The Owensboro Metropolitan Planning Commission met in regular session at 6:00 p.m. on Thursday, July 12, 2001, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Drew Kirkland, Chairman
Gary Noffsinger
Nick Cambron
Dave Appleby
Jimmy Gilles
Irvin Rogers
Sister Vivian Bowles
Judy Dixon
Martin Hayden
Stewart Elliott, Attorney

CHAIRMAN: Welcome everyone to the Owensboro Metropolitan Planning Commission. Our invocation and pledge of allegiance will be given by Ms. Judy Dixon.

(INVOCATION AND PLEDGE OF ALLEGIANCE)

CHAIRMAN: Our first item on the agenda is to consider the minutes of the June 14th meeting. Are there any questions or additions to the minutes?

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

MS. DIXON: Move to approve.

MR. CAMBRON: Second.

CHAIRMAN: Motion by Ms. Dixon to approve.

Mr. Cambon seconded. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Mr. Noffsinger, the next item, please.

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PUBLIC HEARING

ITEM 2

Consider text amendments to the Sign Regulations regarding billboards, affecting Article 9 of the Zoning Ordinance for Daviess County and Whitesville.

MR. NOFFSINGER: Mr. Chairman, this item has been advertised for public hearing at this time. I believe there are several people in the audience that may wish to address this item. Near the end of that discussion, I think Mr. Adams is here to present the staff's findings and recommendations.

MR. ELLIOTT: State your name, please.

MR. ADAMS: Gary Adams.

(MR. GARY ADAMS SWORN BY ATTORNEY.)

MR. ADAMS: What I'm going to do here, Mr.
Chairman, is read the front page of the Zoning Text Amendment Staff Report just to give general information to the public and the audience here.

BACKGROUND

On March 7, 2001, Daviess County Judge Executive Reid Haire issued Executive Order No. 2-2001, in which he declared "a moratorium on all permitting requests made to the Owensboro Metropolitan Planning Commission relating to billboard construction within Daviess County." The Judge/Executive's purpose was to "allow the Daviess County Fiscal Court the opportunity to review any and all policies related to billboard permitting in Daviess County."

The City of Owensboro adopted a prohibition on new commercial billboards in 1989, and none have been permitted within the city limits of Owensboro since then.

The Judge/Executive established a billboard review committee, which included representation from the two main outdoor advertising companies operating in the county (Lamar out of Evansville, IN, and Bill Smith, Owensboro), the local PRIDE organization, OMPC Commissioner Vivian Bowles and OPMPC Associate Director of Planning Gary Adams, Judge Haire, County Commissioner Bruce Kunze, and Fiscal Court Clerk

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Jennifer Warren. Also, representatives from Scenic Kentucky attended one session at the invitation of PRIDE and Judge Haire.

The Billboard Committee met several times. Judge Haire chaired the meetings and explained that he sought a compromise with all interested parties, and was not currently seeking elimination of existing or future billboard signs in Daviess County. However, Judge Haire was particularly concerned that US 60 E, from the new bridge leading into Owensboro, not become littered with billboards.

Scenic Kentucky, which is affiliated with Scenic America, argued for the elimination of outdoor advertising altogether. In lieu of a ban on new billboards, Scenic Kentucky promoted more restrictive sign regulations, especially to avoid proliferation at key entry points into the community. PRIDE attendees were representing their own opinions and not the organization's which had not taken a formal position, but did encourage the general public to let Fiscal Court know its concerns about billboards.

The outdoor advertisers were receptive to tighter restrictions that are reasonable. There was substantial support for banning new billboards in agricultural zones, but some did not want to lose that
option. There was extensive discussion of the need to adequately represent the state permitting rules for billboards along "state-controlled" highways, particular highways of statewide and national importance. To this end, Kentucky Transportation Cabinet's District Office in Madisonville reviewed an early draft and responded with several helpful recommendations to make the local rules consistent with those of the state.

After several lengthy discussions, the committee came to consensus on the proposed amendments. Judge Haire submitted them to the OMPC for consideration on June 11, 2001.

SUMMARY OF PROPOSED CHANGES

The proposed amendments reduce the maximum height and area of new billboards, and increase the minimum spacing between billboards and minimum setbacks from residential uses and schools.

In Business and Industrial zones, the following is a summary of the major changes that are proposed:

* Maximum sign area is reduced from 1250 SF to 380 SF along "US" highways and 300 SF along other roadways.
* Maximum sign height is reduced from 100 feet to 40 feet along "US" highways and 32 feet along other roadways.
* Minimum spacing between billboards is increased from 100 feet to 500 feet and to 1,000 feet when located on the same side of the street.
* Minimum distance of a billboard from residential uses is increased from 50 feet to 400 feet; as a new provision, the 400 feet setback distance will also apply to schools with persons under 18 years of age.

* Particular "gateway highways" are designated, and billboards must be setback 500 feet from these highways.

* Each billboard is limited to no more than one sign face per each side of the sign, for a total of two.

In Agricultural zones, the same changes are proposed as listed above except as noted below:

* Minimum spacing between billboards is increased from 300 feet to 1,500 feet, and to 3,000 feet when located on the same side of the street.

* Billboards shall not be visible (as defined) from "gateway highways" or from any defined "state-controlled highway" (particular major highways).

MR. ADAMS: That's it for the Staff.

Thank you.

CHAIRMAN: Thank you, Gary.

Does anybody from the audience want to make any comments?

Yes, sir, would you like to make a comment?

MR. SMITH: Yes, sir.

MR. ELLIOTT: State your name, please.

MR. SMITH: I'm Scott Smith with Bill Smith Outdoor Advertising.

(MR. SCOTT SMITH SWORN BY ATTORNEY.)

MR. SMITH: I was involved in this

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committee making up these ordinances that you're seeing proposed changes. I'm not in favor of this ordinance. It's kind of like quite a few years ago there was a metro proposal out there and there was a lot of members that sat on that committee that were against that proposal. I'm against this proposal due to the fact that it restricts me as a business man to perform my job and to meet the needs of other local businesses within the community as far as reaching the traveling public.

Do any of you all have any questions?

MR. CAMBRON: In general, what part of this -- I mean surely you're not opposed to all of it.

MR. SMITH: No, I'm not opposed to all of it. I don't like such a severe restriction on the size of the signs. For example, you're going from 1250 square feet to 380 square feet. I don't have a problem with the height. We don't have any signs that tall anyway. I'm concerned about the spacing aspects to 1,000 feet down the same side of the road. Right now we have driven out the various roads in this area trying to look for potential locations and they aren't there. If you have a location that meets the criteria as far as zoning and you have a residential area that
may be 400 feet or closer to that, so we can't build on that. Then if you look at another area that's more commercial, then it may be less than 1,000 feet to an existing signage structure at the time. If you go to agricultural zoned property, you're looking at potentially 3,000 feet if they're on the same side between signs.

MR. CAMBRON: How does this effect your growth in the near future?

MR. SMITH: It would restrict it greatly. It would be like, for example, the Messenger-Inquirer having ten pieces of paper and printing on the front and back and then you saying, okay, you can only grow one page a month and you have to keep those pages whether you have them sold or not. Well, Sunday then you sell what you have. If you don't have any extra pages, then that's tough.

MR. CAMBRON: Are you about the only person in town now that's doing billboards in Owensboro?

MR. SMITH: No. There's another company in Owensboro.

MR. CAMBRON: But from Owensboro.

MR. SMITH: Yes.

MR. GILLES: What's the average sign now?
What's the square footage?

MR. SMITH: There's two different sizes. There's what's called a Volton which is 672 square feet and there's what's called a Posture Panel. That is approximately 300 square feet.

MR. CAMBRON: Right now you have 672 to 675 square feet signage. What happens to that, the ones you have?

MR. SMITH: They're grandfathered in, but it eliminates us from having the opportunity, for example, on the new east/west corridor, you're talking about the 54 corridor, that's going to have a lot of traffic coming through Owensboro that's not planning on staying in Owensboro. How is, for example, a hotel, a restaurant going to attract that traveling public to stop by their place of business? They can't stop and get a paper. They're not going to be able to do that. They're not going to be able to watch the TV so see it. It's either going to be radio or signage and if they're not familiar with the area, they probably won't have the radio on unfortunately because we want out of state, out of town people coming to our community. Not passing through and not ever stopping.

MR. CAMBRON: So basically two parts of this particular proposal that you're not agreeing with
is the size and spacing and that's it, right?

MR. SMITH: That would be my biggest concern on sizing and the spacing, yes.

CHAIRMAN: Mr. Smith, what would you --

obviously you were on the panel that came up with this compromise.

MR. SMITH: Yes.

CHAIRMAN: Obviously you were not pleased with the compromise that were struck. Obviously the sign size, the 1250 down was what bothers you the most I would say, that and the spaceage. What's your greatest concern and what was your, what did you think was the fair distance?

MR. SMITH: Right now we are currently under what the state regulates. That's their regs for federal aid primary highway. That's what they institute as the guidelines. Okay. Right now in this community there's a feeling that we need to do something to be stricter to that than that arrangement. I don't mind being a little stricter, but I don't want to be so strict that I feel like I'm losing my toes on compromise.

MR. CAMBRON: You're relating to distances, right? Not so much the size there, but the distance?
MR. SMITH: Both.

CHAIRMAN: We're back to my original question. Size and distance, what did you think was adequate?

MR. SMITH: On the adequate -- on existing or on this?

CHAIRMAN: Obviously you don't like this. The bigger one was better, but what did you think was a fair compromise?

MR. SMITH: Well, the compromise they come up is was 380 square feet which was 10 1/2 by 36 which was smaller than a standard bulletin, but larger than a posture page. I would have liked to have kept the bulletin. For example, if you wanted to go with bulletins on US highways or federal aid primary highways and no bulletins on non-federal primary highways.

CHAIRMAN: In other words, keep some of the standard sizes that you produce?

MR. SMITH: Correct.

CHAIRMAN: Does anybody else on the commission have any questions?

MR. HAYDEN: What would be the distance you would recommend on the signs?

MR. SMITH: On the spacing?
MR. HAYDEN: Spacing, yes.

MR. SMITH: I don't have a problem with 500 feet, but I do have a problem with 1,000 feet. What I'm saying, in other words, for example, as the way this is written if you have a sign and you have the opportunity to build a sign on another location that's less than 1,000 feet down the road on the same side, it will not pass. That's 1,000 feet instead of 500 feet. Diagonally it's 500 feet. In a straight line you're saying 1,000 feet.

CHAIRMAN: Are there any more questions, any questions from anybody in the audience?

(NO RESPONSE)

CHAIRMAN: Does the commission have any more questions?

MR. APPLEBY: I have one for Mr. Adams.

MR. SMITH: Thank you.

CHAIRMAN: Thank you. We have a question on the floor.

MR. APPLEBY: I want to be clear on the gateway highway designations, Gary. As I understand it, will be no signage within 500 feet of gateway highway or designated gateway highway; is that right?

MR. ADAMS: Yes, sir.

MR. APPLEBY: But the size and height
limitations also effects -- you're effectively trying
to eliminate billboards on gateway/highways? You've
got a 40 foot height requirement regardless.

MR. ADAMS: The 500 feet was
accommodation. As concern you might have billboards
on intersecting roadways that are really intended to
be viewed from those intersecting highways. Not
having some kind of specification on whether or not
they could be seen or not seen on the gateway highway,
it was to say they have to be at least 500 feet from
gateway highway. Presumption is it wouldn't be seen,
but that still doesn't accommodate some state rules on
certain roads where even if you can see it from 500
feet away, you may not be able to do it. That doesn't
apply to gateway highways and commercial areas which a
lot of say 60 east which is designated gateway highway
outside of Wrights Landing Road has a lot of
commercial industrial zoning. So a federal rule you
can have billboards close to it, but by gateway
highway designation say you have to be 500 feet away.
They may be addressing those adjoining roads. I know
it sounds very confusing. It gets very technical, but
the idea was to keep billboards even in commercial
industrial areas at least 500 feet from these
so-called gateway highways.
MR. APPLEBY: What all are designated as

gateway highway?

MR. ADAMS: US 60 East from Wrights Landing Road to Hancock County. The new bridge encroach down to Maceo. The Natcher Parkway, the Audubon Parkway, and the U 60 bypass extension when it's built.

MR. CAMBRON: Just as a comment here. Of course, all the roads that go off have designated here, you know, this is probably 90 percent of where a billboard would be, should be for any person that does advertising to want to advertise period.

MR. ADAMS: Well, there's quite a few roads that have not been included as gateway highway where there are billboards now could be more; 56, 81, 54.

MR. CAMBRON: Of course, you know, I guess if somebody end up advertising they're looking for massive traffic as much as possible to maximize your dollar that you've invested in a billboard/your copy you have up there. So it does, you know, puts a strain on both him and the businesses that are wanting to advertise because you look for good locations. Not to take offense, but he may have a billboard at 25th and Frederica but may be setting a block off

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Frederica. I mean you'd much rather be on Frederica than you would on 25th. So it does pose a problem for the person that is wanting to advertise in the near future because there again traffic patters will change. Hopefully they'll change the way we decide they're going to change.

MR. ADAMS: One thing I would note that it is likely that the bypass extension will intersect existing 60 inside of Wrights Land Road and there will be numerous -- there are quite a few billboards already in that vicinity, but there's four that are going up, four large ones are going up right near the Hawesway Truck Stop that will apply for prior to the moratorium. They're not up yet. So there's going to be quite a few opportunities to advertise people coming in the new bridge in terms of motels and things like that.

I'm here primarily to interpret what the committee came up with.

CHAIRMAN: Thank you, Mr. Adams.

I think we have one other person in the audience. Did you want to speak?

MR. ELLIOTT: State your name, please.

MS. WHITE: My name is Julie White.

