

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 AUGUST 14, 2008

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

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

20 * * * * *

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

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

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

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

29 (NO RESPONSE)

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

3 MS. DIXON: Move to approve.

4 CHAIRMAN: Motion for approval by Ms. Dixon.

5 MR. HAYDEN: Second.

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

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries unanimously.

10 Next item, Mr. Noffsinger.

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12 CELLULAR TELECOMMUNICATIONS FACILITIES PER KRS 100.987

13 ITEM 2

14 895 Highway 140 West
15 Consider approval of a wireless telecommunications
16 tower
17 Applicant: Larry A. Ratliff, GTE Wireless of the
18 Midwest, d/b/a Verizon Wireless

19 MR. SILVERT: State your name, please.

20 MR. HOWARD: Brian Howard.

21 (BRIAN HOWARD SWORN BY ATTORNEY.)

22 MR. HOWARD: I'll enter a Staff Report into
23 the record. I'll note that the application was
24 submitted on July 21, 2008. The Planning Commission
25 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

1 cellular tower. The proposed tower type is a lattice
2 self-supporting structure. The tower height is 195
3 feet. 185 foot tower with a 10 foot lightening
4 arrestor on top.

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

8 The application was submitted and has been
9 done so in meeting all the requirements of our zoning
10 regulations. They do ask for one waiver on setbacks.
11 The zoning ordinance requires a setback to be half the
12 height of the tower, due to the lease area of the lot
13 which is 100 feet by 100 feet. The setback would be
14 98 feet, and they can't meet that; however based upon
15 the distance from the leased property to the parent
16 tract boundary, they do meet the setback requirements
17 and that is the waiver that's been typical of other
18 cell towers of this type locating in the county.

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

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

25 They also submitted a minor subdivision plat

1 to create the 100 foot by 100 foot lease area for the
2 property which is on the agenda as a related item.

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

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

12 CHAIRMAN: Do we have anybody representing the
13 applicant?

14 MR. POTEAT: Yes.

15 MR. SILVERT: State your name, please.

16 MR. POTEAT: Steve Poteat.

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

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

22 You've heard Mr. Howard and his report. We
23 have with us today Ms. Traci Preble who is the project
24 manager for GTE Wireless/Verizon, and Bill Duffy, the
25 design engineer, to answer any questions that you may

1 have.

2 I'm not going to lengthen this by going over
3 what we've got in our application. Everything is in
4 order in the application. We believe it's
5 appropriate, but we will try to answer any questions
6 that may come up.

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

12 MR. POTEAT: Sure. Thank you.

13 CHAIRMAN: Are there any questions from the
14 audience?

15 (NO RESPONSE)

16 CHAIRMAN: Are there any questions from the
17 staff?

18 MR. PAYNE: I certainly have something to say.

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

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

24 MR. SILVERT: State your name, please.

25 MR. POTEAT: My name is Larry Payne.

1 (LARRY PAYNE SWORN BY ATTORNEY.)

2 MR. PAYNE: I think I heard mention that there
3 was some information that we had submitted earlier
4 that's in the record. I would like to suggest to you
5 that information is probably outdated and we would
6 like to distribute some information at this time.

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

10 MR. PAYNE: Thank you.

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

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

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

23 What we're going to ask for here tonight is an
24 adjustment to their plans, and the cause of which
25 really is outside of the purview, I think, of this

1 group to consider, but even if you do it's a grain of
2 sand.

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

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

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

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

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

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

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

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

1 track for some time.

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

4 CHAIRMAN: Absolutely.

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

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

9 Would you step to the podium and make your
10 request.

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

15 CHAIRMAN: Thank you.

16 Mr. Payne.

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

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

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

1 and "Payne Shop."

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

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

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

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

23 That effort to establish this conversation was
24 rejected. We further learned in the last week that
25 that cell phone site was put under contract sometime

1 in January well before the conclusion of the
2 permitting process and certainly well before it came
3 before this board for approval. So it was a foregone
4 conclusion on the part of Verizon that they would get
5 this rubber stamped here tonight. We certainly hope
6 that's not the case.

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

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

21 In this meeting, I don't know exactly who
22 brought it up, but the Telecommunications Act of 1996
23 was mentioned as a reason to why you guys couldn't
24 deny this request here tonight. Whoever makes that
25 assumption is wrong. I would like to point out to you

1 that the Department of Justice in a brief that they
2 submitted to the Supreme Court and relevant to about
3 three or four cases actually said that specific states
4 and the authorities associated with those like this
5 board and the local zoning ordinances, etcetera, that
6 you are permitted to grant or deny permits on any
7 other basis other than those associated with concerns
8 about RF radiation.

9 (JIMMY GILLES JOINS MEETING AT THIS TIME.)

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

25 You may think your hands are tied, but they're

1 not.

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

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

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

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

18 A little research of the area shows that
19 there's several towers already in existence within the
20 area. Kenegy has got two towers. One is 92 foot
21 tall. It's located within 1.9 miles. I'm not sure
22 what the elevation that it's built on is. They have
23 another one that's 215 feet tall. It's located within
24 2.7 miles. Crown Castle USA has got a 289 foot tower.
25 It's located within 2.9 miles. Muhlenberg

1 Broadcasting Company has got a 679 foot tower. It's
2 located within 3.6 miles. Clearly the opportunity to
3 co-locate the equipment should be pursued.

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

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

25 I could trot in here many real estate agents

1 and each one of them I'm confident would tell you that
2 they'd much rather list than try to sell a piece of
3 property that doesn't have a cell phone tower next to
4 it as opposed to one that does.

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

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

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

18 I would call to your attention the fact that
19 recently there was a court decision in Bunker Hill
20 Village, Texas where a couple filed suit against the
21 city and against the cell tower owner because they
22 placed the cell phone tower in their backyard. It
23 devalued their property. The couple received a \$1.2
24 million settlement from the cell tower owner and there
25 was an undisclosed settlement from the city.

1 So court cases have been tested on this. It
2 calls in to your consideration, why do you want to go
3 there anyway? There are judges that will rule in our
4 favor in this case.

