The Owensboro Metropolitan Planning Commission met in regular session at 6:00 p.m. on Thursday, November 8, 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
Scott Jagoe
Irvin Rogers
Judy Dixon
Martin Hayden
Stewart Elliott, Attorney

CHAIRMAN: Want to welcome everybody to our November 8th Owensboro Metropolitan Planning Commission meeting. Please stand. Our invocation and pledge of allegiance will be given by Dave Appleby.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Our first act of business would be to consider the minutes of the October 11, 2001, meeting. Are there are any questions, corrections or additions to the minutes?

(NO RESPONSE)
CHAIRMAN: If there are none, the Chair is ready for a motion.

MS. DIXON: Move to approve.

CHAIRMAN: Ms. Dixon move for approval.

MR. HAYDEN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Mr. Noffsinger

MR. NOFFSINGER: Second item on the agenda is view presentation of the updated website iOMPC.org. We have been working on improving and expanding our website that went on line in September or October of last year. Since that time we've been working with the Messenger-Inquirer. At this time I'd like to give some credit where credit is due before Mr. Adams makes a presentation.

We had Mr. Gordon Wilkerson and Eric Kyle working on the project. With Messenger-Inquirer new media we had Kathleen Hensley and Ben Woods. The City of Owensboro information services contributed to this site. Mr. Wes Crabtree as well as Matt Royalty and the OMPC Staff Mr. Gary Adams has carried the ball on this project in working with many of the different
organizations as well as Jim Mischel and Becky Watson.

I'm certainly very excited about our new website. I think you will find it's very informational. The website that we had prior to this one was only just an opening page that told you what the Planning Commission was and what they do. This puts out all of our forms, documents and information that we use on a daily basis and try to communicate to the public. It puts it out on-line so that you have easy access to it if you have access to the internet.

So with that turn it over to Mr. Gary Adams. The Planning Commission will probably want to scoot around and go out into the audience.

(MR. GARY ADAMS GIVES PRESENTATION OF THE UPDATED WEBSITE iOMPC.org.)

CHAIRMAN: Mr. Adams, I want to thank you for a nice presentation. I think that will be very informative to the public and I hope the public uses it and it will answer a lot of their questions and save them a lot of time. Thank you very much. Well done.

Mr. Noffsinger, next item.

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PUBLIC FACILITIES PLANS
REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

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ITEM 3

2200 Airport Road (Map N-66, 67)
Building Construction
Consider comments regarding the construction of a snow and ice control materials building.
Referred by: Owensboro-Daviess County Regional Airport Board

MR. NOFFSINGER: Mr. Chairman, the Planning Staff has reviewed this application. We find that there is no conflict with the Comprehensive Plan. We recommend you forward a letter to that effect to the Daviess County Regional Airport Board.

CHAIRMAN: Is there anybody here representing the airport board?

(NO RESPONSE)

CHAIRMAN: Are there any questions from any of the commissioners?

(NO RESPONSE)

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

Ohio Valley Reporting
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Next item, please.

ITEM 4

2200 Airport Road (Map N-66, 67)
Facility Construction
Consider comments regarding the relocation of a drainage ditch and the construction of the east Airport perimeter road.
Referred by: Owensboro-Daviess County Regional Airport Board

MR. NOFFSINGER: Mr. Chairman, the Planning Staff has reviewed this application. We find there are no conflicts with the Comprehensive Plan and recommend you forward a letter to the Owensboro-Daviess County Regional Airport Board to that affect.

CHAIRMAN: Any questions by any of the boards members?

(NO RESPONSE)

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

MR. HAYDEN: Motion for approval.

CHAIRMAN: 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.

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Next item, please.

ZONING CHANGE - CITY

ITEM 5

4100, 4200 Blocks Airpark Drive, 7.607 acres
Consider zoning change: From I-1 Light Industrial to I-2 Heavy Industrial
Applicant: Owensboro-Daviess County Industry, Inc., Owensboro Municipal Improvements Corp., C.J. Turner

MR. NOFFSINGER: Mr. Chairman, I have a letter in the file asking that this particular item be postponed until the December meeting of the Planning Commission. The reason for that is they would be adding additional acreage to this petition and they'll need to re-advertise and notify adjoining land owners. We recommend you grant the applicant's request to postpone.

CHAIRMAN: The chair is ready for a motion to that effect.

MS. DIXON: Move to postpone.

MR. CAMBRON: Second.

CHAIRMAN: Move to postpone by Ms. Dixon. Second by Mr. Cambron. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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MR. NOFFSINGER: Mr. Chairman, in the related items, these two items are located on the portion of the same property that was proposed to be rezoned in the previous item. However, that zoning change does not affect what the Planning Commission can approve on these plats so we can move forward with them.

Related Items:

ITEM 5A

Mid America Airpark, Unit 7, Phase 1, 8.040 acres
Consider approval of major subdivision preliminary plat.
Applicant: Owensboro-Daviess County Industry, Inc., Owensboro Municipal Improvement Corp.

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

CHAIRMAN: Is anybody here representing the Improvement Corp?

(NO RESPONSE)

CHAIRMAN: Does any of the board members have any questions?

(NO RESPONSE)

MR. CAMBRON: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Cambron.

MR. ROGERS: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 5B

4200 Airpark Drive, 8.04 acres
Mid-America Airpark, Unit #7, Phase I, Lot #9
Consider approval of major subdivision final plat.
Applicant: Owensboro-Daviess County Industry, Inc.,
Owensboro Municipal Improvement Corp.

MR. NOFFSINGER: Mr. Chairman, this plat has been reviewed by the Planning Staff, Engineering Staff, found to be in order and is ready for your consideration.

CHAIRMAN: Any questions from any of the board members?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

MR. HAYDEN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

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Next item, please.

ZONING CHANGES - COUNTY

ITEM 6

2401 Block Fairview Drive, 35.310+ acres
Consider zoning change: From A-U Urban Agriculture
and R-1C Single-Family Residential to R-1C
Single-Family Residential.
Applicant: Steve Baker Building, 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. Driveway access points to the subject
property shall not be allowed on Fairview Drive.

2. The access point to the proposed subdivision
on Fairview Drive shall be limited to a public street
aligned with Fairview Spur as shown on the proposed
preliminary plat submitted in conjunction with this
rezoning request.

Findings of Fact:

1. The subject property is located within an
Urban Residential Plan Area, where urban low-density uses are appropriate in limited locations;
2. The subject property adjoins R-1C Single-Family Residential zoning and uses; and,
3. A preliminary subdivision plat has been submitted for approval indicating all necessary urban services, including sanitary sewers, are available to the subject property.

MS. WATSON: We'd like to enter this Staff Report as Exhibit A.

CHAIRMAN: Is there somebody here representing the applicant?

MR. BAKER: Yes.

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

(NO RESPONSE)

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

(NO RESPONSE)

MR. CAMBRON: Is Chair ready for a motion?

CHAIRMAN: The Chair is ready for a motion.

MR. CAMBRON: Motion for approval based upon the Staff's Finding of Facts 1 through 3 and the Conditions 1 and 2, Mr. Chairman.
CHAIRMAN: Motion for approval. Do we have a second?

MR. JAGOE: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

Related Item:

ITEM 6A

Plantation Pointe, 35.310+ acres
Consider approval of major subdivision preliminary plat.
Applicant: Steve Baker Building, LLC

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff, the Engineering Staff. It's found to be in order. It creates 62 lots for single-family residential construction and it is ready for your consideration.

CHAIRMAN: Is there any questions from the audience?

(NO RESPONSE)

CHAIRMAN: Any questions from the commissioners?

MS. REYNOLDS: I have a question.

