

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 OCTOBER 9, 2008

3 The Owensboro Metropolitan Planning Commission  
4 met in regular session at 5:30 p.m. on Thursday,  
5 October 9, 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 our October 9th Planning & Zoning meeting. Please  
23 stand while our invocation is given by Mr. Williams.

24 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

25 CHAIRMAN: Our first order of business is to  
consider the minutes from the September 11, 2008  
meeting. Are there any corrections, additions?

(NO RESPONSE)

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

1 MS. DIXON: Move to approve.

2 CHAIRMAN: Motion for approval by Ms. Dixon.

3 MR. HAYDEN: Second.

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

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries unanimously.

8 Next item, Mr. Noffsinger.

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10 CELLULAR TELECOMMUNICATIONS FACILITIES  
11 PER KRS 100.987

12 ITEM 2

13 895 Highway 140 West (Map CO-39)(Postponed at  
14 September 11, 2008, meeting)  
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. NOFFSINGER: Mr. Chairman, this  
20 application has been reviewed by the Planning Staff.  
21 It was postponed from the last meeting to review a  
22 packet submitted by an adjoining landowner, Mr. Larry  
23 Payne and his wife. It was also postponed for  
24 renotification to adjoining property owners as well as  
25 advertising in the Messenger-Inquirer.

So with that the applicant is here tonight to  
speak and answer any questions to the application as  
well as the Paynes are here and they may have some

1 questions as well.

2 CHAIRMAN: Mr. Poteat.

3 MR. SILVERT: State your name, please.

4 MR. POTEAT: Steve Poteat.

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

7 MR. POTEAT: Thank you.

8 Mr. Chairman and Board Members, I have with us  
9 tonight a couple that were here the first time. Traci  
10 Preble, the project manager, Bill Duffey, the design  
11 engineer.

12 We also have Mr. William Grigsby who is a  
13 structural engineer that will give some information on  
14 the structural integrity of the cell tower.

15 We also have coming a Mr. Marty Brown who is  
16 with Galloway Appraisers out of Louisville. You have,  
17 I believe, been provided with a report that he's done  
18 and his curriculum vitae and/or resume. He called and  
19 he did not get to leave Louisville until 4:30 our  
20 time. Be that as it is we will call him last if he  
21 gets here.

22 Couple of comments I would like to make first  
23 of all regarding a couple matters before I turn it  
24 over first to Mr. Duffey who will discuss the site  
25 location, things of that nature.

1           First of all, the issues have been raised  
2           concerning where the access is on that property. I  
3           want to address a couple of things on that before we  
4           turn it over to them.

5           Without conceding where access to this  
6           property is and that it's over on Mr. Payne or not on  
7           Mr. Payne, the fact of the matter is the Ratliff  
8           family have owned this farm since 1917. As long as  
9           Mr. Ratliff can remember, and he's 57, that's been the  
10          access to that farm.

11          Now, regardless of that fact and without  
12          conceding that Mr. Ratliff and his family does not  
13          have the right to use it, we have submitted another  
14          plan showing an alternate location for access into  
15          this site. I wanted to bring that to your attention  
16          and point that out to you. Now, again, we're not  
17          conceding that Mr. Ratliff doesn't have the right to  
18          use that access as it's been in existence for many,  
19          many years, but we do have an alternate location and  
20          an alternate access that has been submitted for  
21          approval as the access or an access to this property.

22          With that I want to state that, of course,  
23          this has been renoticed in the paper. I did want to  
24          address a couple of things regarding signage.

25          I think Mr. Howard will recall that I called

1 him after we put the signs up. The first time we had  
2 a storm come through and they were blown down. One  
3 was blown away. They were put back up and, yes, they  
4 were put back up probably the day we had our August  
5 meeting. To my knowledge they're still up and they've  
6 been up since then. That satisfies those  
7 requirements.

8 I'm going to now turn it over to Mr. Duffey  
9 and let him address some issues. After that if you  
10 have any questions of him, obviously you're more than  
11 welcome to ask any question. If nothing now, I'll  
12 turn it over to Mr. Duffey.

13 MR. DUFFY: My name is Bill Duffey, RF Design  
14 Engineer for Verizon Wireless.

15 (BILL DUFFEY SWORN BY ATTORNEY.)

16 MR. DUFFEY: I could take questions or I could  
17 just go into the two proposed locations which is in  
18 the packets that were submitted to you earlier today.

19 CHAIRMAN: At the present time I don't know if  
20 anybody has any questions. Why don't you go into your  
21 two locations, if you don't mind.

22 MR. DUFFEY: Mr. Payne found or knows of two  
23 locations where he believes we could locate our  
24 transmitters and provide the objective of the site  
25 from another location. He believes this would be a

1 better location.

2 In the letters and the propagation maps which  
3 have been submitted to you guys today, I state reasons  
4 why we can't go on either one of these towers.

5 On the first one I call it the Kenergy Tower  
6 because I have to refer to towers and the tower owner  
7 name is on the FCC license when I look up a tower, and  
8 that's who owns this tower. It's called Kenergy  
9 Tower.

10 ASR Number 1043552, this tower is just south  
11 of Daviess County. It's in McLean County, Kentucky.  
12 Verizon Wireless does not have a license to transmit  
13 in this county. So I can't transmit in this county  
14 because I don't have permission to do so from the FCC.  
15 Verizon Wireless does not have a license so I can't  
16 transmit from -- that rules out the Kenergy Tower.

17 The next tower is the New Cingular Wireless  
18 Tower. Again, that's the owner name on the FCC web  
19 page.

20 ASR Number 124413, this tower is further north  
21 than the desired location. Let me back up for a  
22 minute and state the objective of the site.

23 The objective of the site is to carry reliable  
24 coverage along 431 south from where we currently have  
25 coverage, which I call the Towne Square Mall site.

1 That may mean nothing to you, but for our engineers  
2 it's a location. I don't have an address in front of  
3 me tonight.

4 There's an existing site around Towne Square  
5 Mall and there's a significant gap in coverage south  
6 on 431 to the county line.

7 This tower at Utica is going to provide  
8 reliable coverage all the way to the McLean County  
9 line where I'm not allowed to transmit any further.

10 If I were to locate on the New Cingular  
11 Wireless Tower, it leaves about a one and third mile  
12 gap in coverage where I would not have what I deem or  
13 what the industry deems reliable coverage. So that  
14 tower is not desirable because it does not meet,  
15 again, it does not meet the objectives of the site.

16 That being said, I can answer any questions.

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

19 (NO RESPONSE)

20 CHAIRMAN: Anybody in the audience have any  
21 questions?

22 MR. PAYNE: Yes, I do.

23 MR. SILVERT: State your name, please.

24 MR. PAYNE: My name is Larry Payne.

25 (LARRY PAYNE SWORN BY ATTORNEY.)

1           MR. PAYNE: I guess just a couple of questions  
2 based on Mr. Duffey's information he provided here  
3 tonight.

4           Is it a major thing to obtain license to  
5 transmit into another county? A follow up to that, if  
6 your radio signals happen to cross the McLean County  
7 line, are you going to be fined for that? I'm not  
8 clear.

9           MR. DUFFEY: I can speak to it. I have  
10 limited knowledge of it.

11           A little bit of relevance for everybody  
12 because we all know that analog TV is getting ready to  
13 be shutdown. I think we've all seen the commercials.

14           How all that relates to what we're talking  
15 about here tonight and to address your question about  
16 licenses.

