

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 SEPTEMBER 11, 2008

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:30 p.m. on Thursday,
5 September 11, 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 Martin Hayden
15 Rita Moorman

16 * * * * *

17 CHAIRMAN: Call the Owensboro Metropolitan
18 Planning Commission September 11th meeting to order.

19 Please stand for our invocation and pledge of
20 allegiance.

21 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

22 CHAIRMAN: Our first order of business is to
23 consider the minutes from the August 14, 2008 meeting.
24 Are there any corrections, additions?

25 (NO RESPONSE)

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

MS. DIXON: Move to approve.

1 CHAIRMAN: Motion for approval by Ms. Dixon.

2 MR. HAYDEN: Second.

3 CHAIRMAN: Second by Mr. Hayden. 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 -----

9 CELLULAR TELECOMMUNICATIONS FACILITIES PER KRS 100.987

10 ITEM 2

11 895 Highway 140 West (Postponed at August 14, 2008,
12 meeting)

13 Consider approval of a wireless telecommunications
14 tower

15 Applicant: Larry A. Ratliff, GTE Wireless of the
16 Midwest, d/b/a Verizon Wireless

17 MR. NOFFSINGER: Mr. Chairman, the applicant
18 has requested a postponement of this item to be
19 postponed until our October 9, 2008 meeting. The
20 applicant has signed the agreement stating that they
21 do agree to waive the 60 day timing mechanism in the
22 statutes that requires the Planning Commission to act
23 within 60 days.

24 The applicant is requesting this postponement
25 so that they will have time to respond to information
submitted by Mr. Larry Payne, as well as we may have a
notification publication issue regarding this item

1 from the August 14th meeting. The applicant is not
2 alleging or agreeing that that is the case, but there
3 is that issue out there.

4 It will take action by you to postpone a vote
5 and then authorize me to sign that agreement for the
6 Planning Commission. It will come back to us on
7 October 9th of 2008. The applicant will put a new
8 notice in the Messenger-Inquirer stating that it will
9 be heard October 9th.

10 CHAIRMAN: This does require a motion?

11 MR. NOFFSINGER: Yes, sir.

12 CHAIRMAN: Chair is ready for a motion.

13 MR. MILLER: Mr. Chairman, I move to postpone
14 this item and in that motion would like to authorize
15 Mr. Noffsinger to sign the postponement letter from
16 the applicant to hear this item at our October 9,
17 2008, meeting.

18 CHAIRMAN: We have a motion for postponement
19 by Mr. Miller and authorization for Mr. Noffsinger to
20 sign.

21 MR. APPLEBY: Second.

22 CHAIRMAN: We have a second from Mr. Appleby.
23 All in favor raise your right hand.

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: Motion carries unanimously for

1 postponement.

2 Next item, please.

3 Related Items:

4 ITEM 2A

5 895 Highway 140 West, 0.230 acres (Postponed at August
6 14, 2008, meeting)

7 Consider approval of minor subdivision plat.

8 Applicant: Larry A. Ratliff

9 MR. NOFFSINGER: Mr. Chairman, this plat is

10 related to the item we just voted to postpone. So

11 Staff would recommend that you postpone taking action

12 on this plat until we hear the actual application for

13 the cell tower.

14 CHAIRMAN: We need a motion on that also?

15 MR. NOFFSINGER: Yes, sir.

16 CHAIRMAN: Chair is ready for a motion.

17 MS. DIXON: Move to postpone until the October

18 9, 2008 meeting.

19 CHAIRMAN: Motion for postponement by

20 Ms. Dixon.

21 MR. MILLER: Second.

22 CHAIRMAN: Second by Mr. Miller. All in favor

23 raise your right hand.

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: Motion carries unanimously.

Next item, please.