CHAIRMAN: Would you step to the podium
there and be sworn in.

MR. ELLIOTT: State your name, please.

MRS. REYNOLDS: Alice Reynolds.

(MRS. ALICE REYNOLDS SWORN BY ATTORNEY.)

MRS. REYNOLDS: We live at 2537 Hillbrooke Parkway. Our house boarders on the lake. We have not been able to find out if Mr. Baker is going to intend to fill the lake, is he going to go and maintain the lake, or what he's planning to do.

CHAIRMAN: Yes, ma'am. We'll get that question answered right now.

Mr. Baker.

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

MR. BAKER: My name is Steve Baker.

(MR. STEVE BAKER SWORN BY ATTORNEY.)

MR. BAKER: I'm sorry. Was your name Mrs. Reynolds?

MRS. REYNOLDS: It's Alice Reynolds.

MR. BAKER: As to the lake, yes, we are going to control the lake. Yes, we will maintain it. We are not going to fill it.

MRS. REYNOLDS: Because we were concerned about mosquitoes.

MR. BAKER: It's going to be left. As
I'm alive, it'll be left.

MRS. REYNOLDS: That was our question about it. Thank you.

MR. BAKER: Thank you.

CHAIRMAN: Are there any others questions from the audience?

(NO RESPONSE)

CHAIRMAN: Any questions from the commission?

(NO RESPONSE)

CHAIRMAN: If there are none, the Chair is ready for a motion.

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MR. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 7

8171 Jack Hinton Rd, 8234 Short Station Rd, 142 acres
Consider zoning change: From A-R Rural Agriculture to EX-1 Coal Mining
Applicant: Rust Mining, LLC, Dorothy Barnett, Monnie Dawson Rev. Living Trust

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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 in a Rural Maintenance Plan Area, where coal mining use is appropriate in general locations;

2. The subject property is located in the Rural Service Area and outside of a Rural Community Plan Area;

3. The subject property adjoins property to the north that is currently zoned EX-1 Coal Mining;

4. The Philpot Quadrangle map indicates the presence of coal deposits on the site;

5. Although the subject property contains some areas of prime farmland as indicated by the Map of Important Farmlands prepared by the U.S. Department of Agriculture Soil Conservation Service, a review of the soils indicates as best a fair potential for row crop production and pasture; and,

6. A transportation plan has been approved by the Transportation Cabinet and the County Engineer.

CHAIRMAN: Is there anybody representing the applicant?

MR. BRANCATO: Yes.

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

Okay. We have two people. We'll recognize you first. Step to the podium.

MR. ELLIOTT: State your name, please.

MRS. GRAY: My name is Teresa Gray.

(MRS. TERESA GRAY SWORN BY ATTORNEY.)

MRS. GRAY: I have several questions. Where we adjoin Mr. Dawson or Monnie Dawson I would like to know when the start date; how long this project is going to last; what the blasting regulation schedule and dates and times are; how I will be notified of the blasting.

Then I have some property concern. I would like a preblast survey done of my house and my buildings. My concern also is I have a driveway leading out between Mr. Dawson and Mr. Lampkin. Our access out there we have our phone service through that service. My safety going in and out while they're mining. I have a granddaughter that plays in our yard. Is that going to be fenced off to where she can't wander over there.

I also have a concern of where they're going to haul it out. The road that I think they're proposing is Short Station. It's very narrow. A lot
of people live on that road.

Also if there is damages to my property, who am I to go and complain to. Who's going to take care of that? Also I would like to know the Rust Mining, I would like to know if there's any complaints against the mine right now and how the company has resolved them, the length and the time of the investigation for any of the complaints against them. That about takes care of it.

CHAIRMAN: Let's bring somebody from the applicant. Who is going to represent the applicant in answering the questions?

MR. ELLIOTT: State your name, please.

MR. BRANCATO: My name is Frank Brancato.

(MR. FRANK BRANCATO SWORN BY ATTORNEY.)

MR. BRANCATO: I wrote the questions down. If I miss answering one, would you all let me know when I've missed a question, please.

The start date is depending, of course, on obtaining surface mining permit. As Staff has acknowledged, the area that is proposed for zoning tonight is in the middle of a field of area that is already zoned for mining. We are currently in the process of permitting two properties. That is the Payne property and the Lampkin property which were
rezoned several years ago. The earliest I could see
us starting would be seven months; assuming that
everything clicked along in Frankfort on obtaining the
permit, and it could be longer than that. The
earliest it could possibly be would be seven months.

How long it will be there is a function of
other areas that we are attempting to lease at this
time. Based on what we have leased right now and what
we have proposed rezoning tonight, something in the
area of 12 to 18 months would be the time period in
that area.

The blasting plan has not been designed,
but typically blasting has limited to daylight hours.
Typically occurs at noon and at 4:00 if there's more
than one shot per day. If there's one shot, it's
typically at noon. Part of the reason for that is
safety. We move all of the operations and men out of
the area so they can do that. They can have their
dinner. We have separate crew that would detonate the
shot.

In terms of preblasting survey, Rust is
required to provide a 30 day written notice published
in the paper and to send a notice to everyone within a
half mile of any area of the permit. That means
people who are more than a mile from the blasting will
get a notice. It's half mile from the edge of the
permit. What our policy has been is to do three times
notice requirement. So we'll publish it three times
more than 30 days in advance. On our current permit
we sent a notice to everyone within one mile of the
permit. So we doubled the state requirement.

The Grays do have a driveway. They have a
right-of-way across the Lampkin property. They do
have water service that runs down that line, phone
service runs down that line and power service runs
down that line. All of that will have to be addressed
as a part of the mining permit application.

Our preliminary plan is to provide a
temporary driveway about 100 feet north of the current
driveway which would give the Grays access while we're
mining in that area. Then we would jump across that
driveway and replace their existing driveway in the
approximate same location.

The Grays are entitled to a preblast
survey as is everybody within a half mile of the
permit. Again, it maybe a mile or more from the
actual blasting, but everybody within one-half mile of
the permit will be offered the opportunity for a
preblast survey.

We've had two complaints from our current

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operation. One landowner called and said that he
thought our blasting had broken his water line. When
the water line was dug up it was determined the line
was 55 years old and an iron pipe and it simply rusted
through.

The other complaint that we've had was a
coal truck that had left our property and had failed
to close the tarp. We addressed that with the driver.
I called the complainant back that day and I've called
him twice since then. They have no further
complaints.

CHAIRMAN: Thank you. Did that clear up
your complete list of questions?

MRS. GRAY: Everything except if we do
have a problem, who am I to contact?

CHAIRMAN: Let's let him address that.

Mr. Brancato.

MR. BRANCATO: You can contact me. I'll
be glad to give you my home phone number, my cell
phone number, and my office number. Of course, you
have the phone numbers of the engineering firm that
does your preblast survey. So you'll have five or six
contacts if you have an issue.

MRS. GRAY: One more concern and this is
it. As far as is there going to be any kind of fence
up to where, you know, they're re going to have these
holes opened up.

CHAIRMAN: Let him address that.

MR. BRANCATO: We will agree to put up
some sort of orange fencing around her property if
that would give her comfort level of where the mining
will stop. Typical or similar to the orange silt
fencing or safety fencing you see around construction
sites.

CHAIRMAN: Thank you.

Mr. Cambron, I think you said you had a
question.

MR. CAMBRON: Mr. Brancato, can you come
back up to the podium. My question was, and one that
you didn't touch upon and she had asked also about the
haul road and taking your loads down Short Station
Road. Is this the only alternative you all have at
this point in time?

