MEMBERS PRESENT: Drew Kirkland, Chairman
Gary Noffsinger
Nick Cambron
Dave Appleby
Mike Armstrong
Scott Jagoe
Sister Vivian Bowles
Judy Dixon
Martin Hayden
Stewart Elliott,
Attorney

CHAIRMAN: I would like to welcome everybody to the February 8, 2001, Owensboro Metropolitan Planning & Zoning Commission.

Our first order of business is our invocation and pledge of allegiance will be given by Mr. Scott Jagoe.

(INVOCATION AND PLEDGE OF ALLEGIANCE)

CHAIRMAN: Mr. Noffsinger, our first order of business.

MR. NOFFSINGER: First item will be to
consider the minutes of the January 11, 2001, meeting.

CHAIRMAN: Does anybody have any questions, additions about the minutes?

(NO RESPONSE)

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MR. HAYDEN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next order.

ITEM 2

Consider adoption of the Comprehensive Plan updated parts 000-700, including Overview, Principles and Assumptions, Population, Economy and Employment, Land Use, Transportation, Community Facilities, and Environment. (POSTPONED)

MR. NOFFSINGER: Mr. Chairman, we are pleased to announce that the Comprehensive Plan is now complete. It's been the 2001 update to the Comprehensive Plan which is a guide for land use within our community. It's taken several years to do. The plan has been updated. It's 100 percent complete and we are now ready to entertain any public comment as to the plan.
CHAIRMAN: Is there anybody from the audience that would like to make any comments on the Comprehensive Plan?

(NO RESPONSE)

CHAIRMAN: Anybody from the commission that would like to make any comments or have any questions?

MR. CAMBRON: Just glad it's done.

MR. NOFFSINGER: So are we.

CHAIRMAN: On behalf of the citizens of Owensboro, Daviess County and Whitesville, our board, Gary, I'd like to thank you, Mr. Adams, Mr. Mischel, Ms. Watson for coming on board and helping complete the plan. I know what a task it's been. We certainly appreciate all your work. We had a change in the staff. We had some time where you all had to pull extra duty with the retirement of Mr. Anderson. So we certainly appreciate all your efforts and we still got it done. Actually it was done in January, but we postponed it to add more input from the community. So thank you all for a job well done. We certainly appreciate all of it. Thank you very much.

We need to entertain a motion.

MS. DIXON: Move to approve.

MR. CAMBRON: Second.
CHAIRMAN: Ms. Dixon has a motion for approval. Mr. Cambron has a second. All in favor of the Comprehensive Plan raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

MR. CAMBRON: I have a question here, Mr. Chairman.

Is this on our web page yet, Mr. Noffsinger?

MR. NOFFSINGER: Yes, sir. Our web page is currently under construction. We're in the process of dumping information on to that web site. There's quite a bit of information that is being put in. The site is not fully functional at this time; however, a copy of the plan is available on the website via e-mail.

MR. CAMBRON: Thank you so much.

CHAIRMAN: Next item.

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PUBLIC FACILITIES PLAN
REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

ITEM 3

9661 KY 56 (Map CO-12)
Building Construction
Consider comments regarding the placement of a portable classroom at the West Louisville Elementary School.
Referred by: Daviess County Board of Education

Ohio Valley Reporting
(270) 683-7383
MR. NOFFSINGER: This application has been filed for a modular classroom that will be used temporarily at the West Louisville Elementary School. Planning Staff has reviewed the proposal. Found no conflict with the Comprehensive Plan and it's ready for your consideration.

CHAIRMAN: Is there anybody representing the Daviess County Schools here?

(NO RESPONSE)

CHAIRMAN: Does anybody in the audience have any questions?

(NO RESPONSE)

CHAIRMAN: Any of the commissioners have any questions?

(NO RESPONSE)

MR. CAMBRON: Is Chair ready for a motion.

CHAIRMAN: Chair is ready for a motion.

MR. CAMBRON: Motion for approval.

CHAIRMAN: Mr. Cambron has a motion for approval.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Ohio Valley Reporting
(270) 683-7383
Next item, please.

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CELLULAR TELECOMMUNICATIONS FACILITIES
PER KRS 100.987

ITEM 4

3790 Earls Lane (Map N-12)
Consider approval of a wireless telecommunication tower.
Applicant: Crown Communications, Inc.,
Westel-Milwaukee Company, Inc.

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff.
The application is found to be in order. Mr. David Pike is here representing the applicants and if you have any questions I'm sure he's capable of answering them.

CHAIRMAN: Mr. Pike, would you mind if I ask if there are any questions from the audience?

MR. PIKE: I was hoping you would, Mr. Chairman, having learned my lesson on that issue previously.

CHAIRMAN: Thank you.

Does anybody in the audience have any questions?

(NO RESPONSE)

CHAIRMAN: Do any of the commissioners have any questions?
(NO RESPONSE)

CHAIRMAN: Mr. Pike, if you have no comments you need not be sworn in and we will vote on this application.

MR. PIKE: Any time a lawyer can avoid being sworn in, that's just fine.

CHAIRMAN: Thank you.

MR. NOFFSINGER: One thing I'd like to add. This site is at the intersection of the US 60 bypass and Parrish Avenue. It's very near the Green Belt Park of the area of the Audubon Plaza Shopping Center. The applicant's site plan was reviewed by the City Parks & Recreation Department. They prepared a landscape plan, a recommended landscape plan. The applicant has reviewed that plan, made a few changes to it, but the plan is acceptable to the Parks Department as well as the applicant. I'd just like to make that condition to any approval that that landscape plan be implemented.

MR. PIKE: I appreciate Mr. Noffsinger bringing that tonight.

CHAIRMAN: Wait just a minute. If we're going to get you on record, we'll need to get you sworn in.

MR. PIKE: I probably need to stipulate on
MR. ELLIOTT: State your name for the record, please.

MR. PIKE: David Pike.

(MR. DAVID PIKE SWORN BY ATTORNEY.)

MR. PIKE: For the record my name is David Pike. I'm the regional counsel for Crown Communication, Incorporated.

Mr. Noffsinger is correct. We were tendered a draft landscaping plan. We could not accommodate that exact configuration because we are not authorized to do planning outside of the 100 by 100 foot lease area. We have however indicated that we will do a comparable amount of planning within our leased area that would be satisfactory to the staff of OMPC.

CHAIRMAN: Is that correct, Mr. Noffsinger?

MR. NOFFSINGER: Yes, sir.

CHAIRMAN: If we have no further comments or questions, Chair is ready more a motion.

MS. DIXON: Move for approval.

MR. HAYDEN: Second.

CHAIRMAN: We have a motion for approval by Ms. Dixon. Mr. Hayden has a second. All in favor.
raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Thank you, Mr. Pike.

MR. PIKE: Thank you very much, Ladies and Gentlemen.

CHAIRMAN: Next item.

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ZONING CHANGE - CITY

ITEM 5

1117 Allen Street, 0.384 acres (Map N-4)
Consider zoning change: From R-4DT Inner-City Residential to I-1 Light Industrial.
Applicant: Stephen Mayton, John & Frieda Calhoun

MR. ELLIOTT: State your name, please.

MR. MAYTON: Stephen Mayton.

(MR. STEPHEN MAYTON SWORN BY ATTORNEY.)

MR. MAYTON: I've learned that -- this is the first time I've tried to get the property rezoned and the zoning committee recommended that I just get half of the property rezoned and that I needed to get an extension in order to have the proper paperwork and stuff done. I'd like to make as part of the record that the zoning would approve, give their recommendation for the rezoning if I do that.

CHAIRMAN: What you are requesting is a
postponement?

MR. MAYTON: Yes, because I need to have
the property rezoned I-1 and the other half
residential.

CHAIRMAN: So you're making a request to
the board to have this rezoning change postponed,
correct?

MR. MAYTON: Yes.

MR. JAGOE: Are you sure that's what his
question was?

SISTER VIVIAN: It sounded like he thought
if he did it that that was automatic.

MR. MAYTON: No. No. I'm trying -- I
was told that if I rezoned just half of it that I
would get the Planning & Zoning's recommendation to do
that. If I try to get the whole thing rezoned they
won't.

MR. APPLEBY: You mean the staff's
recommendation?

MR. MAYTON: Yes.

CHAIRMAN: Mr. Noffsinger.

MR. NOFFSINGER: If I may just make a
comment. I think what he's asking is in terms of he's
acting upon the Staff Report which alluded to perhaps
it would make for a better application if only a
portion of the property were rezoned to industrial
versus all of the property. This commission cannot
make a commitment as to whether or not it would be
approved or if they would consider it favorably until
such time as they go through the public hearing
process.