17           It was a big 700 megahertz auction. I don't  
18 know if you heard about it. It's called Auction 73  
19 for the people that are in the wireless business. The  
20 government sells off spectrum to wireless carriers I  
21 think to the tune of billions of dollars. I don't  
22 know what was paid. Verizon Wireless paid close to  
23 \$10 million for these licenses to transmit. So to  
24 answer that question, yes, it is a very big deal.  
25 Another company owns that right now. I believe their



1 name is Bluegrass Wireless or that's the name it's  
2 operating as.

3 To address the second question. If I do cross  
4 this line, which I do, we have to draw up what is  
5 called an Extension Agreement. It's a legal document  
6 that states -- I can paraphrase, but to the extent  
7 that signals cross into your area, not that my  
8 intention is to steal revenue or customers from your  
9 area, but the intention being that I am trying to  
10 provide coverage to my boundary line. This is drawn  
11 up and signed by various executives of both companies.  
12 With the clause in there being that either side can  
13 cancel the document, you know, say that this Extension  
14 Agreement is null and void and withdraw this document  
15 within, I believe, 90 days is standard language.

16 So, yes, I could invest the money and time and  
17 transmit in McLean County and 90 days after I turn it  
18 up I'll have to turn the site down and relocate  
19 somewhere else.

20 There again it wouldn't meet the objective of  
21 the site for that tower there.

22 MR. PAYNE: A follow up?

23 CHAIRMAN: Sure. Sort of address your  
24 question this way so we don't get across.

25 MR. PAYNE: Which way, I'm sorry?

1           CHAIRMAN: Address to me.

2           MR. PAYNE: Would we be safe in assuming that  
3 Verizon never intends to establish a business in  
4 McLean County?

5           The other question is that the Cingular, the  
6 New Cingular Tower that you mentioned is, I have  
7 included an RF map in the handout that you guys have  
8 had in your possession for about a month. They're  
9 able to obtain really excellent coverage in the Utica  
10 zip code area because of this tower. I was wondering  
11 why Verizon would anticipate them not being able to  
12 obtain similar coverage from this 285 foot tower.

13          CHAIRMAN: Did you understand the question?

14          MR. DUFFEY: Yes, I understand it.

15          State it again. I think it was more than one  
16 question.

17          MR. PAYNE: Yes. The first question was:  
18 Does Verizon not ever intend to transmit into McLean  
19 County?

20          MR. DUFFEY: Let me do that real quick.

21          I'm glad I talked about this earlier. The  
22 Auction 73 Verizon Wireless, and there's many  
23 different bands and spectrums. As we know the  
24 spectrum is the visible light that's in this room here  
25 to the radio waves that you listen to in your car. A

1 portion of that was sold off. Verizon bought a  
2 portion of that which is nationwide. All 48 states.

3 So the objective long term is, yes, we do some  
4 day intend to broadcast in McLean County, but at this  
5 time we do not have permission to.

6 Why can't I transmit the same way that someone  
7 else does?

8 MR. PAYNE: Actually the clarification of that  
9 question is that AT&T is experiencing real good  
10 performance off their tower. Basically provides  
11 excellent coverage into the area that you're wanting  
12 to provide and why could Verizon not take advantage of  
13 that.

14 MR. DUFFEY: I haven't seen these maps. I  
15 would have to look at them to see what they, what  
16 signal levels they deem reliable. They could show a  
17 miniscule amount of RF that would not, you could not  
18 reasonably make a telephone call off of.

19 My maps that I have before you, if you look in  
20 the legends of them and you understand what you're  
21 looking at, my cutoff is a negative 5 RSSI, is  
22 negative 5 BBM RSSI. What that means to you is, in  
23 the business if you do it long enough and you know  
24 these statistics, you know that the next 75 coverage  
25 is generally accepted to be good coverage in a

1 building like we have here today.

2           Looked at my phone and I didn't have any bars.  
3 I said, man, I'll need to comment to one of my  
4 counter-parts. We need to get an in-building coverage  
5 here. You maybe could make a phone call in here, but  
6 I would not deem it reliable because statistically  
7 you're not going to get successful in a phone call in  
8 this room.

9           The next level I believe on my map, neg 80.  
10 That's a little bit -- you can probably make a phone  
11 call inside or you may not be able to.

12           The next cutoff level or the next color  
13 further out from the towers is a neg 85. Generally  
14 that signal level is accepted for good coverage while  
15 you're driving in your car with the glass and the  
16 metal around the car and the human head. All these  
17 things, and the leaves from the trees, all these  
18 things that impede the free space laws from the  
19 antennas to the cell phone, all these things have to  
20 be considered and generally neg 85 is what I deem as  
21 good coverage.

22           Since, again, the objective of the site is to  
23 cover along that road to the county line, I use the  
24 neg 85 cutoff as my cutoff. I can't state what cutoff  
25 they have. Maybe they're saying that they only want

1 people to make phone calls while they're standing  
2 outside. That would be another level. That would be  
3 more, it would go further into McLean County than  
4 these maps before you show because you wouldn't have  
5 the metal and the glass from the car. That's  
6 basically what these maps before you show.

7 Did I answer that sufficiently?

8 CHAIRMAN: Does anyone else have any  
9 questions?

10 (NO RESPONSE)

11 CHAIRMAN: Does anybody on the commission have  
12 any questions?

13 MR. PAYNE: Mr. Kirkland, I have some  
14 information I'd like to cover. Are you asking for  
15 that at this point in time?

16 CHAIRMAN: No, sir.

17 Mr. Poteat, do you have any further  
18 information that you would want to provide at this  
19 time?

20 MR. POTEAT: As to this issue, no, but I do  
21 have other information we do want to provide, yes.

22 CHAIRMAN: I think what I'll do, if Mr. Payne  
23 seems to be the only member of the audience that has  
24 questions, I'll get him to come forward and we'll sort  
25 of summarize his questions so you at the time can

1 bring the appropriate, rather than bring people up and  
2 he may not have had a question that somebody may spend  
3 10 or 15 minutes covering. Is that okay with you,  
4 Mr. Poteat?

5 MR. POTEAT: That's fine.

6 CHAIRMAN: Mr. Payne.

7 MR. PAYNE: Mr. Kirkland, so that I can  
8 understand the process, I have probably 15 or 20  
9 minutes worth of material that I would like to cover.  
10 I would like to delve in with information that was  
11 submitted to this group last month and review that  
12 briefly. So I can understand the process, is it your  
13 intention to allow me to go through that?

14 CHAIRMAN: Mr. Payne, we have that  
15 information. I think each person on this commission,  
16 unless somebody has some individual questions, if you  
17 have any witnesses or anything that you want to bring,  
18 we'll be happy to hear from them. I think we're at  
19 the point now where it would be better if we were to  
20 cover the questions that you have while they have the  
21 witnesses to answer those questions.

22 MR. PAYNE: We have some additional  
23 information, new information we'd like to present here  
24 this evening. I'm going to ask Genie to pass this  
25 information out.

1           Before we do, I would like to ask this  
2           commission as well as Verizon Wireless if they feel  
3           like they're in compliance of Article 20, the Antenna  
4           Tower Regulation where it talks about the purpose of  
5           the regulation. That antennas and cell phone towers  
6           should further the health, safety and general welfare  
7           of the public.

8           Clearly in your handout we have provided  
9           signed petitions by all the adjacent landowners that  
10          says that it's not in their best interest.

11          Just one side bar here is that we would ask  
12          this commission to keep in mind that the only thing  
13          the adjacent landowners have asked, I mean they're not  
14          saying don't build the tower. They're simply saying  
15          by virtue of their signed petition to move it to the  
16          back. It's in everybody's best interest to do that.  
17          The reasons why it's in the best interest is that the  
18          landowner would be much better off to have that tower  
19          in the back because it preserves the value of this  
20          property for other purposes. It's certainly in an  
21          adjacent landowner's best interest because it mediates  
22          a devaluation factor of our property. Plus it  
23          alleviates some of our health concerns being located  
24          that close to the tower.