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

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

23 Number 8, I won't worry you on with that. It
24 has to do with the fact that there is some impediments
25 that Verizon feels like they probably covered that

1 I'll show you here in a few minutes that they probably
2 haven't. Jenny and I have enjoined Verizon any of
3 their agents, Kenergy, whoever else from the use of
4 our property as a means of egress/ingress or passage.
5 In order to get power to this thing, I'm pretty sure
6 they intend to cross our property line. It's not
7 going to happen. I think they have moved the outlet
8 road to compensate for that fact and I'm not sure they
9 have.

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

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

22 To my knowledge Verizon has not provided for
23 demolition and removal of this cell phone tower when
24 it becomes obsolete, and they will be obsolete.
25 Technology is around the corner where it will make

1 these towers no longer needed. I would suggest that
2 they should be required to purchase a bond for the
3 removal of these towers.

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

20 So you've got to bear one thing in mind.
21 Jenny and I are going to be the first most impacted
22 people by virtue of the cell phone tower. So it's in
23 our best interest to get out and see if we can find
24 other people that might want to have one of these
25 things, and we did. Why didn't Verizon?

1 I know that the Telecommunications Act
2 precludes us from talking about the health
3 implications of cell phone towers and cell phones. If
4 anybody wants to know the reap of benefit of my
5 research on that however meet me afterwards and I'll
6 tell you about it.

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

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

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

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

24 MR. PAYNE: Just briefly. Because I had
25 called into question the fact that everything appeared

1 to be a foregone conclusion as far as these cell phone
2 towers are concerned. I've raised that concern with
3 the county commission. Their attorney has suggested
4 that we enter into a modification of a zoning
5 ordinance that would require for the most part that
6 Verizon or Cingular or anybody else wanting to build a
7 cell phone tower will give notification to the
8 Planning & Zoning Board at the same time they apply
9 for an FCC license. What that will do is give the
10 general public an opportunity to have an impact before
11 you get steam rolled over. Quite honestly, folks, we
12 feel like we're being steam rolled here. This is in
13 the record. I want to make sure that it's read into
14 the record.

15 I'm going to be doing a little switching here
16 on you. I'm going to be referring to Pages 10, 14 and
17 15.

18 This particular finding of fact calls into
19 question the quality, number one, of the notification
20 was sent to the adjoining property owners. This is
21 Page 14. This is what it looks like. This was sent
22 out to all the adjoining property owners in
23 preparation for this meeting so that they could figure
24 out where this cell tower was going to be and make
25 their own decision about it.

1 I would challenge anyone to look at this,
2 especially if you look in the upper right-hand corner
3 of this piece of paper. One of the adjacent land
4 owners said, well, to me, are they going to put that
5 in the middle of 140? Really if you look at that,
6 that's exactly where it appears to be. I think they
7 could do a lot better job of that than what they're
8 doing.

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

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

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

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

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

25 MR. PAYNE: Not unless you would classify me

1 as an expert having done the research I've done over
2 the last few weeks.

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

5 MR. PAYNE: No, I don't.

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

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

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

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

20 CHAIRMAN: Mr. Silvert.

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

24 CHAIRMAN: Thank you.

25 MR. PAYNE: I would refer you to page 15 in

1 your handout and also to Page 10. I know they're
2 different locations.

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

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

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

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

23 So they can present this to you guys and
24 suggest to you that they know exactly where that cell
25 phone tower is going to be, but that boundary line is

1 not right.

2 CHAIRMAN: Thank you.

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

6 MR. PAYNE: That would be me.

7 CHAIRMAN: The cell phone is going to be
8 placed on your property?

9 MR. PAYNE: No. You said the next-door
10 neighbor.

11 CHAIRMAN: I'm sorry. Your next-door
12 neighbor.

13 MR. PAYNE: He's an absentee landowner. He
14 doesn't live out there. I don't know.

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

19 CHAIRMAN: Your oath as a lawyer has been
20 accepted.

21 MR. POTEAT: Yes.

22 CHAIRMAN: Several questions that I have.

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

25 MR. POTEAT: Yes. The lease that he signed is

1 in our application. He has signed off on the survey
2 that has been submitted as Item 2. Signed off on it
3 the day before yesterday.

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

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

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

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

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

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

20 CHAIRMAN: Thank you.

21 MR. POTEAT: Verizon did have alternate sites.
22 In fact, this was not the first site they chose. The
23 first site they chose and started proceeding on was
24 somewhere around April or May of '07. They went
25 through their process on that one. They filed their

1 application with the federal agency that they're
2 required to. They're doing their due diligent
3 studies, their geo studies and others. They ran into
4 a historical problem. There was a cemetery that no
5 one knew about. That killed that one. This one
6 started after that. I can't tell you when that one
7 was done, when that was done, but it was I'm going to
8 say it was probably either sometime this past winter
9 or back in the fall of '07 is when that was
10 discovered. That stopped that one.

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

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

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

25 No, we didn't talk to everybody out there.

1 The first choice didn't happen. They went to the
2 second choice. The second choice was Mr. Ratliff.
3 That's the one we're here on today.

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

9 MR. POTEAT: Co-location?

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

12 MR. POTEAT: Co-location.

13 CHAIRMAN: Right.

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

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

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

24 CHAIRMAN: Maybe we're at the point where
25 maybe we need to dismiss you and bring the expert,

1 unless you want to personally address some of these
2 other questions that he brought up.

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

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

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

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

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

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

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

25 The things that I said that I can, you know,

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

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

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

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

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

25 (BILL DUFFY SWORN BY ATTORNEY.)

1 CHAIRMAN: Mr. Duffy, these are actually
2 questions that the neighbor has in regards to the cell
3 tower. I'm sure you're familiar with them. I'll
4 restate some of them. They aren't necessarily
5 question of the board. They're just questions we want
6 answered in regard to this application.

7 MR. DUFFY: I understand.

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

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

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

25 MR. DUFFY: Oh, yes, most definitely.

1 CHAIRMAN: Did I state it correctly?

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

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

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

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

1 improve that.