However, you do have the right to ask for
a postponement so that you could amend the application
to reduce the acreage by submitting a new drawing, by
submitting a new legal description, and also by having
the item readvertised in the Messenger-Inquirer as
well as notifying adjoining property owners that you
are amending the application.

So this commission has to act upon a
postponement. Now, the postponement if we come back
next month then this board would only be considering
the rezoning of a portion of the property and then
they would receive a recommendation from the Planning
Staff and they would hear from you as the applicant as
well as the property owners within the area if they
have any concerns and then they would forward a
recommendation on to the legislative body which would
be the city commission for final action.

Now, Staff did allude to perhaps it would
make for a better application if you were to reduce
the acreage, but making no guarantees as to whether or not in the end it would be approved or not approved.

MR. MAYTON: Right. I realize that.

CHAIRMAN: The only thing we're going to vote on is postponement and that is your only request that really has any bearing to us. What you're going to do, how you're going to break it up has no bearing on us until you actually present it. Do you understand?

MR. MAYTON: Yes.

CHAIRMAN: Now the Chair is ready for a motion.

MS. DIXON: Move to postpone.

CHAIRMAN: Motion for postponement by Ms. Dixon.

MR. JAGOE: Second.

CHAIRMAN: Second by Mr. Jagoe. All in favor for postponement raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MR. CAMBRON: Mr. Chairman, do we not need to read the Zoning Staff Report.

CHAIRMAN: Not for postponement.

MR. CAMBRON: I did not know.

CHAIRMAN: See you next month. Thank you.

Next item.

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ZONING CHANGES - COUNTY

ITEM 6

4100 Block Medley Road, 10.040 acres (Map N-81)
(POSTPONED)
Applicant: Robert J. Wimsatt

MR. NOFFSINGER: Mr. Chairman, this rezoning was considered by the Planning Commission at their last meeting. It was postponed due to some drainage concerns within the area. We have Ms. Becky Watson here from the Planning Staff that can give you a brief summary of what's taken place since that time.

MR. ELLIOTT: State your name, please.

MS. WATSON: Becky Watson.

(MS. BECKY WATSON SWORN BY ATTORNEY.)

MS. WATSON: We had a meeting at the property after the complaint was made last month at the Planning Commission meeting concerning the drainage deficiency on Deer Haven Drive. The project engineer, the project developer, the City of Owensboro Engineer and Assistant, Vice Chairman of the Planning Commission and myself met to see what the problem might be there.

The project engineers are proposing to regrade the base coat to a small degree before the
final coat is put down on the property. They are also
going to place an accessible curb at that location.
For the immediate need, they've placed a silt fence
for erosion control. So once the final construction
is completed on the street, we feel like all the
drainage problems will be alleviated.

CHAIRMAN: Ms. Watson, I have a question
of you. Did you notify the complainant of this
action?

MS. WATSON: Yes. I sent a letter to Ms.
Ketterman after we met on the property. We tried to
contact her before so she could be present at the
meeting, but I was not able to get ahold of her by
telephone.

CHAIRMAN: Didn't you also try to contact
her after you made your visit?

MS. WATSON: I sent a letter after I made
my visit.

CHAIRMAN: Did you ever hear any response?

MS. WATSON: No, I haven't heard from her.

CHAIRMAN: Thank you very much.

Is there anybody from the audience that
has any comment?

Yes, ma'am.

MS. KETTERMAN: Yes, I would like to reply
about that matter.

MR. ELLIOTT: Let me swear you in. State
your name, please.

MS. KETTERMAN: Freida Ketterman.

(MS. FREIDA KETTERMAN SWORN BY ATTORNEY.)

MS. KETTERMAN: Number, one I was in
Florida for three weeks. We were not notified that we
were needed here. I had my little say the last time I
was down here. The neighbors knew I was in Florida.
I had 50 messages on my machine when I got home and
none of them was from her. I had some hang ups, but
the hang ups didn't even have a telephone number. I
received this letter and the first paragraph really
puzzles me. Its says, "On Friday the 19th" - I left
for Florida the 18th - "an investigation was made
regarding your complaint about a drainage deficiency
in front of your home on Deer Haven Drive. Present at
the site were the project engineers, the project
developer, the City of Owensboro Engineer and
Assistant, a Planning Commissioner member and myself.
Every effort was made to contact you so that you could
be present at the meeting, but I was unable to reach
you by telephone. Well, all of my neighbors knew
where I was at.

MS. WATSON: I didn't try to contact any
CHAIRMAN: Wait a minute, Ms. Watson.

We'll let her complete.

MS. KETTERMAN: What I'm saying is I wasn't given warning and a lot of people take vacations. I was in Florida three weeks. We got back the 2nd. I received this after I got back, this letter.

When she says that they put up this little silt screen out there, yes, it's a little silt screen. The mud has washed. I've called every day from Florida, when I was down there, my neighbors. We've had one rain up here since I was down there. The mud still washes underneath that. They've had to come out every time it does rain, scoop up the mud, put it back in my yard or pack it off. So that doesn't help a bit. I've talked to some other people about when it's going to be done, what time limit. In a year or so. Well, this spring I'm having my yard landscaped. Who is going to pay for it when it washes away? I'll pay for it once and that's all. That's all I have to say.

CHAIRMAN: Thank you.

Does the applicant have any comments or suggestions?

MR. CAMBRON: Before he comes up can we
get Mr. Bryant up here. I want to ask him a question. I think Mr. Bryant can answer these questions maybe a little.

MR. WIMSATT: I just have a basic comment.

MR. ELLIOTT: State your name, please.

MR. WIMSATT: Bob Wimsatt.

(MR. BOB WIMSATT SWORN BY ATTORNEY.)

MR. WIMSATT: I just wanted to make a point to the commission that I have complied with everything that the city engineer and everybody has asked me to do with any of this project. You know, I made the commitment last month. Certainly if there were any corrections or improvements that needed to be made we would do it. We've done what the city engineer required. I continue to stand behind that commitment. If there is a problem in the future, we'll take care of it. I don't know what to say other than that.

CHAIRMAN: Thank you, Mr. Wimsatt.

Mr. Cambron, did you want --

MR. CAMBRON: Yes, get Mr. Bryant to come up to the microphone for a second.

MR. ELLIOTT: State your name, please.

MR. BRYANT: Don Bryant.

(MR. DON BRYANT SWORN BY ATTORNEY.)
MR. CAMBRON: Mr. Bryant, can you elaborate a little. You went out there and you shot some grade and showed where it was high and so on and so forth there.

MR. BRYANT: Yes. The base course, the base asphalt was in place. Of course, that's a rough course to be followed later by the surface course. The center of the street, the grade is a little bit high right in the center. It will have to be lowered a little bit before the asphalt is placed, the final asphalt is placed. Of course, without the surface there we have about a one-inch depression around the radius which is typical. You'll find that any construction area where the street is running construction you're going to have some silt and it's going to settle against the curb because you've got a one-inch lip where the silt is trapped along the base of the curb. That will all be taken care of when the surface is placed.

I think there's going to be some sidewalks there that was actually placed by the people who installed the unit on the lot. That sidewalk did not have a provision for handicap access and that's going to be reconstructed before it's completed. With that and the final grading there shouldn't -- we see no
reason why there's going to be any problem at that
location.

MR. CAMBRON: That's all the comment I
have.

CHAIRMAN: Mr. Cambron, let me ask you a
question. Didn't you go out there?

MR. CAMBRON: Yes, I did.

CHAIRMAN: If I read the letter correctly
we had you and two engineers and Ms. Watson from the
staff.

MR. CAMBRON: I think we had only one
engineer if I'm not mistaken. Anyway, it was the city
gineer that came out. I'm sorry. And you're an
engineer, aren't you, Mr. Bryant.

MR. BRYANT: Yes.

MR. CAMBRON: I think the problem was
looked at and evaluated. I think it's going to be --
CHAIRMAN: Were you satisfied?

MR. CAMBRON: Oh, very much so, yes.

MR. JAGOE: Just out of curiosity if I
could ask Mr. Bryant a question.

Is the problem erosion coming from an
existing site that does not have erosion control on it
or is it just that the dirt is settling in the street
and the cap of the street is not on yet?
MR. BRYANT: There could be some erosion
from up the hill from off-site, but I think some of it
is coming actually from the lot itself right at the
corner. Spilling over the curb. The water is coming
at a higher velocity, it hits the radius and there's a
flat area in there and the property slopes down where
the silt settles out. You're going to have a small
amount of silt there after a rain regardless of what
you do until the final asphalt is in place, but you
see that in all of your subdivisions.

MR. JAGOE: I'm aware of that. The silt
fence is put in place just to hold back where the
water is washing across the curb?

MR. BRYANT: That's right. Just contain
it. It will have to be maintained. If the silt pits
is working properly, it will have to be cleaned
because it's going to trap silt. That means it's
working.