(MS. JULIE WHITE SWORN BY ATTORNEY.)
MS. WHITE: I'm here this evening because I think our community is a beautiful spot and I want to carry on the torch of Lady Bird Johnson. That in my view is to plant a bush or a shrub instead of having advertising that not everyone necessarily wants to read or see as they travel. I think that it's important for us as we think about tourists to create an attractive pathway into our community. I think it's important not to underestimate the power of people to find restaurants and lodging. Now with cell phones and all the other means of communication I certainly don't rely on that when I travel in order to find a place to stay or eat. I think it's more important for us to remember our heritage in this area and the beauty of our natural surroundings and I would like to keep a moratorium. I think we already have plenty of billboards and I'd like to make them more spectacular and more beautiful instead of adding more to that. I just wanted you to know that there are many people in the community that feel that we have enough billboards already.

CHAIRMAN: Thank you. One more comment.

MR. ELLIOTT: State your name please.

MS. BELCHER: Elizabeth Belcher.

(MS. ELIZABETH BELCHER SWORN BY ATTORNEY.)

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MS. BELCHER: I would like to second what this lady just said. I'm a member of the Ben Hawes community and with possibility of us having the new park come from that area that the addition to the Ben Hawes work. I was wondering when Mr. Adams read this list of gateways why 60 West was not included in that because my understanding is the entrance to the park may be out 60 West.

CHAIRMAN: Ms. Belcher, to answer that question Mr. Adams is here to interpret only what the committee had decided. His role of answering questions why they did not put that in the mix, you know, he does not know that. He's just interrupting what they came out with.

MS. BELCHER: Is it too late to add that?

CHAIRMAN: At this meeting right now it would be because we're getting ready to vote very shortly on the proposal.

MS. BELCHER: I'd like this lady, like I said, I would encourage you all to a moratorium and to try to beautify our highways with the park being expanded like it is, the tourism that will be coming through that area, people are looking for nature and for beauty and not looking for billboards. Thank you.

CHAIRMAN: Thank you for your comment.

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Yes, sir. Would you like to make a comment?

MR. ELLIOTT: State your name, please.

MR. HAIRE: Paul Haire.

(MR. PAUL HAIRE SWORN BY ATTORNEY.)

MR. HAIRE: I come here representing PRIDE. PRIDE will not prevent, will not provide an opinion one way or the other about this ordinance. The process we will provide an opinion in that we feel that fiscal court did try to represent a broad base of the community and try to make a compromise on the proposal and feel that the fiscal court made all efforts possible to solicit all opinion before coming up with a compromise on the ordinance.

CHAIRMAN: Thank you.

The Chair is now ready for a motion unless anybody has any more questions.

Yes, sir. Would you like to make a comment?

MR. MORSE: Yes, I would.

MR. ELLIOTT: State your name, please.

MR. MORSE: My name is Paul Morsee.

(MR. PAUL MORSE SWORN BY ATTORNEY.)

MR. MORSE: I'm here representing myself. Not a representative of any organization. I
was on the committee and I did work with the Smiths on it. If I'm not mistaken, I believe that the Smiths had signed off on the new and were in agreement on the new spacing and size of the billboard. I know they did not sign off on the gateway community idea, but I understand, at least it was my understanding, he did sign off on --

CHAIRMAN: Mr. Morsee, your comments will be to the Chair and not to any individual.

MR. MORSE: Okay. That they did sign off on all other aspects of the new proposal.

In any event, I believe that communities that look good are nicer for people to live in. They attract tourist. They are more likely to attract better jobs and that billboards are a form of visual pollution. I haven't given a lot of thought to billboards until I got into this and I drove the entire bypass. I drove all the entrances to the city. Started looking at billboard and I found out that the areas without billboards are really much more attractive. In fact, the City of Owensboro ban new billboards for than a decade ago. There's not been a new billboard built in the City of Owensboro for some 11 years. Several Kentucky counties and several entire states have banned new billboards altogether.
Billboards have been talking about our gateway highways and the importance of having good looking highways. Billboards have been banned on the Gene Synder Freeway. That's the outer loop around Louisville. It's a real nice road to drive. I drove it. Not a billboard on the whole loop.

By contrast the proposed regulations for Daviess County are really quite minimal. They are in fact a large concession to -- probably, I would say less than one-tenth of the population of Daviess County. We have over 90,000 people. Perhaps 90 people have some stake in this. The billboard companies understandably have a stake in it. Some advertisers have a stake and some people who lease their land for billboards have a stake. I understand that. They are a tiny minority compared to the entire community. So I trust that you will act in interest of the overwhelming majority which stands to benefit from fewer billboards. Not more.

CHAIRMAN: Thank you. I think --

MR. ROGERS: May I ask Mr. Morse a question?

CHAIRMAN: Yes, sir.

MR. ROGERS: You were on the committee.

Could you tell me why they limited it to, this is
going to shorten the billboards, be less of them now.

Why one sign per face of a billboard?

MR. MORSE: I don't think I would be the
best person to speak on that, the thought behind
that. My understanding was just to have them be less
-- not as large and more attractive. As long as we
have some that they would be smaller.

MR. ROGERS: We've got their size that
they're leaning to. Just one sign per sign face.

MR. MORSE: Perhaps the professional staff
could speak to that better than I could. In fact,
Sister Vivian was on that committee too. She might be
able to answer that question better than I.

SISTER VIVIAN: My understanding was
because we were decreasing the size and we were
limiting no pig-back, none of that, and it all came in
to play at the same time.

Gary, do you remember anything different?

MR. ADAMS: No.

SISTER VIVIAN: We had looked at what
other cities did, what the state permitted and all of
those considerations.

MR. CAMBRON: Mr. Chairman, can I ask Mr.
Smith another question, please?

CHAIRMAN: Yes, you can.
MR. CAMBRON: Mr. Smith, I have a quick question for you. Are there standard sizes? There again, I'm not very educated at that, but are there standard sizes of billboards need to be to order the material?

MR. SMITH: Correct.

MR. CAMBRON: The only reason I'm asking that it goes from -- both sides 380. Is there a size in-between 380 and 672?

MR. SMITH: No.

MR. CAMBRON: I guess if they did bring it up between say 500, then it all would have to be special or make the material more expensive. I guess you could get it, correct?

MR. SMITH: Yes. It would be real difficult. In fact, I don't know if you can actually get posters for your signs.

MR. CAMBRON: So you either live with 380, 672 or 1250?

MR. SMITH: Yes. Right now, for example, on some communities there 20 by 80, 20 by 60, as far as different size signs. There aren't any of those in this community as we speak.

MR. CAMBRON: If you broke your signage down, how many are 672 and how many are 380 or 1250?
I don't know if the city had any 1250.

MR. SMITH: The majority of ours are what we call post-panels, 12 by 25. We have some of the 672's. Those are called bulletins.

MR. CAMBRON: So the majority is 380, right?

MR. SMITH: The majority of them -- currently we don't have 380. We either have 672 or the 300 square feet.

CHAIRMAN: All right. I think the Chair is now ready for a motion.

MR. CAMBRON: Mr. Chairman, there's some questions that need to be ironed out. There is some concern that this gentleman has that I feel like haven't been addressed properly. My motion would be to postpone it and see if we can work out a few more items on it. I mean it's not a big rush on it right now. We have a moratorium. That's my thought. See if we couldn't work out or even make the compromises right here tonight.

CHAIRMAN: Mr. Noffsinger, would you like to say something?

MR. NOFFSINGER: Mr. Chairman, for the record, the moratorium was lifted some time ago. New billboards are currently being permitted; however,
they must meet the requirements of these proposed regulations.

MR. CAMBRON: Even though they aren't adopted yet?

MR. NOFFSINGER: Yes, sir. That comes from the judge/executive.

MR. CAMBRON: Sure.

CHAIRMAN: Mr. Cambron, your motion may not help. They may injure more than it would help. You might want to consider that.

MR. CAMBRON: Consider. Postponement, that's my only thought.

CHAIRMAN: Is that a motion?

MR. CAMBRON: Yes.

CHAIRMAN: We have a motion on the floor for postponement by Mr. Cambron. Is there a second?

(NO RESPONSE)

CHAIRMAN: Motion dies for lack of second.

Chair will entertain another motion.

MS. DIXON: Move to approve the billboard amendments based upon the information presented.

CHAIRMAN: Ms. Dixon has a motion on the floor to approve the billboard proposal as it is proposed by the Staff and the committee. Is there a
MR. ROGERS: Second.

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

(COMMITTEE MEMBERS IRVIN ROGERS, SISTER VIVIAN, DREW KIRKLAND AND JUDY DIXON RESPONDED AYE.)

CHAIRMAN: We have four. All opposed.

(COMMITTEE MEMBERS DAVE APPLEBY, JIMMY GILLES, NICK CAMBRON AND MARTIN HAYDEN RESPONDED NAY.)

CHAIRMAN: Four. It did not pass. Then motion fails.

MR. ELLIOTT: Well, no. You have a tie vote. I think it's referred to the next meeting.

CHAIRMAN: So it's postponed. It ended up four/four. We will move on to the next item.

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PUBLIC FACILITIES PLANS REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

MR. NOFFSINGER: Mr. Chairman, we do have a new item under New Business Public Facilities Plan that I would like to move up and consider at this point in time.

CHAIRMAN: Consider it done.
ITEM 29

3827, 3907 South Griffith Avenue
Land Acquisition and Building Construction
Consider comments regarding the acquisition of property for the construction of a fire station and city park.
Referred by: The City of Owensboro

MR. NOFFSINGER: Mr. Chairman, I believe the city manager is here tonight to discuss this item with you. It is for land acquisition and turn it over to you.

CHAIRMAN: Mr. Noffsinger, since we've had Mr. Adams introduced and sworn in, I would like to announce to the public that the commission is very proud that we have two members of our staff, Mr. Adams and Mr. Noffsinger have both passed the American Institute of Certified Planners test on their first try. We are very pleased to have this and this is a very distinguished organization that they get into by testing. So, Mr. Adams, Mr. Noffsinger, congratulations. We're very proud of you. Thank you.

Is Mr. Payne in the audience?

MR. PAYNE: Yes, sir.

CHAIRMAN: Would you step forward, please?

MR. ELLIOTT: State your name for the, please.

MR. PAYNE: Ron Payne, City Manager.

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(MR. RON PAYNE SWORN BY ATTORNEY.)

MR. PAYNE: We've got a chart here.

The city currently has a fire station located on Scherm Road. Our facility's maintenance people tell us that we need to make some $183,000 repair to that fire station. It contains asbestos and there's a lot of other things that we need to do to it. It's in a bad location. There's some encroachment problems with it and we don't want to make or commit those kind of funds to an old fire station.

Texas Gas has agreed to donate to the City of Owensboro property that's located here on South Griffith Avenue. It's about 1.7 acres in here. We are going to propose to the city commission that we construct a fire station on that piece of property and also dedicate the remaining portion of this property as a neighborhood park. This is basically what we want to do. This moves this fire station about seven-tenths of a mile south from where it's presently located. It will also give us improved response time through Tammarack Road into an area that has been of concern in regards to those response times. That's the Apollo area, the Twin Lakes area.

With that I'll answer any questions the
CHAIRMAN: Does anybody from the audience want to address this issue?

Yes, ma'am.

MR. ELLIOTT: State your name, please.

MS. FULKERSON: My name is Mary Fulkerson.

(MS. FULKERSON SWORN BY ATTORNEY.)

MS. FULKERSON: Mr. Chairman, I have a question as far as the placement of this fire station. Will this be in place of the proposed fire station on Todd Bridge Road?

CHAIRMAN: Mr. Payne.

MR. PAYNE: These are really two different issues. What we're trying to do here is address the need to basically replace the fire station we've got on Scherm Road because of the tremendous amount of repairs we have to make to it. Ultimately the need for that additional station, Fire Station Number 6 will be governed by the development that occurs out in that area of town. So there is still the possibility that the city would construct a fire station out in that area. Now, we're leaving the option open to do it in the park, but we may not want to put it there. Again, the location of that fire station is going to be driven by where the development takes place as I
said in that part of the city.

MS. FULKERSON: Thank you, Mr. Chairman.

CHAIRMAN: Thank you. Do we have any other questions from anybody in the audience?

(NO RESPONSE)

CHAIRMAN: Does anybody on the commission have a question of Mr. Payne?

MR. APPLEBY: Is Chair ready for a motion?

CHAIRMAN: Mr. Noffsinger.

MR. NOFFSINGER: If I might state for the record. The Planning Staff in reviewing this acquisition for consistency with the Comprehensive Plan has taken a look at Section 600 of the Comprehensive Plan that deals with public protection. In that section we are showing the location of the existing fire stations within the City of Owensboro and their service radius. According to the locations of our fire stations now we have quite a bit of overlap in service areas. This Fire Station Number 5 as we show it, right now the Scherm Road station if that station is moved to the south as proposed at this time would reduce overlap and coverage within that area. So in speaking to the Comprehensive Plan, I think we can forward a recommendation to the city commission that although
this proposed acquisition is not in complete compliance with the plan, that it is insignificant compliance with the plan in that it reduces the overlap and moves this station to the south and slightly west as we show in anticipated need in the current plan.

CHAIRMAN: Thank you, Mr. Noffsinger. Does anybody on the commission have any questions of Mr. Payne?

(NO RESPONSE)

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

MR. APPLEBY: Move to make a favorable recommendation.

SISTER VIVIAN: Second.

CHAIRMAN: Motion by Mr. Appleby. Sister Vivian seconds Mr. Appleby's motion. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 3

4900, 5000 Blocks Annabelle Lane Land Disposition
Consider comments regarding a proposal to close Annabelle Lane.
Referred by: Daviess County Fiscal Court
MR. NOFFSINGER: Mr. Chairman, the Planning Staff has reviewed this application. We find it to be consistent or not in conflict with the Comprehensive Plan; however, we do recommend that you forward this recommendation with the condition that prior to closing that there are two lots that currently front on Annabelle Lane that I understand are not developed. Those lots should be consolidated with adjoining property that has frontage on public right-of-way.

CHAIRMAN: Thank you, Mr. Noffsinger.

Any questions from anybody in the audience?

(NO RESPONSE)

CHAIRMAN: Any questions from the commission?

(NO RESPONSE)

MR. CAMBRON: Chair ready for a motion.

CHAIRMAN: Chair is ready for a motion.

MR. CAMBRON: Motion for approval.

CHAIRMAN: Motion by approval of Mr. Cambron.

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.