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

4 MR. DUFFY: I simply didn't see any other
5 towers. I know Mr. Payne stated that there were
6 towers in the vicinity, but I simply don't see these
7 towers. A 70 foot tall tower isn't going to work. It
8 was a stretch to get a 108 foot tower to work. I
9 prefer a 300 foot tower so that I can get as many
10 co-locators as I can on there so that we can get --
11 down where Mr. Payne lives, I'm sure you're aware of
12 it, there's gently rolling hills, and 70 foot on a
13 gently rolling hill I'm not going to get two or three
14 miles before my signal is cut off and I'm going to
15 have to build three or four more towers if I go on a
16 70 foot tower.

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

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

21 CHAIRMAN: But there are restrictions.

22 MR. DUFFY: There are restrictions. When I
23 considered the community and different things, I asked
24 myself, you know, these towers are expensive. A 300
25 foot tower would require a big bright light on top. I

1 don't like to do that to landowners because a lot of
2 landowners have adjacent landowners take issue with
3 the blinking light.

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

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

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

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

18 CHAIRMAN: This is based on just your --

19 MR. DUFFY: It's a prediction tool I have. I
20 plug in what my frequency is, what powers I'm allowed
21 to transmit in certain counties. Daviess County, I
22 don't know what this population is for this county,
23 but if it's less than 100 people per square mile, I
24 have a certain amount that I can transmit. If it's
25 more than 100 people per square mile, then an interest

1 in safety I have to stay under 500 watts. There are
2 different considerations and different environments
3 and this is one where I can meet the needs and stay
4 underneath the FAA limit and not have a light on top.

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

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

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

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

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

20 CHAIRMAN: Thank you, Mr. Miller.

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

24 MR. DUFFY: I have a bachelor's degree and I'm
25 currently pursuing a master's degree.

1 CHAIRMAN: In what field?

2 MR. DUFFY: Networking. Computer networking.

3 Is that sufficient?

4 MR. MILLER: Thank you.

5 CHAIRMAN: Thank you.

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

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

16 CHAIRMAN: Do you want one for the record
17 also?

18 COURT REPORTER: Yes.

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

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

23 (TRACI PREBLE SWORN BY ATTORNEY.)

24 MS. PREBLE: Couple of things I wanted to
25 address. One was the lightening issue. This tower,

1 again, being 185 foot with a type of lightening rod.
2 Actually it's the tallest thing in the area. So it is
3 going to attract the lightening. We then have a
4 grounding system because obviously Verizon does not
5 want their building, their equipment, their tower to
6 be damaged as well as the other carriers that we hope
7 to come to this site. So there's a grounding system
8 that then takes that, if it is hit, takes it down into
9 the ground and it dissipates.

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

21 Verizon, as being a good neighbor, has agreed
22 to construct or to purchase a tower that has been in
23 essence over-designed so that it has a fall zone of --
24 this being a 185 foot tower. The fall zone is about
25 135 feet. So if it did fall, which they don't, but if

1 it did it wouldn't just fall the distance of the 185
2 feet. It would collapse on a place that it was
3 designed to collapse on and fall in that 135 foot.

4 We have a letter we call fall zone letter that
5 we have and that we can provide to the board.

6 CHAIRMAN: Thank you.

7 Does anybody have any questions of Ms. Preble?

8 (NO RESPONSE)

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

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

14 CHAIRMAN: Of course.

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

17 MR. PAYNE: My name is Larry Payne.

18 I had a question of Mr. Duffy about the
19 coverage map that he distributed.

20 Is that Verizon's coverage map or is that also
21 all cell phone carrier's coverage map?

22 CHAIRMAN: Mr. Duffy.

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

24 CHAIRMAN: Thank you.

25 Does anybody in the audience have a question

1 of Mr. Duffy?

2 (NO RESPONSE)

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

6 Does anybody from the board have a question?

7 (NO RESPONSE)

8 CHAIRMAN: Are there any questions from
9 anybody --

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

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

14 CHAIRMAN: Go ahead.

15 MR. PAYNE: Thank you.

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

21 Just in closing, what we attempted to do back
22 in February through the certified letter was to have
23 an impact on where this thing was going to go. We
24 were trying to be reasonable and be a good neighbor.
25 Ms. Preble got a copy of this letter. She chose not

1 to respond. The Akron office of GPD got a letter.
2 They chose not to respond.

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

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

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

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

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

17 MR. PAYNE: One hundred yards.

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

21 MR. DUFFY: It wouldn't have very much of an
22 affect. When I received it via e-mail from Mr. Payne,
23 and I stopped what I was doing for about a day and a
24 half and I seriously considered his request. I
25 understand because I walk out my front door every

1 morning walking my dog and I see a cell tower blinking
2 right in my front door.

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

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

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

20 CHAIRMAN: Did you respond to his request?

21 MR. DUFFY: I responded. I don't know if it
22 went directly to him or not.

23 CHAIRMAN: What was your response?

24 MR. DUFFY: This was about a few months ago.
25 I believe the questions were something about he wanted

1 to enter into some sincere negotiations to put the
2 cell tower on his property. So I looked at other
3 locations. When I looked at the location that I
4 believe was proposed, it was quite a bit to the north,
5 if my orientation of his property is correct.

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

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

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

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

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

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

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

25 MR. POTEAT: Certainly they do. They have to

1 lease this property.

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

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

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

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

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

1 I can't, when I'm costing too much money. That's how
2 it works.

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

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

19 MR. DUFFY: I understand.

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

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

25 MR. HAYDEN: That's the way I understood it.

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

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

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

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

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

19 CHAIRMAN: Thank you.

20 I think we've heard many --

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

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

25 CHAIRMAN: Surely.

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

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

8 CHAIRMAN: You're on the clock.

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

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

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

25 Really now we would like to see it in the back

1 of that property. It only means that they have to
2 build the cell phone tower as high as Verizon has
3 built theirs. Verizon doesn't have a big bright light
4 on top of theirs. Thank you very much for your time.