MR. JAGOE: Thanks.

CHAIRMAN: Yes, ma'am, would you like to
make a final comment?

MS. KETTERMAN: They talk about they're
going to do this and they're going to do this and I've
heard this for a year. That's the only reason I come
down here last month. I've heard it for a year.
That's silt stuff has been out for a year. When it rains, and you're not talking about spring rains. You're talking about light rains. I don't know if they realize the spring rains in Kentucky and Owensboro are ridiculous, but they have built up each section, each home to where it kind of comes down in layers. Ours is pretty close to the bottom. They loosen the dirt up just this past week. Now when we get these rains that's coming in, I wish all of you would just come out and look. I've got tapes where the street is just flooding. My backyard it's just rolling down through the hill. It's hilly ground. There should have been a provision. They don't have a gully. They don't have a wash way. They don't have a way for it to come down this way. It comes straight down in my yard and through my yard and takes my yard. I wish you'd just come and look.

CHAIRMAN: Mr. Cambron did come and look and took his time. We did send Ms. Watson from our staff. We sent the city engineer and we had another engineer and the developer out there. So we had a pretty good contingency of people that went. So each member sort of has their own area. Mr. Cambron took his time and did go out there and take a look at this. We have to value his opinion.
MS. KETTERMAN: I value everybody's opinion. I have photographs. I have a video.

CHAIRMAN: Thank you.

If there are no further comments, --

MR. CAMBRON: Is Chair ready for a motion?

CHAIRMAN: Chair is ready for a motion.

MR. CAMBRON: Motion for approval for Item Number 6, 4100 Block Medley Road.

CHAIRMAN: Motion for approval by Mr. Cambron.

MR. ELLIOTT: Incorporate the findings of fact.

MR. CAMBRON: Yes, I don't remember what they were now. I don't have them in front of me.

Ms. Watson, do you know what the findings of facts were there?

MR. ELLIOTT: They were read in the last meeting.

MS. WATSON: Here's a copy.

MR. CAMBRON: Thanks so much. Findings of Fact 1 through 4.

CHAIRMAN: Thank you, Mr. Cambron. We have a motion by Mr. Cambron.

MS. DIXON: Second.

CHAIRMAN: Second by Ms. Dixon. All in
favors of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

MR. NOFFSINGER: item

ITEM 7

Portion 4617 Sutherland Road, 2.30 acres (Map N-62) (POSTPONED)

Consider zoning change: From A-R Rural Agriculture to B-4 General Business.

Applicant: Steve Aull, Forrest Allen Delacey, Shirley Delacey

PROPOSED ZONE & LAND USE PLAN

The applicant is seeking a B-4 General Business zone. The subject property is located in an Urban Residential Plan Area, where general business uses are appropriate in very limited locations.

SPECIFIC LAND USE CRITERIA

(a) Building and lot patterns; outdoor storage yards - Building and lot patterns shall conform with the criteria for "Nonresidential Development" (D7) and outdoor storage yards, with "Buffers for Outdoor Storage Yards" (D1).

(b) Logical zoning expansions of proportional scope - Existing General business zones may be expanded onto contiguous land that generally abuts the same street(s). The expansion of a General Business
zone should not significantly increase the extent of
the zone in the vicinity of the expansion and should
not overburden the capacity of roadways and other
necessary urban services that are available in the
affected area.

(c) Expansions across intervening streets - In
Central Residential, Urban Residential, Future Urban
and Professional/Service Plan Areas, the expansion of
an existing General Business zone across an
intervening street should be at least one-and-one half
(1.5) acres in size, but should not occur if this
would significantly increase the extent of the zone in
the vicinity.

APPLICANT'S FINDINGS

Applicant is seeking a B-4 General Business Zone.
The subject property is located in an Urban
Residential Plan Area where general business uses are
appropriate in very-limited locations.
The applicant proposes to relocate his Sports
Warehouse operation presently located on Washington
Avenue to an 80' x 140' building to be constructed on
the subject 2.30 acre tract. Applicant also proposes
outdoor recreational and sports practice facilities
including an 18-hole mini-golf facility and batting
cages. Submitted herewith is a conceptual site plan

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showing the proposed layout including parking and storm water detention area.

1. The application is in substantial compliance with the adopted Comprehensive Plan. Specific land use criteria applicable to this zoning change are as follows:

   (a) Building and lot patterns: Outdoor storage yards. Building and lot patterns should conform with the criteria for "Nonresidential Development" (D7), specifically, expansions of existing nonresidential uses and areas. Limited expansion of existing nonresidential uses and areas should be accommodated where they reasonably satisfy a set of "logical expansion criteria". The proposed rezoning is limited in scope, consisting of 2.30 acres, and clearly constitutes a logical expansion of an existing B-4 area, being situated directly across Sutherland Road from an 18-acre site previously rezoned to B-4 by the OMPC in 1990.

   (b) Logical zoning expansions of proportional scope. Existing General Business zones may be expanded onto contiguous land that generally abuts the same street. The expansion of a General Business zone should not significantly increase the extent of the zone in the vicinity of the expansion.
and should not overburden the capacity of roadways and other necessary urban services that are available in the affected area. All urban services are available to the subject property. Sanitary sewer service exists along Salem Drive extending east to the intersection of Veach Road, requiring approximately 850 feet of sewer extension to serve the property. An existing 6-inch waterline with fire hydrants along the west side of Sutherland Road provide both water supply and fire protection. The property is served by Western Kentucky Gas and Kenergy. Access to the property is provided by Veach Road and Salem Drive, via Sutherland Road.

(c) Expansions across intervening streets

In Central Residential, Urban Residential, Future Urban, and Professional/Service plan areas, the expansion of a General Business zone across an intervening street should be at least 1.5 acres in size, but should not occur if this would significantly increase the extent of the zone in the vicinity. The proposed rezoning exceeds this minimum while not significantly increasing the extent of B-4 zoning in the area.

2. The Urban Residential plan area, which encourages residential development for the subject
property, is inappropriate. Residential development of land in this area is not economically feasible. In addition, said land is not suitable for residential development due to flood plain considerations and subsequent added costs of development.

3. There have been major social, physical and economic changes within the area involved which were not anticipated in the Comprehensive Plan, and those changes have substantially altered the basic character of the area involved. These changes include the following:

(a) Rezoning of the Jones property (Lucky Strike Subdivision) consisting of two (2) parcels located on Salem drive from A-U to B-4 General Business. The larger tract consisting of 18.397 acres fronts along the south side of Salem Drive and the west side of Sutherland road, and is situated directly across the road from the subject property. The remaining smaller tract fronts on the north side of Salem Drive and backs up to the By-pass. This rezoning occurred on May 19, 1990.

(b) The abandonment of the L&N Railroad and the construction of J.R. Miller Boulevard on the railroad property has provided the area with additional commercial potential.
Construction of Salem Drive connecting J.R. Miller Boulevard and Veach Road. This connection provides for a through highway from Frederica Street to U.S. 231. The construction of J.R. Miller Boulevard and Salem Drive has opened up this area for commercial development.

The continuing expansion of the general area for commercial development provides for the economic potential for the subject property.

PLANNING STAFF REVIEW

The subject property is a portion of 4617 Sutherland Road, which is currently in agricultural use with two barns located on the property. Land use criteria applicable to this proposal are reviewed below.

GENERAL LAND USE CRITERIA

Environment

The property is located in a floodplain, as shown on the Flood Insurance Rate Map #21059CO280C, with a base flood elevation of 392 feet above sea level.

Urban Services

Water and electricity are available to the site. Sanitary sewers are proposed for extension to be approved by RWRA. However, the applicant has not submitted a plan for extending sanitary sewers.
Roadway Capacity. The subject property is located on a rural local road presently serving farming operations and scattered rural residential uses. Sutherland Road has a pavement width of approximately 16 feet with no curb or gutters. The existing roadway capacity would likely be overburdened with the proposed general business uses.

No improvements have been proposed for Sutherland Road to serve the proposed development. Public improvement specifications would require a minimum roadway pavement width of 34-feet with curb and gutter and a 4-foot sidewalk, for a new local street serving general business uses. The existing Sutherland Road does not approach these minimum dimensions.

J.R. Miller Boulevard is planned to extend south and then west to Frederica Street. Right-of-way has been acquired for this extension, and upon construction, a larger area will be opened for general business activities that will be oriented toward major streets that are elevated above the 100-year flood.

Roadway capacity to the subject property is severely compromised during periods of localized heavy rains, when Sutherland Road is often closed due to flooding. The subject property and the roadway lie completely below the elevation of the 100-year flood.
Development Patterns

The property is located in an area where agriculture and scattered rural residences are the prevalent land uses. The property located across Sutherland Road to the west is zoned B-4 General Business, but remains undeveloped. Property to the south, east and north is in agricultural use. There are no existing general business uses to the east of J.R. Miller Boulevard.