MR. BRANCATO: As I stand in front of you
today under oath in front of all of these people,
that's the only route we have out today. That's not
to say I'm not negotiating with other people to try
and find an alternative route to get to Aull Road
which is less densely populated and which has had coal
hauled on it before, but our application tonight is

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limited to the rezoning of these properties. We have
surveyed Short Station Road. There are no substandard
bridges or structures which would preclude a petition
to add extended weight on Short Station Road. We
would provide a bond in the amount of about 60 or
$75,000. It will be in that range, if we use Short
Station Road. In order to even consider using Short
Station Road under the county regulations, we first
must have a rezoning and secondly must have a surface
mining permit and then approach the county for
potential use of Short Station Road.

MR. CAMBRON: How many trucks are you
planning on bringing out there daily; do you know?

MR. BRANCATO: It would be a little over
four loaded trucks per hour during 6:00 in the morning
until about 4:00 in the afternoon.

MR. CAMBRON: These truck will be hauling
about 80,000 plus?

MR. BRANCATO: Yes, sir. What we're doing
right now and what we would plan to continue to do is
I contact the Daviess County Transportation group
every day and tell them whether we're going to haul
coal the next day. We send our first round of trucks
out before the school buses come into the area. By
the time they come back for a load, most of the school
buses are done, but if we get our schedules mixed up and we fail to do that, there would be approximately one coal truck for every five school buses out there.

MR. CAMBRON: Okay. Thank you.

MR. HAYDEN: What kind of maintenance did you all have on that Short Station Road if you use it as a haul road? Like especially in the wintertime that road goes all to pieces.

MR. BRANCATO: Unfortunately Short Station Road is a lot like other county roads which actually grew up over time. So it does not have a good base. Just has a couple of inches of asphalt. We would grade and maintain the road with gravel. There are a couple of roller-coaster hills that if we use that road we would like to take out, but we would have to work that out with the county engineer.

MR. CAMBRON: If you have alternative haul road, do you have any idea where it would be? Where it would lie other than Short Station Road? The only reason I say that is that there are some bad curving in that road and a truck with 80,000 pounds plus will have a hard time negotiating that. I'm sure on a daily basis they'll eventually get themselves acclimated to it, but this is a bad road to be hauling coal out.
MR. BRANCATO: There is one route that involve four or five landowners and would take us to 144. Then there's a second route that would involve two landowners that will take us to Aull Road.

MR. CAMBRON: And you are negotiating with these people?

MR. BRANCATO: With the latter right now, with the two people.

MR. HAYDEN: You haven't talked to me.

MR. BRANCATO: No, we're not talking to you because somebody in front of you we ran into some price restrictions. Can't get to you until we get to somebody in front of you.

CHAIRMAN: Are there any more questions from anybody in the audience or any more commissioners have any questions?

MR. ELLIOTT: State your name, please.

MR. GRAY: Jeff Gray.

(MR. JEFF GRAY SWORN BY ATTORNEY.)

MR. GRAY: I'm concerned about our driveway going out. Kids play on that. They ride four-wheelers and this little orange fence, would you put your kids out there? As a board member would you let your kids get around that? You know they're going to be looking over the side. They're going to be
blasting and they're proposing to go across our
driveway. They ride four-wheelers. They walk up and
down the lane. They're going to move our driveway and
have this going across it. I think you're
jeopardizing people if you let them move this driveway
and go across the driveway. If they want to go
around, that's fine. Go out Short Station if that's
what they've got to do or whatever, but that is our
access in and out. You're going to whatever going
across this road. How far are they going to stay off
this road? Are they going to go right up to it?
Somebody has an accident, what's going to happen?
That's my concern.

CHAIRMAN: Do you want me to phrase that
or have that done as a question?

MR. GRAY: I'm just concerned the safety
issue has not been addressed. An orange rubber,
whatever fence it is, it's not going to stop nothing,
kids especially. We have family reunions and there's
kids out there all the time. You going to put this
coal mine in my front door.

CHAIRMAN: Let's have them address --

MR. CAMBRON: Let me ask a question. Are
you talking about the whole perimeter of your property
or just where the lane is going to be moved?
MR. GRAY: The lane and the front of my property is where it's going to be.

MR. CAMBRON: Right, but you're talking about the whole perimeter of your property where they're going to be mining. Not just your lane.

MR. GRAY: Well, the lane too because that's where they like to ride the four-wheeler up and down there. Are you going to stop them because if you're going to let these heavy equipment go across it, it's going to be dangerous. That's my question. I don't think it's right.

CHAIRMAN: Can you show me on here where you live exactly, Mr. Gray, on this map?

MR. BRANCATO: I'll help you locate it, if you would like. Right here.

MR. GRAY: Right here. This is already zoned. Now they're proposing to take this driveway and move it over on somebody else. They're going to do this -- they're proposing this haul road across this driveway. Them kids, they like to walk up and down the drive. To me just take the driveway out.

MR. CAMBRON: If you'll step back up to the podium. She'll need to hear this too.

MR. GRAY: If they do that, that kind of hinkers us.
MR. APPLEBY: Your driveway is across --
I take it this is not your property where your
driveway is. It's going across the Lampkin property?
MR. GRAY: That's a little bit of gray
area. He says it's Lampkins and I don't know. When
we moved back there, we had to sign a piece of paper.
The county didn't have to maintain it if we could move
it back there.

MR. APPLEBY: I mean it's your
understanding that it doesn't really, it doesn't
belong to you, that part out there in the front?
You've got easement I take it across that?

MR. GRAY: I guess that's what it is.
We've maintained it since I've been there for 20
years.

MR. CAMBRON: Do you own it; do you know?

MR. GRAY: Nobody really told me.
MR. HAYDEN: You're not the only one using
that driveway?

MR. GRAY: Tom Cecil, my brother-in-law
uses it.

MR. HAYDEN: Cecils use that driveway too.

MR. GRAY: And there's several. Kids and
a lot of people go in and out of that driveway.
That's one of my concerns.
MRS. GRAY: There's easements through there.

MR. GRAY: Easement she said. I don't know how we stand on that.

CHAIRMAN: Let's have them address that.

MR. BRANCATO: The driveway is a right-of-way easement that was carved out of the Lampkin property and they have non-exclusive rights to use that lane to access. Their property, which is approximately one acre at the bottom of that lane. Then the lane takes a 90 degree turn and also serves another farmhouse in this area.

What our plan is is to -- we're going to stay behind this lake and behind the improvements that front Short Station Road. Our plan is for the Grays to share the Lampkins driveway for a couple of weeks while we mine through this area. Then we would put their driveway back. Their lane right now is about between six and eight feet below Short Station Road.

One of the reasons they have to maintain it so much is there's a lot of water that sheds off the road. Their lane almost acts as a ditch as opposed to a driveway. So we're proposing to raise that elevation about seven feet which would bring it into the same elevation as Short Station Road and then
maybe be able to have ditches and be easier to
maintain the road.

Somehow we have to get the coal out of
dawson and Barnett's property and without having the
Cecil property leased, and we don't have that lease,
the only way is to go up the middle of the Dawson
property which would cross their lane.

MR. APPLEBY: Where is their lane in
relation to your proposed haul road?

MR. BRANCATO: We don't actually have a
location for a haul road, but we got one possibility
in here, but it would have to be someplace between
this line and this line. It would have to be
someplace in here because our lease with Dawson
permits us to stay approximately 50 feet behind the
facilities and business that they operate and fronts
that Short Station Road.

MR. CAMBRON: Any alternative to going
through their driveway?

MR. BRANCATO: Well, the only alternative
I know of is if we can lease Cecil's property. We
don't have that lease. Then we can come across the
back side which would leave their driveway open, but
we don't have that lease today.