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

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

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

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

19 (NO RESPONSE)

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

23 MR. APPLEBY: Mr. Chairman, I think that Mr.
24 Payne has made a pretty good argument and he's given
25 us a lot of information. I don't know about the rest

1 of the board, but I've not had time to actually read
2 it all. If you're looking for a motion, I would move
3 that we postpone this for 30 days and give us a chance
4 to all look at everything that they've submitted and
5 visit it again next month.

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

8 MR. EVANS: Second.

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

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

14 CHAIRMAN: All opposed.

15 (DREW KIRKLAND RESPONDED NAY.)

16 CHAIRMAN: The motion will be postponed.

17 Next item.

18 Related Items:

19 ITEM 2A

20 895 Highway 140 West, 0.230 acres
21 Consider approval of minor subdivision plat.
22 Applicant: Larry A. Ratliff

23 MR. NOFFSINGER: Mr. Chairman, given the fact
24 that Item 2 was postponed, the Staff would recommend
25 that you consider postponing this item since it is
related to the cell tower site.

1 CHAIRMAN: The chair would need a motion?

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

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

8 CHAIRMAN: Okay. The applicant request
9 postponement.

10 MS. DIXON: Move to postpone.

11 CHAIRMAN: Move for postponement by Ms. Dixon.

12 MR. TAYLOR: Second.

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

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries unanimously.

17 Next item, please.

18 -----

19 ZONING CHANGE

20 ITEM 3

21 4751 Free Silver Road, 6.657 acres
22 Consider zoning change: From EX-1 Coal Mining to A-R
23 Rural Agriculture
24 Applicant: Kenneth J. Hodgkins

25 MR. HOWARD: I will note that all of the
rezonings heard here tonight will be final 21 days

1 after the Planning Commission hearing unless an agreed
2 property owner or the applicant files a petition with
3 our office or the local legislative body files papers
4 in our office to allow them to hear it.

5 PLANNING STAFF RECOMMENDATIONS

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

10 FINDINGS OF FACT:

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

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

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

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

23 CHAIRMAN: Do we have anybody representing the
24 applicant?

25 APPLICANT REP: That's me, sir.

1 CHAIRMAN: Do we have any questions of the
2 applicant?

3 (NO RESPONSE)

4 CHAIRMAN: Does the applicant want to make a
5 statement?

6 APPLICANT REP: No.

7 CHAIRMAN: The chair is then ready for a
8 motion.

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

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

15 MR. EVANS: Second.

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

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries unanimously.

20 Next item, please.

21 ITEM 4

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

PLANNING STAFF RECOMMENDATIONS

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

6 CONDITION:

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

10 FINDINGS OF FACT:

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

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

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

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

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

23 CHAIRMAN: Do we have anybody representing the
24 applicant?

25 APPLICANT REP: Yes.

1 CHAIRMAN: Do we have any questions of the
2 applicant?

3 (NO RESPONSE)

4 CHAIRMAN: Does the applicant wish to make a
5 statement?

6 (NO RESPONSE)

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

9 MR. MILLER: Mr. Chairman, motion to approve
10 based on Planning Staff Recommendations, the one
11 condition as stated and the Findings of Fact 1 through
12 4.

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

15 MR. HAYDEN: Second.

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

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries unanimously.

20 Next item, please.

21 ITEM 5

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

25 PLANNING STAFF RECOMMENDATIONS

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

6 CONDITION:

- 7 1. All vehicular use areas shall be paved and
8 appropriate vehicular use area screening shall be
9 installed where adjacent to road right-of-way; and,
10 2. Submission of a division and consolidation
11 plat to combine the two tracts of land.

12 FINDINGS OF FACT:

- 13 1. The subject property is located in an
14 Urban Residential Plan Area, where multi-family
15 residential uses are appropriate in limited locations;
16 2. The use of the property as apartments
17 conforms to the criteria for Urban Residential
18 development;
19 3. A portion of the subject property is
20 currently zoned R-3MF Multi-Family Residential;
21 4. At 0.143 +/- acres, the proposed rezoning
22 should not overburden the capacity of roadway and
23 other necessary urban services that are available in
24 the affected area.

25 MR. HOWARD: I would like to enter the Staff

1 Report into the record.

2 CHAIRMAN: Do we have someone representing the
3 applicant?

4 APPLICANT REP: Yes.

5 CHAIRMAN: Do we have any questions of the
6 applicant?

7 (NO RESPONSE)

8 CHAIRMAN: Does the applicant wish to make a
9 statement?

10 APPLICANT REP: No.

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

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

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

18 MR. TAYLOR: Second.

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

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 Next item, please.

24 (IRVIN ROGERS LEAVES MEETING AT THIS TIME.)

25 -----

1 COMBINED DEVELOPMENT PLAN/MAJOR SUBDIVISIONS

2 ITEM 6

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

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

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

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

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

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

23 The final plat for the property was approved
24 October 14, 2004. At that time \$93,050.68 was posted
25 for surety. Of that amount \$81,300.68 was for streets
and sidewalks. That surety was transferred to the

1 county engineer on October 13, 2006.

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

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

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

23 A little bit of research. Looking at the
24 state roads in Daviess County, any road that is
25 classified as a state route, I looked the information

1 up on that. There are 178 miles of state roads within
2 Daviess County that are narrower than 10 1/2 feet.
3 Only 79 miles have a width that's greater than 10 1/2
4 feet.

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

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

24 On-street parking serves as a neckdown point
25 or a choke point which can serve to slow down traffic.

1 Chicanes, which are often installed after the
2 fact on roadways, that's a purposeful gentle curving
3 of a roadway. A lot of times roads are retrofit with
4 that type of thing. This road was designed with some
5 curvature.

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

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

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

16 5.1.1 says to provide for the movement of
17 people and goods from one place to another in a safe
18 and efficient manner.

19 5.1.1.1 says to reduce travel time and costs
20 by integrating or interconnecting the various modes of
21 transportation where possible.