The applicant argues that there have been major social, physical and economic changes within the area that were not anticipated in the Comprehensive Plan, thus changing the development and character of the area. The rezoning of the acreage west of the subject property across Sutherland Road does not constitute a major social, economic or physical change that was not anticipated in the Comprehensive Plan. At the time of the rezoning to B-4 of the adjacent property across Sutherland Road, Salem Drive was not constructed or anticipated, east of J.R. Miller Boulevard. That basis was used to recommend a zone change to B-4 in 1990, recognizing the commercial development occurring eastward from Frederica Street. However, no commercial development has yet occurred on that property.

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The current adopted Comprehensive Plan incorporates the changes that have occurred with the construction of Salem Drive and J.R. Miller Boulevard, and fit well with the currently planned extension of J.R. Miller Boulevard. The adopted Comprehensive Plan identifies a Business Plan Area bounded by J.R. Miller Boulevard, Salem Drive and Sutherland Road. The Business Plan Area does not extend across Sutherland Road to the east and the extension of the Business Plan Area is not appropriate. No general business uses have developed east of J.R. Miller Boulevard.

The applicant contends that the existing Urban Residential Plan Area is inappropriate. The existing land use is scattered rural residential uses and agricultural uses, served by a rural local road. The existing zoning and Plan Area are appropriate for the area at this time.

Additionally, the property on the southeast corner at the intersection of J.R. Miller Boulevard and Salem Drive, which was rezoned to B-4 General Business, has not yet developed with general business uses. It remains vacant property, which may illustrate that the market demand for general business uses in this area has not yet occurred.

SPECIFIC LAND USE CRITERIA

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Limited expansions of existing nonresidential uses and areas should be accommodated where they reasonably satisfy a set of "logical criteria". Existing General Business zones may be extended onto contiguous land that generally abuts the same streets. The B-4 General Business zoning across Sutherland Road to the west has frontage on Sutherland Road but is oriented toward a major collector street, Salem Drive, with frontage on J.R. Miller Boulevard, a minor arterial. In fact, the subdivision plat for that property prohibits access points on Sutherland Road. Therefore, the zoning change for the B-4 property to the west of the subject property was major-street oriented, unlike the proposal for the subject property. The criteria for expansion across an intervening street is not met, because the contiguous B-4 General Business zone is not oriented to the local rural Sutherland Road. Therefore, the criteria for a "logical expansion" have not been met and the proposal would constitute a new location of general business activities.

PLANNING STAFF RECOMMENDATIONS

Staff recommends denial because the proposal is not in accordance with the Comprehensive Plan. This recommendation is made subject to the findings of

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facts that follow:

1. The subject property is located in an Urban Residential Plan Area where general business uses are appropriate in very-limited locations;

2. The proposal would likely overburden the roadway capacity of Sutherland Road;

3. The proposal does not meet the criteria for "logical expansion" across an intervening roadway because the adjacent contiguous B-4 zoning to the west across Sutherland Road is oriented toward Salem Drive and J.R. Miller Boulevard, a major collector and a minor arterial, respectively, with no access points allowed on Sutherland Road;

4. There have been no major social, physical, or economic changes that were not anticipated in the adopted Comprehensive Plan that would change the character of the vicinity of the subject property;

5. The current zoning and land use plan area are appropriate at this time for the subject property and the proposed zoning classification is inappropriate;

6. There are no existing general business uses east of J.R. Miller Boulevard; and,

7. Zoning additional property to B-4 General Business in this area would be premature and is not consistent with the current development patterns in

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the vicinity because the adjacent B-4 General Business
property zoned in 1990 west of Sutherland Road has yet
to develop and remains vacant.

We'd like to enter this as Exhibit A.

ITEM 7 STAFF REPORT IS ATTACHED AND MADE
A PART OF THE RECORD AT THIS TIME AS EXHIBIT A.)

CHAIRMAN: Thank you, Ms. Watson.

MR. JAGOE: Mr. Chairman, I need to
disqualify myself.

CHAIRMAN: Mr. Jagoe will be disqualified
on voting on this.

MR. ELLIOTT: State your name, please.

MR. KAMUF: Charles Kamuf.

(MR. CHARLES KAMUF SWORN BY ATTORNEY.)

CHAIRMAN: Mr. Kamuf, I will applaud you
for jumping to the stand so quickly. You haven't even
been asked yet and you're just right there.

MR. KAMUF: I want to get on with the
program.

CHAIRMAN: I assume this will be very
prompt and quick presentation.

MR. KAMUF: About ten minutes.

CHAIRMAN: Thank you.

MR. KAMUF: I represent Steve and Christy
Aull. It's concerning a 2.5 acre tract of ground.
It's near the location of Salem Drive and Veach Road.
The purpose of the rezoning is to get an agricultural
zone changed to B-4. The proposed use of the property
will be for a new retail sporting goods business and
an outdoor recreation activity which includes cages
and miniature golf. I have copies of this for some of
you that are a little far away so you can look at this
as we go through.

I think when you look at the Staff Report
there's only really one issue in this case. Certainly
it's not going to be the logical expansion issue. It
concerns the roadway. I think the Staff Report says
something about overburden roadway.

So based upon the Staff Report, we
prepared and submitted a preliminary development plan
which we'll show you in a few minutes with proposed
improvements to Sutherland Road from Veach Road. From
this area right here to the entrance of the subject
property. Our improvements to the Sutherland Road
have met the improvements and the approval of the
county engineer and we have followed his instructions.
Our proposed improvements deal with Article 514 of the
Subdivision Design Standards and Improvements and they
state as follow as far as the authority of the county
engineer.
"All improvements shall comply with the best engineering standards and all constructions on and under the streets that are proposed for dedication shall be based on plans approved either the city or the county engineer and construction thereon shall be subject to the inspection and approval of the county engineer."

If you have any question concerning Article 514, I have a copy, Mr. Chairman. I won't give it out, but if you all have some question about it I have a copy of that for you.

We have worked closely with the county engineer and at his suggestion we have prepared a two-phase approach in the implementation and the improvements to Sutherland Road.

Phase 1 involves this: It involves the widening of Sutherland Road from this point to the entrance there with newly constructed shoulders and drainage ditches. These improvements in the cost of approximately 50 to $60,000 will be paid for by Mr. Aull.

I might point out that the existing daily traffic on Sutherland Road is approximately 436 vehicles according to the GRADD count and that is relatively low as compared to these other two.
statistics. The 1998 count on J.R. Miller Boulevard South at Salem was 14,000. So when we compare 436. Right up the road a 1992 count on Veach Road at Sutherland Road is over 1,000. So as you can see what we're getting ready to do in this little area here is insignificant compared to the 14,000 figure and the 10,000 figure.

Plan 2: After we would do this at the suggestion of the county engineer, and I might say he's been our authority on this. We have met with him. We've got his approval and we've done these things with his instructions. At his suggestion, the county engineer, the construction plan for Phase 2 would allow for the future construction of a 34 foot roadway with curb, gutters and sidewalks if and when future development and traffic demand warrants.

Now, let's start out -- I know that's an issue with you and we have tried to do everything possible to get the county engineer for his approval and his input and his consideration and we think we have. As we get along further, if you have questions about that we'll try to answer them.

Now, does the proposal meet the logical expansion test? All you've got to do is look directly across the street. This is what only a little plat
that you have in front of you is designated as the Lucky Strike Loop. The proposal now that we have once it has met the requirements of the county engineer, fully meets the requirement of the logical expansion of B-4 rezoning. The proposal does meet the criteria with the roadway improvements to Sutherland Road because Sutherland Road is now an improved roadway and has the approval of the county engineer.

I think that the definition of logical expansion is one that we've always used if it's directly across the road. We'll talk about intervening streets in just a minute, but certainly any reasonable person can look at that and tell that that's a logical expansion.

Now, two other points. Appropriate part and also whether there are physical, social or economic changes in the area.

The Staff Report in the Jones case, and that's the case that we call the Lucky Strike Subdivision, recognized at that time in 1990 that there were major changes in the area. They recognize that the zoning was inappropriate and by a vote of nine to nothing they approved the rezoning directly across the road. I have a copy of that.

Ladies and Gentleman, if you can see what
I've just passed out to you is the OMPC recommendation to Fiscal Court. It states what at the top? It was a nine to zero vote. If you look down in the Finding of Fact it says with what? "With the proposed extension of Salem Drive across this property we feel that the demand for commercial development is coming and is justified due to location and existing conditions surrounding the property." The next paragraph, "Other commercial properties have already been developed along these routes in just the past few months thus setting a possible trend extending eastward from Highway 431 to commercial development."