1 MR. NOFFSINGER: Under Zoning Changes Item 3
2 has been withdrawn.

3 -----

4 ZONING CHANGES

5 ITEM 4

6 10562 US Highway 431, 0.38 acres
7 Consider zoning change: From R-1A Single-Family
8 Residential to B-4 General Business
9 Applicant: Daviess County, a political subdivision of
10 the Commonwealth of Kentucky

11 MR. SILVERT: State your name, please.

12 MR. HOWARD: Brian Howard.

13 (BRIAN HOWARD SWORN BY ATTORNEY.)

14 MR. HOWARD: As the first order of business, I
15 will note that all the rezonings heard tonight will
16 become final 21 days after the meeting unless an
17 appeal is filed by anyone. That appeal would be filed
18 with our office and they're available on the back
19 table and on our web site as well.

20 For this rezoning our Staff Report is for
21 denial so I will have to read the entire Staff Report
22 into the record.

23 PROPOSED ZONE & LAND USE PLAN

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

1 SPECIFIC LAND USE CRITERIA

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

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

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

21 APPLICANT'S FINDINGS

22 The proposed rezoning is in compliance with
23 the applicable criteria as set forth in the
24 Comprehensive Land Use Plan. The rezoning proposal
25 meets the requirements of the criteria as set out

1 under Section 11 General Business of the Land Use
2 Plan. The subject property is located in a Rural
3 Community Plan Area where commercial activities are
4 appropriate in limited locations.

5 Building and lot patterns; outdoor storage
6 yards - Building and lot patterns conform to the
7 criteria for "non-residential development."

8 New locations in rural communities - In Rural
9 Community plan areas, new locations of General
10 Business zones should be "major-street-oriented." As
11 indicated in the background section above, the subject
12 property has a long history of non-residential use and
13 past use is consistent with B-4 General Business.

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

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

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

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

4 On June 5, 2008, the property located at 10539
5 Highway 431, which is north and east of the subject
6 property, was rezoned from R-1A Single-Family
7 Residential and A-U Urban Agriculture to B-4 General
8 Business.

9 The applicant's plan is to rezone the property
10 to make it a conforming use and then sell.

11 PLANNING STAFF REVIEW

12 The subject property is located in the 10500
13 block of US 431. Land use criteria applicable to this
14 proposal are reviewed below.

15 GENERAL LAND USE CRITERIA

16 Environment

17 According to a study prepared by the US
18 Department of Agriculture Soil Conservation Service
19 dated March 6, 1990, it appears that the subject
20 property is not located in a wetlands area. The
21 subject property is not located in a special flood
22 hazard area per FIRM Map 21059C0425 C. Based on the
23 preliminary FIRM maps dated July 7, 2007, the subject
24 property is not located in a special flood hazard area
25 per Map 21059C0405 D. It appears that a portion of

1 the subject property is designated as prime
2 agricultural land according to the "Important
3 Farmlands" map created by the US Department of
4 Agriculture Soil Conservation Service dated March
5 1980. However, the prime farmland has been lots from
6 previous development on the site. The developer is
7 responsible for obtaining permits as may be required
8 by the Division of Water, The Army Corp of Engineers,
9 FEMA or other state and federal agencies as may be
10 applicable.

11 It appears that the subject property is
12 outside the Owensboro Wellhead Protection Area
13 according to a map created by GRADD office dated March
14 1999.

15 Urban Services

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

19 Development Patterns

20 The subject property is located in the rural
21 community of Utica. In the vicinity of the subject
22 property, all surrounding properties are zoned R-1A
23 Single-Family Residential. There are residences on
24 all sides of the subject property.

25 The subject property is only 0.38 acres in

1 size which could create issues when applying
2 appropriate screening measures. A ten foot landscape
3 buffer with a six foot element and one tree every 40
4 linear feet would be required along the entire
5 boundary to the north, west and south. The east side
6 of the property is the road frontage which is
7 primarily open. The rezoning ordinance allows for a
8 maximum of 40 percent of the road frontage to be used
9 for access.