25          It's in Verizon's best interest because they

1 get the tower and the location that they say they  
2 need. Of course, we disagree that they have to have  
3 it in that location.

4           Primarily we would like to ask Verizon: Do  
5 they feel that they're in compliance for the first  
6 test of the regulation which says it should be in the  
7 best interest and the health, safety and general  
8 welfare. Will they not agree that it would be a  
9 win-win if they simply relocated that tower to the  
10 back. That would be my first question, Mr. Kirkland.

11           CHAIRMAN: I actually got that as two  
12 questions. One based on the health and welfare and  
13 one based on the movement of the tower. I broke it  
14 down into two questions.

15           MR. PAYNE: I think you're correct, sir.

16           CHAIRMAN: Do you want to give a list or is  
17 that pretty much it?

18           MR. PAYNE: No. I've got some other  
19 information I would like to go through.

20           CHAIRMAN: Why don't you do a summary of  
21 questions and then I'll bring them forward since we  
22 have all their people here to ask, if that would be  
23 okay with you.

24           MR. PAYNE: Basically, Mr. Kirkland, we would  
25 like to revisit, I'm not sure that I'm in compliance



1 with the way you want this thing to go this evening.  
2 We would like to revisit the signing issue and the  
3 notification issue as stipulated by Article 20-4 in  
4 the regulation.

5 I believe in September basically Verizon asked  
6 for a redo because we pointed out some weaknesses in  
7 their application in the way they've done the signage.  
8 Everybody is aware of that. I won't go back through  
9 it.

10 In your handout what you will find is three  
11 pictures. I'm going to suggest to the commission and  
12 to Verizon that they're still not in compliance with  
13 this requirement.

14 The top picture on this page was taken, and it  
15 shows the condition of this sign, from September 14th  
16 through October 8th.

17 The second picture was taken yesterday as  
18 well. It was taken later in the day and somebody  
19 found that it was appropriate to come out and sit this  
20 sign up.

21 Now, we've said all the way along that this  
22 sign really has never been posed.

23 If you look at the bottom picture, this sign  
24 is not even visible from the road. It can't be read.  
25 It never could have been read.

1           That's one of the issues that I have to put  
2 forward tonight.

3           Really they have not complied with the spirit  
4 and intent of the regulation. I'm going to suggest to  
5 this commission that they never intended to.

6           Mr. Duffey testified awhile ago extensively  
7 that they could not co-locate their equipment on these  
8 various towers. We've talked about the Kenenergy tower.  
9 We've talked about the AT&T tower. Obviously AT&T is  
10 by virtue of Page 9, in the addendum that you've had  
11 in your possession for a month, shows that they get  
12 excellent coverage in the Utica area.

13           In addition, we found a third tower. This  
14 third tower is owned by Mr. Norris Harris. It looks  
15 like this. I apologize for the quality of that  
16 picture. It's due to my camera and my printer  
17 primarily.

18           This is a guy tower. It's located exactly one  
19 mile from the center of Utica. It's 190 foot tall.  
20 It sits on a ground elevation of 530 feet. It has an  
21 overall height of 720 feet, which is much higher than  
22 what Verizon says they need on the Highway 140 West  
23 location.

24           CHAIRMAN: Excuse me, you're listing Norris  
25 Harris as the owner. Wouldn't this be on Norris

1 Harris's property and would somebody else be the owner  
2 or is this his tower?

3 MR. PAYNE: Actually, as I understand it, is  
4 that this tower has been no longer in use and has not  
5 been used and it has reverted to Mr. Norris's  
6 ownership.

7 CHAIRMAN: So it was a communication tower?

8 MR. PAYNE: It was indeed a communication  
9 tower.

10 CHAIRMAN: But is no longer being used?

11 MR. PAYNE: Is no longer being used.

12 It has another feature. It has power within  
13 150 feet of that tower. Mr. Harris is really  
14 interested and leasing this spot and/or this tower for  
15 the purposes of locating a cellular antenna on it.

16 I assume the commission has had a chance to  
17 look through the information we submitted. In that I  
18 referenced the minutes of the meeting of August 12,  
19 2004. Primarily a conversation between a Mr. Pike and  
20 Mr. Appleby here on the commission. I won't go into  
21 that again. The only thing I'm saying is that here is  
22 another opportunity for this commission to reinforce  
23 their regulation as far as collocation. I know this  
24 commission is interested in that. We would ask you to  
25 consider it.

1           The other new item that's in your handout is  
2           titled Collection Tower Data. I'm saying that this is  
3           misinformation that we've seen presented here in the  
4           last couple of months.

5           Verizon testified in August and they kept  
6           talking repeatedly, and in the middle of that you'll  
7           see an excerpt of the minutes out of the meeting out  
8           of August where they talk about they just couldn't  
9           make a 70 foot tower work. They barely could make a  
10          108 foot tower work.

11          It was confusing to me because I couldn't  
12          figure out where they were coming up with these  
13          numbers because obviously the Kenergy tower and the  
14          AT&T tower are much taller than that.

15          So what I did on Pages 2 and 3, in the middle  
16          of that page, there's a scan image. This is a  
17          document that we obtained directly from the record at  
18          the OMPC.

19          You'll notice, and this is information that  
20          Verizon submitted to the Staff. You'll notice it's  
21          kind of small and hard to read. I apologize for that.  
22          It was submitted on July 23, 2008.

23          There's a bracketed box here and it has a  
24          Kenergy tower listed on Page 2 and a bracket box on  
25          the other page is a Cingular tower. You'll notice out

1 to the far right-hand column there's a number. It  
2 says, 65.5. On Page 3 it says, 86.9. Now, if you  
3 stop there, which it appears that Verizon did, we can  
4 conclude that that is 65.5 feet and 86.9 feet  
5 respectively.

6 Had they went a little bit deeper into the web  
7 site of the FCC, on Page 5 and 6 of this handout  
8 you'll see that I did. I printed it out on 9/11/2008.  
9 Again, the bracketed box is in the center of the page  
10 and it shows Kenergy Corporation. This gives a little  
11 bit more detail. The 65.5 is meters. Big difference  
12 between meters and feet. If you do the math  
13 calculation, which I have a calculator that does that.  
14 I don't do it by hand. 65.5 meters equals 213 feet.  
15 So the overall height of the Kenergy tower is 725  
16 feet. The Cingular tower says it's 86.9 meters.  
17 That's 285 feet.

18 Finally I understood how that Verizon was  
19 throwing numbers out like 70 feet, 100 feet to this  
20 commission. Certainly no one thinks that you can put  
21 up a cell tower at 70 feet and expect it to work, but  
22 the information was provided to this commission  
23 suggesting that what we were recommending as far as  
24 collocation was ridiculous.

25 I mean this is supposed to be an engineering

1 firm. I think it leaves a little bit to be desired.

2 I want to point out one last thing before we  
3 move away from this document. Again, I call your  
4 attention that this research was done by Verizon on  
5 July 23, 2008. What's significant about that?

6 Well, what's significant is that by that time  
7 they had already core drilled the site. They had  
8 already entered into some kind of agreement with the  
9 landowner to lease the property on Highway 140 West.  
10 They had applied to the FCC. They may have gotten  
11 relation from the FCC by this time. They have done  
12 some kind of a site plan. What does that mean?

13 I suggest to you that it means that they never  
14 intended to seriously consider co-locating their  
15 equipment because they didn't do the search for the  
16 other site until the last of July. I think it goes to  
17 their intent.