Then on the next to the last page that you have in front of you or the last page. This is the recommendation of your board to Fiscal Court and this was the Staff Report. Look at the Staff Recommendation if you will on the last page. "Staff Recommends approval because of major physical changes in the area not anticipated by the adopted land use plan that have altered the basic character of the area." Now, you can look at the findings, but I'll go over those.

If we can, secondly not only do we have the findings that were in the Jones case and those were, what? The abandoning of L&N Railroad connecting...
in this particular area here that we have. The abandoning of the L & N Railroad and the construction of J.R. Miller Boulevard. We have a construction of Salem Drive connecting J.R. Miller Boulevard and Veach Road. Now in addition we have the Jones rezoning, the Lucky Strike rezoning which was nine to zero.

In addition, we now have a new traffic count on Sutherland Road. Fifteen years ago I think the count was something like 176 vehicles. In the last ten years it's up to 436 vehicles. This is another change that was not considered in the Jones rezoning.

In addition our roadway improvements. We are addressing not only the traffic demands for our property, the 2.5 acre tract, but we are assisting the county in the development of the whole area by Mr. Aull agreeing to construct the area from Salem Drive to the entrance of his property and paying for it out of his own pocket of approximately 50 to $60,000.

The next issue: The issue is to whether the property is appropriately zoned. It's our contention that - and Mr. Jagoe, you're a developer. Some of the rest of you develop property - is that nobody is going to develop this property residential that you see in that area and have to fill three to
four feet of fill before they can develop it into a housing area.

The logical expansion area I think is pretty clear because if you can throw a rock across the street, the expansion as far as the intervening streets, and this is quoted right out of the ordinance. It's out of the land use map. "In Central Residential, Urban Residential, Future Urban, and Professional/Services plan area, the expansion of a general business zones across an intervening street" - across Sutherland - "should be at least 1.5 acres in size," - we're 2.5 acres - "but should not occur if it would significantly increase the extent of one in the vicinity. The proposed rezoning exceeds the minimum while not significantly increasing the extent of B-4 zoning."

Concerning paragraph 6 of the Staff Report. That there are non-existing business uses east of J.R. Miller Boulevard.

We think that this recommendation of the Staff is irrelevant. It's an economic use. It's not a zoning issue. The reason there's no business development in this area that we see as far as the Lucky Strike Subdivision is because these lots are selling for $100,000 apiece. That's way outside of
the range of what Mr. Aull paid for his property.

In any event, there are existing business uses east of J.R. Miller Boulevard and it is not an issue tonight.

As far as paragraph 7 of the Staff Report where it is stated that "Zoning additional property to B-4 Business in this area would be premature and is not consistent with the current development patterns in the vicinity because the B-4 General Business in 1990 west of Sutherland Road has yet to develop and remains vacant."

As to whether to develop it is premature or irrelevant to this board, the board should not be involved in the timing of the development. This is a zoning board. The market place determines the timing of a development. We think that that is an irrelevant issue that was raised by the staff.

Two other points. The proposed use is a low impact use and is better situated off of a major thoroughfare.

A couple of examples. What I have done is I've taken the roadway that you see coming off of Highway 81 that goes to Golfland. I've tried to find something that would be similar where you could look at it and say, hey, this is something similar.
have they done down there? That roadway is
approximately 18 foot in most places. Sometimes it's
20, but it goes off of Highway 81 to a golf course -
excuse me - Golfland. Not only does it go to
Golfland, it goes to the Big Independent Tobacco
Warehouse. It goes to Agri-Flo Products in the back
and it also goes to Hartz Construction.

Here are some photographs. They're all
about the same. There are three of them here. It
shows you what the area looks like. What we propose
in our area is similar. We're going to pay for the
construction of it. That is an 18 or 20 foot strip
going to Golfland and it has shoulders on the side
with the drainage ditch.

MR. CAMBRON: What's the size of that road
out there now?

CHAIRMAN: Seventeen.

MR. KAMUF: The next project that I'll
talk about is the Daniels Lane project. Some of you
are familiar with the Vince Hayden project off of
Daniels Lane. The road was widen from Highway 60 up
to the railroad track. Mr. Hayden then put in a
little industrial development. I might say it's
probably the only one in Daviess County that has
sewers underneath of it with no place to drain them,
but anyway it has what we call an area that is very similar to the one that we have. It is a 20-foot strip, but in addition to where ours goes, ours really goes no place because it goes to the entrance of this property. Basically the only people that use that road are people that take a short-cut. Instead of going around Towne Square that comes from out of Browns Valley area, they cut through and go to this particular area to get to town. Here is another -- this is the area of Vince Hayden's project off of Daniels Lane. I might say he has -- it's a 20-foot street going to an industrial property with shoulders and drainage ditches just like we intend to do, but in that situation the county paid for it. I have a letter that I'll show you where the county paid for it and in this situation we're willing to do the improvements ourself.

If there would be some question as to who paid for it, we have a letter from Judge Norris at that time where he said, I will improve the 20-foot street, I'll pay for it. If there's some question about the size of it, we have that information. I'm trying to short cut it.

We're asking you to approve this rezoning.

We think we have the roadway situation straightened.
As far as the property being inappropriately zoned, I don't think anybody would say that this property out here is going to be in a residential area.

The third and last issue that we're talking about is what has been done in other parts of the county. We're asking to be treated the same way as some of the other individuals as far as the requirements such as on Daniels Lane and such as Golfland off of Highway 81. We're here to answer questions. Did I make it in time, Drew?

CHAIRMAN: A new watch might be appropriate.

MR. KAMUF: In all seriousness, we're here to try to answer any questions that you have. Don Bryant is here. He has met time and time with the county engineer to go over these problems to work them out. We have done what he has given us instructions to do.

CHAIRMAN: Let me open with one question and I know others may have questions. In the early part of your presentation, you alluded to the fact obviously the road is 17 feet. We're going to improve it to 19 feet, but you also made comment or reference to the 34 foot.
MR. KAMUF: Correct

CHAIRMAN: You made reference to that and maybe it was in-between passing or looking or viewing or something, maybe I didn't get the rest of your comment or maybe the rest of your comment didn't fit into what I was hoping it to fit into.

MR. KAMUF: It's a two-phase program. In other words, right now with our program we're going to widen the road to 24 with shoulders and drainage ditches on the side. Mr. Aull will pay that immediately.

At the suggestion of the county engineer, the construction phase for Phase 2 will be allowed for future construction of a 34-foot roadway with curb and gutter and sidewalks if and when future development and traffic demand warrants it. In other words, there's no reason to do anything like that right now when we're going to have a batting cage and miniature golf out there and Steve and Christy are going to move a small part of their sports warehouse there. It's not a need now.

CHAIRMAN: I'm sorry. I misunderstood.

You're going from 17 to 24 or 17 to 19?

MR. KAMUF: No, I'm sorry. We're going from 17 to 20. Then that's Phase 1 at the present
time. We're willing to do that. We're willing to pay
for the construction of this. Whenever time demands
it or if there's other construction in the area, at
that time we'll be responsible for a 34-foot roadway
with curb and gutter.

CHAIRMAN: You're saying that Mr. Aull
will be responsible for a 34-foot road if it is
determined by the county engineer?

MR. KAMUF: That's correct.

CHAIRMAN: At that time and meaning I
think there's approximately 1100-foot from the
intersection there back to his property?

MR. KAMUF: I think it is.

MR. BRYANT: It's about 850-feet.

CHAIRMAN: The 1100 would probably
encompass this whole property frontage.

MR. BRYANT: We've got tapers on the south
end.

MR. KAMUF: He'll have to answer the
footage.

CHAIRMAN: I understand. You've got an
original commitment to go ahead and make these
improvements which the county engineer signed off on
and you are committed for the future to go to the
34-foot improvement at Mr. Aull's expense to your area.
in the future when the time warrants that?

MR. KAMUF: Correct.

MR. ELLIOTT: You're still under oath.

MR. BRYANT: The intent was to allow for future development should it happen. Right now this may be all that ever happens in this area. It is 20-foot improved roadway. It'd be more than sufficient to take care of it.

Mr. Aull has additional acres here that he may decide to develop in the future. There are other properties in the area that may be developed. Basically this has been designed in such a way, just a preliminary design. We've still got a final development plan to be submitted. It's designed in such a way that this improvement can be widened and curb and gutter installed with drainage and so forth accordingly. So this is just a first phase of an ultimate design that would be a 34-foot curb and gutter with sidewalks if needed in a future date.

Now, as far as who pays for it, Mr. Aull if he decides to do additional development in the future, then he would be asked to implement that improvement. If some of the other property owners in that area decide to develop their land and it's brought before the board and approved, then the county
engineer is trying to set this up in a manner that we
can phase this in in multiple phases as needed, if
needed, and that whoever is doing the development will
pick up the additional cost in the future.