22 5.2.1 says to provide for the movement of
23 people and goods from one place to another in a safe,
24 efficient, and cost-effective manner.

25 As far as roadway connections go, we feel that

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

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

1 see that connection made.

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

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

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

17 In regard to future development in the area,
18 there are two major projects that are at least talked
19 about if not proposed at this point. Those are the
20 Gateway Commons, which is the former TIF site, and
21 then the hospital. If and when those projects are
22 developed, they will both be required to do a Traffic
23 Impact Study. The intent of the Traffic Impact Study
24 is to look at the amount of traffic that those uses
25 will generate and then assign those to the roadways,

1 determine what type of roadway improvements might be
2 needed to mitigate the traffic that they will
3 generate. Those will be looked at in the future. We
4 don't want the future development to adversely impact
5 the existing roadway.

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

12 The Owensboro Metropolitan Subdivision
13 Regulation limits the distance of a cul-de-sac to
14 1,000 feet. Without another access point, without
15 another way in or out, in essence the subdivision
16 would act as a long cul-de-sac. So without another
17 connection that would be in violation of the
18 subdivision regulations maximum length on cul-de-sacs.

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

24 For example, in Lexington, when reviewing
25 subdivision plats, when they get to a threshold of 35

1 to 40 lots, they look for a second access point to a
2 development.

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

6 Georgetown has theirs set at 300.

7 Oldham County and Elizabethtown both do it
8 based on AADT, which is an average annual daily
9 traffic county. They use 2,000, which institutes
10 transportation engineer's average for single-family
11 residences. Ten trips per day as far as the number of
12 trips it generates. So that would be approximately
13 200.

14 Louisville is 200 lots.

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

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

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

1 proposed connection.

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

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

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

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

20 As I said, in the back you will see the letter
21 from the school board. You will see a letter from the
22 information from Sheriff Cain. Then there's also a
23 letter that was issued from the county engineer, Sinan
24 Rayyan, to Mr. Thompson in regards to the connection
25 of that subdivision. Basically stating that he's

1 contacted members of the Fiscal Court, Planning &
2 Zoning and interested citizens to discuss the issue.
3 The majority if not all of them believe that this
4 connection should be made. He's issued that letter to
5 the developer as well.

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

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

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

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

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

22 FINDINGS OF FACT

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

25 2. The Calumet Trace connection has been

1 planned for since 1995 and been assumed as part of the
2 transportation network.

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

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

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

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

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

24 8. The roadway was designed with on street
25 parking, street medians and roadway curvature which

1 are all considered as traffic calming devices which
2 may promote slower speeds.

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

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

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

21 I will enter that into the record.

22 MS. DIXON: Thank you, Mr. Howard.

23 Mr. Thompson.

24 MR. SILVERT: State your name, please.

25 MR. THOMPSON: Tommy Thompson.

1 (TOMMY THOMPSON SWORN BY ATTORNEY.)

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

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

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

16 They initially took those concerns to the
17 Daviess County Fiscal Court about three weeks ago and
18 had a good discussion there, but as you well know the
19 fiscal court has no jurisdiction in that issue. So
20 told the resident that. As was chronicled in the
21 Owensboro paper following that meeting, the fiscal
22 court encouraged the neighborhood to petition us, the
23 developer, to ask you to consider amending the plan
24 because they didn't have that authority and only you
25 do. Subsequent to that meeting with the fiscal court

1 we've had meetings with the neighbors. It's been made
2 quite clear to us, as a matter of fact there was a
3 vote taken by the members of the association that
4 lives in the most affected area, the north end of The
5 Downs, the Hialeah and Lakeside section. The vast
6 majority if not all of the neighbors that live in that
7 section voted not to or would desire for the road not
8 to be connected. They came to us with that huge
9 majority and asked us if we would petition the board
10 so that they could be heard. I think we would all
11 agree that the most significant stakeholders in this
12 whole issue are those individuals, those good
13 residents that live in The Downs.

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

22 The real objective is to allow the residents
23 of The Downs to have a forum because if we did not
24 petition you for the plan to be amended as the fiscal
25 court has suggested, they wouldn't have a forum for

1 their good concerns to be heard. That's why we're
2 doing this. Out of respect to their concerns and also
3 out of the suggestion of fiscal court. I'll certainly
4 yield the rest of my time. I think there's a number
5 of residents here that can better expand on their
6 concerns of addressing this issue.

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

9 (NO RESPONSE)

10 MS. DIXON: Is there anyone else that wishes
11 to speak in favor, approval of the amended plan?

12 Come to the microphone one at a time, please.

13 MR. SILVERT: State your name, please.

14 MR. ROBERTS: My name is Anthony Roberts.

15 (ANTHONY ROBERTS SWORN BY ATTORNEY.)

16 MR. ROBERTS: My purpose of being here is to
17 connect the road, Calumet Trace to Pleasant Valley
18 Road. It's been on the plat as stated since about
19 1995.

20 I have a daughter that bought a house at The
21 Downs, Saratoga Court. Bought it I think in 2001.
22 She has boy in a wheelchair. I've been going around
23 Pleasant Valley Road hoping that one day that this
24 becomes a reality. It shows on the map, Castlen's
25 map. It's been around for I don't know how long. I

1 don't see any reason why we can't follow through and
2 get this accomplished. I know it's an inconvenience
3 on certain people, but progress always has a price.
4 Thank you.

5 MS. DIXON: Thank you.

6 MR. SILVERT: State your name, please.

7 MS. STEIN: Sheila Stein.

8 (SHEILA STEIN SWORN BY ATTORNEY.)

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

22 MS. DIXON: Thank you.

23 Is there anyone else wishing to speak either
24 way?

25 MR. SILVERT: State your name.

1 MR. GLOVER: Gerald Glover.

2 (GERALD GLOVER SWORN BY ATTORNEY.)