10 The road frontage of the property is used
11 primarily as access since the site has historically
12 been used as a fire station. Although the use has
13 been non-residential in nature, the fire station was
14 approved under the public facility guidelines
15 established in KRS for governmental uses and are
16 appropriate in any zone. Since a fire station could
17 be constructed in any zone as a public facility, the
18 justification of use as commercial is negligible.
19 Also, from previous public hearings concerning another
20 rezoning in the vicinity, statements have been made
21 that the fire station is being relocated due to poor
22 sight visibility at this location. The
23 appropriateness of converting the use to commercial
24 which could significantly increase the extent of
25 traffic utilizing the site may create a safety and

1 liability issue.

2 There are two primary criteria in the
3 Comprehensive Plan for general business uses within a
4 Rural Community Plan Area. The first is a logical
5 expansion which is not applicable for the subject
6 property since the nearest B-4 General Business zoning
7 is located across the street and to the north or
8 south. The second criteria states that new locations
9 of general business use should be
10 major-street-oriented and be located at the corner of
11 intersecting streets if located in close proximity to
12 existing dwellings. With frontage on US 431, the site
13 is major-street-oriented; however, the second portion
14 of the requirement is not met and not addressed by the
15 applicant in their findings. There are existing
16 dwellings on three sides of the subject property with
17 the property to the east across US Highway 431 being
18 occupied by a residence as well.

19 SPECIFIC LAND USE CRITERIA

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

1 PLANNING STAFF RECOMMENDATIONS

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

6 FINDINGS OF FACT:

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

10 2. Although the subject property may have
11 been used for non-residential purposes as a fire
12 station, the approval was via a public facility review
13 for local government which is applicable in any zone;

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

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

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

24 MR. HOWARD: We would like to enter the Staff
25 Report into the record as Exhibit A.

1 CHAIRMAN: Is the applicant represented by
2 anybody here?

3 MR. PORTER: Yes, Mr. Chairman. Claud Porter,
4 County Attorney on behalf of fiscal court.

5 MR. SILVERT: Mr. Porter, I recognize the oath
6 that you took as an attorney.

7 MR. PORTER: Mr. Chairman, Members of the
8 Board, fiscal court is asking that the commission and
9 the board change the fire department's zoning or
10 rezone from R-1A residential. It's county zoned. I
11 notice Mr. Howard has quickly gone through each of
12 those.

13 It's been a fire department since 1973. I
14 think the two criteria that Mr. Howard noted that we
15 did not comply with, one was that it was not
16 contiguous to other rezonings.

17 I would note that the commission has approved
18 the property immediately across 431 from an R-1A to a
19 B-4 very recently. I think that was back in July. It
20 is contiguous in the sense that it is adjoining the
21 major arterial street, US Highway 431.

22 The other issue I think that he addressed was
23 the traffic elements. Of course, we have no idea of
24 the use that someone may put to the property if it is
25 given to a B-4, if it's changed to a B-4, but it would

1 not create, I don't think that would create any
2 additional traffic any more than the fire department
3 does now with the volunteers appearing there
4 periodically for their use and for fires as necessary.

5 So given those circumstances we would ask that
6 the Board approve the change in the zoning given those
7 criteria.

8 CHAIRMAN: Thank you, Mr. Porter.

9 Is there anybody else that would like to ask
10 any questions or have any comments?

11 Yes, sir. Please step to the mike.

12 MR. SILVERT: State your name, please.

13 MR. GRIMSLEY: Bob Grimsley.

14 (BOB GRIMSLEY SWORN BY ATTORNEY.)

15 MR. GRIMSLEY: I own the property directly
16 across from the fire station. My wife and I had it
17 rezoned by this board back when we met with you guys.

18 I would like to offer our support for the
19 rezoning of the fire station to a B-4 zoning. I feel
20 like the traffic patterns have been established. It's
21 been in the community. It's not only used as a fire
22 station, but some of the people that travel the
23 transcontinental bike railway use that facility to
24 stay in and it's used for different activities within
25 the community. I feel like it's not going to be a

1 hazard to have it zoned to B-4. We wholeheartedly,
2 the community and my wife, Nancy, and I support the
3 zoning approval.