CHAIRMAN: Are there any other questions
or comments from the audience?

   Yes, sir.

   MR. ELLIOTT: State your name, please.

   MR. HAZELWOOD: Mike Hazelwood.

   (MR. MIKE HAZELWOOD SWORN BY ATTORNEY.)

   MR. HAZELWOOD: I live at 8067 Short Station Road and by looking at that map I'm not sure exactly where I'm at even though I know I'm close. I've lived out there about ten years. I was real familiar with Lanham and their mining business out there and I'm concerned, like the other lady was, if I get my home tore up and not be able to do anything about it. I've got it paid for and I don't want to buy another one. I'm too old.

   CHAIRMAN: Why don't you come over here to the map and Mr. Brancato can probably help you locate your home. He did a pretty good job earlier.

   (MR. HAZELWOOD APPROACHES MAP AND HAS DISCUSSION WITH MR. BRANCATO.)

   MR. BRANCATO: We carry general liability insurance. We use Down Home Service. We have a contractor to do our explosion and detonation and they carry general liability insurance. Everybody along that road will have an opportunity to have a preblast survey. Now, preblast survey takes several hours. A
technical person or an engineer comes in and takes photographs, does sketch of the house, puts all the dimensions down, location of all the windows and identifies the current condition of the structure. Then if someone believes they've been adversely affected by it, we'll do a post-blast survey or an interim blast survey and document the condition of the house. It helps the landowner and it helps the insurance company both.

CHAIRMAN: Are there any other questions of anybody in the audience?

Yes, ma'am.

MR. ELLIOTT: Mr. Chairman, I think Mr. Hayden wants to make a statement.

CHAIRMAN: Yes, sir.

MR. HAYDEN: Being that I'm so close to this property, it's probably going to be talking to me about this, some of my property too, I think I should disqualify myself because it's only a conflict of interest I feel like.

CHAIRMAN: Mr. Hayden will disqualify himself from any further testimony.

(MR. HAYDEN EXCUSES HIMSELF AND LEAVES ROOM.)

CHAIRMAN: Yes, ma'am.
MRS. WADE: My name is Cheryl Wade.

(MRS. CHERYL WADE SWORN BY ATTORNEY.)

MRS. WADE: I have some of the same concerns as the other lady did. We live at 8065 Jack Hinton Road. One thing I want to know, he said they would quit at 4 p.m. Does that just mean the trucks or does that mean everything shuts down?

CHAIRMAN: Let's see if you have several list of questions and we'll run through those and then we'll try to cover it all at one time.

MRS. WADE: He said he would provide phone numbers, cell phone numbers. How do we get these phone numbers? I have environmental concerns; air, water, noise, dust. We have children too that play outside. We connect with the property. The clean up afterwards. What does all of that consist of? On these preblast surveys, is there any cost to us?

CHAIRMAN: Thank you.

MR. BRANCATO: I have six question. Is that the right number?

CHAIRMAN: We'll bring her back if there's any question.

MR. BRANCATO: The 4:00 time period I gave earlier was in response to the question about the coal hauling. Not the mining operation. Currently we're
operating a full compliment on day shift and running
two dozers at night. We are uncertain at this point
how much tonnage we would be producing so I can't say
whether we actually run a full compliment at night in
this other location, but at we would at least run a
full day shift and two dozers at night.

We must obtain a permit from the Division
of Air concerning air quality. We obtain permits
concerning water quality from the Department of
Surface Mining and Reclamation Enforcement, from the
Division of Water, and from the Federal Office of
Surface Mining and Reclamation Enforcement. All of
these people come out at least monthly and inspect our
operations.

To control drainage we'll build a basin,
at least one basin on the Payne property and then,
again, depending if we get these other properties
we're negotiating for, we might have two more drainage
control basins.

Water quality in the area in terms of flow
should already be improved because a mile and a half
up Joe's Creek we built a two acre basin that will
remain as a permanent water impoundment. So that
water flow from the upper part of the water shed,
which has about 1,000 acres in it will flow through

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this basin before it exits into what Joe is running.

Noise, the biggest problem with noise in the coal mining operations, the biggest complaint I've heard in my career in the industry is a back up alarm. Unfortunately that's a federal mandate. That back up alarm must be audible for a quarter of a mile. What happens is in cool weather that audible noise will carry up to half a mile. That's the reality of the situation. I really don't know what we can do about that. The back-up alarm, actually the hour back-up alarm ceases to operate we're obligated to repair that or park it. We cannot operate equipment without back-up alarms.

Dust is a problem just like it is for farmers, but we do water our roads and put dust control suppressants on it. We use water or water treated with tree sap or the tailings from crude oil. Typically you can't use oil on the road particularly if it's used unless you sample it and have a copy of the sample with the truck, but there's no impediment to be using crude oil or trailings from crude oil.

Clean up, I'm interpreting that to be reclamation; although I'm not certain that was your question. Most of this area is characterized as hay and pasture land. There are some areas which are
prime farmland. Hay and pasture land we are required
to reseed and to grow three years of hay on it and
obtain -- cuttings from that hay we typically use
that as part of our reclamation.

Prime farmland we are required to
segregate the upper two horizons of soil which are
split into the A horizon or the B horizon. The A
horizon is defined as that soil that has nutrients in
it what we typically call top soil. The B horizon is
that soil that is without nutrients, but can become
nutritional if it's fertilized and below.

We segregate that into two separate piles
and put it back in the order that it was removed.
Typically you get a swell factor of about 15 percent
when you handle the soils, but when you factor in the
removal of the coal, the elevation is modestly
changed.

CHAIRMAN: Are there any other questions
from the audience?

Yes, sir.

MR. ELLIOTT: State your name, please.

MR. FLOYD: Terry Floyd.

(MR. TERRY FLOYD SWORN BY ATTORNEY.)

MR. FLOYD: I have two questions about the
proposals. The property line that I have, we have a
small pond that is split by the property line and I
want to know if there's assurance that they're not
looking at draining that pond on me from the other
side. The other was I'm not sure where they're
talking hauling out coal on Short Station. Where is
that? Could you point out to where that is on the
map, where they're look to hauling? What direction
they're going on Short Station?

CHAIRMAN: Mr. Brancato, will you step
give -- give him your address, sir.

MR. BRANCATO: I think I know where his
house is.

The way the law works on mining adjacent
properties, in theory you can mine right up to the
property, but if any of the adjacent property where
the slough off onto your property, then you have a
technical trespass. So where there would be a basin
that is shared by two properties. Our choices are
either to stay back 50 or 75 feet from the basin,
unless we work something out with the adjoining
landowner. I've had landowners who agree that we
could mine right up to their property and not be
concerned if 10 feet of it would slide in as long as
we would put it back. Then I've had other landowners
who say they don't want their property moved. That's
a landowner's right and choice.

The location, if we have to use Short Station Road and are not successful in obtaining either one of these alternate routes, would be up to the corner of Payne's property.

MR. FLOYD: Are you going north or south?

MR. BRANCATO: North to 144.

CHAIRMAN: Thank you.

MR. NOFFSINGER: Mr. Chairman, if I might.

CHAIRMAN: Yes, sir.

MR. NOFFSINGER: I think it's appropriate that I add this statement at this time to make the public aware of the buffer requirements that are set out not only as a state requirement, but also a local zoning ordinance.

The mining activity cannot occur within 300 feet of a residential structure or within 100 feet of a public right-of-way unless they obtain a waiver from the resident and a variance from the Owensboro Metropolitan Board of Adjustment. Not just a waiver from the landowner, but also a variance from the Board of Adjustment. Same thing in terms of mining along Short Station Road.