ITEM 4

314 Ford Avenue
Facility Change in Use
Consider comments regarding the change in use of an existing residential structure to a day care center for students' children.
Referred by: Owensboro Board of Education

MR. NOFFSINGER: Mr. Chairman, the Planning Staff reviewed this application. We find no conflicts with the Comprehensive Plan.

CHAIRMAN: Is there anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Any questions from anybody in the audience?

(NO RESPONSE)

CHAIRMAN: Any questions from the commission?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MR. HAYDEN: Second.

CHAIRMAN: Second by Mr. Hayden. All in

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favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, Mr. Noffsinger.

ITEM 5

2101 Grimes Avenue
Building Construction
Consider comments regarding the construction of aggregate storage bins for the RWRA system maintenance complex.
Referred by: Regional Water Resource Agency

MR. NOFFSINGER: Mr. Chairman, the Planning Staff has reviewed this request. We find no conflict with the Comprehensive Plan.

CHAIRMAN: Is anybody here representing the applicant? Do you want to make a statement?

MR. BECKETT: No. I'm Dean Beckett with Regional Water Resource Agency. I'm here to answer any questions.

CHAIRMAN: Let's see if we have any questions.

Is there anybody that has any questions from the audience?

(NO RESPONSE)

CHAIRMAN: Anybody from the commission?

(NO RESPONSE)

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

CHAIRMAN: Motion for approval by Mr. Cambron.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 6

2060 Lewis Lane
Building Construction
Consider comments regarding the construction of an addition to Sutton Elementary School.
Referred by: Owensboro Board of Education

MR. NOFFSINGER: Mr. Chairman, the Planning Staff has reviewed this application. Find no conflicts with the Comprehensive Plan.

CHAIRMAN: Anybody from the audience have any questions?

(NO RESPONSE)

CHAIRMAN: Anybody from the commission

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Move for approval.

CHAIRMAN: Motion for approval by Ms. Dixon.

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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 7

2800 Block Old Newbolt Road
Land Disposition
Consider comments regarding a proposal to close a portion of Old Newbolt Road.
Referred by: Daviess County Fiscal Court

MR. NOFFSINGER: Mr. Chairman, the Planning Staff reviewed this application. We find no conflict with the Comprehensive Plan.

CHAIRMAN: Anybody from the audience have any questions?

(NO RESPONSE)

CHAIRMAN: Anybody on the commission?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Motion for approval.

MR. HAYDEN: Second.

CHAIRMAN: Motion for approval by Ms. Dixon. Second by Mr. Hayden. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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CHAIRMAN: Motion carries unanimously.
Next item, please.

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ZONING CHANGES - CITY

ITEM 8

Portion 104 West Ninth Street, 0.84+ acres (POSTPONED)
Consider zoning change: From B-4 General Business to
I-1 Light Industrial
Applicant: Bryant-Busch, LLC

MR. ELLIOTT: State your name, please.
MS. WATSON: Becky Watson.

(MS. BECKY WATSON SWORN BY ATTORNEY.)

PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal is
in compliance with the adopted Comprehensive Plan.
This recommendation is made subject to the conditions
and findings of fact that follow:
Conditions:
1. Submission of a final development plan to be
considered by the OMPC.

Findings of Fact:
1. The subject property is located in a Business
Plan Area, where light industrial uses are appropriate
in limited locations;
2. A portion of the subject property is
currently zoned I-1 Light Industrial and contiguous

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properties are zoned I-1 Light Industrial; and

3. The applicant's proposal is a logical expansion of the I-1 Light Industrial zone because it would not significantly increase the extent of industrial uses that are located in the vicinity or overburden the capacity of the roadways or other necessary urban services in the affected area.

MS. WATSON: We would like to enter the Staff Report as Exhibit A.

(ITEM 8 - STAFF REPORT IS ATTACHED AND MADE A PART OF THE RECORD AT THIS TIME AS EXHIBIT A.)

CHAIRMAN: Is there anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody in the audience have any questions?

(NO RESPONSE)

CHAIRMAN: Does anybody on the commission have any questions?

(NO RESPONSE)

MR. CAMBRON: I would like to make motion for approval based upon Condition 1 and the Findings of Fact 1, 2 and 3, Mr. Chairman.

CHAIRMAN: Mr. Cambron has made a motion for approval.

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MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 8A

104 West Ninth Street, 2.147 acres
Consider approval of final development plan.
Applicant: Bryant-Bush, LLC

MR. NOFFSINGER: Mr. Chairman, this development plan is in order and ready for your consideration.

CHAIRMAN: Anybody from the audience have any questions?

(NO RESPONSE)

CHAIRMAN: From the commission?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. ROGERS: Motion for approval.

MR. HAYDEN: Second.

CHAIRMAN: Motion for approval by Mr. Rogers. 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

2600 West 10th Street, 0.42 acres
Consider zoning change: From B-4 General Business to I-1 Light Industrial
Applicant: Judson R. Drewry

PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal is in compliance with the adopted Comprehensive Plan. This recommendation is made subject to the conditions and findings of fact that follow:

Conditions:

1. Screening of all adjoining residential zones along the south boundary with a 6-foot high planting, hedge, fence or wall and 1 tree per 40 feet of linear boundary.

2. Screening of all outdoor storage areas with a 6-foot high solid wall or fence and 1 tree per 40 feet of linear boundary.

3. All vehicular use areas shall be paved and landscaped with a 3-foot high continuous planting, hedge, fence or wall where vehicular use areas adjoin street right-of-way.

4. Access points shall be in conformance with the adopted street access standards, restricted to no more than 40 percent of the street frontage.

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Findings of Fact:

1. The subject property is located within a Professional/Service Plan Area, where light industrial uses are appropriate in very-limited locations;
2. The subject property is contiguous to existing light industrial zones and uses;
3. Previous uses on the property have been light industrial activities; and,
4. The applicant's proposal is a logical zoning expansion because it would not significantly increase the extent of light industrial uses within the area, and would not overburden the capacity of roadways and other necessary urban services that are available in the affected area.

MS. WATSON: We would like the Staff Report entered as Exhibit B.

(ITEM 9 - STAFF REPORT IS ATTACHED AND MADE A PART OF THE RECORD AT THIS TIME AS EXHIBIT B.)

CHAIRMAN: Anybody here representing the applicant?

APPLICANT: Yes.

CHAIRMAN: Does anybody have any questions of the applicant from the audience?

(NO RESPONSE)

CHAIRMAN: Does anybody have any questions
of the applicant from the commission?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. HAYDEN: Make motion for approval with Conditions 1 through 4 and Findings of Fact 1 through 4.

CHAIRMAN: Thank you very much.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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ZONING CHANGES - COUNTY

ITEM 10

3133 Commonwealth Court, 0.22+ acres
Consider zoning change: From I-1 Light Industrial to B-4 General Business
Applicant: Ward Pedley

PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal is in compliance with the adopted Comprehensive Plan.

Findings in support of this recommendation include:

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

2. The area consists of a variety of general business and industrial uses;

3. The subject property is contiguous to existing B-4 General Business zones; and,

4. The applicant's proposal is a logical zoning expansion because it would not significantly increase the extent of the B-4 General Business zone within the area, and would not overburden the capacity of roadways and other necessary urban services that are available in the affected area.

MS. WATSON: We'd like to enter this as Exhibit C.

ITEM 10- STAFF REPORT IS ATTACHED AND MADE A PART OF THE RECORD AT THIS TIME AS EXHIBIT C.

CHAIRMAN: Is there anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Anybody from the audience have any questions or the commission?

(NO RESPONSE)

MR. CAMBRON: Make a motion for approval based upon the Staff's Recommendations and Findings of Fact 1 through 4.

CHAIRMAN: Motion for approval by Mr.
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.

MR. NOFFSINGER: Mr. Chairman, Items Number 11, 12 and 12A are related and we'll start with Item Number 11.

ITEM 11

5140, 5200-5300 Blocks Frederica Street, 84.853 acres
Consider zoning change: From A-R Rural Agriculture to
B-3 Highway Business Center
Applicant: Dial Properties, Cecil Rodney and Mary
Katherine Burns, Renus F. Ernst Heirs

PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal is in substantial compliance with the adopted
Comprehensive Plan. This recommendation is made subject to the conditions and findings of fact that follow:

Conditions:

1. Submission of a final development plan limiting access points to the three project entrance
driveways that are proposed, prohibiting access points on the out-parcels to Frederica Street or to the
entrance project driveways, and dedicating right-of-
way for the proposed Goetz Drive extension.

2. The proper signatures for allowances of
access from Towne Square Mall or Back Square Drive to
the subject property shall be obtained prior to
issuance of any permits for initiation of any work.

3. Surety for retention basins and improvements
to Frederica Street shall be submitted prior to final
plat approval or issuance of initial building permit,
whichever comes first. Improvements will include the
widening of Frederica Street to a five-lane cross
section with southbound right turn deceleration lanes
into all three project driveways, a left turn lane
approximately 150 feet in length at the northbound
approach along Frederica Street, and a right turn lane
approximately 200 feet in length at the southbound
approach along Frederica Street to the southern
project driveway. Improvements will also include a
left turn lane approximately 200 feet in length at the
northbound approach along Frederica Street and a right
turn lane approximately 250 feet in length at the
southbound approach along Frederica Street to the
project driveway opposite the Goody's driveway, and
turn lanes approximately 200 feet in length into the
northern project driveway at the northbound and
southbound approaches along Frederica Street.

4. Approval of water and sanitary sewer extensions by appropriate agencies. Surety for water and sewer improvements shall be submitted prior to final plat approval or issuance of initial building permit, whichever comes first.

Findings of Fact:

1. A portion of the subject property is located in a Business Plan Area, where highway business uses are appropriate in general locations;

2. A portion of the subject property is located in a Rural Preference Plan Area, where highway business uses are not recommended;

3. The applicant's request will be initiated as an integral unit according to a formal development plan;

4. The applicant's proposal is "arterial-street-oriented" and greater than 15 acres in size;

5. Contiguous land uses are similar in nature to those permitted in a Highway Business Center zone and constitute a logical expansion of existing uses in the immediate vicinity; and,

6. Proposed improvements to Frederica Street and connection to Towne Square Mall will allow maintenance
of an acceptable level of service without
overburdening the capacity of the roadways in the
affected area; and,

7. Oral or written commitments in excess of
325,000 square feet have been obtained supporting the
viability of the proposed Highway Business Center.

MS. WATSON: We'd like the Staff Report
entered as Exhibit E.

(ITEM 11 - STAFF REPORT IS ATTACHED AND
MADE A PART OF THE RECORD AT THIS TIME AS EXHIBIT D.)

CHAIRMAN: Is there anybody here
representing the applicant?

MR. ELLIOTT: State your name, please.

MR. KAMUF: Charles Kamuf.

(MR. CHARLES KAMUF SWORN BY ATTORNEY.)

MR. KAMUF: Ladies and Gentlemen, I
represent the landowner and also the applicant. I
didn't know whether you want to hear all three items
at the same time?

CHAIRMAN: You want to see how many
questions we have before we get into your
presentation? If we have a lot of questions, then we
may just go ahead and let you do them all. If we
don't have many questions or concern, we may be able
to sort of make it very brief.

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MR. KAMUF: I intend to do that.

CHAIRMAN: Do you understand that?

MR. KAMUF: I understand that. Since we've got a favorable Staff Report, I don't think I'll say very much. We also have an annexation, the forms have been filled out for annexation on both I think, what is it, on the industrial property and also on B-3. We have the individuals from Dial Properties that are here. Richard Cooper is here to explain anything that you have concerning the tenants. We also have Johnson, Depp & Quisenberry here and engineers to answer any questions. I'll leave it at that.

CHAIRMAN: Thank you, Mr. Kamuf. Let's see what any specific questions we might have and then you can address those.

Is there anybody from the audience that would have any questions of this proposal?

MS. FULKERSON: Yes.

CHAIRMAN: Yes, ma'am.

MS. FULKERSON: I've already been sworn in.

MR. ELLIOTT: Okay. State your name again.

MS. FULKERSON: My name is Mary Fulkerson.
Mr. Chairman, I and my family are one of the adjoining farm owners to this property. We have land that adjoins it on the west. The lady that just stood up here and presented Exhibit D did not bring up one fact. This land is in a flood plain. I have two questions regarding that. What is the maximum height that the land will be built up where the buildings will be? Will it be taller than the highway?

CHAIRMAN: What's your second question?

MS. FULKERSON: All right, sir. If the back-water is not allowed to spread over these 84 acres, then it will deeper where it will spread out on the adjoining land. As I've mentioned I and my family is one of the landowners that adjoins this. Who will be responsible for the extra back-water? That's my second question.

CHAIRMAN: Thank you. What I'm going to do is bundle up your questions at one time and they have several experts that can address these questions rather than -- then somebody else may come.

MS. FULKERSON: Considering the flood water because that is, of course, the utmost importance in my mind anyway.

CHAIRMAN: Yes, ma'am.

MS. FULKERSON: How deep are the retention
basins going to be? I believe you're going to say
that they're two foot. At two foot how will it hold
all of the head water, all of the water running off
the parking lots, and most importantly all the back
water.

CHAIRMAN: Those are your —

MS. FULKERSON: Those are the three
questions that I have.

CHAIRMAN: You said two and now you've got
three. That's fine. No problem.

MS. FULKERSON: I didn't know if you were
going to -- I was going to put the two on the back
water together. Those are the ones I have concerning
the flooding. I do have other questions however.

CHAIRMAN: Let's go through the technical
aspect. I will not answer those question, but I am
sure Mr. Kamuf has somebody in his group that will be
able to answer the technical questions. Obviously,
flooding which would be a concern for adjoining
property owners and I think those are very good
questions. Let me ask you if would you sit down for a
moment and let them address these questions.

MS. FULKERSON: I would be happy to, yes.

CHAIRMAN: Thank you. Mr. Kamuf.

MR. ELLIOTT: State your name, please.
MR. ALENDER: Tom Alender.

(MR. TOM ALENDER SWORN BY ATTORNEY.)

MR. ALENDER: Here is a copy of the proposed development plan. Between the two properties this is the existing Burns property and this is the Ernst property.