4 CHAIRMAN: Thank you, Mr. Grimsley.

5 Anybody have any questions?

6 (NO RESPONSE)

7 CHAIRMAN: Mr. Porter, I have a question.

8 MR. PORTER: Yes.

9 CHAIRMAN: What is the use going to be of this
10 facility?

11 MR. PORTER: We are uncertain. It will be
12 declared a surplus property. The intent will be to
13 market that as a surplus property. So we do not have
14 a use. The county does not have a use in mind.

15 CHAIRMAN: Thank you.

16 MR. PORTER: I think the board is aware that
17 the state has changed the speed limit along that road,
18 which also was, I think, a concern that the Staff had
19 about access and visibility. It was changed from 55
20 to 45, I think, miles per hour just recently.

21 CHAIRMAN: Thank you.

22 Does anybody on the Staff have a question?

23 (NO RESPONSE)

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

1 MR. APPLEBY: Mr. Chairman, I make a motion
2 for approval based on the applicant's findings of
3 fact.

4 CHAIRMAN: We've got a motion for approval by
5 Mr. Appleby.

6 MR. HAYDEN: Second.

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

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries unanimously.

11 Thank you very much.

12 Next item, please.

13 ITEM 5

14 4300 Veach Road, 11.075 acres
15 Consider zoning change: From A-R Rural Agriculture to
16 B-4 General Business
17 Applicant: River City Church, Inc.

18 PLANNING STAFF RECOMMENDATIONS

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

24 CONDITIONS:

25 1. Access to both J.R. Miller Boulevard and
Veach Road shall be limited to the proposed public

1 street intersections as shown on the preliminary
2 development plan submitted in conjunction with the
3 rezoning;

4 2. The site development shall be phased to
5 connect the public street to Veach Road first and to
6 move westward as the site develops. The street
7 connection to J.R. Miller Boulevard shall be in
8 compliance with the special access restrictions and
9 shall not be made until it will connect the roadway
10 network within the surrounding neighborhood; and,

11 3. Due to the proximity to residential
12 structures, all lighting for the subject property
13 should be directed away from the residential
14 structures to reduce the impact of the commercial
15 light and glare onto the residential property.

16 FINDINGS OF FACT:

17 1. The subject property is located in a
18 Business Plan Area, where general business uses are
19 appropriate in limited locations;

20 2. The subject property will be used for a
21 church and commercial purposes and will be
22 nonresidential in nature;

23 3. The proposal is a logical expansion of
24 existing B-4 General Business zoning located
25 immediately south and west of the subject property;

1 4. The expansion of the B-4 zoning should not
2 significantly increase the extent of the zone in the
3 vicinity of the expansion and should not overburden
4 the capacity of roadways and other necessary urban
5 services that are available in the affected area.

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

8 CHAIRMAN: Is anybody here representing the
9 applicant?

10 MR. BICKEL: Yes, sir. Mr. Chairman, John
11 Bickel here on behalf of the applicant.

12 MR. SILVERT: Mr. Bickel, we recognize the
13 oath you took as an attorney.

14 MR. BICKEL: Thank you.

15 The applicant would like to suggest one change
16 in the condition. We're continuing, of course, to ask
17 for approval, but we want to introduce a little bit
18 more flexibility into the conditional aspect of the
19 rezoning.

20 Condition Number 2, we would like to request
21 that the rezoning be subject to this condition being
22 revised as follows:

23 The site development shall be phased to
24 connect the public street to either Veach Road or J.R.
25 Miller, to move westward from Veach Road or eastward

1 from J.R. Miller as the site develops. The street
2 connection to J.R. Miller Boulevard shall be in
3 compliance with the special access restrictions.