If you are to be able to mine within 100 feet of Short Station Road right-of-way, you are to
obtain a waiver from that particular case from county, Daviess County Fiscal Court as well as a variance from the Owensboro Metropolitan Board of Adjustment. Just wanted to clarify that to anyone that might be within 300 feet of the proposed mining activity and to remind the applicant of those requirements.

MR. BRANCATO: That's how our zoning has been submitted. So that the proposed area is 300 feet from an occupied dwelling and 100 feet from the right-of-way.

CHAIRMAN: Yes, ma'am.

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

MS. SCOTT: Pam Scott.

(MS. PAM SCOTT SWORN BY ATTORNEY.)

MS. SCOTT: My main concern is hauling the coal on Short Station Road. In that mile and half, we counted 21 homes. We have small children. We have teenagers that are just driving. The road is narrow. It's hilly and it's curvy.

CHAIRMAN: Mr. Brancato, would you address that concern, please.

MR. BRANCATO: Right now I'm not sure that I can. If there are 21 houses, the road is narrow. It's a typical county road, but that's not the
application that is before this body tonight. We're asking for a rezoning. We cannot use Short Station Road without first petitioning Fiscal Court for an extended way. Not do that until we have a rezoning of the property and have a surface mining permit. We did do a survey of the road. I have a letter from the county engineer affirming what I've just told you here tonight.

CHAIRMAN: If I understood you correctly, I believe you said you have four trucks an hour?

MR. BRANCATO: A little over four loaded trucks per hour based on the rate of production of 30,000 tons a month.

MR. CHAIRMAN: And then these four trucks an hour you're going to try to miss the school traffic, i.e. school buses, kids coming back and forth going to school?

MR. BRANCATO: That's what we're doing right now. We're mining right off of 144 every day. We contact the Daviess County Transportation either by fax or by telephone and tell them that we're going to be hauling coal the next day. The buses arrive in the area around 7:00. We send our first round of trucks out around 6:30. They are coming back around 7:30, 20 till 8 when most of the bus traffic is gone. So we're
trying to coordinate when the bulk of our traffic is
gone.

CHAIRMAN: What about the tail end of it
when you have 3:30 to 4:00?

MR. BRANCATO: We try to get our last load
out by 3:00 when trucks start arriving.

CHAIRMAN: So the trucks will be out and
clear. So they're going to miss the school drive
time?

MR. BRANCATO: They're going to pass them
on 60 and 144, but in terms of congested area they're
not going to be around.

CHAIRMAN: Out of the Short Station Road
area?

MR. BRANCATO: Right. As I said earlier,
if we have a complete mess up, I mess up something or
their schedule changes and we do wind up being timed
in the same place at the same time, there would be one
coal truck for every five school buses.

CHAIRMAN: Thank you.

MR. NOFFSINGER: Mr. Chairman, just a
point of clarification. The Lampkin property I
believe is currently zoned EX-1 for mining.

MR. BRANCATO: Yes, sir.

MR. NOFFSINGER: The haul road is proposed
to continue from this site over to the Lampkin property. Looks like go to the Robert Payne property. Point of access would be the northern most corner of the Payne property. Those properties are already zone EX-1 coal mining. So there would be an opportunity to petition the Daviess County Fiscal Court for approval of that road prior to the approval of this zoning change.

MR. BRANCATO: Okay.

CHAIRMAN: Let's take a couple of more questions and try to get everybody a chance to speak and try not to be redundant in our questions. Are there questions that we have not covered?

Ma'am, you have been to the podium. Let me give somebody else a change.

MRS. GRAY: He still hasn't answered my question.

CHAIRMAN: Okay. We'll go back.

MRS. GRAY: One was the contact phone numbers and the other was the cost for the surveys. Is there going to be any cost to the landowners?

CHAIRMAN: That is correct.

MR. BRANCATO: I didn't hear the one about the phone numbers. I'll be glad to give you all those numbers tonight. They're also posted on the entrance
to the mine that we currently have. We are required
to post those numbers at the entrance to every mine as
it's established, but I'd be happy to give you numbers
tonight, cell phone, fax number, whatever you need.
There's no cost to the homeowners for a preblast
survey.

    CHAIRMAN: Thank you. Yes, sir, I believe
you have a question.

    MR. ELLIOTT: State your name, please.

    MR. MESERVE: Patrick Meserve.

    (MR. PATRICK MESERVE SWORN BY ATTORNEY.)

    MR. MESERVE: Just wonder if they could
elaborate on the hill he's talking about, taking down
a hill on the road if he did have to use Short Station
Road as access. If there is no alternative but Short
Station, what hill was he talking about, meaning there
was two hills? If he could elaborate on that.

    CHAIRMAN: Okay. Thank you.

    MR. BRANCATO: There are a number of
roller-coaster areas on Short Station Road. What I
said was we will get -- if we have to use Short
Station Road and petition to do so with the county
ingineer, then we are willing to improve Short Station
Road by changing the elevation of the roller-coasters
and making them less dramatic than they are now.
There are two areas when you're in a car that it's almost impossible to see over the hill. If you're in a truck you can see over the hill, but in a car or a little vehicle it's almost impossible to see over the hill.

CHAIRMAN: Could you spot those areas on the map or get close?

MR. BRANCATO: I'm not sure that I can do so with accuracy, Mr. Chairman. I'd be hesitant to do so. It's a little further north. It's right in this area and right in this area.

MR. CAMBRON: Mr. Brancato, you all are running an operation out there now. Where are you all bringing your coal out now? Where is your haul road coming out?

MR. BRANCATO: Directly to 144.

CHAIRMAN: Can you point that out to me, please?

MR. BRANCATO: It's actually off the map. I have a separate map I can show you.

MR. FENCE: I added it to it. It's on there now.

MR. BRANCATO: Oh, yes, I see where you added it.

It's right here.
MR. CAMBRON: And as an alternative route, there again I understand you're in negotiations, but as an alternative route you would probably try to bring that coal to that facility; is that correct?

MR. BRANCATO: No. There would be no reason to bring the coal to this facility.

MR. CAMBRON: Where would you? You don't have to draw a line, but just where would you want to have that haul road come out at if you determined or if it was determined that you can't use Short Station Road; in other words, where does the end of the haul road suppose to come out at if you determine you're going to use a haul road? Not where it starts, but where would it end at?

MR. APPLEBY: Going out the Aull Road. I think that's what you're talking about, isn't it?

MR. BRANCATO: Oh, if we went out the Aull Road?

MR. CAMBRON: Yes.

MR. BRANCATO: Unfortunately Aull Road is over here off the map.

MR. CAMBRON: Right. Are you wanting to go that far?

MR. BRANCATO: I'm sorry. Here it is. We would come across this area and then down Aull Road at
MR. CAMBRON: Thank you.

MR. BRANCATO: But we don't have, these areas that are striped in pink are zoned for surface mining, but we don't have them leased.

CHAIRMAN: Is there anybody that has not previously asked a question that has a question?

Yes, ma'am.

MR. ELLIOTT: State your name, please.

MS. KUYKENDALL: Janell Kuykendall.

(MS. KUYKENDALL SWORN BY ATTORNEY.)

MS. KUYKENDALL: My residence is 8271 Short Station. It's actually straight across from the Grays. I know they said their lane they're not going to be able to use. How does that affect my driveway and me getting in and out of my residence? Like he was saying about the safety of the children. I have two children. Seven months from now it's going to be summer and they're going to be out and wanting to ride their bikes. I'm just worried about their concern. A yellow fence is not going to stop them if they're on a three-wheeler, on a bike, whatever they're on. I think everything else I had down has been answered.
earlier.