18 CHAIRMAN: Let me just review the way I took  
19 your questions.

20 Question number one was on the health and  
21 welfare of the public.

22 Question two would be the movement of the  
23 tower to the back of the land.

24 Question three was the sign issue, which the  
25 Staff will cover. Then the sub question off that was

1 about the application process.

2 The fourth question was about the Norris, what  
3 we'll refer to as the Norris Harris location. Would  
4 that be correct?

5 MR. PAYNE: That's correct.

6 Fifth question was about the misinterpreting  
7 of the height of the towers and the decimal that they  
8 gave about the 70 foot when it was actually much  
9 higher than that because they failed to convert it  
10 from meters to feet.

11 CHAIRMAN: Let me ask you to be seated.

12 Mr. Poteat, why don't you take the podium  
13 there and assign your -- would you want me to repeat  
14 those questions or do you pretty much have them?

15 MR. POTEAT: I'm not sure that I have them and  
16 I'm not sure that I ever will.

17 I want to point out a couple of things. First  
18 of all I would like to see a copy of what he filed. I  
19 have no idea what he's talking about.

20 (MR. POTEAT IS HANDED DOCUMENT.)

21 CHAIRMAN: Mr. Poteat, why don't you turn that  
22 over to whichever needs to see that and lets proceed  
23 with who would be --

24 MR. POTEAT: I wanted to comment on a couple  
25 of points on the first question, which I think he

1 indicated failure to follow Article 20 and the purpose  
2 of the statute or the regulation.

3 The purpose is furthering the public health,  
4 safety and general welfare, yes, that is part of it,  
5 but you can't just come in and say, well, the reason  
6 it doesn't is because we don't want it there. That's  
7 basically what they're doing. They've offered nothing  
8 to show that this tower in any way will affect the  
9 public health, safety or general welfare. Nothing.  
10 They're saying, we don't want it there. A lot of  
11 people don't want it there.

12 We'll have Mr. Brown here on the values.  
13 We'll ask him to answer those questions.

14 I think the first one I want is Mr. Duffey  
15 back up here to answer some questions relating to the  
16 Norris site, if he knows. I certainly don't know  
17 anything about that tower other than what we've got  
18 here.

19 MR. DUFFEY: First thing I wanted to state  
20 before it leaves me, we have not filed with the FCC,  
21 and I don't know where you get this information. The  
22 process doesn't work like that. I don't know. I can  
23 come back to this later. It all goes into if the  
24 tower is filed with the FAA, it has an FAA study  
25 number done. It has a determination done whether it



1 is or whether it is not a danger to aircraft. Once  
2 that is done, another study is done. I believe it's  
3 called a topo air. Our regulatory people do it. I'm  
4 not into the rules. I'm vaguely familiar with them.  
5 It basically has to do with the approach and the  
6 descent of airplanes to runways. Will this tower  
7 interfere with these airplanes while they're in what's  
8 called clean cockpit. You're not supposed to  
9 interfere with them because there's a danger of making  
10 them crash.

11 How it works is, my understanding of how it  
12 works is the FAA study is determined, you're granted a  
13 certain height. The FAA says it's safe to this  
14 height. You need to put a light on top or you need to  
15 paint it and other criteria. After that is done then  
16 it is filed with the FCC. This tower as we proposed  
17 it is not needing to be filed with the FAA so  
18 therefore it will not be filed with the FCC. I don't  
19 know -- I'm confused where you're coming up with this  
20 information.

21 The next point, this tower. I know from the  
22 picture that you said it was a mile south. I'm glad I  
23 spoke earlier about the license in the county line. I  
24 can speak a little bit further about.

25 I stated earlier that the objective of this

1 site is to carry a phone call reliably on 431 south to  
2 the county line. Also in my statements and every RF  
3 engineer wants, every cellular RF engineer wants good  
4 overlapping coverage. If I were to move a mile south,  
5 that would put this tower outside of my search area.  
6 Therefore, I wouldn't be interested in the tower. It  
7 would be south there. Not only would I not be  
8 interested in it being that much further south, it  
9 would further encroach on my neighbors to the south,  
10 Bluegrass Cellular, and it would be more of an  
11 aggressive approach to them. They would take it like  
12 I was trying to steal more revenue because it's not  
13 really responsible design. If you are doing the work  
14 that I do, you would understand that this is generally  
15 accepted practices. You don't build these towers  
16 generally this close to a line, a neighbor line. It's  
17 not something that neighbors do to each other.

18 Now, I forget another point. What was another  
19 point?

20 CHAIRMAN: Movement of the tower to the back  
21 of the land. I believe we've covered that, but would  
22 you revisit that for us.

23 MR. DUFFEY: I kind of talked about that in my  
24 statements just a second ago.

25 If I were to move it further anywhere, the

1 surveys that I have and that I can look at sitting at  
2 my desk just north of Indianapolis where I work, it  
3 shows that I am putting the tower on the highest point  
4 on this property. That being said, I have a couple of  
5 considerations.

6 Yes, I can move the tower. I can move the  
7 tower -- I've already moved the tower one time from  
8 another property owner. When we went through the  
9 state historical preservation officer, he found a  
10 cemetery on this person's property. So we said we  
11 can't do this. This is not something that we want to  
12 enter into. So we started approaching this current  
13 landowner.

14 So, yes, to answer the question, I can move  
15 the tower, but there are consequences to moving that.  
16 I believe everyone will think it's undesirable. It's  
17 my intention to not cause an undesirable impact to the  
18 neighborhood.

19 Like I said, I'm putting the tower on the  
20 highest point on the property.

21 CHAIRMAN: What would be the consequences that  
22 maybe you're referring to that maybe we're not -- if  
23 you move the tower.

24 MR. DUFFEY: To get the overall height that  
25 Mr. Payne is referring to, which is my objective on

1 building it, give or take a foot I'm building the  
2 tower as tall as I can without having a light on top  
3 and without having the FAA study done and without all  
4 these other restrictions. I'm trying to get the  
5 maximum height that I can for this tower. That's my  
6 objective.

7           If I were to lose elevation, to get that same  
8 objective I would have to put a light on top, which  
9 would be blinking on Mr. Payne's property, and I don't  
10 want that. Generally that is resisted by adjacent  
11 landowners. I've got one blinking in my front door,  
12 which I stated back in August. In the mornings I walk  
13 with out with the dog and I see a blinking red light.  
14 It's annoying, but I know that I can use my phone if  
15 something were to happen with me on my walk. It's  
16 something that I don't want to do to a neighborhood if  
17 I can keep from doing it to a neighborhood. I'm  
18 trying to be considerate here.

19           You may not know this, but these towers that  
20 are lit are a great source of controversy by Avion  
21 groups. There are some studies out and there's  
22 pending legislation about blinking red lights on  
23 towers cause the death of migratory birds. It's going  
24 to impact this business like you would not believe.  
25 It is something that I'm not trying to do unless I

1 absolutely have to. If you haven't heard about it,  
2 I'm sure you will hear about it more.

3 So I'll kill migratory birds. I have a light  
4 on top, which is undesirable to the neighbors. Have  
5 to be filed and studied by the FAA and an ASR number,  
6 which I cited from the other two towers earlier.

7 CHAIRMAN: Are you going to, maybe you did  
8 address and I missed it, but the height from meters to  
9 feet?

10 MR. DUFFEY: I'm very well aware that a meter  
11 is 3.28 feet. I cited those ASR's earlier because I  
12 can pull my laptop out and show these documents to  
13 you. I don't know where he's getting this from, but  
14 when I cite these ASR's and you go to this web page  
15 that I do and will require to go to to find out about  
16 these towers, it has two four different values for  
17 height on this from.

18 The first value is -- I don't know where you  
19 start. One value on the form is a total overall with  
20 pertinence. To define that, that is the height of the  
21 supported height of the tower plus any lightning rod.  
22 The lightning rod is an impertinence.