4 All this does, Ladies and Gentlemen, is to
5 allow flexible; in other words, whether you begin over
6 on the Veach Road side or whether you begin at the
7 J.R. Miller side. That is indeterminate now, but it
8 would still be binding as to fixing the point of
9 access at point of access to J.R. Miller to remain the
10 same, point of access to Veach Road remain the same.

11 CHAIRMAN: Does anybody have any questions of
12 --

13 Brian, does the Staff have a question to Mr.
14 Bickel on that?

15 MR. HOWARD: I will explain where that
16 condition came from.

17 The reason that it was stated that way is that
18 there are special access requirements along J.R.
19 Miller Boulevard. Those stated in order for a street
20 connection to be made that there are a couple of
21 criteria that have to be met.

22 The first is that it has to create the fourth
23 leg of a three leg intersection. So this would do
24 that. You'd have J.R. and Weikel. This would create
25 a four leg intersection.

1 However, the other criteria is that it should
2 not happen unless the access point will connect the
3 surrounding neighborhood. Unless the connection is
4 made to Veach Road and the surrounding neighborhood is
5 not connected and the requirements of the special
6 access guidelines on J.R. Miller Boulevard will not be
7 met. If the accesses were to start at J.R. Miller
8 Boulevard and work towards the east, there could be no
9 guarantee that the connection would be made to Veach
10 Road in the future or when that connection would be
11 made.

12 So the intent of the requirements of a special
13 access guidelines would not or could potentially not
14 be addressed. So that's why we wanted to make sure it
15 was geared so that when a connection is made to J.R.
16 Miller Boulevard that those requirements of the
17 special access requirements are met.

18 MR. BICKEL: Mr. Chairman, if I -- excuse me.
19 Brian, are you finished?

20 MR. HOWARD: Yes.

21 MR. BICKEL: Mr. Chairman, if I may respond.
22 We are only asking for the same treatment
23 that's been given to the project to the north in
24 Fiddlesticks.

25 Thompson Homes started at J.R. Miller rather

1 than starting at Veach and they have not completed the
2 roadway all the way through from J.R. Miller to Veach.
3 We're just asking for the same accommodation.

4 CHAIRMAN: Mr. Howard, make sure that I
5 understand. We want to be able to connect Weikel all
6 the way over to Veach Road?

7 MR. HOWARD: Correct.

8 MR. BICKEL: And we will do that eventually.
9 It's just rather than mandating that we must start our
10 development on the Veach Road side, we would like to
11 have the option, like Thompson Homes did, of starting
12 on J.R. Miller Boulevard side. That's all we're
13 asking.

14 CHAIRMAN: Mr. Bickel, you understand that
15 what we want in the agreement would be that this road
16 would be completed, the connection would be completed.

17 MR. BICKEL: Well, we own the whole 11.075
18 acre tract. When we would finally plat it, you would
19 have to complete the road. Sure.

20 CHAIRMAN: Mr. Howard.

21 MR. HOWARD: Whenever a final plat is
22 submitted, they would post surety for that; however,
23 they wouldn't have to do a final plat for the entire
24 development at one time. They could do that in
25 phases. At the initial final plat they wouldn't

1 necessarily have to post surety for the entire roadway
2 connection.

3 CHAIRMAN: Mr. Howard, unless you correct me,
4 I don't really see a problem with them starting on one
5 end or the other. Is there a problem there that I'm
6 not understanding?

7 MR. HOWARD: Again, it's just that we want to
8 make sure that the special requirements set by the
9 GRADD transportation are addressed on this site and
10 that we do guarantee that the entire tract is
11 connected from Veach Road and J.R. Miller Boulevard.
12 We saw that with this condition that we would
13 guarantee that that connection be made.

14 CHAIRMAN: Mr. Bickel, do you see any
15 problem with wording such that the guarantee is there
16 and we allow you to start at the other side?