MR. NOFFSINGER: Excuse me. Mr. Alender, would you please grab the microphone and speak into it.

MR. ALENDER: This is the Fulkerson property. This is the existing Burns properties and this is the existing Ernst property.

On these two properties there's approximately 97.6 acres of ground now that's completely in the flood plain. The flood elevation according to the latest FEMA map is 392.4. This is the back water which is affected. When you have the back water affect over this 97 acres, there's existing now there's 600 -- right now there's an existing 606,500 cubic yards of flood storage area. The technical number is equivalent to 376 acres treatable ground. If you have 376 acres you'd have one foot of water on it.

We are proposing to fill the eastern portion of the property from here east out to
Frederica Street and in the process taking the dirt out of this backward L-shape property to fill here and to replace the flood volume that we're filling in over here. Lot 12 and Lot 11 and leaving the dirt in the proposed 120 foot right-of-way of the drive. In these two areas we are proposing to take out 610,300 cubic yards of material which is 378.3 acre. Less than one percent difference, but it's more than exist out there now. We have worked with the city engineer and Marwan required us to at least replace any fill volume. We had to replace the storage for back water flooding. I think that will answer one question.

The other question on the depth of the retention areas. The existing ground now down in here is down in 387 elevation, and 390 up here, an about 388 over here. These are proposed to be dry retention basins with these heavy blue lines as being a 6 foot wide concrete slab that's going to drain the water from here to a location here. These going to drain this direction. Then they're going to go from here to here into a two pump station which will kick on when it starts raining. There's enough volume in these areas to contain a five inch rain or greater than a five inch rainfall without the pumps kicking on. So when the water comes off this shopping center, it will
stay in here for a long period of time before it releases through a spillway that we have here. When the pumps kick on the pumps will be discharging at a minimal rate. Actually be 8 cubic feet per second. The water that's coming off the property now is around 190 cub feet per second. So it will be delayed back in here.

One of the questions that she asked is at the bottom of these basins is 382 at the pump stations and they'll go up to 384. The emergency spillway down here is set at 384 and 3 inches. So the height of the water in these retention basins will be a little over two foot before it starts going out. At the maximum elevation it will be three foot high. So that will be at the low spots, be here and here.

In regards to the adjoining property owners, there's an existing ditch here that goes between Ms. Fulkerson and Mr. Ernst that goes down here and then drains east into the highway ditch on Frederica Street. There's an existing ditch here, an existing ditch here and basically all goes to the southeast corner of the property.

We're proposing to send from the out lot west into the retention pond, out this spillway and out this ditch where it will exit the same spot that
it did. No additional water will go on the Mitchell property. No additional water will go on the Fulkerson property. The Goetz property is higher than our property. We're going to be taking the water that would normally come into here. There will be no water, on head water condition from our property backing up on the Goetz property or any additional property. Back water problems this will be under water.

MR. CAMBRON: The proposed blue line that runs on the south part of the property there where Mr. Mitchell's property is, is that going to be open ditch or is it a closed pipe ditch?

MR. ALENDER: That is going to have the same six foot wide concrete basin, concrete slab on the bottom. The south bank as it is with sloping down towards our property put 6 foot wide ditch on it and it will be open. There will be a slight slope of flat area draining this direction similar to the existing ground that's out there now.

MR. CAMBRON: Are those ditches going to be mobile?

MR. ALENDER: Yes. The proposed grade on these ditches, the concrete portion is .14 which is 1.4 feet and thousand which is similar to what's out
there now. These ditches are on the same grade or
proposed basins are on .3 percent which would be three
feet per thousand. If you didn't have a level out
there, you would know that it was flat or wouldn't be
much slope to it. Basically that's what the ground is
out there now.

MR. CAMBRON: You may not be able to
answer this question, but who is responsible for those
ditches and the retention basins?

MR. ALENDER: When development is
completed and these basins are built, bond releases,
then these are going to be dedicated to the city
that's in the annexation agreement. The city will
maintain all the public ditches here. They will
maintain the retention areas, the paved ditches. The
developer will be required to maintain the internal
drainage on the shopping center.

CHAIRMAN: Thank you.

MS. FULKERSON: Mr. Chairman, may I yield
the floor to Mr. Mitchell.

CHAIRMAN: Mr. Mitchell, come forward and
be sworn in.

MR. MITCHELL: I'm Frank Mitchell.

(MR. FRANK MITCHELL SWORN BY ATTORNEY.)

MR. MITCHELL: I'm Frank Mitchell and I've
got 47 1/2 acres here right south of the Ernst property. I understood you to say that this ditch is six foot wide?

MR. ALENDE: That's what it's going to be, yes, sir.

MR. MITCHELL: Well, this ditch right now, anywhere on that ditch I go back almost 5000 feet. Anywhere across this ditch I can step across it like I'm stepping right here. This water, this water in this area drains south. It drain to the south side and to the east. On my farm here which Mr. Fulkerson's land I've got, what, about 18 acres back in here. This tract of land we cleaned it up probably 9, 10 years and put it on grade. 5000 feet from here to 431 I've got 14 inch -- so when we have 3 inch rain this ground is under water. It goes off it goes off slow. The ditch on the south side of me we cleaned out which Mr. Kamuf can attest. We ended up in a lawsuit over that. What I'm trying to say is when we get a three inch rain that farm of mine is under water. It will go off reasonable quick. We get five inches rain of water, it has to go but it doesn't go off that quick because water is backing up. Built this ditch on 431. Goetz ditch on the back back here fiscal court and the landowners just cleaned this
ditch out in the last 60 days, but still yet they
didn't make this ditch any deeper. They just cleaned
out the debris. The more you put under water — back
in '97 when we had that 14 inches of rain for a 24
hour period, my farm probably had six foot of water in
it and Mr. Schell lived there.

How deep was the water in your house?

I've got four grain bins sitting right
here behind his house. The water was probably six to
eight foot deep. I don't use these bins because when
the water starts up I don't have anything big enough
to clean those bins out quick enough before the water
gets in them. This is a major thing here.

You are going to have some flashfloods and
you're going to have — we've had 6 to 8 inches of
rain in a 24 hour period. This is a major thing.
You're going to raise this two feet. When these lakes
fill up the water is going to overflow. We've been
through this before. When you put a crop out there
and see water come up over like this which fortunately
we don't have many floods in the summertime, but we
have them in the spring, fall and winter.

My main concern, which I don't know
whether it's going to come before this meeting or not,
but between Mr. Schell's house and the right-of-way
here of this ditch I've got a 30 foot easement. When I come in here with four-wheel drive tractor, disc and a rotor, I'm stretched out 70 feet. I have to swing out on 431 across the road to shoulder on the east side in order to hit this 13 foot. Believe me when you have traffic coming in four directions, there ain't no second chances. You either hit it or you miss it and I have missed it. People out there to stop traffic to where we could get things lined up.

With JR Miller coming across here, right across the road from me, the only way that I'm going to get farm machinery in my farm is get police escort out there to stop traffic. I went out this afternoon and was looking. Didn't go out to measure, but it's approximately 40 feet from my line to the edge of where JR Miller is going to be. This is going to be - - you know, I don't know what I'm going to do.

Last fall when we were hauling grain off this farm coming out of Owensboro with a Tandem truck and you swing in the other lane to hit this brick, I had a car pass me on the right side. I mean just an instant a big truck would have killed somebody.

People, everybody is in a hurry. They don't have time to wait. I'm sure probably JR they'll put a stoplight in there, but when they do how am I going to get in
there? I'm just one person versus the City of Owensboro, but I have some major problems. What they ought to do is come on out and build a Target on my farm and solve this problem.

CHAIRMAN: Thank you, Mr. Mitchell.

Mr. Alender.

MR. ALENDER: This is a very narrow ditch right now. We are proposing to make the bottom 6 foot wide plus the fact the area from my finger here up to where the slope, we're are going to flatten that out which will also take water. This ditch is going to be in the range of six foot deep at that particular place.

MR. MITCHELL: When you make that ditch six foot wide on the bottom, how wide is it going to have to be on top?

MR. ALENDER: On your property line we're going to leave your property and that bank the same and put the ditch at the bottom wide enough in our direction and then this area here is going to have dirt taken out of it also. It's going to be only .3 percent up slope which is basically flat.

MR. MITCHELL: Well, --

CHAIRMAN: Wait a minute, Mr. Mitchell. May I get you to step to the other podium because we
MR. MITCHELL: Like I just said a few minutes ago, anywhere on that ditch for 5000 feet I can step across. That ditch right, Bob, right behind your house where my grain bins are and I can step across them. I mean I can take a bushhog and mow both sides.

CHAIRMAN: Mr. Mitchell, I think I see where you're heading with it. You're extremely concerned about getting your equipment in.

MR. MITCHELL: No. What I'm concerned, what we're talking about right now is this ditch that at the deepest point would be right on 431. The deepest point of that ditch might be three and a half, four feet.

MR. SCHELL: It ain't very deep.

CHAIRMAN: Wait just a minute. For this other gentleman to make any comments, we'll have to have him sworn in and he'll have to have his time. I don't mind doing that, but that's what we have to do to do it correctly.

MR. MITCHELL: I understand that. Back up 40, 50 feet and that ditch, well, back at the other end of the Ernst property be on the west end, that ditch probably, I know it's not two foot deep.
inches. Like I say I can step across it. It's that wide. If you're going to make it six foot wide at the bottom, unless you go straight up in cement, how are you going to hold the walls of that ditch? What I'm asking is: How wide is the top of that ditch going to be?

MR. ALENDER: It may be easier to draw a sketch.

MR. CAMBRON: The ditch, will it have a berm on each side or will it be flat, the depth? Do you understand what I'm saying?

MR. ALENDER: We're going to slope from Mr. Mitchell's side down on three to one slope so we can put some grass on it. We'll go six feet wide this grade and put a very gentle slope of .3 percent this way with no berm on it which it may be two foot wide at the bottom now. We're going to have a 6 foot wide all on our property plus basically this entire strip is going to be ditch. From south of where the proposed power line is, from here to here, is going to be ditch. It's going to be approximately 50 feet wide, but only six feet on the south end is going to be paved. This will have water flow in it also. It will be sloped this direction. What we are proposing doing is we're going to have to relocate the ditch,
existing ditch out on Frederica Street. We're going
to match this existing ditch that's right across from
the Schell property on highway right-of-way and take
it constant flow from here all the way back to the
back which will lower the ditch in this general area.
We're going to greatly increase the volume of our
ditch compared to what the ditch is out there now.
With these retention ponds here head-water that's
coming from the Goetz property and our property will
be a lot slower than it was getting to this ditch now.
Now, if we have something like we did in '97 where we
had flashfloods and back water problems, it's going to
be the same as it was.

MR. MITCHELL: Right now where does Rodney
Burns, where does his water go right now?

MR. ALENDER: Mr. Burns has a ditch, has a
field ditch here and there's a field ditch on --

MR. MITCHELL: It goes towards 431?

MR. ALENDER: 431. Then there is an
existing ditch here from where Goetz property comes it
comes down here into your ditch and goes this way
towards 431.

MR. MITCHELL: That little ditch you're
talking about is about that wide.

MR. ALENDER: Well, we are making it
CHAIRMAN: Sir, you may step to the podium, but you cannot make any comments until you do.

MR. MITCHELL: You know, I don't want to take up any excessive time, but you put your feet in my shoes and your family — Jimmy Gilles knows what's going on, and you work all your life. I bought this farm in 1966 and it was a frog pond when I bought it. You could not drive a tractor from one end to the other without getting hung up. We finally got it cleaned up and put on grade to where the water will drain off on a normal rain. Like I say it will drain. We've got it on a grade. We run drains. That farm can make, consistently it will make 55 to 60 bushel of soy bean. It will make 175 to 200 bushel of corn if everything is right. You take a six inch rain on it or waste high and you done got your yield down 50 percent. What I'm saying is is farm land out there now. When you put it under asphalt you make the ditches bigger, but a five gallon will only hold five gallons of water.

CHAIRMAN: Mr. Mitchell, let me make a comment here. This proposal of their drainage flood plain is something they have proposed and have had to have it approved by the city engineer. So it's not
something that they're saying I think it will work, live with it. It's something that they've proposed, the city engineer has and the county engineer has approved it and made recommendation, changes and others so that your situation is no worse and based on your testimony seems like your actual situation should basically improve.

Is that correct?

MR. ALENDER: It should improve under head water conditions. These are going to be dry when there's no rain. It's a hole in the ground. When it rains the water is going to stop in here and build up several hours before it ever goes out this spillway. So the water that you were getting when the Goetz property, the Burns property, Ernst property, that may hit your ditch and go over the bank of the ditch is not going to be getting there at the same speed.

MR. MITCHELL: How big are these holding basins going to be?

MR. ALENDER: They're a total of 30 some odd acres.

MR. MITCHELL: Are they going to have a concrete bottom in them?

MR. ALENDER: Yes. That's what these dark lines are, are 6 foot wide paved bottom and with flat,
basically flat bottoms.

MR. MITCHELL: In other words, that retain basin is going to slope toward that 6 foot wide concrete?

MR. ALENDER: No, sir. That retaining basin from here north is going to slope to here. There's a pump station going to be here.

MR. MITCHELL: What size pump will that be?

MR. ALENDER: That is a 40 horse-power pump.

MR. MITCHELL: Is that, what, four inch, six inch?

MR. ALENDER: It's going to be in a ten inch line. It's going to discharge out here into a concrete spillway.

MR. MITCHELL: Into a concrete what?

MR. ALENDER: Spillway. This dark line here is a concrete spillway that's going to turn and come and come into this.

MR. MITCHELL: Okay. Now, that will be under the new JR Miller Road, right?

MR. ALENDER: It will be discharging just north of the JR Miller Road. We have talked with city engineer.s They are going to put in - - with this
road put in they will put a box culvert there for
evacuation spillway in case the pumps don't work and
get back water so the water can go out.

   MR. MITCHELL: Now, this is another thing
to take into consideration regardless how smart your
engineers are. What if that pump doesn't work?

   CHAIRMAN: Didn't you just answer that
question?