23 The second value on that form is a supported  
24 height or a -- I forget the exact word, but it's a  
25 little bit less and it's just the other number minus

1 the length of the impertinence.

2 The other two values on the form one of them  
3 is the ground elevation, which all of these are in  
4 meters. Then the last value on this form is a  
5 supported height plus the impertinence, plus the  
6 ground elevation all together. So I'm very well  
7 aware.

8 Those maps you have before you, how I plotted  
9 those and how it's responsible to plot these when I go  
10 to investigate that this is a viable candidate, you  
11 can't mount antennas on the impertinence so I don't  
12 add that value into my antennas that I would be  
13 promulgated from.

14 Generally if a tower is not transmitting  
15 somebody most of the time is up there, unless there's  
16 not, but generally it's accepted that you take the  
17 supported height that I referred to just a second ago,  
18 subtract about 20 feet, because an average antenna  
19 anywhere between 6 and 8 foot in height. Keep a  
20 separation tip to tip. Generally like ten feet in the  
21 business, but it may be a little bit more aggressive.

22 So I take the top of the supported height, I  
23 subtract 20 feet and that's how you have the plat you  
24 have before you this evening.

25 I did all of that. I don't know how and why

1       you think I didn't do this or where all this came  
2       from. I don't appreciate it. I know what I'm talking  
3       about. I do this stuff every day for a living so it's  
4       pretty insulting. I'll move past that personal  
5       attack.

6                I'll take any other questions now.

7                MR. APPLEBY: I think his question was, and it  
8       was in the testimony from the meeting of August 14th,  
9       is, maybe you misspoke, but you at this point said the  
10      70 foot tall tower isn't going to work.

11              MR. DUFFEY: I'll say that again. A 70 foot  
12      tall tower will not work.

13              MR. APPLEBY: I think his argument was that  
14      that Kenergy tower is not a 70 foot tower. It was  
15      65.5 meters. Did I understand that correctly?

16              MR. PAYNE: That's correct.

17              MR. DUFFY: Right. 150 foot tower may not  
18      work. I'm not trying to get a 150 foot tower. I'm  
19      trying to get a 180 foot tower. I think I was  
20      misunderstood when I --

21              CHAIRMAN: Would you want to see a copy of  
22      this?

23              MR. DUFFEY: I would like to see the coverage.

24              CHAIRMAN: Why don't you come up here and you  
25      can get mine.

1           MR. DUFFEY: Sure.

2           CHAIRMAN: Exhibit 2 is what you're referring  
3 to, Mr. Appleby?

4           MR. APPLEBY: Yes. This is what he gave us  
5 tonight where he quoted that meeting. I think we've  
6 got confusion between the two of them.

7           MR. DUFFEY: If I remember while I'm reading  
8 this, if I remember how things happened, I believe at  
9 the meeting I found out about a 70 foot tall or these  
10 other two towers. Before the meeting in August, I had  
11 no knowledge of these towers because they were outside  
12 of my search range and therefore I didn't investigate  
13 them. Am I correct? These towers were news to me  
14 that last meeting. So I wouldn't have had time to  
15 investigate or do my normal due diligence. That's how  
16 we got the maps before you this evening. I just  
17 produced those in the last 30 days because that's when  
18 I was made aware of these two towers. So plainly this  
19 was talking about in generalities, not referring to  
20 these two towers specifically.

21           CHAIRMAN: The other question was the sign  
22 issue which I think Mr. Howard would probably be more  
23 capable of answering that.

24           Am I correct, Mr. Noffsinger?

25           Mr. Howard.



1 MR. SILVERT: State your name, please.

2 MR. HOWARD: Brian Howard.

3 (BRIAN HOWARD SWORN BY ATTORNEY.)

4 MR. HOWARD: The zoning ordinance regulations  
5 require basically that two signs be posted on the  
6 property. One is a sign to be posted at the location  
7 where the tower will be constructed. The other is  
8 closest to the intersecting street or the nearest  
9 street.

10 I didn't see the pictures that were submitted  
11 tonight, as far as the one that might not have been  
12 seen.

13 CHAIRMAN: Mr. Miller, would you mind giving  
14 him yours.

15 MR. HOWARD: He mentioned the one that was  
16 back where the actual tower would be. Mr. Poteat  
17 could probably speak better to which one was at which  
18 location.

19 (MR. HOWARD REVIEWS PHOTOGRAPHS.)

20 CHAIRMAN: Please return to the mike.

21 MR. HOWARD: Actually, I guess, these  
22 pictures, looks like these were all or all these were  
23 taken at the nearest intersecting street.

24 I understood the statement that one could not  
25 be seen from the road. I'm assuming it might be the

1 one posted at the back of the property. Mr. Poteat  
2 could probably answer as well where they were posted.

3 MR. POTEAT: The one there is on the disputed  
4 drive. When they blew down and that one was put back  
5 up, the dispute had already arisen regarding whether  
6 the access was located on Mr. Ratliff's property or  
7 Mr. Payne's property. We moved it down the hill off  
8 the backside and moved it down to that corner. It was  
9 the only place we could get.

10 The other one is back in the middle of the  
11 bean field. It was back in the middle of the bean  
12 field. The beans probably the last time I saw them  
13 were that tall. They're probably not now.

14 CHAIRMAN: Mr. Noffsinger, have we got an  
15 issue here? In the spirit of the regulation, the sign  
16 has been posted. It appears that mother nature or  
17 others has had havoc on this sign.

18 MR. NOFFSINGER: Mr. Chairman, I think that's  
19 certainly possible. Perhaps the question is has  
20 proper notification or notice been served. I think  
21 that is a legal question which should be addressed by  
22 counsel.

23 CHAIRMAN: Mr. Silvert.

24 MR. SILVERT: Well, it could be a question of  
25 best evidence too. We don't know how long the sign

1 was in this condition either. There's no testimony to  
2 that. We do have testimony the sign was placed. That  
3 would be a question of whether you allow the evidence  
4 that that sign was actually placed. We take it for  
5 what it is.

6 CHAIRMAN: Would there be any question in your  
7 mind, Mr. Silvert, whether the sign was placed or not?

8 MR. SILVERT: The testimony is that the sign  
9 was placed. They've taken an oath to tell the truth.

10 CHAIRMAN: Thank you.

11 Mr. Poteat.

12 MR. POTEAT: Again for the second time, they  
13 were placed at a different location earlier, but  
14 evidently they couldn't be seen there either because  
15 nobody saw them.

16 Again, unless you go back in the middle of the  
17 bean field, you're not going to see the other sign.  
18 Now, I haven't been back in there lately.

19 CHAIRMAN: Refresh my memory. Why was it put  
20 back in the middle of the bean field?

21 MR. POTEAT: Because that's where the site  
22 location is.

23 CHAIRMAN: It was right in the site location,  
24 I'm sorry.

25 MR. POTEAT: Right now it's covered with

1 beans.

2 CHAIRMAN: But the sign was placed there.

3 MR. POTEAT: The sign was placed back there.

4 Whether there's beans there now or not, I don't know.

5 I don't know whether the sign is there or not. I

6 haven't been back out there to look.

7 As far as somebody picking the sign up

8 yesterday or the day before, I don't know. I don't

9 make a habit of driving out there every day to take a

10 look and see. I don't think that's a responsibility.

11 I think Mr. Silvert will agree that the

12 purpose of the signs, the newspaper ad, of certified

13 mails to all adjoining landowners is notification so

14 that people will have the opportunity to come in and

15 speak their mind concerning this. That's happened.