17 MR. BICKEL: The guarantee is there because of
18 Condition Number 1. The access points are fixed, J.R.
19 Miller and Veach Road. As the property is developed,
20 the road has to be built in conjunction with the
21 preliminary plan that's already been presented as part
22 of the application. So Condition Number 1 takes care
23 of that.

24 CHAIRMAN: Mr. Howard, do you feel comfortable
25 with that?

1 MR. HOWARD: Condition Number 1 is in
2 reference to the actual location along those road
3 frontages where that access point would tie in. I
4 don't know that it actually states that it guarantees
5 that the roads would connect.

6 MR. BICKEL: But starting on Veach Road side
7 doesn't guarantee that the road would connect either.

8 MR. HOWARD: Right, but the --

9 MR. BICKEL: All we're asking for is the
10 flexibility to start at either end of the property.

11 CHAIRMAN: Mr. Bickel, with your gift of
12 words, could you come up with something that would
13 satisfy this? I realize what you're saying, but he's
14 playing with a set of rules also. I see no problem
15 with you all starting on the other side.

16 MR. APPLEBY: Is there a note that can be --
17 we're going to deal also with the preliminary
18 development plan is the next item. What I'm
19 understanding you to say is they don't have to final
20 plat and bond anything all of it at one time. They
21 can do it piecemeal. Which you're going to require
22 that street to be bonded and stubbed out to the
23 property line at each juncture?

24 MR. HOWARD: Correct.

25 MR. APPLEBY: Your concern is that it may

1 never be completed and they may never develop all the
2 way through then it wouldn't be criteria set out for
3 J.R. Miller Boulevard?

4 MR. HOWARD: That's correct.

5 MR. APPLEBY: Is there any way we can deal
6 with this on the preliminary development plan by some
7 kind of a note that this road is to connect?
8 Something that would bind that property all the way
9 through there?

10 MR. NOFFSINGER: Mr. Chairman, it is a timing
11 issue. So far we have not heard what the timing is.
12 We are dealing with a special access provision that
13 applies to J.R. Miller Boulevard and not Veach Road.
14 So that's why Planning Staff, as well as the
15 Transportation Advisory Committee is concerned about
16 making sure that this street, if it's a street or if
17 there's access to J.R. Miller, that it be connected
18 with Veach Road.

19 Now, you can certainly address it on the
20 preliminary plat and the rezoning by some type of
21 timing mechanism, but I don't think we've heard that
22 here tonight. It's eventually. At what stage in the
23 game will this street be connected I think is the real
24 issue that Staff is trying to deal with and that we
25 haven't heard and did not know until tonight that this

1 was going to be an issue.

2 CHAIRMAN: Mr. Bickel.

3 MR. BICKEL: We cannot commit to timing on the
4 total construction of the road because we don't know
5 how it will be developed. That's why the rule is you
6 only have to bond or build when you get a final plat.
7 That, of course, makes sense, but we don't have the
8 capability of knowing how the development is going to
9 proceed over time and that's why we can't commit to a
10 timing schedule.

11 I guess I don't understand why we're being
12 treated differently than Thompson Homes. What am I
13 missing here, gentlemen? There's no timing schedule
14 for Thompson Homes to build all the way through to
15 connect the street from J.R. Miller to Veach Road.

16 MR. NOFFSINGER: There's no time schedule per
17 se, but there is a plan that Mr. Thompson entered into
18 an agreement, a final development plan preliminary
19 subdivision plat that indicated that that connection
20 would be made.

21 MR. BICKEL: And we're doing that too. We're
22 indicating through our preliminary plan that the
23 street will be made. We've committed just like it
24 says in Condition Number 1, to the two points of
25 access are fixed.

1 MR. NOFFSINGER: That is being done, but
2 there's a serious concern that that street may never
3 be connected. That's what we're trying to address
4 here. You could come in and create one to three lots.
5 We're not dealing with a traditional developer. We're
6 dealing with a church that has not developed property
7 that has a plan submitted with no time line in terms
8 of how that property is going to be developed. The
9 timing becomes an issue and at what point will a
10 building permit be issued for a church on this
11 property and the street to be constructed. It's a
12 matter of how long will this function as a driveway as
13 opposed to a street.