   MR. ALENDER: Well, what we have is a
spillway that overflows. If the pumps don't work, the
way the pumps are set up is when the water comes in
the pumps kick on. Water starts going out this
evacuation spillway, the pumps kick off. So this
spillway is designed to handle the water that comes
through here in a six and a half inch rain fall.

   MR. MITCHELL: Like I say I don't want to
hold up this meeting. I don't want to -- but you'll
see the day, mark my word, that your pump will be
under.

   MR. ALENDER: Yes, sir, it will.

   MR. MITCHELL: They will be. I promise
you this building that they're fixing to set up out
there, they'll have - (inaudible) - we've seen it it.
I mean, you know you've got to live there and
experience it before you can believe it. I know

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you're going to do what you got to do, but it's going
to affect a lot of people. Most of you in this room,
you got to be a farmer to know how a farmer lives.
You've worked all your life to get a piece of ground.
Whether it drains right. Will it produce right.
Something like this if you all don't do what you say
you're going to do, you're going to mess up what I've
worked for for 40 years.

MR. ALENDER: That's why we have bonds for
it and the city will not accept it until it's built
this way and then we've done what we're suppose to do
and it will be between you and the city.

MR. MITCHELL: Just like what you just
said, you know. You might put the bottom of the ditch
6 foot wide and it's only a foot wide right now. The
top of it is going to have to be, and I'm not an
engineer, but the top will probably have to be 20 feet
wide.

MR. ALENDER: It's going to be a lot wider
than that and it's going to be on our property.

MR. MITCHELL: It will be on your
property, but when that ditch overflows it will be on
my property.

MR. ALENDER: But the chance of it
overflowing with a wider ditch are a lot less than it
would be with the existing ditch that's down there now.

MR. MITCHELL: Well, the ditch on 431 overflows right in front of his house.

CHAIRMAN: Sir, would you like to step to the podium and be sworn in and say something. You've sort of been a background participant.

MR. ELLIOTT: State your name, please.

MR. SCHELL: My name is Robert Schell. I live on the property line too down there in the corner.

(MR. ROBERT SCHELL SWORN BY ATTORNEY.)

MR. SCHELL: Like Mr. Mitchell is talking about there. That ditch is not very deep. 431 ditch out there, Frederica Street ditch I don't know where you're figuring on putting all the water down it. You talking about making it 6 foot wide in the bottom.

All that water comes right there at one time it's going to wash 431 away unless you have some way to stop it because that bridge by my house now water comes out of that field in the ditch I have to keep getting fill put in by the bridge there so we can get in and out. It sinks down about foot or two a year.

All that water is going to be -- you talking about heading right out -- one way out there. Only way to
MR. ALENDER: The way the retention basins are designed, they hold the water back. That water that discharges out of this retention pond is going to be a lot less than the water that comes out here now, much less what the new development is going to be. You have all of this area for this water to come into and back up before it comes out of this.

MR. SCHELL: How big of a line you going to have running over there to pump down there? I mean how much water is coming out of there at one time?

MR. ALENDER: The design right now for the two pumps total is for 4,000 gallons per minute. It may sound like a lot, but that retention basin holds 2 million gallon. So in a three inch rainfall, it's going to take over a full day to pump that basin out.

MR. SCHELL: How high a fill are you figuring on putting in where you're going to build a shopping center thing? How much high up?

MR. ALENDER: 386 down here at your property to about 390 up here. The buildings are going up 394 and half and the property line is going to be anywhere from 392 to 393 1/2.

MR. SCHELL: Around three foot then.

MR. ALENDER: It averages around four
MR. SCHELL: That's putting it up there pretty high.

MR. ALENDER: But they are taking the same amount of volume of dirt out of this that we're putting over here.

MR. SCHELL: Are they figuring on getting all this dirt back on the back property?

MR. ALENDER: Yes, sir.

MR. SCHELL: That's going to make enough ditch there, retention basin to catch water.

MR. ALENDER: Yes, sir. We're going to strip the dirt on the south side of proposed Goetz Lane all the way back here. It's around 50 foot wide, next to Mr. Mitchell's property. We're going to put a new power line in here. We're going to take all this dirt out here. There's about three feet back in here that we're going to take out and you're getting into the six foot range up here. So whatever dirt comes out of here is going over here.

MR. SCHELL: You figure on, in other words, leaving the ditch alone on the south side going to work over to the north side of the ditch.

MR. ALENDER: All the new ditches will be on our development. We're not going to affect
anything south of here. We're going to make sure that
tall the water goes to the same spot, but at a slower
rate than it is now. That's the beauty of having the
dry basin there. When it does rain, the water is
going to collect in that basin and the pump is going
to pump it out at a slow rate. If you have a huge
rain and the back water coming up, this isn't going to
flood, but this will.

MR. SCHELL: How many feet is JR Miller
Boulevard extension from the ditch now or where they
figuring on putting it through there? How many feet
will it be?

MR. ALENDER: This is going to be
approximately 100 feet. From the south property line
to the south right-of-way is going to be 80 feet.

MR. SCHELL: In other words, it's going to
be about 80 foot from the ditch. Now, you figuring to
making about a 6 foot bottom ditch up there?

MR. ALENDER: Yes. We're going to make a
six foot bottom ditch. That's this heavy line. Then
another 50 feet of it we're going to take the dirt out
of it.

MR. SCHELL: So you're not going to have
much room left in-between there then, right?

MR. ALENDER: We'll have room that it will
slope up to the roadway, yes.

MR. SCHELL: But you're not going to have much room between the road and the ditch.

MR. ALENDER: Well, we have 120 foot right-of-way there and the road itself is only 40 foot wide. So we have 60 foot from the center of the right-of-way and we have 20 foot of road nobody has to lose. It's 40 foot strip from the edge of the pavement to the right-of-way. There's also going to be a walkway here, 10 foot wide walkway that the Greenbelt way. There's no problem with the water and the ditch being near the roadway. We've got plenty of space between there.

MR. SCHELL: That's where you figuring on the Greenbelt going through then.

MR. ALENDER: On the right-of-way, yes, sir.

MR. SCHELL: Another question I would like to ask you. They figuring on widening Frederica Street. Which way are they going there? East or west?

MR. ALENDER: West.

MR. SCHELL: Going west with all of it?

MR. ALENDER: Yes, sir.

MR. SCHELL: They've got all kind of
right-of-way on the east side. How come they don't go
that way?

MR. ALENDER: We are needing right turn
lanes and acceleration lanes.

MR. SCHELL: You haven't got a whole lot
of right-of-way on the west side.

MR. ALENDER: We are dedicating additional
right-of-way.

MR. SCHELL: You're going to get right on
top of my front porch if you keep coming over. You
only got so much. If you get any more than that, I
won't have anything left.

MR. ALENDER: The intent from the proposed
land extension is to taper it back to where your
property line, where the edge of the pavement is now.
We will not be widening on your property. We can't.
We don't have permission.

MR. SCHELL: You're not going to go any
further than right there at that ditch then?

MR. ALENDER: What the proposed plans are
for Goetz Drive is to put in --

MR. SCHELL: I understand. I'm talking
about Frederica Street now. How far are they going to
Frederica Street? They're talking about making four
lane road all the way to Frederica on 431 or
Frederica, whatever you want to call it.

MR. ALENDER: I'm not up to - -

MR. SCHELL: You're talking about putting Frederica Street - -

MR. ELLIOTT: They're talking at the same time.

CHAIRMAN: Let's address the questions here. He's adequately answered about every footage, square footage, square inch that we can possibly cover. If you've got a couple of more specific things, we definitely want to cover them, but we can't talk at the same time because she can't get them for the record. Some of our people may have trouble recording this.

MR. SCHELL: What I want to know is if they're making Frederica Street out from this shopping center on that development they're talking about now, are they going to stop there or are they going straight on out with Frederica Street like they plan an going west side?

CHAIRMAN: We'll let this be the final question.

MR. ALENDER: The proposal right now is to stop the widening of Frederica Street just south of where Goetz Lane is going to come in and taper back

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where our south property line is which is the north
property line of your property and Mr. Mitchell's
property. There's no widening south of our property.

CHAIRMAN: Thank you.

Does anybody from the commission have any
questions by chance that were not covered in this very
extensive presentation?

MS. FULKERSON: Excuse me. I still have
the floor.

CHAIRMAN: Would you like to ask another
question, ma'am?

MS. FULKERSON: Yes, sir. I believe that
I have two sections. One areas that was concerning
the flood and I haven't had all of answered -- I
haven't had every question answered. I had three
questions and I've only had one of them answered.
Then I do have another part. I known everybody is
going tired to listening to all of this.

CHAIRMAN: I would suggest probably in
your best interest that you make your questions very
concise because the technology, you realize this is
not a group of engineers that he's making this
presentation to. So consequently we have to be able
to grasp, understand and move on.

MS. FULKERSON: I understand that.
CHAIRMAN: Thank you. Another couple of minutes.

MS. FULKERSON: Addressing what you just said, I have been to Mr. Noffsinger. I have been to the city engineer. I've been to the city manager. I have talked to the city attorney and everybody keeps saying wait until this meeting. I took off from work to be here tonight, sir. I hope that you all will listen to my problems.

CHAIRMAN: Ma'am, we have been listening for quite some time.

MS. FULKERSON: Does my 20 minutes start now?

MR. APPLEBY: Do you have a question?

MS. FULKERSON: Yes, I do.

CHAIRMAN: If you have a question, please be concise.

MS. FULKERSON: Maximum height of the land where the buildings will be built up over the highway. He said between three and five foot.

MR. ALENDER: No, ma'am.

CHAIRMAN: Next question, please.

MS. FULKERSON: If -- now you've got me shook.

If the extra back water is raised, who
will be responsible, and I think you answered that.
The city and the county.

CHAIRMAN: No, ma'am, I did not answer any
questions.

MS. FULKERSON: Oh, okay. Then that's
still a question that I have. That's the part that I
have on the flood.

We now have a verbal agreement with the
Ernsts family to use an access to our crop land. On
the map there's a public utility easement of 15 foot.
Will something be put to stop the public from coming
onto our land on these six foot spillways; and if so,
can this be removed so that we can have access to our
crop land? Question.

The next question is: What will prevent
four-wheelers from coming across our land from this
what we are now calling the six foot basin, concrete
basin, and using that as a short cut to the new
footfall field? I have been told that you all are the
people that I need to ask this question of.

CHAIRMAN: Would you answer the questions
that you may answer and then we will conclude this.

MR. ALENDER: The first question that I
can answer she wanted to know the height of this would
be built above the highway. The highway is
approximately 391 here and 392 here. The buildings are going to be two and a half feet higher than this end and two and a half feet higher at this end. Existing ground out here is going to be raised an average of four feet.

Back water. As I mentioned earlier we are replacing -- whatever they're going to put in here is going to be taken out of this same property. So basically -- whatever is put in here is going to be taken off of our property. So we are only moving the volume from our property to the other spot. It will have exact -- one percent of the same volume that we had prior to development of the property.

Public right-of-way I can't answer.

Four-wheelers I can't answer.

CHAIRMAN: Thank you. Does that satisfy your concerns?

MS. FULKERSON: To what Mr. Alender say may I make a comment?

CHAIRMAN: Of course.

MS. FULKERSON: Thank you, sir.

I lived through the '97 flood. What Mr. Schell said with heart and conviction, I lived through it too.

Jimmy, you know what it was like.
The first thing that my husband told me is that if water ever crosses 431 it will be in our house. I know water will stand three foot tall on 431. I saw it. If this is going to be two and a half foot above the road, I want everybody to be aware no matter what anybody says if we have another '97 flood it's going to be the height Mr. Alender just talked about. It is very possible to get into these buildings. I want Home Depo to know because I believe some people from the Dial Corporation are here tonight. I want them to know it has been within the last four years three foot high on Frederica Street. That was a comment I wanted to make.

CHAIRMAN: Thank you. I think all of us that lived here in Owensboro are very aware of that.

MS. FULKERSON: Apparently you're not taking it as seriously as I would hope this commission would. Flooding in Daviess County is vital importance. All of us, the people that lived in the area. Like I say Exhibit D doesn't even say anything about that this is in a flood plain. Before this is rezoned, you know, everybody here ought be aware that land that is now in crop land will hold water back much faster than land that is now covered by asphalt. Of course, it slides off. You know, water moves
faster when it's on asphalt. So it is a difference
whether we're talking about 87 acres, 84 acres in crop
land with ditches and contours versus the retention
basins which will hold however many Mr. Alender just
said.

CHAIRMAN: Thank you.

MS. FULKERSON: Thank you.

What about my questions? Who will be
responsible if this doesn't work?

CHAIRMAN: Who will be responsible?

MS. FULKERSON: Yes.

CHAIRMAN: I believe Mr. Alender covered
that. You know, there is a bond posted. He is
required by the city engineer, to meet the city
engineer plans for drainage of that area.

MS. FULKERSON: Thank you, sir.

CHAIRMAN: He covered that in his
presentation earlier.

MS. FULKERSON: So the city engineer --

I'm sorry. Johnson, Depp & Quisenberry would be
responsible if this plan fails and there is extra back
water or is it the Dial Corporation?

MR. APPLEBY: City engineer always has
approved JD&Q Design. If they build it to conform
with this plan, their bond will be released and the
city will maintain to take that over. If you have a
problem that you felt was a result of this drainage
plan, you take it up with the city beyond that point.

MS. FULKERSON: Thank you, sir.

Appreciate it, Mr. Appleby. That means if I have a
problem, it is the city --

MR. APPLEBY: I don't know what they'll do
about it, but you take it up with the city.

MS. FULKERSON: Thank you, sir.

I have asked Mr. Fowler and this was the
time and place to get an answer. I do appreciate Mr.
Appleby -- is Mr. Fowler here?

CHAIRMAN: I don't think he joined us
tonight.

MS. FULKERSON: Okay. So this is on
record that it is the city's responsibility --

MR. APPLEBY: No, ma'am. I said you would
take it up this the city. The city has approved this
plan.

MS. FULKERSON: Yes, I know. Excuse me
one moment.

Thank you, Mr. Chairman.

CHAIRMAN: Thank you.

With no further questions unless you all
would like to --
CHAIRMAN: The Chair is now ready for a motion.