16 Mr. Payne, of course, I think is the only one

17 here tonight for that, but everyone else has had

18 notice. It was in the paper. That's the purpose of

19 those. I don't think Mr. Silvert would disagree that

20 whatever has happened now the intent, and he'll know

21 the case law as well as anyone else. The notice

22 requirement has been met. We believe it has been.

23 If we can go on to a couple of other

24 questions. I know the Norris cell tower site came up.

25 CHAIRMAN: Yes. I thought the other gentleman

1 covered that. If you would like to elaborate on it.

2 MR. POTEAT: Well, the structural engineer  
3 that has some comments on that particular Norris  
4 tower.

5 CHAIRMAN: Very good.

6 MR. SILVERT: State your name, please.

7 MR. GRIGSBY: William E. Grigsby.

8 (WILLIAM E. GRIGSBY SWORN BY ATTORNEY.)

9 MR. GRIGSBY: Granted this is not a great  
10 quality picture and I'm not trying to make any  
11 comments on anybody's photographic abilities.

12 You can see at the top of this that it's got a  
13 whip antenna on it.

14 CHAIRMAN: Just describe it.

15 MR. GRIGSBY: It's a short-wave antenna. Like  
16 a police radio.

17 CHAIRMAN: Okay. I got it.

18 MR. GRIGSBY: A police radio, a fire radio,  
19 Kentucky Utilities radio. It's my experience that,  
20 one, 190 feet is very short for a guide tower. So  
21 that kind of set off alarm bells for me to begin with,  
22 but it's not unusual for a radio, for a short wave  
23 radio antenna tower.

24 It's my experience that trying to put, it's my  
25 experience that small radio, short wave radio antenna

1 towers of this type cannot carry the weight and the  
2 mass of cellular towers.

3 We've looked into it on several projects and  
4 it's just not feasible. You basically have to take  
5 that tower down and put another tower up.

6 CHAIRMAN: Because of?

7 MR. GRIGSBY: It's just not structurally  
8 capable of carrying the loads.

9 CHAIRMAN: Does anybody have any questions of  
10 our engineer?

11 (NO RESPONSE)

12 CHAIRMAN: All right, sir. Thank you very  
13 much.

14 Does anybody on the commission have any  
15 questions at this time?

16 (NO RESPONSE)

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

19 MR. PAYNE: Yes, I do, sir.

20 Really I would like to ask Mr. Kirkland a  
21 question about oaths for a moment.

22 Does the commission recognize the oath I took  
23 as being on par and valid as any other oath that's  
24 given?

25 CHAIRMAN: I think that question would be

1 Mr. Silvert.

2 MR. SILVERT: Sir, the commission has to  
3 evaluate the evidence. You might have competing  
4 points of view on that evidence. All parties have  
5 taken oaths. We assume that they're telling the  
6 truth. They might have competing points of view.  
7 It's this commission's duty to way the evidence one  
8 way or the other just like any try or fact does.

9 So, yes, to answer your question. Of course,  
10 the commission recognizes the oath that you took as  
11 well as any other.

12 If the question is whether or not this sign  
13 was posted in compliance with the ordinance, I'm  
14 reading the ordinance right now. I don't want to get  
15 into the legal questions of whether or not something  
16 was done properly or improperly, but if I were to  
17 advise my client right now, was this sign posted in  
18 good faith and in accordance with the ordinance, my  
19 opinion would be, yes.

20 MR. PAYNE: Thank you, sir.

21 CHAIRMAN: Mr. Payne, were you trying to imply  
22 that somebody on Mr. Poteat's side was not truthful?

23 MR. PAYNE: No, sir.

24 CHAIRMAN: I just wanted to clear that up. It  
25 was confusing in my mind.

1           MR. PAYNE: All I'm saying is that Mr. Poteat  
2 has given some statements that are in direct  
3 contradiction of things that I'm saying, but I heard  
4 reference. Well --

5           CHAIRMAN: For instance?

6           MR. PAYNE: About the signage, for example.  
7 Mr. Poteat said that the sign was -- earlier in the  
8 evening he said the sign was put up well prior and  
9 within the 14 day time frame. I live out there. I  
10 travel the road every day. The only sign that's ever  
11 been up, the only sign that was ever attempted to be  
12 posted is the one in the picture that I gave you.

13          CHAIRMAN: Are you saying that Mr. Poteat did  
14 not put the one in the bean field?

15          MR. PAYNE: I'm saying I'm sure Mr. Poteat  
16 personally did not put any signs up there. I'm saying  
17 that there is not a sign in the bean field and never  
18 has been.

19          CHAIRMAN: Just a moment.

20          Mr. Poteat.

21          MR. POTEAT: First of all I take exception to  
22 that. I did put the signs up.

23          MR. PAYNE: I apologize then.

24          MR. POTEAT: I put the signs up.

25          There was a sign out in the bean field.



1       Unfortunately, and I think I sent Mr. Howard prints of  
2       those pictures showing. If he doesn't have them, I've  
3       got them on my computer at the office and I can send  
4       them to you tonight.

5               CHAIRMAN: Mr. Poteat, just one question from  
6       me personally. You said, and to make sure that I'm  
7       exactly clear on this. You said you put the signs,  
8       meaning both signs?

9               MR. POTEAT: I put the signs up.

10              CHAIRMAN: The one in the bean field, you  
11       personally put that sign up?

12              MR. POTEAT: Yes. There was another sign that  
13       was put up on top of the hill trying to keep it off,  
14       after the issue came up, trying to keep it off of  
15       anything that might be his and trying to get it to  
16       where it could be seen.

17              Now, probably the day or the day after they  
18       were put up is the day we had that first storm and  
19       that's when I called Mr. Howard and told him the signs  
20       were gone. I called him shortly after that. They  
21       were blown down. They were blown somewhere. I put  
22       them back up on the 14th.

23              CHAIRMAN: Personally?

24              MR. POTEAT: Personally.

25              CHAIRMAN: Both locations?

1 MR. POTEAT: Both locations.

2 CHAIRMAN: Thank you.

3 Based on Mr. Silvert's advice to the  
4 commission, I will say that the sign issue is pretty  
5 much squared away in my mind.

6 I think at this point unless we have any  
7 further questions, I think the chair is ready to  
8 entertain a motion.

9 MR. PAYNE: One more point. One more,  
10 Mr. Kirkland. Two minutes.

11 Mr. Duffey said that the Kenergy tower nor the  
12 AT&T tower showed up in his search when he was  
13 preparing his study. Well, they done a study on  
14 7/23/2008 and the document they put in the record at  
15 the OMPC Staff office clearly shows that they did find  
16 these towers. Thank you very much.

17 CHAIRMAN: Mr. Duffey, I don't think I can let  
18 that one rest.

19 MR. DUFFEY: I think it all has to do with the  
20 amount of radius and what was in my search ring. I  
21 could put the 1A certified ordinance for the lumpus  
22 tower and do a search ring for ten miles and I could  
23 come up with all kinds of towers. I've already spoken  
24 to it quite --

25 CHAIRMAN: Excuse me, Mr. Duffey, for

1 interrupting you. I think his question was, he's  
2 questioning whether you did or did not find these  
3 towers in your search.

4 MR. DUFFEY: And that's what I'm defining. My  
5 search ring is an area that -- no, it's not in my  
6 search ring. But since he brought them up at the last  
7 meeting in August, to show that I'm a good neighbor  
8 and I'm trying to do and maybe this will work from  
9 this other tower, I went back and I looked at these  
10 and I drafted the documents that are before you this  
11 evening. I went in to find out how tall the towers  
12 are and I made my propagation maps from that. After  
13 he said, why can't you use this tower, I was just  
14 stating what I already knew. That anything outside of  
15 this search ring simply was not going to meet the  
16 objectives of the site.