CHAIRMAN: Thank you.

MR. BRANCATO: Can I show you a map maybe, if that will help?

MS. KUYKENDALL: Yes.

MR. BRANCATO: The Gray's house is here. Your residence is here. The exit to Short Station Road has to be used up here. None of this part of Short Station Road will be affected. Under the current lease we have will be behind this line here which is about 500 feet from Short Station, between 5 and 700 feet.

CHAIRMAN: I believe we've covered everybody in the audience that had questions. Does anybody -- yes, ma'am.

MRS. GRAY: My concerns that he still hasn't answer the question on safety just like she just asked. Like the orange fence that he's proposing wouldn't stop kids from crossing over to the coal mine.

CHAIRMAN: Mr. Brancato, you want to address the orange fence concern.

MR. BRANCATO: Well, the orange fence came up because Mrs. Gray asked for a fence tonight or her husband did and I said we'd be willing to put that up.
I frankly don't know how to address it more than
provide reasonable fencing and reasonable notice and
reasonable berms around the property which we will do,
which we're required to do as part of obtaining a
permit.

CHAIRMAN: Thank you.

Yes, sir.

MR. ELLIOTT: State your name, please.

MR. WADE: My name is Eric Wade.

(MR. ERIC WADE SWORN BY ATTORNEY.)

MR. WADE: My concern is the berms too you
were speaking of.

CHAIRMAN: Either address your questions
from back there so we can get it on the record and
then move to the map.

MR. WADE: I live at 8065 Jack Hinton
Road. Concerning the berms along the ditch between
Barnett and I. I'd have to point and he could answer.

CHAIRMAN: We needed to get your question
on the record.

MR. BRANCATO: We're going to permit up to
the ditch. Whether we mine up to the ditch or not I
don't know, but if we permit up to the ditch we'll
have to put a berm up to the ditch.

MR. WADE: What kind of footage from our
ditch here?

MR. BRANCATO: The toe of the berm is the location to the ditch. I'm not certain off the top of my head whether that's 25 feet or 50 feet. I don't want to mislead you, but something in that range.

MR. WADE: What's the height of the berm?

MR. BRANCATO: It'd be about eight feet high.

MR. WADE: Another question too. I have a pool. That doesn't pay for my chemicals, your dust control.

MR. BRANCATO: Again, if there's an adverse affect from the mining operation, we'll address that, but we've also checked the weather for the last 50 years as maintained by the U.S. Weather Bureau. Prevailing winds here are southwest to east. So that would be this location. It would be from this area across the plains where there are no houses. That's the prevailing wind. That means 85 percent of the time that's the direction of the wind.

CHAIRMAN: If we have no further questions from anybody from the audience, does the commission have any questions?

(NO RESPONSE)

CHAIRMAN: If the commission has no
further questions, then the Chair is ready for a
motion.

MR. CAMBRON: Mr. Chairman, let me just
ask a quick question or make this comment. The
biggest problem that I have - I understand they're
going to mine coal. That's fine. I understand that -
is the alternative route that they have to take this
clean out. I'm concerned for these citizens out there,
of course, and the kids, as well as Mr. Brancato is
too for his operation. I guess my only thought would
be, you know, possibly looking for another alternative
route. I'm not saying that we would approve or deny
what they have now, but my thought would be to
postpone it for 30 days and see if they can come up
with a different route if it's possible.

CHAIRMAN: Mr. Cambron, you realize that
obviously this body is just to zone or not zone the
property application.

MR. CAMBRON: Right.

CHAIRMAN: The property owners and the
county commission would be dealing with the roads
which we really have no control over one way or the
other. If they meet our requirements or don't meet
our requirements, that's our responsibility.

Unfortunately, the roads come under heading of the
MR. CAMBRON: But also our main concern here a lot of times, especially with coal mining, is concern of the citizens and their safety. We're not talking about just adult's safety. We're talking about children's safety. These coal trucks at 80,000 pounds on that road have a hard time stopping. That's in the best of weather. Whether or not that is a viable option, I don't know, but I want to make that as a recommendation or a proposal.

CHAIRMAN: What you want to do is make a proposal for a postponement?

MR. CAMBRON: Correct.

CHAIRMAN: Let's do that because we really shouldn't use the road situation, but that really doesn't come under our jurisdiction.

MR. CAMBRON: Then my proposal would be to postpone this for 30 days and to give these people some time to work something out if possible, but my concern is the public's safety. There again, not just for the adults, but as much as for the children on these school buses. There are a lot of people that live out in that area. A lot of people. That is my proposal. I'm looking for a second.

MS. DIXON: Second.
CHAIRMAN: We have a motion for postponement and a second.

MR. APPLEBY: Does Mr. Brancato want to address this before we vote?

CHAIRMAN: We have a motion and a second.

Stewart, where do we stand on voting? Don't we have to go ahead and call for the vote?

MR. ELLIOTT: Yes.

CHAIRMAN: Reference from our attorney, that we've got a motion and a second. Motion on the floor is a motion for a postponement by Mr. Cambron. We've got a second by Ms. Dixon. So the vote would be, the motion would be for postponement for 30 days.

All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Seven in favor and we've got one disqualified. So motion is postponed for 30 days.

Next item, please.

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MAJOR SUBDIVISIONS

ITEM 8

4550 Lucky Strike Loop, 1.0 acre
Salem Drive Development, Unit #2, Lot #18
Consider approval of major subdivision final plat.
Applicant: John D. & Iona Miller Jones

Ohio Valley Reporting
(270) 683-7383
MR. NOFFSINGER: Mr. Chairman, this plat has been reviewed by the Planning Staff and City Engineering Staff. It's found to be in order. It is a nondevelopment lot. It is a lot for a retention basin to be conveyed to the City of Owensboro for maintenance. With that it's ready for your consideration.

CHAIRMAN: Is there anybody representing the Jones here?

(NO RESPONSE)

CHAIRMAN: Anybody from the commission have a question?

(NO RESPONSE)

MR. APPLEBY: Is Chair ready for a motion?

CHAIRMAN: Chair is ready for a motion.

MR. APPLEBY: Motion for approval.

MR. GILLES: Second.

CHAIRMAN: We have a motion for approval by Mr. Appleby and a second. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 9

Heartland (located at Rush Trail and Meadow Grass)
Consider approval of major subdivision final plat.
Applicant: National City Bank, Kentucky, Jagoe Development Corporation

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff, City Engineering Staff. It's found to be in order. This plat is for property transfer. With that it's ready for your consideration.

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

CHAIRMAN: Mr. Jagoe will be disqualified.

(MR. JAGOE EXCUSES HIM AND LEAVES ROOM.)

CHAIRMAN: Is there anybody representing the applicant?

(NO RESPONSE)

CHAIRMAN: Any questions from the commission?

(NO RESPONSE)

MR. ROGERS: Motion for approval.

MR. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.
Next item, please.

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MINOR SUBDIVISION

ITEM 10

5616, 5626 Pleasant Point Road, 3.972+ acres
Consider approval of minor subdivision plat.
Applicant: Clifton R. Sumner

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff and the County Engineering Staff. It's found to be in order. It creates a lot that will slightly exceed the three to one depth to width ratio; however, it does meet the frontage as required at the building setback line. If this property is going to be divided, this is about the only way you could do it and be somewhat in line with the subdivision regulation. One of the lots that they are creating will continue or will maintain all applicable regulations. The remaining track will be slightly over. The applicant has agreed that the property cannot be further subdivided because of this. With that it's ready for your consideration.

CHAIRMAN: Is anybody representing the applicant?

MR. SUMNER: Yes.