MR. APPLEBY: Mr. Chairman, I make a motion for approval based upon Planning Staff Recommendations, Conditions 1 through 4 and Findings of Fact 1 through 7.

MR. CAMBRON: Second.

CHAIRMAN: Mr. Appleby has made a proposal for approval. Mr. Cambron has made a second. All in favor raise your right hand.

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

CHAIRMAN: All opposed.

(NO RESPONSE)

CHAIRMAN: We had seven votes and one abstention. Seven for and one abstain. Mr. Gilles abstained.

Next item, please.

ITEM 12

5150 Frederica Street, 12.786 acres
Consider zoning change: From A-R Rural Agriculture to I-1 Light Industrial
Applicant: Dial Properties, Cecil Rodney and Mary Katherine Burns

PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal is
in compliance with the adopted Comprehensive Plan.

This recommendation is made subject to the conditions
and findings of fact that follow:

Conditions:

1. Submission of a final development plan
   limiting access points to the three project entrance
   driveways that are proposed, prohibiting access points
   on the out parcels to Frederica Street or to the
   project entrance driveways, and dedicating
   right-of-way for the proposed Goetz Drive extension.

2. The proper signatures for allowance of access
   from Towne Square Mall or Back Square Drive to the
   subject property shall be obtained prior to issuance
   of any permits for initiation of any work.

3. Surety for retention basins and improvements
   to Frederica Street shall be submitted prior to final
   plat approval or issuance of initial building permit,
   whichever comes first. Improvements will include the
   widening of Frederica Street to a five-lane cross
   section with southbound right turn deceleration lanes
   into all three project driveways, a left turn lane
   approximately 150 feet in length at the northbound
   approach along Frederica Street, and a right turn lane
   approximately 200 feet in length at the southbound
   approach along Frederica Street to the southern
project driveway. Improvements also will include a
left turn lane approximately 200 feet in length at the
northbound approach along Frederica Street and a right
turn lane approximately 250 feet in length at the
southbound approach along Frederica Street to the
project driveway opposite the Goody's driveway, and
turn lanes approximately 200 feet in length into the
northern project driveway at the northbound and
southbound approaches along Frederica Street.

4. Approval of water and sanitary sewer
extensions by the appropriate agencies. Surety for
water and sewer improvements shall be submitted prior
to final plat approval or issuance of initial building
permit, whichever comes first.

Findings of Fact:

1. The subject property is located within a
Business Plan area, where light industrial uses are
appropriate in limited locations;

2. The applicant's proposal is an integral light
industrial component of a larger planned highway
business center;

3. The light industrial component is
arterial-street-oriented and is a use desirable in
close proximity to highway business uses; and

4. The applicant's proposal is to be developed
in accordance with a formal development plan in
keeping with the design theme of the larger highway
business center; and,

5. Proposed improvements to Frederica Street and
connection to Towne Square Mall will allow maintenance
of an acceptable level of service without
overburdening the capacity of the roadways in the
affected area.

MS. WATSON: We'd like to enter the Staff
Report as Exhibit E.

(ITEM 12 - STAFF REPORT IS ATTACHED AND
MADE A PART OF THE RECORD AT THIS TIME AS EXHIBIT E.)

CHAIRMAN: We have someone here
representing the applicant? Have any questions?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. CAMBRON: Motion for approval based
upon the Planning Staff's Findings of Fact and
Conditions 1 through 4 and Findings of Fact 1 through
5, Mr. Chairman.

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

MR. APPLEBY: Second.

CHAIRMAN: Second by Mr. Appleby. All in
favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

Related Item to two items above:

ITEM 12A

5140, 5150, 5200-5300 Block Frederica Street/5300, 5361 Goetz Drive (Extension) Southgate Centre, 97.639 acres
Consider approval of combined final development plan/major subdivision preliminary plat.
Applicant: Dial Properties, Rodney Burns Property, Renus Ernst Heirs Property

MR. NOFFSINGER: Mr. Chairman, this application, this plan has been reviewed by the Planning Staff. It's found to be in order. We do have some comments related to access, sewer and sanitary sewage disposal as well as water. I'll make those in just a moment. It has been reviewed by the city engineer for drainage. It has been approved. It's been reviewed by all utility companies.

If the Planning Commission wishes to approve this item tonight, they should do so with the following condition, and that will be: Signatures of the adjoining property owners to the north which would be Towne Square Mall property. Some of those owners also include Sears Department Store, JCPenney's, Famous Barr. Those signatures must be obtained on this final development plan before it's to be approved.
so that this development will have access to the Towne Square Mall Center to the north as well as the current plans for sanitary sewage disposal and for water supply to extend over to the Towne Square Mall property. So if this plan is approved we need those conditions. It would not be approved or signed until such time as those conditions are met.

CHAIRMAN: Thank you, Mr. Noffsinger.

MR. KAMUF: Mr. Chairman, may I just ask a question?

CHAIRMAN: Mr. Kamuf.

MR. KAMUF: Gary, are you seeing either the signatures or the Back Square easement?

MR. NOFFSINGER: No, sir. The zoning changes are tied to either or. The approval of this plan is tied to the plan you have before this commission tonight, which does not include a plan for the Back Square Drive extension. If you're unable to obtain the signatures for the front access between the two centers, then you would need to file a new plan which shows extension of Back Square with the proper signatures.

MR. KAMUF: I understand. Thank you.

MR. CAMBRON: Chair ready for a motion?

CHAIRMAN: Chair is ready for a motion,
Mr. Cambron.

MR. CAMBRON: Motion for approval based upon the conditions that Mr. Noffsinger set forth.

CHAIRMAN: Motion by Mr. Cambron based on the conditions of Mr. Noffsinger. Do we have a second?

MR. APPLEBY: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion passes unanimously.

Next item, please.

ITEM 13

6028 KY 54, 0.23 acres
Csondier zoning change: From R-1A Single-Family Residential to B-4 General Business
Applicant: Joseph and Linda Boarman

PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal is in compliance with the adopted Comprehensive Plan.

This recommendation is made subject to the conditions and findings of fact that follow:

Conditions:

1. No access points shall be allowed on KY 54; and,

2. Landscaping and land use buffers shall be
provided in accordance with the Zoning Ordinance.

Findings of Fact:

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

2. The subject property is situated at the intersection of a major street;

3. The subject property is contiguous to B-4 General Business zones and uses;

4. The applicant's proposal is a logical expansion of existing B-4 General Business zoning to the north across KY 54 because it would not significantly increase the B-4 General Business zoning in the vicinity and would not overburden the capacity of roadways or other urban services available in the affected area; and,

5. The current zoning is inappropriate and the proposed zoning is more appropriate because the subject property has historically been used for business purposes.

MS. WATSON: We'd like to enter the Staff Report as Exhibit F.

(ITEM 13 - STAFF REPORT IS ATTACHED AND MADE A PART OF THE RECORD AT THIS TIME AS EXHIBIT F.)

CHAIRMAN: Is there someone here
representing the applicant?

APPLICANT: Yes.

CHAIRMAN: Let's see if we have any questions.

Does anybody have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody on the commission have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. HAYDEN: I make a motion we approve the Conditions 1 and 2 and Fact Finding 1 through 5.

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

MR. APPLEBY: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 14

5400 Block KY 56, 5.985 acres
Consider zoning change: From A-R Rural Agriculture to R-1A Single-Family Residential
Applicant: Michael W. O'Bryan d/b/a O'Bryan Development, Inc., J.C. Ellis Estate

Ohio Valley Reporting
(270) 683-7383
PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal is in compliance with the adopted Comprehensive Plan and there have been major changes of an economic, physical or social nature within the area involved which were not anticipated in the adopted Comprehensive Plan and those changes have substantially altered the basic character of the area involved. Finding of fact in support of this recommendation follow:

1. The subject property is located within a Rural Preference Plan Area, where urban low-density residential uses are appropriate in very-limited locations;

2. The adjacent property was rezoned in 1998 to R-1A Single-Family Residential and the applicant's proposal is a logical extension of that zone and development;

3. The adopted Comprehensive Plan update now recognizes the location of a new elementary school in the vicinity of the subject property;

4. The adopted Comprehensive Plan update now recognizes the extension of sanitary sewers in the vicinity of the subject property;

5. The availability of the sanitary sewers to Ohio Valley Reporting (270) 683-7383
the immediate vicinity has resulted in the creation of
an urban residential growth area within a Rural
Preference Plan area under the adopted Comprehensive
Plan update; and,

6. Roadway improvements proposed with Section 1
of this development will result in adequate roadway
capacity for the proposed development.

MS. WATSON: The Staff Report is entered
as Exhibit G.

(CHAINMAN: Is somebody here representing
the applicant?
(NO RESPONSE)

(CHAINMAN: Any questions from the
audience?
(NO RESPONSE)

(CHAINMAN: Questions from the commission?
(NO RESPONSE)

Mr. Cambron: Motion for approval of
Findings of Fact 1 through 6.

(CHAINMAN: Motion for approval by Mr.
Cambron.

MR. GILLES: Second.

(CHAIRMAN: Mr. Gilles has a second. All

Ohio Valley Reporting
(270) 683-7383
in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

Related Item:

ITEM 14A

Meadow Run at Whispering Meadows, 5.985 acres
Consider approval of combined final development
plan/major subdivision preliminary plat.
Applicant: Michael W. O'Bryan, d/b/a O'Bryan
Development, Inc., JC Ellis Estate & O'Bryan
Development, Inc.

MR. NOFFSINGER: Mr. Chairman, this plan
has been reviewed by the Planning and Engineer Staff.
It is in order. 'It's for 23 single-family lots.
With that it's ready for your consideration.

CHAIRMAN: Anybody here representing the
applicant?

(NO RESPONSE)

CHAIRMAN: Have any questions?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. HAYDEN: Make a motion for approval
with the recommendation of Staff.

CHAIRMAN: Got a motion for approval by
Mr. Hayden.

MR. APPLEBY: Second.
CHAIRMAN: Second by Mr. Appleby. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 15

5700 Block St. Lawrence Road, 10000 Block St. Lawrence Spur, 7.14 acres
Consider zoning change: From EX-1 Coal Mining to A-R Rural Agriculture
Applicant: Thomas Gary and Michell Bickett

PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because the proposal in compliance with the adopted Comprehensive Plan,
subject to the findings of fact that follow:

Findings of Fact:

1. The subject property is located in a Rural Maintenance Plan Area, where rural large-lot residential uses are appropriate in limited locations;
2. The subject property is adjacent to A-R Rural Agriculture zoning;
3. There are no current coal mining activities apparent on properties in the vicinity;
4. The proposed lot for rural residential use fronts upon a public street; and,
5. The proposed residential lot meets the criteria for rural large-lot residential use.
MS. WATSON: Staff Report is entered as Exhibit H.

(ITEM 15 - STAFF REPORT IS ATTACHED AND MADE A PART OF THE RECORD AT THIS TIME AS EXHIBIT H.)

CHAIRMAN: Is anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Any questions from anybody on the commission?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. ROGERS: Motion for approval based on Staff's Recommendations and Finding of fact 1 through 5.

CHAIRMAN: Motion by Mr. Rogers 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.

Next item, please.

ITEM 16

4715 Sutherland Road (Portion of 4617 Sutherland Road), 1.093 acres

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

Ohio Valley Reporting
(270) 683-7383
Applicant: Jim Hawkins, Stephen E. and Christine Aull

MR. NOFFSINGER: There is a request for
postponement by the applicant.

MR. CAMBRON: Make a motion for
postponement.

MR. HAYDEN: Second.

CHAIRMAN: Motion for postponement.

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 17

3010 US 60 E (Future 3120 US 60E), 0.976 acres
Consider zoning change: From B-4 General Business to
R-1A Single-Family Residential
Applicant: Franklyn D. Westerfield

PROPOSED ZONE & LAND USE PLAN

The applicant is seeking an R-1A Single-Family
Residential zone. The subject property is located in
a Business Plan Area, where urban low-density
residential uses are appropriate in very-limited
locations.

SPECIFIC LAND USE CRITERIA

(A) Building and lot patterns should conform to
the criteria for "Urban Residential Development" (D6).
(B) Existing, expanded or new sanitary sewers

Urban low-density residential uses should occur only where sanitary sewer systems exist or may be expanded or where new sewer systems may be properly established.

(C) Only logical expansion in Business Plan Areas, completely new locations of urban low-density residential use should not be established. However, existing areas of this use may be expanded onto contiguous land.

APPLICANT'S FINDINGS

The proposed Zoning Map Amendment is not in compliance with the Comprehensive Plan. The existing zoning classification given the property is inappropriate. The subject property has been used as a single-family residence for many years. An existing R-1A zone is located south of the subject property across East Sixth Street. It is the applicant's contention that the proposed zoning classification is appropriate.

PLANNING STAFF REVIEW

The subject property is located in the 3100 block of US 60E. The subject property is located in an area of intense commercial development. Land use criteria applicable to this proposal are reviewed below.
GENERAL LAND USE CRITERIA

Environment

No important environmental criteria apply to the subject property.

Urban Services

All urban services are available to the site, including sanitary sewers. However, the subject property is currently served by an on-site sewage disposal system.

Development Patterns

The subject property is situated amid intense general business uses. To the north across US 60 E is located Kentucky Fried Chicken restaurant, Long John Silver's restaurant, and a convenient/gas store. Another convenient/gas store and an apartment complex are located to the east of the subject property. To the west of the subject property is a bank. Property across E 6th Street is zoned R-1A and contains a single-family residence. The current single-family residential use on the subject property is oriented facing US 60 E, with access from US 60 E and from E 6th Street via a gravel driveway.

The single-family residence located on the property is non-conforming and may remain. The existing zoning of B-4 General Business would not
permit a single-family residence to be constructed on
the property in accordance with the currently adopted
Zoning Ordinance. It is the intent of this Zoning
Ordinance to permit non-conformities to continue until
they are removed, but not to encourage their
survival. The Zoning Ordinance further states that
non-conformities shall not be enlarged or extended
beyond the scope and area of their operation at the
time of the adoption or amendment of the Zoning
Ordinance, nor be used as grounds for adding other
structures or uses prohibited elsewhere in the same
zone.