17 CHAIRMAN: It was called into question and I  
18 felt like you needed to respond.

19 MR. DUFFEY: That's fine. Thank you.

20 CHAIRMAN: At this point the chair would be  
21 ready to entertain a motion or any questions from the  
22 commission.

23 MR. APPLEBY: Mr. Chairman, to be clear. The  
24 Staff Report that we were given for their meeting, in  
25 their findings they have stated that the application

1 is complete with all materials and in accordance with  
2 OMPC Ordinance; Staff feels that they're in compliance  
3 with all design criteria of the OMPC Ordinance; and by  
4 providing the opportunity for three service providers  
5 on this tower, we are promoting the goal of the  
6 Comprehensive Plan to encourage collocation; is that  
7 correct? Is that where the Staff is on this tonight  
8 after all the other information?

9 MR. NOFFSINGER: That is correct. I believe  
10 what has been done here over the past several months  
11 by the applicant and those that had questions  
12 regarding the application is to determine if there is  
13 another feasible location where they can locate. I  
14 think Mr. Payne has told you he believes there is.  
15 Mr. Duffey and those from Verizon have given you  
16 information as to why that's not the case. Keep in  
17 mind there is a waiver as a part of this application  
18 which waives the distance, the setback distance of the  
19 tower from the lease line that it's on that you are to  
20 consider.

21 Just a point of clarification. The  
22 information that Verizon submitted in the application  
23 that included the Kenergy tower was a requirement of  
24 the application to show other cell towers within the  
25 jurisdiction of Owensboro Metropolitan Planning

1 Commission. While that tower did show up within the  
2 jurisdiction of Daviess County, that does not mean  
3 that it is located within their search ring. I think  
4 what Mr. Duffey is saying here is that they're limited  
5 by their search ring that they define and the towers  
6 that are located within that search ring. I felt like  
7 I needed to expand on that.

8 Mr. Duffey, am I clear?

9 He's shaking his head. I wanted to make sure  
10 we all understand what is meant by that. Staff does  
11 stand by the Staff Report and also call your attention  
12 to the variance on the setback.

13 CHAIRMAN: Should we have Mr. Duffey come to  
14 the mike just to say that he agreed to that statement  
15 by you?

16 MR. NOFFSINGER: That would be good.

17 CHAIRMAN: Mr. Duffey, would you just  
18 acknowledge that you're aware of the statement that  
19 Mr. Noffsinger just made and that it is correct.

20 MR. DUFFY: Yes, it is correct.

21 CHAIRMAN: Thank you, Mr. Duffey.

22 Mr. Appleby.

23 MR. APPLEBY: I'm going to make a motion for  
24 approval based on the Staff's findings.

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

1 Mr. Appleby based upon the Staff's findings.

2 MS. DIXON: Second.

3 CHAIRMAN: Second by Ms. Dixon. 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 Related Items:

9 ITEM 2A

10 895 Highway 140 West, 0.230 acres (Postponed at  
11 September 11, 2008 meeting)

12 Consider approval of minor subdivision plat.

13 Applicant: Larry A. Ratliff

14 MR. NOFFSINGER: Mr. Chairman, this  
15 application plat has been reviewed by the Planning  
16 Staff and Engineering Staff. It's found to be in  
17 order. It comes to you as an exception because it  
18 creates a lot that does not meet the minimum  
19 requirements of the zoning ordinance or subdivision  
20 regulations. However, it is a lease lot for a  
21 cellular antenna communication tower and its approval  
22 would be consistent with other leased lots in the  
23 community that have been approved for cellular  
24 telecommunication facilities.

25 CHAIRMAN: Obviously we have the applicant  
represented here. Do we have any questions?

1 (NO RESPONSE)

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

4 MR. PAYNE: I have a question, Mr. Kirkland.

5 CHAIRMAN: Yes, sir.

6 MR. PAYNE: I have not had an opportunity to  
7 see the revised plat drawing where it shows that it's  
8 not infringing on our right-of-way. I would like to  
9 see that.

10 (MR. POTEAT HANDS MR. PAYNE DOCUMENT.)

11 MR. PAYNE: Thank you very much.

12 CHAIRMAN: If there are no further questions,  
13 the chair is ready for a motion.

14 MR. APPLEBY: Motion for approval.

15 CHAIRMAN: Motion for approval by Mr. Appleby.

16 MS. MOORMAN: Second.

17 CHAIRMAN: Second by Ms. Moorman. All in  
18 favor raise your right hand.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries unanimously.

21 Next item, please.

22 -----

23 ZONING CHANGES

24 ITEM 3

25 9210 Highway 144, 0.82 acres

1 Consider zoning change: From A-U Urban Agriculture to  
2 B-4 General Business  
3 Applicant: East Daviess County Water Association

4 MR. HOWARD: I'll note that on all the  
5 rezoning that all the recommendations made by the  
6 commission tonight will become final 21 days after the  
7 meeting, unless an appeal is filed by a person, the  
8 applicant or the local jurisdiction to hear that  
9 rezoning case.

10 PLANNING STAFF RECOMMENDATIONS

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

15 FINDINGS OF FACT

16 1. The subject property is located in a Rural  
17 Community Plan Area where general business uses are  
18 appropriate in limited locations;

19 2. The continued use of the property by the  
20 East Daviess County Water Association for offices will  
21 be nonresidential in nature;

22 3. The proposed rezoning is a logical  
23 expansion of existing B-4 General Business zoning  
24 located immediately east of the subject property;

25 4. The rezoning of the subject property to  
B-4 General Business will bring the existing use on



1 the property into compliance with zoning ordinance  
2 standards and will allow the two tracts owned by the  
3 applicant to be consolidated; and,

4 5. At 0.82 acres in size, the expansion of a  
5 General Business zone should not significantly  
6 increase the extent of the zone in the vicinity of the  
7 expansion and should not overburden the capacity of  
8 roadways and other necessary urban services that are  
9 available in the affected area.

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

12 CHAIRMAN: Is there anybody here representing  
13 the applicant?

14 APPLICANT REP: Yes.

15 CHAIRMAN: Does anybody have any questions of  
16 the applicant?

17 (NO RESPONSE)

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

20 MR. HAYDEN: Make a motion for approval with  
21 Staff Recommendations and Findings of Fact 1 through  
22 5.

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

25 MR. MILLER: Second.

1                   CHAIRMAN:  Second by Mr. Miller.  All in favor  
2 raise your right hand.

3                   (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4                   CHAIRMAN:  Motion carries unanimously.

5                   Next item, please.

6                   ITEM 4

7                   2601 Old Henderson Road, 2740 McFarland Avenue, 1.232  
8 acres (Remanded from the City of Owensboro regarding  
9 questions of potentially improper notice to adjoining  
10 landowner(s) and to allow the landowner(s), if any,  
11 due process  
12 Consider zoning change:  From I-1 Light Industrial and  
13 R-4DT Inner-City Residential to I-1 Light Industrial  
14 Applicant:  Unique Granite & Marble Shop; Rick Thomas  
15 Custom Builders, Inc.

16                   MR. NOFFSINGER:  Mr. Chairman, Mr. Silvert  
17 needs to make a statement on this item before Mr.  
18 Howard reads anything into the record.

19                   MR. SILVERT:  This is unusual procedurally,  
20 Commission.  Typically we will send an item and it  
21 will either automatically the zoning will change 21  
22 days if there is no grievance filed; however, with  
23 this one there was.  It went to the city commission.  
24 At the city commission the question was raised whether  
25 or not everyone was properly noticed.  That question  
actually was a difficult one to answer because the  
statute says that we may rely upon PVA records.  
Unfortunately the PVA records as to one of these  
adjoining landowners provided two different addresses.