CHAIRMAN: Do you have some comments you would like to make?
MR. SUMNER: Only if there is a problem subdividing.

CHAIRMAN: I'm sorry, step to the mike.

MR. ELLIOTT: State your name, please.

MR. SUMNER: Clifton Sumner.

(MR. CLIFTON SUMNER SWORN BY ATTORNEY.)

MR. SUMNER: All I want to say is the only reason for dividing is to get my youngest son three acres of ground to get started in life. That's all.

CHAIRMAN: Any questions from any of the commissioners?

MR. JAGOE: I have a question. On the no further division, does that include the properties that are adjacent, that are owned as well or just the one two plus acre tracks?

MR. NOFFSINGER: It would only pertain to the 2.9 acre track.

MR. JAGOE: Thank you.

MR. APPLEBY: Is Chair ready for a motion?

CHAIRMAN: Chair is ready for a motion.

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MR. HAYDEN: Second.

MR. 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.

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SURETY RELEASES

ITEM 11

Eagle Crest Estates, Unit #1, $5,000.00
Consider partial release of surety (Certificate of Deposit) for fire hydrants.
Surety retained (Certificate of Deposit) $5,000.00
Surety posted by: Hayden Park Developers

ITEM 12

Evansville Teachers Federal Credit Unit, $33,479.06
Consider release of surety (Performance Bond) for landscaping.
Surety posted by: Peters Contracting, Inc.

ITEM 13

Falloway Auto Sales, $1,987.00
Consider release of surety (Certified Check) for landscaping.
Surety posted by: Falloway Auto Sales

ITEM 14

Fulkerson Property Division, $2,500.00
Consider release of surety (Certified Check) for fire hydrants.
Surety posted by: Bill Kurtz/Kurtz Auction & Realty

ITEM 15

First Security Bank & Trust, McLean, $1,470
Consider release of surety (Irrevocable Letter of Credit) for landscaping.
Surety posted by: First Security Bank & Trust, McLean
ITEM 16

Grace Tabernacle, $1,245.00
Consider release of surety (Certificate of Deposit) for landscaping.
Surety posted by: Grace Tabernacle

ITEM 17

Hunters Ridge, Unit #7, $500.00
Consider release of surety (Certified Check) for water mains.
Surety posted by: Hunters Ridge Development, Inc.

ITEM 18

Kentucky Wesleyan College Parking Lot, $2,817.00
Consider release of surety (Performance Bond) for landscaping.
Surety posted by: Peters Contracting, Inc.

ITEM 19

Lewis Lane Baptist Church Parking Lot, $2,512.00
Consider release of surety (Certified Check) for landscaping.
Surety posted by: Lewis Lane Baptist Church

MR. NOFFSINGER: Under Surety Releases,

Items 11 through 19 are in order and may be released in toto.

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

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.

SURETY TRANSFERS

ITEM 20
Brookhill Estates, Unit #11, $2,520.00
Transfer of surety (Certificate of Deposit) for 1" bitum conc. surface to the City of Owensboro.
Surety posted by: Brookhill Estates, Inc.

ITEM 21
Brookhill Estates, Unit #11, $6,660.00
Transfer of surety (Certificate of Deposit) for sidewalks to the City of Owensboro.
Surety posted by: Brookhill Estates, Inc.

ITEM 22
Brookhill Estates, Unit #11, $600.00
Transfer of surety (Certified Check) for storm sewers to the City of Owensboro.
Surety posted by: Brookhill Estates, Inc.

ITEM 23
Lake Forest, Unit #11, $2,158.80
Transfer of surety (Certificate of Deposit) for 1" bitum conc. surface to the Daviess County Fiscal Court.
Surety posted by: Lake Forest Community, LLC

ITEM 24
Lake Forest, Unit #11, $4,317.60
Transfer of surety (Certificate of Deposit) for 2" bitum conc. base to the Daviess County Fiscal Court.
Surety posted by: Lake Forest Community, LLC

ITEM 25
Lake Forest, Unit #11, $5,508.00
Transfer of surety (Certificate of Deposit) for sidewalks to the Daviess County Fiscal Court.
Surety posted by: Lake Forest Community, LLC
ITEM 26
Lake Forest, Unit #11, $200.00
Transfer of surety (Certified Check) for storm sewers and drainage to the Daviess County Fiscal Court
Surety posted by: Lake Forest Community, LLC

ITEM 27
Lake Forest, Unit #11, $1,000.00
Transfer of surety (Certificate of Deposit) for valley curb and gutter to the Daviess County Fiscal Court.
Surety posted by: Lake Forest Community, LLC

ITEM 28
Salem Drive Development, $10,170.00
Transfer of surety (Irrevocable Letter of Credit) for water mains and fire hydrants to the City of Owensboro.
Surety posted by: Mr. & Mrs. John D. Jones

ITEM 29
Starlite Development, $9,471.00
Transfer of surety (Irrevocable Letter of Credit) for sidewalks to the City of Owensboro.
Surety posted by: Robert H. Steele

MR. NOFFSINGER: Under Surety Transfers,
Items 20 through 29 are in order and may be transferred in toto.

MR. APPLEBY: Mr. Chairman, I need to disqualify myself on Item 29.

CHAIRMAN: Disqualification by Mr. Appleby. The Chair is now ready for a motion.

MR. CAMBRON: Motion for Items 20 through 28.

CHAIRMAN: Mr. Cambron has a motion for
Items 20 through 28.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT WITH THE EXCEPTION OF MR. APPLEBY'S DISQUALIFICATION RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Mr. Cambron, do you have another motion?

MR. CAMBRON: Motion for approval on Item 29.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

NEW BUSINESS

ITEM 30

Ratify the Chairman's signature regarding a Collateral Security Agreement between Area Bank and the Owensboro Metropolitan Planning Commission.

MR. NOFFSINGER: Mr. Chairman, this is on the agenda. It's an item or document that we need to guarantee that the OMPC deposits, which are public

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moneys, will be insured by the FDIC. We would
recommend you approve this document.

CHAIRMAN: Any questions from any of the
commission?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. HAYDEN: Make a motion for approval.

CHAIRMAN: Motion for approval by Mr.

Hayden.

MS. DIXON: Second.

CHAIRMAN: Second by Ms. Dixon.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 31

Consider Resolution No. 11-2001 approving the
execution of the Interlocal Cooperation Agreement to
establish the Kentucky Municipal Risk Management
Association.

MR. NOFFSINGER: Mr. Chairman, this item
is on the agenda for the Planning Commission to
participate in the insurance programs that are offered
by the Kentucky Legal Cities. It does require the
signature of the Planning Commission Chairman and
other officers. I would recommend that this
resolution be approved and signed.
MR. CAMBRON: Motion for approval.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 32

Eagle Crest Estates, Unit #1, $12,100.00
Consider partial release of surety (Certificate of Deposit) for storm sewers and sanitary sewers. Surety retained (Certificate of Deposit) $39,590
Surety posted by: Hayden Park Developers

MR. NOFFSINGER: Mr. Chairman, this item is in order and ready for release.

CHAIRMAN: I'd say the Chair would be ready for a motion on this.

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

MR. HAYDEN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Chair is ready for one more motion.

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MR. CAMBRON: Wait, there's somebody in the audience.

CHAIRMAN: I'm sorry. Did I not recognize somebody? Is there anybody in the audience that wanted to be recognized?

MR. KELLY: Yes, I would.

CHAIRMAN: Okay. This would be under New Business then.

MR. ELLIOTT: State your name, please.

MR. KELLY: Darnell Kelly.

(MR. DARNELL KELLY SWORN BY ATTORNEY.)