Mr. Aull has agreed if that should happen
that he will go ahead and fund the improvements across
his property and continue to do his part whether it be
development to his property or someone else in the
area. That's been addressed by a note on the plan and
the wording of that has been pretty much established
by I think both the staff and the county engineer.

CHAIRMAN: Thank you, Mr. Bryant. That's
what I wanted to clear up about the improvements,
Phase 1, 2 and 3 and see exactly where Mr. Aull stood
with the potential. If this does develop, then, you
know, what we don't want to be faced with in the
future if there is another developer that goes on
beyond him and then the road warrants it, that the
last guy is left holding the bag.

MR. BRYANT: If you can see this, this is
a typical section. What's being proposed initially is
a 20-foot rural section. This is basically the same
thing that was done about six years ago on Daniels
Lane. Now, the county paid for that.

MR. CAMBRON: I've got a question. What's
wrong with that road now? I mean it's a good road. They've just reworked it here a couple of years ago.

MR. APPLEBY: Sixteen foot.

MR. CAMBRON: I know, but it's still a good road. Wait a minute. I want to ask Mr. Appleby a question here.

Is it typical for a developer, and you've been involved in a lot of development over the years, to go that far to have to develop a piece of property that isn't really his? Is that typical?

MR. APPLEBY: Off-site improvements vary from case to case.

MR. CAMBRON: That's a great distance.

MR. APPLEBY: It depends on how much traffic you generate to start with.

MR. CAMBRON: The thing about it is that 400 and whatever Mr. Kamuf said there about the traffic, when the water is over that road, which there are several times a year it's over the road there, that traffic goes from 450 or whatever it is a day down to zero. I have a hard time believing that we would even need to improvement that road any more than what it is.

CHAIRMAN: I think that's something that they've worked out with the county engineer that we're
not going to get in-between.

MR. CAMBRON: The thing about it is is that, you know, I have a hard time seeing a guy spend $60,000 when nothing is going to come of that, but that's my own opinion. That's fine. Go ahead.

MR. APPLEBY: But he'll generate a certain amount of traffic with his own business.

MR. CAMBRON: And I understand that. I do understand that.

MR. BRYANT: He's going to be providing I believe 60 some odd parking spaces. He's required to have 53. With GRADD and trying to make some projections, really with the low traffic count in such a small business basically you have insignificant traffic to start with and your impact is insignificant.

MR. CAMBRON: A good part of that he won't be open some of the time, right?

MR. BRYANT: Basically the flooding issue I think for Mr. Aull it's more of an inconvenience. Occasionally we're going to have high water.

MR. CAMBRON: I don't think that high water will effect his business. What I'm saying is that miniature golf it's not open 365 days a year, would they?
MR. BRYANT: No.

MR. CAMBRON: You see what I'm driving at there?

MR. BRYANT: The hint was presiding the parking area to actually allow flooding occasionally in anticipating that.

What we recommend here is the dark area basically is this typical section superimposed over a 34-foot curb and gutter section. This would be an ultimate design should it ever be needed. Quite expensive, but to be built in phases. Like I say, he's going to spend a good bit of money out there just to get this improvement to the property if nothing else develops. You've probably got more roadway capacity than you need.

MR. CAMBRON: You say it's 850 feet that he's going to have to --

MR. BRYANT: About 650 feet.

MR. CAMBRON: To his property?

MR. BRYANT: To the north corner of his property. It's about another 200 feet to the entrance and then you have taper back to the existing roadway that ends at the south corner of the two acre track, two and a half acre. So total improvement length is probably 900 and so feet, but the taper is about four
This design though now the intent is to design it, add a grade. In fact, we've already got a preliminary grade established. We're going to turn the detail plans with the final development plan. The grade will be set such that you can go in and salvage all the pavement that's there and put in the curb and gutter and the additional widening without tearing out any of the asphalt.

MR. CAMBRON: Let me ask another question, Mr. Chairman, if you don't mind. What is putting in curb and guttering? How is that going to enhance drainage there? I mean there's two fine ditches there. I'm just asking.

MR. BRYANT: In that area we're going to have to have actually surface drainage behind the curb and we'll have to have this curb outlet. We can't have storm sewer. Not enough depth to get the water out.

MR. CAMBRON: Right. That's what I'm driving at.

MR. BRYANT: Yes.

MR. CAMBRON: I don't see how it's going to help.

MR. BRYANT: I agree.
MR. NOFFSINGER: Mr. Bryant, what is the current right-of-way on Sutherland Road, the width?

MR. BRYANT: It actually varies. We've got across the subject property we're dedicated 30-feet half right-of-way.

MR. NOFFSINGER: What about off-site?

MR. BRYANT: Off-site will have to be dealt with. This is the preliminary development plan. That was discussed also with the county engineer and it was his feeling that that should be dealt with after we get passed the zoning and it will be a situation we'll have to deal with as part of the final development plan. He thought that would be the appropriate time.

MR. NOFFSINGER: So your proposing roadway improvements to a runway where you do not have adequate right-of-way to propose those improvements and that landowner has not signed off on this development plan; therefore, this commission will be in a position where they could not approve the development plan where you do not have adequate right-of-way nor do you have provisions for gaining that right-of-way. How are you going to make the improvements if you don't have right-of-way?

MR. BRYANT: The improvement will be built.
within the limits of the existing roadway. There is a
prescriptive right-of-way on that and all county
roads.

MR. CAMBRON: Are they 20 foot?

MR. BRYANT: Yes. We can build the
initial improvement. In the long-term if this area
continues to develop, the same thing could happen with
Mr. Jones about ten years ago. If you look at his
development plan, he's showing a 30-foot half
right-of-way on his plan. If there is a problem, it
has been discussed and it can be shifted off of the
center of the existing roadway. Now, what we're
proposing now is to keep it centered and we would like
to do that. Now, if this property continues to
develop, you'll have additional right-of-ways that are
dedicated. It depends on whether or not the
particular site is going to be next if it gets
developed at all. Like I say we did talk about the
right-of-way. We were told that that is an issue that
needs to be dealt with with the final design and that
this needs to be dealt with contingent upon that. If
that needed to be, that that would be done at a future
date. This is how we were advised by the county
engineer.

CHAIRMAN: Any more questions, Mr.
MR. NOFFSINGER: Mr. Chairman, the issue here is not the roadway. We've stated that from day one. It's not the roadway. It's a land use issue. It deals with the caring capacity of the land. Here's a particular piece of property that's located in an urban residential plan area that is not bounded by any commercial, existing commercial uses. We've addressed the issue of logical expansions and you can't show anywhere within this area east of J.R. Miller Boulevard where you have land that is developed for commercial activities. We're simply jumping across a vast amount of area in the community that has the proper infrastructure to it currently and we're jumping across over to another roadway within the middle of a corn field.

Mr. Kamuf got into the cost of the land and the unit price of the land. Well, there's a reason this land was cheaper. The infrastructure is not there. You're dealing with a roadway that is below the flood plan. You're dealing with an unimproved roadway that's nothing more than a minor collector serving a rural farm to market area. The traffic has increased on Sutherland Road simply because people are using Sutherland Road to bypass
some of the congestion on Frederica Street. This community is spending a number of dollars to extend J.R. Miller Boulevard to alleviate some of the congestion on Frederica Street. That will further reduce the amount of traffic on Sutherland Road and that traffic would be utilizing extended J.R. Miller Boulevard to go out past the cinema and get back onto Highway 431. So it's not necessarily an issue of roadway. It's an issue of logical expansion and how we develop our land within the urban areas. This is prime agricultural land. We realize we're going to lose prime agricultural land in the community, but it's an issue of logical expansion and how far do we jump to develop properties where the infrastructure doesn't exist. I agree it's an enormous burden for this developer, the applicant to pay for the improvements to this roadway, but there's a reason for that and that's because this piece of property is 800 feet south of where it should be. At an intersection where you have, currently have the infrastructure in place.

CHAIRMAN: Thank you.

Yes, ma'am, do we have a comment from the audience?

MS. COLEMAN: Yes, we do. We have a
question.

MR. ELLIOTT: State your name.

MS. COLEMAN: Sherrie Coleman.

(MS. SHERRIE COLEMAN SWORN BY ATTORNEY.)

MS. COLEMAN: I have a question about your little green map there. I was thinking that all of Mr. Jones' property wasn't rezoned because I know that at least part of it is still being farmed.

MR. APPLEBY: Not necessarily. You can still farm it even after it's been rezoned.

MS. COLEMAN: I was wondering about that. I was going to talk Mr. Aull, but we never did get together or I wouldn't be up here asking that.