1 One was served. The other was not apparently.  
2 Although, we don't necessarily have evidence of that.  
3 In order to make sure that we completely served  
4 everyone on this issue it was remanded and all of the  
5 adjoining landowners were re-served notice as to this  
6 hearing. So we are here today again evaluating this  
7 question about this rezoning regarding 2601 Old  
8 Henderson Road and 2740 McFarland Avenue.

9 PLANNING STAFF RECOMMENDATIONS

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

15 We have some additional conditions from what  
16 was originally presented at the Planning Commission  
17 meeting and I'll read those into the record now.

18 CONDITIONS:

- 19 1. No vehicular access shall be permitted to  
20 McFarland Avenue;
- 21 2. Install sidewalks along the road frontage  
22 on McFarland Avenue;
- 23 3. The two tracts shall be consolidated into  
24 a single tract;
- 25 4. A minimum six foot tall fence with

1 screening slats and one tree every 40 linear feet  
2 shall be installed around the entire perimeter of the  
3 storage area. The required trees may be grouped;

4 5. Stacked materials on the subject property  
5 shall not exceed the height of the fence;

6 6. A 10 foot landscape buffer with one tree  
7 every 40 linear feet shall be installed within the  
8 fence boundary adjacent to the residentially zoned  
9 property to the east. The landscape buffer shall  
10 remain free of any and all materials on the site. The  
11 landscape buffer, fence and trees must be installed  
12 along the entire tract boundary of the adjoining  
13 residentially zoned property. The required trees may  
14 be grouped;

15 7. A 10 foot landscape buffer with one tree  
16 every 40 linear feet shall be installed between the  
17 installed sidewalk and the fence along McFarland  
18 Avenue. The required trees may be grouped;

19 8. Any proposed structures shall be a minimum  
20 of 30 feet from the back of curb along McFarland  
21 Avenue, but shall be no less than the prescribed  
22 setback established in the zoning ordinance;

23 9. All conditions of this rezoning must be  
24 completed by July 31, 2009.

25 FINDINGS OF FACT:

1           1. The subject property is partially located  
2           in a Business Plan Area, where light industrial uses  
3           are appropriate in limited locations and partially  
4           located in a Central Residential Plan Area, where  
5           light industrial uses are appropriate in very-limited  
6           locations;

7           2. The subject property is currently used for  
8           a granite and marble business with outdoor storage  
9           which is nonresidential in nature;

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

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

20          MR. HOWARD: We would like to enter the Staff  
21          Report with the amended conditions into the record as  
22          Exhibit B.

23          CHAIRMAN: Do we have any questions?  
24          State your name, please.

25          MR. REYNOLDS: David Reynolds.

1           MR. SILVERT: I recognize the oath you took as  
2 an attorney, Mr. Reynolds. Thank you.

3           MR. REYNOLDS: As counsel for CTC Investments,  
4 one of the adjacent landowners that did file notice to  
5 take this to the commission, based upon the additions  
6 to the application we are informing the Commission  
7 that we are satisfied with those.

8           CHAIRMAN: Thank you, Mr. Reynolds.

9           MR. SILVERT: State your name, please.

10          MR. JACOBS: Marty Jacobs.

11          MR. SILVERT: Mr. Jacobs, I recognize the oath  
12 you took as an attorney. You may proceed.

13          MR. JACOBS: Thank you.

14                 I'm here representing the applicant and the  
15 applicant does agree to the conditions that have just  
16 been read and Mr. Silvert accurately described the  
17 process of why we are back here tonight. We would ask  
18 you to approve it with those conditions.

19          CHAIRMAN: Thank you.

20                 I want to thank both counsels, Mr. Silvert,  
21 Mr. Noffsinger, and the Staff for working this  
22 situation out. We appreciate it very much.

23                 At this point in time the chair is ready for a  
24 motion.

25          MR. ROGERS: Motion for approval based on the

1 Planning Staff Recommendations with the Conditions 1  
2 through 9 and the Findings of Facts 1 through 4.

3 CHAIRMAN: We have a motion for approval by  
4 Mr. Rogers.

5 MR. GILLES: Second.

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

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries unanimously.

10 Next item.

11

12 MAJOR SUBDIVISIONS

13 ITEM 5

14 Harbor Hills, Section 1, Unit 4, Lots 27-30, 45-48,  
15 3.632 acres

16 Consider approval of major subdivision final plat.  
Surety (Certified Check) posted: \$63,513.50

17 Applicant: Robert Wimsatt

18 MR. NOFFSINGER: Mr. Chairman, this plan has  
19 been reviewed by the Planning Staff and Engineering  
20 Staff. The plat is found to be in order. The plat is  
21 found to meet with the minimum requirements of the  
22 subdivision regulations and its use is consistent with  
23 the adopted comprehensive plan.

24 CHAIRMAN: Do we have any questions?

25 (NO RESPONSE)

CHAIRMAN: If not the chair is ready for a

1 motion.

2 MR. APPLEBY: Motion for approval.

3 CHAIRMAN: Motion for approval by Mr. Appleby.

4 MR. MILLER: Second.

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

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously.

9 Next item, please.

10 MR. NOFFSINGER: Item 6 has been withdrawn.

11

12

MINOR SUBDIVISIONS

13 ITEM 7

14 606, 610 Bolivar Street, 613, 617 Clay Street,  
15 0.672 acres

16 Consider approval of minor subdivision plat.

17 Applicant: Eddie Wilson, Austin Martin, Tammie H.  
18 Wagovich

19 MR. HOWARD: This plat comes before you.

20 Basically it's a scenario where three adjoining

21 property owners are swapping properties. The result

22 of that is that one of the tracts, which is at 617

23 Clay Street, exceeds the three to one length to width

24 requirement. So it's something that could be approved

25 at the Staff level. It comes before you tonight with

the Staff's support for approval.

CHAIRMAN: Do we have any questions?



1 (NO RESPONSE)

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

4 MR. APPLEBY: Motion for approval.

5 CHAIRMAN: Motion for approval by Mr. Appleby.

6 MR. GILLES: Second.

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

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries unanimously.

11 Next item, please.

12 ITEM 8

13 8511 Ward Road, 9628 Highway 54, 22.69 acres  
14 Consider approval of minor subdivision plat.  
15 Applicant: Wayne Neal Benningfield

16 MR. HOWARD: Again, this plat comes before you  
17 due to an exception.

18 They're proposing to cut a tract into two  
19 lots. They're taking it actually back to the way the  
20 lots were designed originally. They were consolidated  
21 in May of this year. There's an existing home on the  
22 lot that has no road frontage. They want to recreate  
23 that lot with no road frontage. We've noted on the  
24 plat that no further subdivision on the lots will  
25 create addition irregular shaped lots, but the fact  
that there is a home on the tract will not have

1 frontage. It does have an access easement to 54.  
2 That they will not further subdivide the lot by a  
3 note.

4 We will give support for approval.

5 CHAIRMAN: Somebody representing the  
6 applicant?

7 (NO RESPONSE)

8 CHAIRMAN: Do we have any questions?

9 (NO RESPONSE)

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

12 MS. DIXON: Move to approve.

13 CHAIRMAN: Motion for approval by Ms. Dixon.

14 MR. TAYLOR: Second.

15 CHAIRMAN: We have a second by Mr. Taylor.

16 All in favor raise your right hand.

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: Motion carries unanimously.

19 The chair is ready for one final motion.

20 MS. DIXON: Move to adjourn.

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

23 MR. GILLES: Second.

24 CHAIRMAN: Second by Mr. Gilles. All in favor  
25 raise your right hand.

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 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 59 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 November, 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

23

COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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