The applicant wishes to construct a
garage/storage building on the property as an
accessory structure to the single-family residential
use. The Zoning Ordinance does not allow enlargement
of a non-conforming use, so the applicant is
attempting to rezone the property to the R-1A
Single-Family Residential zone so a permit may be
obtained for construction of the garage/storage
building.

The structure the applicant is proposing would
measure 56 feet by 96 feet. There is some question as
to whether this is an accessory use to the residential
use. The size of the building may make it the
The predominant building on the subject property since it exceeds the size of the residential structure. The Zoning Ordinance defines an accessory use or structure as a use or structure subordinate to the principal use of a building or to the principal use of land and which is located on the same lot serving a purpose customarily incidental to the principal building or land use. The applicant should be advised that if the zoning classification is changed to R-1A, the proposed structure must be used as an accessory structure incidental to the principal single-family residence.

Additionally, the applicant would be responsible for buffers for incompatible land use as required by the Zoning Ordinance. An average 10-foot wide easement with a 6-foot high continuous element with one tree every 40 linear feet is required when residentially zoned property adjoins business-zoned property.

Intersection & Driveway Spacing

US 60 E is classified as a principal arterial. The subject property has approximately 116 feet of frontage on US 60 E. Access points should be limited to the existing access point that currently exists on the property if the proposed zoning change occurs.

SPECIFIC LAND USE CRITERIA

Ohio Valley Reporting
(270) 683-7383
The applicant's proposal to rezone the property to R-1A Single-Family Residential does not meet the criteria of the Comprehensive Plan. The criteria for Residential Development are not applicable to this request as the criteria speak to new urban residential development or redevelopment occurring as a regular subdivision or planned development. This proposal is for an existing non-conforming structure on one lot within an area that is an existing nonresidential developed area. As the Zoning Ordinance intends to allow nonconforming uses to continue, but not to encourage their survival, a zoning change on the subject property to a residential classification would not be appropriate.

There is some R-1A zoning in the area situated across E 6th Street. However, the development pattern surrounding the subject property is nonresidential in nature and E 6th Street is a logical boundary for the B-4 General Business zoning. Extension of the R-1A Single-Family zone across E 6th Street to accommodate one lot situated between commercial uses would not constitute a logical expansion of the R-1A zone. In light of the situation of the subject property, the Planning Staff considers the current B-4 zone to be appropriate and the proposed R-1A zone to be
PLANNING STAFF RECOMMENDATIONS

Staff recommends denial because the proposal is not in compliance with the current adopted Comprehensive Plan. Findings in support of this recommendation are as follows:

1. The subject property is located in a Business Plan Area, where urban low-density residential uses are appropriate only in very-limited locations;

2. The current B-4 General Business zoning classification is appropriate for the subject property as evidenced by the nonresidential development patterns in the immediate vicinity;

3. The subject property contains a single-family residential dwelling which is a non-conforming structure in the B-4 General Business zone and may remain without enlargement or expansion; and,

4. It is the intent of the currently adopted Zoning Ordinance to permit non-conformities such as this case to continue until they are removed, but not to encourage their survival.

MS. WATSON: Enter this as Exhibit I.

(ITEM 6 STAFF REPORT IS ATTACHED AND MADE A PART OF THE RECORD AT THIS TIME AS EXHIBIT I.)

CHAIRMAN: Is someone here representing Ohio Valley Reporting (270) 683-7383
the applicant?

Please step forward.

MR. ELLIOTT: State your name, please.

MR. WESTERFIELD: May name is Franklin D. Westerfield.

(MR. WESTERFIELD SWORN BY ATTORNEY.)

MR. WESTERFIELD: Mr. Chairman, I'm the applicant as I said here. I wish I was in the flood plain. I would have a better chance. Since I'm the only one tonight to get annulled just about. All I want to do I purchased a piece of property that has a home on it. I want to live in the home which I am now and I want to build myself a garage. The garage that's there is an existing garage that was made for a model T or model A. It won't even hold my riding lawn mowers.

The garage will be built on the Sixth Street side if I get permission. The Sixth Street side has nothing to do with Kentucky Fried Chicken or any of the rest of them. One side is a vacant field. The other side is residential. It's multi-family. It's apartment house. There's nothing exotic about it. It's just -- the house has been there for -- it's the oldest piece of property on that side of Sixth Street. We want to live there and I want to
have a garage that I can play with my grandchildren
and stuff like that. That's I want. I don't want to
object to any of the Zoning Ordinances or future plans
for that area, but the home has been there. It's been
used as a residence for all of these years and I want
a garage. It won't change the entranceways. I won't
change anything there except build a garage. Hope it
doesn't get flooded out if I get it built. It's
commercial, but it's never been used as commercial
except for a doctor's office back years and years ago.
It's always been a residential home. It's the old
dinosaur in that area. I'd still like to live there
and have a garage to play with my grandchildren.
That's the only thing I can ask this board.
Appreciate you approving this application or this
rezoning. I guess it's crazy to try to rezone a piece
of commercial property to residential, but I don't
have any use for it as commercial. I was to live
there and have a garage and enjoy it. I appreciate
you board letting me.

CHAIRMAN: Mr. Westerfield, I have a
question. You say a garage. This structure will
measure 56 by 96.

MR. WESTERFIELD: Yes, sir. My name is
Westerfield and I'm a pack-rat. I collect everything
under the sun. I have seven other garages and I'm planning on throwing away a bunch of stuff and that's the smallest thing I feel like I can get by with.

CHAIRMAN: You're going to have a consolidated sale.

MR. WESTERFIELD: Some of it I've packed so long it's not worth selling. This is my last move and my last garage. I have other pieces of property here in town and they consistently -- my pattern is a larger garage, but this is my last one.

CHAIRMAN: When you speak garage, speak of the standard structure garage. Not a pole barn?

MR. WESTERFIELD: Well, it is a pole barn. Yes, sir, it's a pole barn. It's a post-frame building, but it's built as good as any home in that neighborhood. My trusses and stuff will set on two foot centers. I put a really shingle roof on it like a house. The metal is commercial metal. The pictures of the buildings are beautiful. There's a lot of them built out here in town and lot of them built in that neighborhood, but there's none of them built like mine except the last one I built.

CHAIRMAN: Mr. Westerfield, let me ask Ms. Watson a question or two.

MR. WESTERFIELD: Sure. I have some
similar pictures.

CHAIRMAN: I appreciate the way that
you're handling this.

Ms. Watson, I can sympathize with him
trying to build a garage. This is somewhat larger
than the garage I have at my house; although, I do
envy him. I must admit that because I'd like to put a
bunch more junk in mine. What can we do to allow Mr.
Westerfield to build a structure and stay within the
ordinance so that he can have some place to store his
toys?

MS. WATSON: You mean without rezoning the
property? I mean he would have to rezone to --

CHAIRMAN: My question to you is: How can
we accommodate his request within either ordinance or
a rezoning?

MS. WATSON: The property would have to
be rezoned for him to be able to get a permit to build
an accessory structure to his residential use.

CHAIRMAN: Where can we keep him within
the ordinance with a rezoning? You know, I hate for a
man not to be able to build a garage on his own
property, even though it's a large garage.

MS. WATSON: I don't think there would be
a limit on the size of the garage if the property was
rezoned. That's probably a better question for Jim Mishel who issued the building permit.

CHAIRMAN: Mr. Mischel.

MR. ELLIOTT: State your name, please.

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I've talk to Mr. Westerfield about this in the past. Basically what the building department has done in the past with a structure such as this, kind of a large accessory building, is on the building permit he state this is to be used for accessory residential use only. Not to be used for business or anything of that nature. Then we just have to wait and see. If he does what he proposes to do. You know, if it is zoned residential.

CHAIRMAN: In other words, we can put restricted covenants that he agrees to. Obviously you're trying to prevent this from being a wholesale operation out of his backyard.

MR. MISCHEL: Yes. I don't think you would need to put any extra restrictions on there. The ordinance -- if this property is zoned residential, then under the ordinance he can only have accessory storage. It wouldn't be, the ordinance he couldn't use it for business or anything else. It
would have to be just his personal accessory residential use. If he went any further than that, then he would be in violation of the ordinance. I guess that would be an enforcement problem.

CHAIRMAN: For you.

MR. MISCHEL: Yes.

CHAIRMAN: Do you have any problems with the direction where we're heading to try to help Mr. Westerfield build his structure and stay within the ordinance?

MR. MISCHEL: I don't want to speak what the recommendation is. I think we've gone --

CHAIRMAN: I understand the ordinance. The ordinance is pretty clear cut, but we're trying to keep him within the ordinance, build the structure.

MR. MISCHEL: As far as my enforcement end of it, I've seen few of these and sometimes people do what they say they're going to do and sometimes they don't and it becomes an enforcement problem. It's just as simple as that. I don't want to say that he will or will not. I don't know. I guess you can take him for his word, I guess. I have no way of knowing.

CHAIRMAN: Let me ask Ms. Watson what her opinion is on this situation if I may.

Ms. Watson, you see where I'm trying to
head with this. I know why you all came up with the proposal for denial. I understand that. Do you see where we're heading with this situation, that maybe we can accommodate Mr. Westerfield and stay within the ordinance and yet he knows he's going to have some iron clad restrictions laid upon him?

MS. WATSON: Well, he would have to adhere to the Zoning Ordinance. I mean the Planning Commission would have the authority to recommend approval for the rezoning if that's what you chose to do. Our recommendation from a planning use standpoint is that it's a business area and should remain a business zone.

SISTER VIVIAN: I have a question. Would it be any better since it's already zoned general business that if he said this pole barn, this large structure that he's building is business, that he's going to sell things out of it?

MS. WATSON: He couldn't do that under the ordinance and have a single-family residential structure on the same property.

SISTER VIVIAN: Either way he goes he's pinned in.

MR. CAMBRON: Can I ask Mr. Westerfield a question?
CHAIRMAN: Go ahead, Mr. Cambron.

MR. CAMBRON: Mr. Westerfield, you stated that there are garages of this size in that neighborhood.

MR. WESTERFIELD: No, sir. I was talking about the building, construction of the garage. There are garages in that neighborhood, but nobody in their right mind builds a garage this large except a Westerfield. I can understand where everybody has a big question mark. Is this guy crazy or is he just trying to pull the wool over their eyes. I assure you I'm the one that's crazy. So if there's no problem with any of the zoning people, but I just want to a big garage. I'm capable of doing it now. I just want a big garage to play with my grandchildren. I have purchased a 125 foot long train that's 26 foot long.

MR. CAMBRON: Is that going to run through the neighborhood?

MR. WESTERFIELD: No, sir. That's why I need the garage. The train itself is 26 foot long.

All I want is a garage. I thought about doing it commercial and just call it a commercial building, but I had no intentions of building commercial business or even continue being in the commercial end of it. When I retire in the next three years, if I live that long,
if I don't get killed over the train, I just want to have a garage to play in. I don't want to deal with the public. Trust me.

MR. HAYDEN: Why can't he build a garage there with as it is today?

MR. WESTERFIELD: I discussed that. Matter of fact, I discussed it with Mr. Noffsinger and Mr. Mischel both. I could call it commercial building because it's commercial and just not use it commercial except for storage, but I can't live there. I have a home there and I would like to live there and play in the garage. I would have to move out if I build a garage. I could do it under existing zone, but I just couldn't live there too.

CHAIRMAN: Let me ask Mr. Noffsinger a question. Which would be better? If we change it to residential, we may handcuff ourself 3, 4, 8, 10, 20 years down the road because somebody will eventually probably want to bring that back to general business. Would it be better to let him build this and keep the zoning as it is?

MR. APPLEBY: The question is not whether he's an honorable man and going to build a garage. I don't have any doubt that's what he plans to do, but
you create problems that I see if you -- is the zoning appropriate or is it not? As I see it, it's appropriate right now. You've got commercial on either side of it. You all of a sudden have residential adjoining commercial which changes all the setbacks if I'm not mistaken, doesn't it, Gary? So you're presenting problems where the property owner that's on either side of it; whereas they don't have that now. Right now it's commercial and you can build right up to the line adjoining commercial, but if you change into residential in the middle then you're hurting the people on either side of you too. It's not question of letting the man build a garage. Is this an appropriate zoning or not? I just can't see --

MR. CAMBRON: One thing that surprises me is that, you know, some of the adjoining property owners wouldn't be here to voice their opinion.

AUDIENCE: We are here.

MR. NOFFSINGER: I do have a question of Mr. Westerfield.

Mr. Westerfield, the materials you're going to store in this building, are those materials to be used, are they going to be sold at another location?
MR. WESTERFIELD: Not from that location.

MR. NOFFSINGER: So you're going to using this garage to store materials that will be taken to another location; say to the Consumer Mall to be sold?

MR. WESTERFIELD: Possibly. My personal life with the Consumer Mall is one in the same. Is has been since it was born. My main objection right now or main concern is to be able to throw away this pack-rat stuff that I've accumulated for years and it's really no good. We have a bar, a jukebox, a Coke machine, and a pool table, and stuff like that that my grandkids want to use. I have ten grandchildren and great-grandchildren. So it's a dual purpose garage. It all relates I guess to me and my addiction to having --

CHAIRMAN: Mr. Westerfield, let us move and hear what collectively your neighbors have to say because we've got to give them fair time. I think some other people want to address this issue. Let's let them. Thank you for your presentation and the manner in which you handled it.

Is there anybody else that would like to address this issue?

MR. ELLIOTT: State your name, please.

MR. HESS: I'm John Hess at 717 Pleasant
MR. HESS: It's interesting if we look at Highway 60 and we've already got some problems, but it's interesting that a comment was just made that the size of the garage. We were already kind of duke out on Highway 60 with regards to the size of the jail. I can't see a 50 by 100 foot building that's going to be a garage. If it's going to be a pole building for storage of thing, then it's going to become very unsightly. Already on the property large tree, rather extensive size tree has already been cut down and is just laying on the property and a pile of brush is as high as the apartment building next-door. This is some of the stuff that Mr. Westerfield has already started to do on his property. This is very unsightly for not only the bank next-door or the apartment community next-door, but also in our front yard because that's what we look at. We look at the back of his building in our front yard. My wife and I we both would have been here tonight but Riley has got a very bad cold and had to leave, but we're asking you to really consider turning this down. We don't need another pack-rat situation on Highway 60 and to become further problems along the Sixth Street which is a
1 really residential street that dead ends into St. Pius
2 Tenth and dead ends at the other end into Wyndall's
3 and a shopping center. So we would appreciate it if
4 you'd keep it in that frame of that environment.
5 Thank you.