14 MR. BICKEL: Mr. Noffsinger, are you saying
15 that the difference is because this is a church and
16 Thompson Homes is a developer and that justifies the
17 difference in treatment?

18 MR. NOFFSINGER: No. What I'm saying it's not
19 because they're a church. What I'm saying is we have
20 a history on this property that indicates that the
21 church wants access to J.R. Miller Boulevard, but does
22 not want to extend that street or that connection to
23 Veach Road. We have to make some assurance --

24 MR. BICKEL: That's incorrect. That's
25 incorrect. They want to extend. They want the street

1 to go all the way through. There's never been any
2 plan or proposal not to have the street go all the way
3 through. It's just that the timing of when the street
4 goes through is something we cannot know and therefore
5 cannot commit to. I'm only asking we be treated the
6 same way as Thompson Homes because they're not on a
7 time line and they don't have -- they started at J.R.
8 Miller and they haven't completed all the way through
9 to Veach Road. We're just asking for the same
10 treatment.

11 MR. APPLEBY: The only concern is that the
12 road would never be built. That's the issues I
13 understand it from the Staff's standpoint. The only
14 way that happens if that property never develops; is
15 that right, because essentially we've got control of
16 it? At any juncture it's going to have to come back
17 before this board with a final -- it's going to have
18 to be final somewhere and bonded somewhere. The plan
19 is not going to be approved if it doesn't show that
20 road through there, if I'm understanding this
21 correctly.

22 MR. NOFFSINGER: If you approve the
23 development subject to the development plan, I think
24 you can ensure that.

25 CHAIRMAN: Can we just do it right there?

1 Because that way that will give -- we would have
2 assurance that the road is done. They would have the
3 opportunity to go ahead and start the development.

4 Do you have a problem with that, Mr. Bickel?

5 MR. BICKEL: We cannot commit to a development
6 plan now because we don't know where all the final lot
7 lines are going to be. All we're committing to on the
8 plat is that the street will go through and we're
9 committed to the two access points that are indicated
10 on the plat. The rest of it may change as the
11 development progresses just like it changed in
12 Fiddlesticks. Just like it changed in Highland
13 Pointe. Just like it customarily changes in all
14 developments. You cannot expect to tie our hands in a
15 way that you don't tie other people's hands.

16 MR. NOFFSINGER: In Mr. Thompson's situation,
17 the adjoining residential development, before Mr.
18 Thompson can transfer lots to landowners, there has to
19 be a final plat and surety posted and the street
20 constructed.

21 MR. BICKEL: That's correct. I understand
22 that.

23 MR. NOFFSINGER: So in order to fulfill that
24 development plan, that has to happen.

25 Here's what we're dealing with, and a

1 development plan may very well take care of it. This
2 is a commercial development, non-residential
3 development. You're not necessarily interested in
4 transferring land, especially the last piece. Now, I
5 know you have the lots that you want to transfer.
6 That's understandable and there will be some final
7 plats. What happens when we get to a point where
8 we've platted lots 1, 2, 3, 4 and 5 and then the
9 church says, we're going to build on 6, and there's
10 never a final plat? The danger is building permits
11 can be issued on preliminary plats. That building
12 permit could be issued for the church that's on the
13 very back lot and the street never be extended or
14 surety posted. It can just be sitting there on its
15 own lot that was never platted.

16 Now, if the property is rezoned subject to a
17 development plan, then prior to the issuance of the
18 building permit, there has to be a development plan
19 that is prepared and approved by the commission that
20 would address the street extending through. So if we
21 can agree on that, I think that's the way to get
22 around the phasing.

23 MR. BICKEL: I'm not sure. We have to agree
24 to a development plan. I'm not sure what all that
25 entails. What kind of restrictions that would impose.