MR. KELLY: I live at 2763 Wayside Drive East. Next door there's a vacant lot which the address is 1203. The city owned this lot at one time and they originally auctioned it off. It was zoned, it's my understanding from the plat that when this subdivision was put in here back in '69 that this was suppose to be a recreational lot for the kids in the neighborhood.

When the city sold this lot through Kurtz Auction & Realty, and that's what they said when they sold it. That it was zoned recreation. Well, they sold it to an individual who has since tried to put a house on this lot. When I questioned how did it go from recreation to residential I was told that it had
always been like that.

My complaint was that the Planning &
Zoning Commission back in 1969 seen this lot as
recreational and not residential. So how can we now
without it being changed to my knowledge go in and put
a house on a lot that's been zoned recreational?

CHAIRMAN: Let me address it this way:
Let us have the address and we'll have one of the
staff members get back with you on the zoning because
we really don't have access to that information with
this being new business. You know, it's not on the
agenda so we cannot accurately address this matter
unless does somebody have --

MR. NOFFSINGER: I am.

CHAIRMAN: You're aware of the situation?

MR. NOFFSINGER: Yes.

CHAIRMAN: We'll have Mr. Noffsinger
address it.

MR. NOFFSINGER: The property that you're
speaking of I believe is zoned single-family
residential, which that zoning classification allows
for a home to be constructed on the property. The
property is properly zoned; however, back when the
subdivision was laid out, I believe there might have
been some type of private restriction or some type of
dedication of some sort for the property to be used as a recreation facility.

The City of Owensboro did sell the property at auction. Looking into it the Planning Commission reviewed the actual disposition of the property by the city and recommended that it move forward. If there are any private restrictions that are in affect for that property, I'm certainly not aware of them. That's not to say that there aren't any private restrictions, but that would be something that we would not enforce. That would be enforced through a civil matter. Mr. Jim Mischel may have something additional he would want to add to that.

MR. APPLEBY: Is there a Deed of Dedication for that subdivision?

MR. NOFFSINGER: Yes.

MR. ELLIOTT: State your name, please.

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: It does seem like at one time the city did own this lot. RWRA at some point had some interest in it for sewer lines, whatever. At some point they decided they did not need them and they increased utilities for themselves before it was sold.
It is zoned for a single-family. We did permit a house on there. This gentleman here did bring in the private deed restrictions for that subdivision. In there it says recreation area up in that corner. In looking at that private deed restriction, we did not find where it talked about it, be it dedicated for recreation even though it does say it on there.

At the same time I told him we really don't enforce private restrictions. We just enforce public restrictions. If anybody wants to look into that and challenge that though, it would be more of a civil matter. Anybody in that subdivision has a right to enforce this private deed restriction. Like I told them I really cannot tell them that that is a private restriction or not. That would be for an attorney to make that assumption and anyone in that subdivision could challenge that, but they would need to do it through an attorney I would think in a civil court, but we did permit it and it does fit the public restrictions as far as setbacks and everything. Anyway that's where we stand on it, unless you have any questions.

CHAIRMAN: Thank you.

MR. ELLIOTT: State your name, please.
MR. WALKER: It's Rick Walker.

(MR. RICK WALKER SWORN BY ATTORNEY.)

MR. WALKER: I live on the opposite side of this same lot that Mr. Kelly is referring to. My concern is that there is a utility easement on that particular property. For the two neighborhoods, actually 2763 is Mr. Kelly's address and my address is 1205. The lot in question is 1203 Wayside Drive East.

My concern is that that particular lot has for a number of years been the catch basin for flood waters for those areas. In building a house in there, you are raising the elevation. My concern is that when you go in and you excavate that particular land, the dirt that comes out of there goes somewhere.

Now, at this particular time it's been moved back into the lower land area, into that basin. Whether there's a house built there or not, it is the natural drainage. There is a ditch that is on that particular property and it's on the map and it shows that there is a one foot ditch. Now, I'm not the greatest mathematician in the world, but if you have a one foot ditch and you fill the dirt in to that one foot ditch and then cut it back out, the elevation has been changed.

My concern is that once that house goes in
there and all of that dirt that has been excavated out
and the house has been put in place, the elevation has
been changed and all of the flood waters that comes in
to the apartment complex and to my property and to Mr.
Kelly's property, all that flood water is going to go
somewhere. My concern is I don't want it. No one
would want their property to be flooded. With putting
that house in there and someone authorized it.

My concern is that we keep in mind that
that water has to go somewhere and it has always gone
to that property and to a sewer. There is a sewer
that runs east and west on that particular property.
To my knowledge it's caving in. It's one of the
oldest sewers in the City of Owensboro. There has
been a liner put inside that sewer to help with the
leaking of it. You know, they're going in and out of
there, bringing sand and whatever for that house in
there and the sewer is starting to collapse. The
sidewalk there has already started to give way. I
have a lot of concerns. I don't want to bore your
patience, but my concern with all of this is you're
putting a house in and I don't think all of the things
have been addressed.

CHAIRMAN: Mr. Walker and Mr. Kelly, I
appreciate both of your concerns and that you have
been given by Mr. Mischel avenues which you can pursue. This board right here we would have zoned the property either residential or recreational or whatever. Whereby this piece of property has the correct zoning by virtue of this board.

We really are in a situation where, you know, as Mr. Mischel pointed out, you know, we cannot enforce private covenants or things that are outside of the parameters of the jurisdiction of this board. There's other areas and places you can take your concerns, but unfortunately it's zoned correctly. It is residential.

At this point in time other than going through the court system, unless Mr. Mischel has some other input, you know, I think we're just at a point where it's zoned residential and that's sort of the end of our jurisdiction, but I'll ask Mr. Mischel if he's got any comments or anything in any way we can help.

MR. MISCHEL: The only thing I might add that if you would like to come down in the morning or I'll do it myself, the person building this house should not create a drainage problem for the neighbors or whatever. If you would come down, it's on the second floor of this building, I'll take you over to
the city engineer's office or in the morning I'll go
over there myself and see if they can't monitor this
and make sure that they do not --

MR. WALKER: That's all I'm asking.

MR. MISCHEL: I think they'd be glad to
send somebody out to look at it and make sure that's
taken care of.

MR. KELLY: The ditch that we're talking
about filling in, I think on the paper it's called --
you know, any more dirt or sand is brought in there,
and Mr. Walker is right in what he's saying. Like he
said that water has got to go somewhere. If you've
ever been in that neighborhood whether it be on Holly
or whatever when it rains, you can't get through
there. It comes in our area. All we're asking is, is
he is doing it right.

MR. MISCHEL: I think last few years the
city has been pretty proactive as far as drainage
ditches and keeping them open and cleaned out. I
think they would be interested that this is not filled
in and that it's cleared out and everything. I'll
bring it to their attention. If you'd like to come
down in morning, we can go over it.

CHAIRMAN: Mr. Walker, are you satisfied
with what we're going to try to do to help you?
MR. WALKER: I'll work on it.

CHAIRMAN: Mr. Kelly?

MR. KELLY: Yes.

CHAIRMAN: Mr. Mischel, does he technically have to physically come down or can he just phone in and see how things are developing?

MR. MISCHEL: You can just phone me if you want to.

MR. WALKER: That's fine.

CHAIRMAN: All right. Thank you all. Now the Chair is ready for one final motion.

MS. DIXON: Move to adjourn.

CHAIRMAN: Motion to adjourn by Ms. Dixon.

MR. APPLEBY: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Meeting is adjourned.
STATE OF KENTUCKY)
   ) SS: REPORTER'S CERTIFICATE
COUNTY OF DAVIESS)

I, LYNETTE 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 70 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this the 26th day of November, 2001.

LYNETTE 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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