MR. KAMUF: I'd like to point, Mr. Chairman, that was an -- in answer to your question that was an 18.8 acre tract of ground in 1990 that was rezoned and it included all of this area in there.

MS. COLEMAN: I had wondered about that since, of course, I live right next-door there.

CHAIRMAN: Did you have any questions you wanted to ask Mr. Aull directly or has your question been satisfied?

MS. COLEMAN: No. That was the only one that I can think of. You all brought up the problem with the water coming up to there and the road being
narrow which it is right now. That's pretty much it.

MR. CAMBRON: Where do you live at, ma'am?

Where do you live at exactly?

MS. COLEMAN: Right there in that little green area that he's pointing to.

MR. CAMBRON: I've never seen the water get up to that level.

MS. COLEMAN: Well, it's been -- yes, it's been up there twice in my life over the road past me. One was in '97 and one was I think it was like '64.

MR. CAMBRON: Yes, it's been awhile.

MS. COLEMAN: But it gets up to where his little sports warehouse is going to be a lot more often than that. Much more often, on the road anyway.

CHAIRMAN: Thank you very much.

Are there any more comments from the audience? Does the commission have any questions?

MS. WATSON: We just make a point of clarification that the Jones rezoning occurred under the 1979 Comprehensive Plan and a new Comprehensive Plan was adopted in '91. So the changes that were based, that that zoning was based on were incorporated in the new Comprehensive Plan.

CHAIRMAN: Thank you very much.

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MR. KAMUF: May I just answer that in one conclusion. When Gary says that the roadway is not a problem, that should answer your question. When anybody sitting on this board as far as any reason, as far as looking at this map, that's why we brought that map, if that's not a logical expansion, then I have never ever seen one.

MR. NOFFSINGER: Excuse me. Charlie, I said it's not the foremost issue. I didn't say it wasn't a problem because obviously the roadway is a problem. That's not the most important issue.

MR. KAMUF: Well, let me answer that. In other words, we are trying in doing everything that we can in answer to Mr. Cambron's question as far as doing what we can to improve the situation out there. Not only as to that property, but as far as the community. We're willing to spend $60,000 which is more than most people have spent to get a situation corrected.

CHAIRMAN: Do we have any other?

MS. COLEMAN: I did think of one more. Is he going to build up the ground underneath the building?

CHAIRMAN: Mr. Bryant, I think that will probably be your question.
MR. BRYANT: If you look on the development plan.

MS. COLEMAN: If I could see it from here, I would.

MR. BRYANT: Can she come over?

CHAIRMAN: That's fine.

MR. BRYANT: All development in this area in the last few years have been finished floor elevations have been elevated to an elevation of 395. Base flood is 392. Champion Ford facility that was just put in a few months ago was elevated to that same elevation. The site will then be graded and that will be a part of the final development plan, but the actual site will be somewhat less than 395. Some of the parking like I said will probably be designed that will be anticipated that we'll have some local flooding occasionally. That much parking you can have half this parking facility flooded and still wouldn't interfere with his operation. The building will be elevated.

MS. COLEMAN: I was just curious.

CHAIRMAN: No further questions from the audience. Does the commission have any questions?

MR. BRYANT: I might mention on the right-of-way on Daniels Lane, we're talking about the
same width improvement that we're talking here. It's identical. There's no right-of-way on Daniels Lane except that part of our project that was approved at that time. There was never any questions asked about improvements of curb and gutter or anything past what the county proposed to do nor were there any issues of right-of-way or any other entities having signed off on.

CHAIRMAN: Thank you, Mr. Bryant. Any questions from the commission?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. HAYDEN: I make a motion we approve with the improvements on the road as set forth.

MR. CAMBRON: I want to second that.

MR. HAYDEN: Based upon the applicant's findings.

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

MR. CAMBRON: I want to second that motion, but I don't know how to word this where it doesn't come out wrong. I'm not in favor of this gentleman having to spend all that money to get all the way to his property.

MR. APPLEBY: The motion is made with the
MR. CAMBRON: I understand, but I just want to make that comment. That's my second. Is that I do approve of his motion, but I don't care that this gentleman has to spend $60,000 for his property.

CHAIRMAN: I think that can be made only as a comment.

MR. CAMBRON: As a comment let it be.

CHAIRMAN: Because this, and I'm sure Mr. Aull had this explained to him, this has nothing to do with our board. Mr. Kamuf and Mr. Bryant and Mr. Aull negotiated this with the county engineer to get the county engineer to come on board for future expansion of this road which may have to go to 34-foot to make sure that everybody understands who pays and I'm sure Mr. Aull will carry his part of the freight when that comes down, but that is the reason of this, Nick. Our board has nothing to do with that.

MR. CAMBRON: I understand. Spend 60,000.

CHAIRMAN: But that's nothing to do with our board. That's between Mr. Aull and the county engineer.

MR. CAMBRON: My motion is to approve then, but with the comment I made.

CHAIRMAN: Yours is the second.
MR. CAMBRON: Second, yes.

CHAIRMAN: There's been a motion and second by Mr. Cambron. All in favor of the motion raise your right hand.

(MR. APPLEBY, MR. ARMSTRONG, SISTER VIVIAN, MR. KIRKLAND, NICK CAMBRON, AND MARTIN HAYDEN RESPONDED AYE.)

CHAIRMAN: All opposed.

(MS. DIXON RESPONDED NAY.)

CHAIRMAN: We have one opposition. We have seven for and we have --

MR. ELLIOTT: Six for. We had a disqualification.

CHAIRMAN: We had a disqualification, right.

Next item, please.

Related Item:

ITEM 7A

4617 Sutherland Road, 2.30 acres (Map N-62)
Consider approval of preliminary development plan.
Applicant: Steve Aull (Sports Warehouse), Forrest Allen Delacey & Shirley Delacey

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff.
It's been okayed by the county engineer. It appears to be in line with the zoning change that was just

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recommended for approval by this commission. It is ready for your consideration.

MR. CAMBRON: Motion for approval.

MR. JAGOE: Mr. Chairman, I need to disqualify myself.

CHAIRMAN: Mr. Jagoe will disqualify himself again in this one.

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

MR. ARMSTRONG: Second.

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

(ALL BOARD MEMBERS PRESENT WITH THE EXCEPTION OF MR. JAGOE RESPONDED AYE.)

CHAIRMAN: Seven for and we had Mr. Jagoe disqualified himself.

Next item, please.

DEVELOPMENT PLAN

ITEM 8

3000 Frederica Street, Phase I, 59.927 acres (Map N-25)
Consider approval of final development plan.
Applicant: Kentucky Wesleyan College

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff.

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It's found to be in order. It is for the construction of a community center at Kentucky Wesleyan College. They are proposing in addition to this improvement sidewalks along a portion of Sherm Road and improvements to their existing parking lots with the installation of landscaping. It's ready for your consideration.

CHAIRMAN: Is there anybody here representing Kentucky Wesleyan College?

APPLICANT: Yes.

CHAIRMAN: Let's see if we have any questions from the audience. Is there any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Any questions by any of the commissioners of the applicant?

(NO RESPONSE)

CHAIRMAN: Unless you all have any comments we're going to go ahead and entertain a motion.

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

MR. HAYDEN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 9

Doe Ridge, Section 3, 15.963 acres
(Map N-81) (POSTPONED)

Consider approval of major subdivision preliminary plat.

Applicant: Robert J. Wimsatt

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff.

It's found to be in order and ready for your consideration.

CHAIRMAN: The applicant is here, Mr. Wimsatt, who has been previously sworn in. Does anybody from the audience have any comments or questions?

Yes, sir. Please step to the podium and be sworn in.

MR. ELLIOTT: State your name, please.

MR. KETTERMAN: Robert Kettermann.

(MR. ROBERT KETTERMAN SWORN BY ATTORNEY.)

MR. KETTERMAN: I have only one question back here on Buck Court. It abuts up to the back of our lot. I was just wondering what degree of soil is going to be taken off the back part of those lots to
adjoin ours? This is a 10-foot fall from there down
to the Buck Court.

MR. WIMSATT: Mr. Chairman, I don't know
the exact answer to Mr. Ketterman's question. I do
know that some of that top of the hill where there's a
cul-de-sac proposed to go, some of that will actually
be knocked down. So there actually be less drainage
coming off that hill down toward his property than
what there currently is. What the actual elevation is
at the curb, you know, what the actual elevation on
the foundations of the homes I can't answer that.

CHAIRMAN: I assume this will have to be
submitted and approved by the county engineer.

MR. WIMSATT: It already has. The city
engineer, Mr. Chairman. They've reviewed all the
plans and all the drainage calculations. Everything
has been submitted for approval.

CHAIRMAN: Thank you.