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

16 I bought my house five and a half years ago.
17 I bought it with a realtor's map and I looked it over
18 and I asked the realtor, I said, where are these two
19 roads? He said, well, they're in the plan. They'll
20 be built any time in the near future. I bought my
21 house with that in mind. Thinking I could go through
22 it. It goes to the south end of town in a shopping
23 area, which it's even better more so than 54 now. I
24 think it's terrible to have to wait as long. Maybe
25 the Planning Commission in the future might want to

1 have the roads made in advance to help construction
2 and workers. With the energy price, we're wasting a
3 lot of gas, everybody is, when they have to drive all
4 the way around. I don't mind driving a little far if
5 I can drive cheaper to go.

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

13 MS. DIXON: Thank you, Mr. Glover.

14 Anyone else wishing to address the issue?

15 MR. SILVERT: State your name, please.

16 MR. BRUSHAUER: Matthew Brushauer.

17 (MATTHEW BRUSHAUER SWORN BY ATTORNEY.)

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

21 Everybody that has bought in The Downs they --
22 this is not about a new proposal. If it was, I could
23 see why we'd be here. Everybody that bought into The
24 Downs knew when they bought the house that this road
25 was suppose to go through. That's the point that I

1 would like to make. They bought the house in The
2 Downs knowing that this road is going to go through.
3 Now we have a change of heart. That's all I'd like to
4 say. Thank you.

5 MS. DIXON: Thank you.

6 Yes, ma'am.

7 MR. SILVERT: State your name, please.

8 MS. HAGAN: My name is Linda Hagan.

9 (LINDA HAGAN SWORN BY ATTORNEY.)

10 MS. HAGAN: I speak on behalf of the neighbors
11 in the Hialaeh Park and Lakeside area.

12 Here I have a petition that we, the members of
13 the board and the officers of the homeowner's
14 association did.

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

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

24 We feel that we have the safety of our
25 children. Our families are at stake. There are

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

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

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

19 In 1995 when Mr. Thompson proposed the plans
20 for this subdivision, we didn't have Wal-Mart or no
21 restaurants, no strip malls. There was no school and
22 there was no proposal for the new hospital. Traffic
23 was nothing like it is now day and night. Who would
24 have ever thought that 54 would have grown as fast and
25 as big as it did?

1 If you were to drive through the subdivision,
2 I don't know how many of you have, you will find that
3 Calumet Trace is a narrow street. It widens through
4 The Downs. It has two curves that if I'm standing on
5 the sidewalk in front of my home, I cannot see around
6 to three houses because of the curve that's there, and
7 back the other way because there is a hill and a
8 curve. The new proposed opening, if you see, has
9 somewhat of a curve in it.

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

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

23 You know, just what price do we really place
24 on a human life? The speed limit on Calumet Trace is
25 35 miles per hour. We feel if it is made a through

1 street there will be people speeding to get to their
2 destination for various reasons. They'll be late for
3 work, late for an appointment or just wanting to get
4 somewhere a little quicker.

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

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

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

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

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

24 MS. HAGAN: I would.

25 MR. SILVERT: I would like to remind the

1 commission that while the formal rules of evidence
2 don't apply here, petitions are specifically excluded
3 under common law. Any type of binding authority on
4 this commission should not be considered as any kind
5 of binding evidence.

6 MS. DIXON: Thank you.

7 Anyone else?

8 MR. SILVERT: State your name, please.

9 MR. HAGAN: My name is Phillip Hagan.

10 (PHILLIP HAGAN SWORN BY ATTORNEY.)

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

22 I mean Linda asked that we open Fairview Drive
23 now. Let Calumet Trace be closed. That's what all of
24 the residents want. Why not open Fairview Drive now?
25 Is it because of the money? Is that what it is? Or

1 is it just because Calumet Trace has been on the map
2 for 13 or 15 years and it has to be open because
3 that's the way it was planned? I don't see that. You
4 people don't live in The Downs. You could care less
5 about the traffic that goes through there. All you're
6 wanting is an opening. Well, you can have that
7 opening with Fairview Drive. Fairview Drive is built
8 to hold the traffic. This gentleman here said that
9 Calumet Trace was built for a minimum. That's true.
10 It's minimum. You put two cars parked along the side
11 of the street, there's one lane open for traffic.
12 We're going to have traffic going back and forth
13 through Calumet Trace. Calumet Trace was not built
14 for flow-through traffic from 54 to Pleasant Valley
15 Road. I know the traffic on Pleasant Valley Road is
16 pretty stiff in the mornings and the evenings. I don't
17 know if you know what 54 is like. Like Linda said,
18 there's traffic on 54 day and night just like
19 Frederica Street. Why you're determined to open
20 Calumet Trace just because it's been on the plat is
21 beyond me. We agree that we need an opening, but why
22 not Fairview Drive? Fairview Drive is right there.
23 It's already been made. It's already made for three
24 lane traffic. Everybody is determine to open Calumet
25 Trace because it's on the plat. It has to be open.

1 That's all I have to say.

2 MS. DIXON: Thank you.

3 Yes, sir.

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

6 MR. GLOVER: Gerald Glover.

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

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

1 MS. DIXON: Thank you.

2 Anyone else wishing to address this?

3 MR. SILVERT: State your name, please.

4 MR. MARKS: Steve Marks.

5 (STEVE MARKS SWORN BY ATTORNEY.)

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

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

20 MS. DIXON: Thank you.

21 Is there anyone else wishing to be heard?

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

1 plans or who owns the property.

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

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

14 MS. DIXON: Thank you.

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

17 MR. THOMPSON: The only thing, Madam Chair, is
18 Fairview Drive, we were mandated to put Fairview Drive
19 in when we started The Downs and built it to minor
20 arterial specifications. We took it all the way to
21 the limits of our property. So for it to be continued
22 as the transportation plan calls for it to be to
23 Pleasant Valley Road, it would have to go through
24 property that we have no control over and do not own.
25 We don't have any control over it. I think the only

1 two options for it to be extended, as the gentleman
2 just said, is for the county to condemn the land,
3 build the road or wait for someone to develop it.
4 Like when we developed The Downs we had to build the
5 road at our expense. Whoever ultimately develops the
6 land, the continuation of it would be forced I'm sure
7 by the Planning Commission to build it to specks to
8 take it all the way out to Pleasant Valley. We have
9 no control over that.

