear than it was a reality. We raised our kids on that street. I see no difference in Calumet. To me it seems like a very similar thing. I think that if it does prove that it
is over-traveled, it just proves we need to get that
second opening as soon as possible.

MS. DIXON: Thank you.

We're going to wrap this up if no one else has
something substantially different.

(NO RESPONSE)

MS. DIXON: Any of the commissioners have a
comment or a question?

MR. GILLES: Mr. Howard, on some of the
documents you gave us, I think it came from fiscal
court, I'm not for sure, it said that Calumet Trace
would be county maintained if it was opened. Would
they have a chance to increase or decrease the speed
limit on that road? Whose jurisdiction is that?

MR. HOWARD: It will be a county maintained
road. That is correct.

If they wanted to look at reduction of speed,
they would have to approach the sheriff's office to
the best of my knowledge in order for them to review
the speed. Possibly do a speed study to see what the
average speed on the roadway was and see if warrants
to reduce that. Might have to get the transportation
engineer involved in it as well to so some of that
information.

MR. GILLES: Thanks.
MS. DIXON: Any other commissioners have a question, comment?

(NO RESPONSE)

MS. DIXON: Chair is ready for a motion.

MR. APPLEBY: Madam Chairman, I recommend that we deny this plan as amended and stay with the original plan based on the Staff's Recommendations.

MS. DIXON: We have a motion. Is there a second?

MR. TAYLOR: Second.

MS. DIXON: Second by Mr. Taylor. Any questions on the motion?

(NO RESPONSE)

MS. DIXON: All in favor of the motion to deny the amended plan raise your right hand.

(ALL BOARD MEMBERS PRESENT - WITH THE DISQUALIFICATION OF DREW KIRKLAND - RESPONDED AYE.)

MS. DIXON: Motion carries.

I will return the gavel to Mr. Kirkland.

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MAJOR SUBDIVISIONS

ITEM 7

Brookstone, 5.005 acres
Consider approval of major subdivision final plat.
Surety (Letter of Credit) posted: $30,353.25
Applicant: Jagoe Homes
CHAIRMAN: Ms. Dixon, thanks. You did an excellent job.

Do we have anybody representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Do we have any questions of the applicant?

(NO RESPONSE)

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

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

MR. EVANS: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

MINOR SUBDIVISIONS

ITEM 8

3441 Fairview Drive, 6.461 acres
Consider approval of minor subdivision plat.
Applicant: Thomas Mack Hagan; Paradise Holdings, LLC

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

CHAIRMAN: We have someone representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Any questions?

(NO RESPONSE)

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

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 9

3619, 3623 Hayden Road, 3.82 acres
Consider approval of minor subdivision plat.

Applicant: Michael S. & Alicia K. Harrington

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

It comes to you as an exception to the subdivision regulations in that the remaining or it's a small tract with limited frontage. It creates a lot
around an existing home. The remaining tract meets
the minimum frontage requirements, but does not meet
the three to one depth to width ratio that's required.
There is an existing septic system for the existing
home. The lot configuration as proposed here is in
keeping with the character of other lots in the area.
So even though it does not meet that depth to width
ratio we would recommend that you approve this plat.

CHAIRMAN: Anybody representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: If not the chair is ready for a

motion.

MR. HAYDEN: Make motion to approve.

CHAIRMAN: Mr. Hayden made a motion for

approval.

MR. EVANS: Second.

CHAIRMAN: Second by Mr. Evans. All in favor

raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 10

9645 Highway 144, 9230 Highway 951, 9.08 acres
Consider approval of minor subdivision plat.
Applicant: Robert Keith Payne, William D. Hamilton

MR. NOFFSINGER: Mr. Chairman, the Planning Staff has reviewed this plat. Can't make a comment on it right now because I don't have it. I will have to refer to Mr. Howard.

MR. HOWARD: Certainly.