1 What are you saying would have to be approved tonight
2 to satisfy your requirement of having a development
3 plan and be the key way of imposing restrictions?

4 MR. NOFFSINGER: Right now you have the
5 preliminary development plan, but the development on
6 the property would be subject to a final development
7 plan being submitted. In other words, you could not
8 move forward with developing properties until there's
9 a final development plan on the property. Building
10 permits would not be issued. What it is is a site
11 plan for the property.

12 MR. BICKEL: May I ask for the commission to
13 proceed with its agenda and give me time to meet with
14 my client to discuss this? Because I'm not in the
15 position to say yea or nay to that. Is that all
16 right?

17 CHAIRMAN: I have no problem with that.

18 Does anybody else?

19 MR. NOFFSINGER: There's not much left.

20 CHAIRMAN: Mr. Bickel, five minutes.

21 MR. BICKEL: Five minutes, yes, sir.

22 CHAIRMAN: We will recess for five minutes.

23 - - - - (OFF THE RECORD) - - - -

24 CHAIRMAN: Call the meeting back to order.

25 Mr. Bickel.

1 MR. BICKEL: Mr. Chairman, we have a solution
2 that is amenable to all. Well, at least we're willing
3 to accept. That is we will accept the rezoning
4 application as originally proposed by the Staff on its
5 conditions. So we will be asking for rezoning in
6 accordance with the conditions as written in the Staff
7 Recommendations.

8 CHAIRMAN: With that are there any further
9 questions?

10 (NO RESPONSE)

11 CHAIRMAN: If not the chair -- just a moment.
12 Mr. Noffsinger.

13 MR. NOFFSINGER: We're fine.

14 CHAIRMAN: No further questions.

15 MR. APPLEBY: I make a motion for approval
16 based on the Staff Recommendations, Conditions 1
17 through 3 and Findings of Fact 1 through 4.

18 CHAIRMAN: We've got a motion for approval by
19 Mr. Appleby.

20 MS. DIXON: Second.

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

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries unanimously.

25 Next item, please.

1 Related Items:

2 ITEM 5A

3 4300 Veach Road, 11.075 acres
4 Consider approval of preliminary development plan.
5 Applicant: River City Church, Inc.

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

10 CHAIRMAN: Is anybody representing the
11 applicant?

12 APPLICANT REP: Yes.

13 CHAIRMAN: Do we have any questions?

14 (NO RESPONSE).

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

17 MS. DIXON: Move to approve.

18 MS. MOORMAN: Second.

19 CHAIRMAN: Motion for approval by Ms. Dixon.
20 Second by Ms. Moorman. All in favor raise your right
21 hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Next item, please.

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MAJOR SUBDIVISIONS

1 ITEM 6

2 Highland Pointe, Unit 3, Lots 5, 8A-8H, 52.994 acres
3 Consider approval of major subdivision final plat.
4 Surety (Certificate of Deposit) posted: \$425,943.50
5 Applicant: Highland Pointe Holdings, LLC

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

10 CHAIRMAN: Anybody representing the applicant?

11 APPLICANT REP: Yes.

12 CHAIRMAN: Do we have any questions of
13 anybody?

14 (NO RESPONSE)

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

17 MR. HAYDEN: Make a motion for approval.

18 CHAIRMAN: Motion for approval by Mr. Hayden.

19 MR. MILLER: Second.

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

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Next item, please.

25 MR. NOFFSINGER: That's all.

 CHAIRMAN: The agenda is completed. Chair is

1 ready for a motion for adjournment.

2 MS. DIXON: Move to adjourn.

3 CHAIRMAN: Ms. Dixon for adjournment.

4 MR. HAYDEN: Second.

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

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: We are adjourned.

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

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and
4 for the State of Kentucky at Large, do hereby certify
5 that the foregoing Owensboro Metropolitan Planning
6 Commission meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 34 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 1st day of October, 2008.

18

19

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

22

COMMISSION EXPIRES: DECEMBER 19, 2010

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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