10 MS. DIXON: Thank you.

11 Yes, sir.

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

14 MR. ROBERTS: Anthony Roberts.

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

21 MS. DIXON: Thank you.

22 Anyone else wishing to address?

23 MR. GLOVER: Gerald Glover.

24 I know people are concerned about their kids.
25 They like to walk the streets and all like that. I'm

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

14 MS. DIXON: Anyone else?

15 Yes, sir.

16 MITCHELL HOWARD: My name is Mitchell Howard.

17 (MITCHELL HOWARD SWORN BY ATTORNEY.)

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

20 (ALL COMMISSIONERS RESPOND AYE.)

21 MITCHELL HOWARD: So all of you have. Good.

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

25 No comment. Okay.

1 Mr. Shelton was quoted in the paper this
2 morning about the school being built because of
3 Calumet Trace being open. In my thoughts when I read
4 that this morning, I think, well, would it be safer to
5 take a bus load of children through a narrow curvy
6 winding road with a median in the middle of it or
7 would it be safer to go around the bypass, 54, where
8 there's a four lane highway? Which would be safer?

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

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

23 One other thing I would like to ask. This I'm
24 not for sure about. Maybe Mr. Howard can tell us a
25 little bit about this.

1 Said Calumet Trace has a 60 foot right-of-way.
2 I think there's also 30 foot setback per the home from
3 the road; is that correct? Is that normal, a 30 foot
4 setback? I think it's 30 if you look it up. It's
5 what I looked up.

6 If you measured between a couple of those
7 houses out there, I don't think you can come up with
8 120 feet.

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

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

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

23 I ask the commission to table this and take a
24 look at the footage as far as the right-of-way and the
25 setback and see if there is appropriate footage there

1 that's required before a decision is made. Thank you
2 for your time.

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

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

22 MS. DIXON: Thank you, Mr. Howard.

23 Anyone else have anything different to add?

24 Yes, ma'am.

25 MR. SILVERT: State your name, please.

1 MS. ROBERTS: Elizabeth Roberts.

2 (ELIZABETH ROBERTS SWORN BY ATTORNEY.)

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

15 MS. DIXON: Thank you.

16 Anyone else?

17 Yes, sir.

18 MR. ADAMS: My name is Gary Adams.

19 (GARY ADAMS SWORN BY ATTORNEY.)

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

24 One of the strategies, as Mr. Howard had
25 mentioned, Fairview Drive extension is a staged

1 construction project. Meaning we don't know when it's
2 going to happen. It would likely be when that
3 property develops. When we were dealing with The
4 Downs, we knew it was going to develop because
5 Mr. Thompson was planning a subdivision. Of course,
6 we didn't know it would take 13 years to get to this
7 point.

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

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

24 MS. DIXON: Thank you, Mr. Adams.

25 Does anyone else have anything to add that is

1 different?

2 Yes, ma'am.

3 MR. SILVERT: State your name, please.

4 MS. HALL: Martha Hall.

5 (MARTHA HALL SWORN BY ATTORNEY.)

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

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

22 As far as some of the others talking about
23 they've got to go all the way around. My son lives on
24 Graham Lane. I have to go all the way around
25 Thruston-Dermont Road and through there, and so does

1 he when he visits, which is three or four times a
2 week. I'm at his place maybe three or four times a
3 week. So I have to go all the way around, but I
4 prefer to do that in order to have a safe neighborhood
5 to live in.

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

10 MS. DIXON: Thank you.

11 Anyone else before we wrap this up?

12 Yes, sir.

13 MR. SILVERT: State your name, please.

14 MR. LASHBROOK: Greg Lashbrook.

15 (GREG LASHBROOK SWORN BY ATTORNEY.)

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

1 I work out towards Masonville. It would be really
2 nice to cut through there for that reason.

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

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

21 MS. DIXON: Thank you.

22 Is there anyone else?

23 Yes, sir.

24 MR. SILVERT: If you would just restate your
25 name.

1 MITCHELL HOWARD: My name is Mitchell Howard.

2 I would just like for the record, Mr. Howard
3 did say at the fiscal court meeting that there was a
4 30 foot setback. Brison Young, if you review the
5 tape, asked about that. He did say that there was a
6 30 foot building setback. I would like to clarify
7 that for the record. Thank you.

8 MS. DIXON: Thank you.

9 Anyone else?

10 Yes, sir.

11 MR. SILVERT: State your name, please.

12 MR. WILKENBERG: Bill Wilkenberg.

13 (MR. WILKENBERG SWORN BY ATTORNEY.)

14 MR. WILKENBERG: I'll keep this brief.

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

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

22 It was a greater fear than it was a realty.
23 We raised our kids on that street. I see no
24 difference in Calumet. To me it seems like a very
25 similar thing. I think that if it does prove that it

1 is over-traveled, it just proves we need to get that
2 second opening as soon as possible.

3 MS. DIXON: Thank you.

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

6 (NO RESPONSE)

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

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

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

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

25 MR. GILLES: Thanks.

1 MS. DIXON: Any other commissioners have a
2 question, comment?

3 (NO RESPONSE)

4 MS. DIXON: Chair is ready for a motion.

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

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

10 MR. TAYLOR: Second.

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

13 (NO RESPONSE)

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

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

18 MS. DIXON: Motion carries.

19 I will return the gavel to Mr. Kirkland.

20 -----

21 MAJOR SUBDIVISIONS

22 ITEM 7

23 Brookstone, 5.005 acres
24 Consider approval of major subdivision final plat.
25 Surety (Letter of Credit) posted: \$30,353.25
Applicant: Jagoe Homes

1 CHAIRMAN: Ms. Dixon, thanks. You did an
2 excellent job.

3 Do we have anybody representing the applicant?

4 APPLICANT REP: Yes.

5 CHAIRMAN: Do we have any questions of the
6 applicant?

7 (NO RESPONSE)

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

10 MS. DIXON: Move to approve.

11 CHAIRMAN: Motion for approval by Ms. Dixon.

12 MR. EVANS: Second.

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

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries unanimously.