Mr. Ketterman, is that satisfactory?

MR. KETTERMAN: The reason I brought it up
is the part where we live, is one of the reasons for
the drainage problem is a lot of the ground above us
was broke down to our area, raised it up about four
feet. It's tapered down to our lot is why the
drainage problem is over there. I just didn't want
the same thing to happen over here as far as the
drainage goes. The more land you take off the more
drainage you've got going one way or the other. I
notice it's a 10-foot fall from our property line down
to the Buck Court according to the map.

MR. WIMSATT: The only thing I know to say
again, Mr. Chairman, the city engineer and
professional engineers have worked together in
submitting this plan for approval. Everything has
been submitted in court, the standard procedures.

CHAIRMAN: I see Mr. Bryant is here. Did
he work on this project for you?

MR. WIMSATT: He did.

CHAIRMAN: Mr. Bryant, would you like to
step to the mike for us.

MR. BRYANT: Yes, sir.

CHAIRMAN: Would you address Mr.
Ketterman's question.

MR. BRYANT: Well, we're in a situation
similar to where we were a month ago. I'm not really
sure what the question is. Issues like this as far as
detailed drainage and so forth is very difficult to
resolve in a form such as this. We need to meet
on-site to look at it and we'll work out whatever
questions that need to be addressed. If they need to
be corrected, we'll do that. I don't really know what
to tell you here other than I do know that when this
next section is implemented that some of the water now
that naturally falls back to this property is going to
be regraded to go to this new street and will be
diverted to the south to a potential basin. So
actually total storm water run off to these existing
lots is going to be reduced once this next section is
put in. Now, the exact impact on any particular lot,
I can't tell you that. The plans we submit do not
have a detailed grading plan for each individual lot.
That is handled as part of the building permit. So we
don't have total control over the final grade of each
individual building site, but the overall grading is
such that it should enhance these lots and not have
negative impact.

CHAIRMAN: Thank you.

MR. KETTERMAN: One more. On the
retention basin, what's the depth that going to be on
that?

MR. BRYANT: It's on the plan. I really
couldn't tell you right off.

MR. WIMSATT: That particular retention
basin is actually wet retention basin so it'll be
deeper than a lot of retention basins which are dry,
but that's part of the drainage calculations that had to be reviewed and approved by the city engineer, and they have been approved.

CHAIRMAN: Thank you.

If there are no more questions from the - - yes, ma'am.

MR. ELLIOTT: State your name, please.

MS. PAYNE: Marsha Payne.

(MS. MARSHA PAYNE SWORN BY ATTORNEY.)

MS. PAYNE: I just have a question. It's probably going to sound like I'm reasking the same thing.

I understand you don't know exactly about the drainage, but what about -- I mean I'm looking to the future. You get this development done. What are homeowners suppose to do if it destroys our property, for lack of a better word? I mean I understand you're not going to know where the drainage is going to go, where the water is going to fall until you get it done. I guess my question is or it's just tossing it up in the air and hope it's going to fall.

MR. APPLEBY: They've got a grade plan that shows how the water is going to go. They can't tell exactly how it's going to go on each lot because that's established once they put the building pad in
and then they'll do drain away from the building and
into the general drainage. They know where the water
is going to go I hope.

MR. BRYANT: We do.

MR. APPLEBY: They've got an overall
grading plan of this whole development. That's shown
on this plan and it routes on that water to the
retention basin. If there were a problem that came
back over and your property was destroyed, this would
be an issue you would take up with the city engineer
who approved this plan.

MS. PAYNE: I guess because one small
problem -- well, it's not small to us that we're
having right now with that one corner. I don't want
it to escalate and get worse as more work is done out
there. It's a nice little subdivision.

MR. BRYANT: I think everything is going
to be fine once we get through the construction phase
and get everything grassed in and so forth. This is
just something we have to go through.

CHAIRMAN: Thank you, Mr. Bryant.

Are there any other questions of Mr.
Wimsatt or does this commission have any questions?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.
MR. CAMBRON: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Cambron.

MR. JAGOE: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 10

Doe Ridge, Section 3, Unit 1, 9.868 (Map N-81) (POSTPONED)

Consider approval of major subdivision final plat. Surety (Certified Check) posted: $47,249.80

Applicant: Robert J. Wimsatt

CHAIRMAN: We know the applicant is here. Does anybody have any questions from the audience?

(NO RESPONSE)

CHAIRMAN: Anything from the commission?

(NO RESPONSE)

MR. APPLEBY: Is Chair ready for a motion?

CHAIRMAN: Chair is ready for a motion.

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MR. JAGOE: Second.

CHAIRMAN: Mr. Jagoe is a second. All in
favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 11

Remington Park, Lots 1-15, 4.943 acres (Map N-42)
Consider approval of major subdivision final plat.
Surety (Irrevocable Letter of Credit) posted: $53,397
Applicant: c/o Ron Jones, Hayden Park Development

CHAIRMAN: Is anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Commission have any comments?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Motion for approval.

CHAIRMAN: Motion for approval by Ms. Dixon.

MR. HAYDEN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.
SURETY RELEASES

ITEM 12

Buskill Properties, $1,703.00
Consider release of surety (Certified Check) for landscaping.
Surety posted by: Buskill Properties

ITEM 13

Commonwealth Auto, $660.00
Consider release of surety (Performance Bond) for landscaping.
Surety posted by: Samuel L. Matthis

ITEM 14

Doe Ridge, unit #1, Section 2, $17,120.00
Consider partial release of surety (Certified Check) for streets, sidewalks, storm and sanitary sewers.
Surety retained (Certified Check) $19,543.15
Surety posted by: Robert J. Wimsatt

ITEM 15

Doe Ridge, Unit #2, $15,536.60
Consider partial release of surety (Certificate of Deposit) for streets and sidewalks.
Surety retained (Certificate of Deposit) $16,535.80
Surety posted by: Robert J. Wimsatt

ITEM 16

H&I Development, Unit #3, $8,055.00
Consider release of surety (Irrevocable Letter of Credit) for water mains and fire hydrants.
Surety posted by: H&I Development

ITEM 17

H&I Development, Unit #3, $32,371.65
Consider partial release of surety (Irrevocable Letter of Credit) for streets and sanitary sewers.
Surety retained (Irrevocable Letter of Credit) $21,633.00
Surety posted by: H&I Development

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ITEM 18

Heritage Place, $15,405.00
Consider release of surety (Performance Bond) for landscaping.
Surety posted by: Wells Helath Properties

ITEM 19

Robert J. Wimsatt, $27,425.00
Consider partial release of surety (Certificate of Deposit) for streets and storm sewers.
Surety retained (Certificate of Deposit) $40,332.00
Surety posted by: Robert J. Wimsatt

ITEM 20

Yellow Ambulance, $878.00
Consider release of surety (Certified Check) for landscaping.
Surety posted by: Louisville Transportation Company

MR. NOFFSINGER: Mr. Chairman, under
Surety Releases Items 12 through 20 are in order and may be released in toto.

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Move to approve 12 through 20 in toto.

CHAIRMAN: Ms. Dixon motion for approval.

MR. JAGOE: Second.

CHAIRMAN: Mr. Jagoe second. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.
SURETY TRANSFERS

ITEM 21

Anna L. Castlen Property Division: $2,500.00
Transfer of surety (Certified Check) for fire hydrants
to the Daviess County Fiscal Court.
Surety posted by: Anna L. Castlen

ITEM 22

D&D Hardware, $2,000.00
Transfer of surety (Certified Check) for fire hydrants
to the Daviess County Fiscal Court.
Surety posted by: Wholesale Petroleum, Inc.

ITEM 23

Owensboro Mercy Health System, Inc., $2,500.00
Transfer of surety (Certified Check) for fire hydrants
to the City of Owensboro.
Surety posted by: Ernie Davis & Sons Mechanical, Inc.

MR. NOFFSINGER: Under Surety Transfers

Items 21 through 23 are in order and may be
transferred in toto.

CHAIRMAN: Chair is ready for a motion.

MR. CAMBRON: Motion for approval.

CHAIRMAN: Mr. Cambron motion for
approval.

MR. APPLEBY: Second.

CHAIRMAN: Mr. Appleby second. All in
favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

The Chair is ready for one final motion.

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MS. DIXON: Move to adjourn.

CHAIRMAN: Motion to adjourn by Ms. Dixon.

MR. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Meeting is adjourned.

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I, LYNNETTE KOLLER, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Planning & Zoning meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 78 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this the 20th day of February, 2001.

LYNNETTE KOLLER, NOTARY PUBLIC
OHIO VALLEY REPORTING SERVICE
202 WEST THIRD STREET, SUITE 2
OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES:
DECEMBER 19, 2002

COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

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