This plat came before you in January of this year and created two lots that were both in excess of the three to one ratio requirement. They're cleaning it up somewhat now. They have one that is an acre, a little over an acre that does meet all the requirements. The other lot meets minimum road front requirement, but it's still in excess of the three to one requirement. With that, with the bettering situation of creating one regular lot, he would recommend approval of it.

CHAIRMAN: Is anybody here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Do we have any questions?

(NO RESPONSE)

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

MS. DIXON: Move to approve.
CHAIRMAN: Motion for approval by Ms. Dixon.

MR. TAYLOR: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 11

1107, 1109 West 8th Street, 0.232 acres
Consider approval of minor subdivision plat.

Applicant: Habitat for Humanity

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this application. It comes before you as an exception to the regulations. It does not create additional tracts. It merely moves the property line between two existing tracts and actually makes them exactly the same size. We recommend that it be approved and that we're not creating any additional tracts that do not fit in the neighborhood.

CHAIRMAN: Anybody representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody have any questions?

(NO RESPONSE)

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

MS. DIXON: Move to approve.
CHAIRMAN: Motion for approval by Ms. Dixon.

MR. EVANS: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

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AGRICULTURAL DIVISIONS

ITEM 12

4150 Ridge Road, 10.783 acres
Consider approval of agricultural division.
Applicant: James W. Hazel, Sr.; Nanette Hazel

MR. NOFFSINGER: Mr. Chairman, Mr. Howard has worked with the applicants on this plat.

MR. HOWARD: This plat comes before you because it's creating a tract that's over ten acres which would be considered an agricultural tract that does not have road frontage. They're proposing to access the property for an existing access easement. We have added notations on the plan that state that the property shall not be further subdivided to create additional irregular-shaped lots not meeting the requirements such as this one without road frontage. With that we would recommend that it be approved.

CHAIRMAN: Do we have anybody representing the applicant?
CHAIRMAN: Does anybody have any questions?

CHAIRMAN: If not chair is ready for a motion.

MR. APPLEBY: Motion for approval.

MR. GILLES: Second.

CHAIRMAN: Motion for approval by Mr. Appleby. Second by Mr. Gilles. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

NEW BUSINESS

ITEM 13

Adopt a rule allowing electrical inspector's employed by the OMPC to perform their duties without a surety bond.

MR. NOFFSINGER: Mr. Chairman, the Kentucky Revised Statutes requires that all electrical inspectors performing duties in the State of Kentucky do so only by placement of a $5,000 surety bond. That surety bond is there to cover, it's basically an honesty bond. That an electrical inspector wouldn't collect a fee and skip town or keep the money and not perform their job.
In Owensboro-Daviess County, the electrical inspectors are employed by the Owensboro Metropolitan Planning Commission. They're not employed by the State of Kentucky nor are they independent contractors out performing their work. We have never required our inspectors to serve bond. In fact, we do carry necessary insurance on our employees to make sure that the work they're doing is covered. Since that bond is primarily there for fees, our electrical inspectors do not take in fees. All fees are taken in by the administrative staff in the office. The inspector performing the work does not see any fees associated with the electrical.

Given the fact that the state allows cities and counties and those representing the cities and counties to adopt their own rules and regulations that may be different from those that are set in the State of Kentucky, we recommend that you adopt a rule allowing inspectors employed by the OMPC to perform their duties without a surety bond. If you do so, this will take care of us in the future in dealing with the state when our electrical inspectors have to renew their license. They won't be burden with the letter they get asking that they provide a surety bond.
CHAIRMAN: Are there any questions?

(NO RESPONSE)

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

MR. HAYDEN: Make motion to approve.

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

MR. EVANS: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

The chair is ready for one final motion.

MS. DIXON: Move to adjourn.

CHAIRMAN: Motion for adjournment by Ms. Dixon.

MR. HAYDEN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.
STATE OF KENTUCKY )
)SS: REPORTER'S CERTIFICATE
COUNTY OF DAVIESS )

I, LYNNETTE KOLLER FUCHS, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Planning Commission meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 102 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 31st day of AUGUST, 2008.

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

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