17 Next item, please.

18 -----

19 MINOR SUBDIVISIONS

20 ITEM 8

21 3441 Fairview Drive, 6.461 acres
22 Consider approval of minor subdivision plat.
23 Applicant: Thomas Mack Hagan; Paradise Holdings, LLC

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

1 consideration.

2 CHAIRMAN: We have someone representing the
3 applicant?

4 APPLICANT REP: Yes.

5 CHAIRMAN: Any questions?

6 (NO RESPONSE)

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

9 MR. APPLEBY: Motion for approval.

10 CHAIRMAN: Motion for approval by Mr. Appleby.

11 MS. DIXON: Second.

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

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries unanimously.

16 Next item.

17 ITEM 9

18 3619, 3623 Hayden Road, 3.82 acres
19 Consider approval of minor subdivision plat.
20 Applicant: Michael S. & Alicia K. Harrington

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

24 It comes to you as an exception to the
25 subdivision regulations in that the remaining or it's
a small tract with limited frontage. It creates a lot

1 around an existing home. The remaining tract meets
2 the minimum frontage requirements, but does not meet
3 the three to one depth to width ratio that's required.
4 There is an existing septic system for the existing
5 home. The lot configuration as proposed here is in
6 keeping with the character of other lots in the area.
7 So even though it does not meet that depth to width
8 ratio we would recommend that you approve this plat.

9 CHAIRMAN: Anybody representing the applicant?

10 APPLICANT REP: Yes.

11 CHAIRMAN: Any questions of the applicant?

12 (NO RESPONSE)

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

15 MR. HAYDEN: Make motion to approve.

16 CHAIRMAN: Mr. Hayden made a motion for
17 approval.

18 MR. EVANS: Second.

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

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 Next item, please.

24 ITEM 10

25 9645 Highway 144, 9230 Highway 951, 9.08 acres

1 Consider approval of minor subdivision plat.
Applicant: Robert Keith Payne, William D. Hamilton

2

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

7 MR. HOWARD: Certainly.

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

18 CHAIRMAN: Is anybody here representing the
19 applicant?

20 APPLICANT REP: Yes.

21 CHAIRMAN: Do we have any questions?

22 (NO RESPONSE)

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

25 MS. DIXON: Move to approve.

1 CHAIRMAN: Motion for approval by Ms. Dixon.

2 MR. TAYLOR: Second.

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

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries unanimously.

7 Next item, please.

8 ITEM 11

9 1107, 1109 West 8th Street, 0.232 acres
10 Consider approval of minor subdivision plat.
11 Applicant: Habitat for Humanity

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

20 CHAIRMAN: Anybody representing the applicant?

21 APPLICANT REP: Yes.

22 CHAIRMAN: Does anybody have any questions?

23 (NO RESPONSE)

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

MS. DIXON: Move to approve.

1 CHAIRMAN: Motion for approval by Ms. Dixon.

2 MR. EVANS: Second.

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

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries unanimously.

7 -----

8 AGRICULTURAL DIVISIONS

9 ITEM 12

10 4150 Ridge Road, 10.783 acres
11 Consider approval of agricultural division.
12 Applicant: James W. Hazel, Sr.; Nanette Hazel

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

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

25 CHAIRMAN: Do we have anybody representing the
applicant?

1 (NO RESPONSE)

2 CHAIRMAN: Does anybody have any questions?

3 (NO RESPONSE)

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

5 MR. APPLEBY: Motion for approval.

6 CHAIRMAN: Motion for approval by Mr. Appleby.

7 MR. GILLES: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 Next item, please.

13 -----

14 NEW BUSINESS

15 ITEM 13

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

18 MR. NOFFSINGER: Mr. Chairman, the Kentucky
19 Revised Statutes requires that all electrical
20 inspectors performing duties in the State of Kentucky
21 do so only by placement of a \$5,000 surety bond. That
22 surety bond is there to cover, it's basically an
23 honesty bond. That an electrical inspector wouldn't
24 collect a fee and skip town or keep the money and not
25 perform their job.

1 In Owensboro-Daviess County, the electrical
2 inspectors are employed by the Owensboro Metropolitan
3 Planning Commission. They're not employed by the
4 State of Kentucky nor are they independent contractors
5 out performing their work. We have never required our
6 inspectors to serve bond. In fact, we do carry
7 necessary insurance on our employees to make sure that
8 the work they're doing is covered. Since that bond is
9 primarily there for fees, our electrical inspectors do
10 not take in fees. All fees are taken in by the
11 administrative staff in the office. The inspector
12 performing the work does not see any fees associated
13 with the electrical.

14 Given the fact that the state allows cities
15 and counties and those representing the cities and
16 counties to adopt their own rules and regulations that
17 may be different from those that are set in the State
18 of Kentucky, we recommend that you adopt a rule
19 allowing inspectors employed by the OMPC to perform
20 their duties without a surety bond. If you do so,
21 this will take care of us in the future in dealing
22 with the state when our electrical inspectors have to
23 renew their license. They won't be burden with the
24 letter they get asking that they provide a surety
25 bond.

1 CHAIRMAN: Are there any questions?

2 (NO RESPONSE)

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

5 MR. HAYDEN: Make motion to approve.

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

8 MR. EVANS: Second.

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

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries unanimously.

13 The chair is ready for one final motion.

14 MS. DIXON: Move to adjourn.

15 CHAIRMAN: Motion for adjournment by Ms.
16 Dixon.

17 MR. HAYDEN: Second.

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

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: We are adjourned.

22 -----

23

24

25

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

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

16 WITNESS my hand and notary seal on this the
17 31st day of AUGUST, 2008.

18
19 _____
20 LYNNETTE KOLLER FUCHS
21 OHIO VALLEY REPORTING SERVICES
22 202 WEST THIRD STREET, SUITE 12
23 OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES: DECEMBER 19, 2010
23 COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY
24

25