6 CHAIRMAN: Thank you.
7 MR. ELLIOTT: State your name, please.
8 MS. LIKENS: Mildred Likens.
9 (MS. LIKENS SWORN BY ATTORNEY.)
10 MS. LIKENS: I have lived at 3300 East
11 Sixth Street for 29 years. I have taken great pride
12 in caring for and maintaining my property. We are a
13 neighborhood that has kept our spacious lawns and our
14 homes in excellent condition. I feel to rezone the
15 property in question would devaluate our homes and it
16 would be a starting point for others to request zoning
17 change. We would no longer have the quiet peaceful
18 neighborhood where many people are free to walk early
19 in the morning and late in the evening. I
20 respectfully ask you not to allow this rezoning to
21 take place. Thank you much.

22 CHAIRMAN: Thank you.
23 Is there anybody else that has any
24 presentation? Yes, sir.
25 MR. ELLIOTT: State your name, please.
MR. HICKELBECK: Ken Hickelbeck (phonetic).

(MR. HICKELBECK SWORN BY ATTORNEY.)

MR. HICKELBECK: I'm very concerned about the future looks of this place we're discussing. I like to invite you all to drive by there and look at the present scene. It is trashy. To me it's an eyesore. I strongly suspect, but I can't prove this now because it hasn't happened yet, but I strongly suspect that Mr. Westerfield wants to use this "garage" as a storage place for his business across the street, the Consumer Mall. That's just an opinion. I can't prove it because it hasn't happened yet, but that's what I strongly suspect the man has in mind. If he doesn't, have him tell us now. It is very unsightly. I suggest that you drive by and look at it.

I have here a letter from Mr. Vincent B. Hayden, Jr. who is owner of Hayden Construction Company who lives on East Sixth Street. He has this to say: "To City Zoning Board. Gentlemen, I live at 3246 East Sixth Street which is very near the property that you are considering rezoning from commercial to residential. I would like to know why you are considering doing this. The homes that face this
property on East Sixth Street are expensive properties. We fear that if this property is rezoned the person who owns this piece of land will use it as a storage area and that this will become an eyesore. Already this property is in disrepair because trash is strung all over and there are piles of dead branches and limbs. We fear that this will become worse if you rezone this property. Homeowners in this area are worried and concerned that it will cause a devaluation of their properties. We all take great pride in our residences and would not want this to happen. Please consider this matter before making your decision to rezone. Thank you. Very truly yours, Vincent B. Hayden, Jr."

CHAIRMAN: Thank you. Does anybody else have any other comments?

MR. WESTERFIELD: First of all I'd like to respond to the comments made, statements made other people. First of all, Mr. Hess. He has a legitimate complaint. There is a tree that has been topped and it was topped by the City of Owensboro, OMU, and so were about ten other trees there. Everything there has been cleaned up. They have a problem with getting to the high tension line or the
transformers with servicing the apartment house
next-door. They have to come through my yard to
service that transformer. OMU came out there, looked
at it, and they have trimmed the trees down where now
they can go through Mr. Marksberry's property to
service Mr. Marksberry's transformer. Not be in my
yard and tear up my yard where I can't mow it. There
was one tree left over that OMU did not clean up.
They just topped it and it unsightly. It's pitifully,
but I have a telephone number in my pocket right now
of the people that are going to be there at 7:00 in
the morning to clean it up. I've a cell phone number
if anyone here wants to call just to verify that,
you're more than welcome to you. That was predone
before I came to this meeting.

The size of this building scares people.
Like I stated awhile ago, he's got to have a motive.
You can't be that crazy to want it that big. I do
have. I have that desire to have a garage. May not
have it there. It's up to you fellows, but I've got
pictures of garages here. So far this garage is going
to be around $45,000 and I guarantee you with the
material in it it's as good as any home in that
neighborhood with the exception of Mr. Hess because
his was built 100 years ago. You can't get that
material now. That's not even in the same ballgame as
this material here. It's a nice old stately home and
I understand he looks out the front door he sees the
mess that's there right now it would upset him. I
assure him that I'm not going to house prisoners or
nothing. It's going to be for me and my
grandchildren. With the landscape and it will be neat
and clean. The only thing I can do is give my word.
That's the only thing I can say. I'd be glad to
address any questions they have specifically. I have
pictures here of similar buildings. Not exactly
because of the size of my building. Be glad to show
it to Mr. Hess or any of the other people here. I
won't degrade the neighborhood. You walk around the
neighborhood and find garages there are pathetic
compared to what this is going to be. Like I say the
roof on this will not be a pole barn roof. It'd be a
regular traditional roof with trusses set on two
foot. All engineering plans and stuff were turned
over to Mr. Mischel. Thirty pound shingles. Five-
eighths plywood. It's not a traditional pole barn
like you would for storing farming equipment. It's
got a six inch concrete floor in it. Nobody does that
any more except crazy old people like me. It will be
a good asset to the community and I'll keep it neat

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and clean and that will be my only subjection is to be there and get that place nice where I can live and enjoy it.

CHAIRMAN: Mr. Westerfield, I appreciate your presentation. What we're faced with is we're limited by the ordinance that there is. Then the other property owners, of course, we have to uphold the ordinance in accordance with what we're dealt with and we've got other property owners concerns to take into hand too.

MR. WESTERFIELD: Yes, sir. I understand that. I'm in a catch 22 situation. I'm the last, that property is the last in there to be developed, but where do you go from here if you can't build commercial property or residential? I'll build a commercial garage there, but I just won't use it for commercial purpose. I'll use it for me and my job. What I can I do with that property?

CHAIRMAN: It's a difficult situation you're faced with.

MR. WESTERFIELD: I have conformed, the property itself has conformed the whole neighbors and I am on Sixth Street. I'm not with Kentucky Fried Chicken. I do have neighbors to get along with and I fully intend to.
CHAIRMAN: Let me ask if anybody on the commission has any questions?

MR. ROGERS: Mr. Westerfield, how long have you lived here in the house?

MR. WESTERFIELD: In that house?

MR. ROGERS: Yes.

MR. WESTERFIELD: A year ago in May, sir.

MR. ROGERS: Did you buy it at public auction or real estate?

MR. WESTERFIELD: Private. It was private sale.

MR. ROGERS: That was zoned B-4 when it was sold. How can he buy a piece of property zoned B-4 and move into it?

MR. NOFFSINGER: They're allowed to continue the use of residential until such time that use is abandoned and converted to commercial use. So I would say the previous owners used the property for residential use and they're simply continuing that and allowed to until they change it to commercial use. Then it could not go back to residential.

I want to make sure the neighbors understand that the property is currently zoned B-4 General Business which means he could operate a business at this location today. He's wanting to
rezone the property to R-1A Single-Family Residential.

By doing that he's allowed, if he's successful in the zoning change, to build this structure. The zoning ordinance, as long as he meets setbacks, he can build a garage twice this size in a residential zone. It may not be compatible with that residential area, but our Zoning Ordinance does not speak to the design of the building or to whether or not they fit into the neighborhood. It speaks to do you meet the proper setbacks. Here's a situation where he's wanting to build a garage. It sounds to me like not only storage accessory to his residence, but he's also going to be storing items there to be sold elsewhere, you know, for money. If that's the case that activity would not be allowed on residential zone. Then we would be in the position of having to address a zoning problem, a zoning violation problem. If he's storing items there to be sold somewhere else at another premises, he should be building this garage in an I-1 Light Industrial zone. That's the zone where you're allowed to have storage, where you do not have retail activities on the premises. So it's a unique situation. It's not an easy situation for this board to address because they would like for this gentleman to be able to build his garage, but then looking at
the plan area and the uses around it, at some point in
time it's highly likely this property will be
developed for commercial use. That would be in
keeping with the development along Highway 60 East.
However, commercial use would not necessarily be in
keeping with the uses on East Sixth Street. The
Zoning Ordinance does not allow you to expand non-
conforming uses beyond the way they consist today.
That's why he's having to consider the rezoning to
residential.

MR. APPLEBY: You do have some screening
requirements in commercial zone?

MR. NOFFSINGER: Yes, sir. Screening and
setbacks. If this property is rezoned to residential,
then the adjoining commercial properties would be
faced with additional screening requirements as well
as setback requirements.

MR. CAMBRON: I'm sorry, say that again.

MR. NOFFSINGER: If this property is
rezoned to R-1A Single-Family Residential, the
adjoining commercial properties would then be required
to meet screening requirements if they expand and
additional building setbacks. Right now they in
theory can build to the property line. If this is
rezoned to residential, they would have to stay ten
feet off the property line.

CHAIRMAN: I think if there are no more questions.

MR. CAMBRON: Chair ready for a motion?

CHAIRMAN: Chair is ready for a motion.

MR. CAMBRON: I'm going to have to make a motion for denial based upon the Staff Findings of Fact 1 through 4.

MS. DIXON: Second.

CHAIRMAN: Motion by Mr. Cambron for denial. Second by Ms. Dixon. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

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MAJOR SUBDIVISIONS

ITEM 18

Brookhill Estates (Lots #107, 108, 110, 111, 113-119), 3.853 acres

Consider approval of revised major subdivision preliminary plat.

Applicant: Brookhill Estates, Inc.

MR. NOFFSINGER: Mr. Chairman, this preliminary plat has been reviewed by the Planning and Engineering Staff. It's found to be in order and ready for your consideration.
CHAIRMAN: Any questions?
(NO RESPONSE)

CHAIRMAN: Any questions of the commission?
(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Move for approval.

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 19

Eagle Crest Estates, 9.505 acres
Consider approval of major subdivision preliminary plat.
Applicant: Ron Jones, William M. Kuegel, et al.

MR. NOFFSINGER: Mr. Chairman, this application and plan has been reviewed by the Planning Staff and the Engineering Staff. It's found to be in order and it's set with the exception and has not been approved by the Green River District Health Department. They are proposing sewers to be
installed; however, these sewers will just be the lines only. They will not be tied to RWRA system. In the interim, they will have to guide septic tank and the health department I believe they will approve it. They're just not available for signature at this time. So if approved condition it on the health department.

CHAIRMAN: Chair is ready for a motion.

MR. ROGERS: Motion for approval.

CHAIRMAN: Motion for approval based on the health department approval by Mr. Rogers. Do we have a second?

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 20

Mid-America Airpark, Unit-6, Lot 8; Phase II, 43.019 acres
Consider approval of major subdivision final plat.
Applicant: City of Owensboro, Daviess County, Owensboro-Daviess County Industrial Foundation, Inc.

MR. NOFFSINGER: Mr. Chairman, this plat is in order and ready for your consideration.

CHAIRMAN: Any questions?

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MR. APPLEBY: Motion for approval.

MR. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

SURETY RELEASES

ITEM 21

Al Braden Office Building, $1,057
Consider release of surety (Certified Check) for landscaping.
Surety posted by: Braden Office Building

ITEM 22

Duncan Auto Sales, Inc., $499.50
Consider release of surety (Performance Bond) for landscaping.
Surety posted by: Duncan Auto Sales, Inc.

ITEM 23

Thruston Country Cupboard #9, $16,9897.50
Consider release of surety (Performance Bond) for landscaping
Surety posted by: Wholesale Petroleum, Inc.

MR. NOFFSINGER: Mr. Chairman, the Surety Releases, Items 21, 22, and 23 are in order and can be released in toto.

CHAIRMAN: Chair is ready for a motion.
MS. DIXON: Move to approve.

CHAIRMAN: Motion to approve by Ms. Dixon.

MR. GILLES: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

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SURETY TRANSFERS

ITEM 24
Bridle Ridge, $11,583
Transfer of surety (Certificate of Deposit) for sidewalks to the City of Owensboro.
Surety posted by: Paul J. Martin

ITEM 25
Doe Ridge, Unit #1, Section 3, $1,436
Transfer of surety (Certified Check) for water mains to the Daviess County Fiscal Court
Surety posted by: Robert J. Wimsatt

ITEM 26
Locust Grove Estates, Unit #1, $2,500
Transfer of surety (Certificate of Deposit) for storm sewers to the Daviess County Fiscal Court
Surety posted by: Eric Avery

ITEM 27
The Landings of Hearland, Phase I, $4,184.60
Transfer of surety (Certificate of Deposit) for streets to the City of Owensboro
Surety posted by: Jagoe Development Corp.

MR. NOFFSINGER: Mr. Chairman, the Surety Transfers, Items 24, 25, 26 and 27 are in order and

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may be transferred in toto.

MR. CAMBRON: So be.

CHAIRMAN: Is that a motion, Mr. Cambron?

MR. CAMBRON: That is a motion.

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.

NEW BUSINESS

ITEM 28

Consider revision to OMPC filing fees to include an application fee for cellular communication towers.

MR. NOFFSINGER: Mr. Chairman, we are asking Planning Commission to consider amending their filing fee chart to include an application fee for cell towers. We've reviewed a number of these in the past. We have not been charging a filing fee. The Staff puts in many hours in review of these plans. We have a court reporter to pay for these meetings as well as other costs incurred. We were recommending that the Planning Commission propose a $2,000 filing fee on
each application submitted. This filing fee is much higher than other filing fees that we have. Many of our development fees are highly subsidized by tax payers. This is a filing fee that we feel that should not be subsidized, but should pay its way and would put the Planning Commission in a position should we need to hire consultants in the future to represent and review these applications there would be moneys available to do that.

CHAIRMAN: Any questions from any of the commission?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. CAMBRON: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Cambron.

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.

Ready for one final motion.

MS. DIXON: Move to adjourn.

MR. APPLEBY: Second.

CHAIRMAN: All in favor raise your right hand.

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(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Meeting is adjourned.

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

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 130 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this
the 6th day of August, 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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