OWENSBORO METROPOLITAN PLANNING COMMISSION

DECEMBER 13, 2001

* * * * * * * * * * *

The Owensboro Metropolitan Planning

Commission met in regular session at 6:00 p.m. on
Thursday, December 13, 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
Scott Jagoe
Irvin Rogers
Sister Vivian Bowles
Judy Dixon
Dr. Mark Bothwell
Martin Hayden
Stewart Elliott,
Attorney

* * * * * * * * * * *

CHAIRMAN: I would like to welcome you all
and call our December 13th meeting of the Owensboro
Metropolitan Planning Commission to order.

Our invocation tonight will be given by

Mr. Martin Hayden. Please stand.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Before we get into our agenda
I'd like to congratulate Dr. Bothwell on completing
his orientation program of the Owensboro Metropolitan
Planning Commission and thank Gary for conducting his

Ohio Valley Reporting
(270) 683-7383
orientation. Thank you, Mr. Noffsinger.

Now, our first item of business is to consider the minutes of the November 8th meeting. Does anybody have any corrections, additions?

(NO RESPONSE)

MR. APPLEBY: Motion to approve.

CHAIRMAN: Motion to approve by Mr. Appleby.

MR. JAGOE: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Our next item of business Mr. Bob Thomas with Hayden & Company will present our audit report.

Mr. Thomas.

MR. ELLIOTT: State your name, please.

MR. THOMAS: Bob Thomas.

(MR. BOB THOMAS SWORN BY ATTORNEY.)

MR. THOMAS: Good evening. As they said I'm Bob Thomas. I'm a CPA and chairholder of Hayden & Company, CPA here in Owensboro. We were engaged to audit the general purpose financial statements of the Owensboro Metropolitan Planning Commission for June 30, 2001.
We conducted our audit in accordance with auditing standards generally accepted in the United States and government auditing standards. Our objective of the audit was to express an opinion on whether the financial statements are fairly presented.

In our report we stated that in our opinion the general purpose financial statements present fairly and all material respects. The financial position of Owensboro Metropolitan Planning Commission and the results of its operations for the year ending June 30, 2001, in accordance with generally accepted accounting principals.

Now, each of you should have got a copy of the report and I submit it for your approval. Would be happy to answer any questions.

CHAIRMAN: Are there any questions from anybody on the commission?

(NO RESPONSE)

CHAIRMAN: Any questions from anybody in the audience?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. CAMBRON: Motion for approval.

CHAIRMAN: Motion for approval.

DR. BOTHWELL: Second.

Ohio Valley Reporting
(270) 683-7383
CHAIRMAN: We've got a second. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Mr. Thomas, thank you very much.

Mr. Noffsinger, next item of business.

-----------------------------------------

PUBLIC FACILITIES PLAN
REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

ITEM 3

Portion 325 East Third Street
Land Acquisition, Street Construction
Consider comments regarding the acquisition of property for improvements to the intersection of J.R. Miller Boulevard, East Third Street and US 231
Referred by: City of Owensboro

MR. NOFFSINGER: Mr. Chairman, the Planning Staff has reviewed this public facilities request. This request is contained within our transportation plan for the community. We have reviewed and find no conflicts with the plan and would recommend that you send a letter to the City of Owensboro in that regard.

CHAIRMAN: Are there any questions from anybody on the commission?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Move to approve.
CHAIRMAN: Motion for approval.

MR. HAYDEN: Second.

CHAIRMAN: There's a second. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

-----------------------------------------

ZONING CHANGES - CITY

ITEM 4

4200 Airpark Drive, 8.04 acres (POSTPONED)
Consider zoning change: From I-1 Light Industrial to I-2 Heavy Industrial
Applicant: Economic Development Properties, City of Owensboro, C.J. Turner

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

Findings in support of this recommendation include:

1. The subject property is located within an Industrial Plan Area, where heavy industrial uses are appropriate in limited locations;

2. The subject property is located within a
planned "Industrial Park", which may contain both light and heavy industrial zones and uses;

3. The subject property adjoins an I-2 Heavy Industrial zone and use to the north; and,

4. The subject property is located away from the fringes of the park that may adjoin incompatible plan area or land uses.

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

CHAIRMAN: Is there anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody on the Planning Commission have any questions?

(NO RESPONSE)

CHAIRMAN: Does anybody in the audience have any questions?

(NO RESPONSE)

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

MS. DIXON: Move to approve based upon Staff Recommendations and findings in support 1, 2, 3 and 4.

CHAIRMAN: Motion for approval.

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 5

Portion 1700 Breckenridge Street, 0.33+ acres
Consider zoning change: From I-1 Light Industrial to B-4 General Business
Applicant: Barney Lain, J.E.D. Rentals Family Partnership, LTD

PLANNING STAFF RECOMMENDATIONS

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

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

Condition:

1. Approval of a final development plan.

Findings of Fact:

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

2. The existing development in the area contains a mixture of industrial and general business uses; and

3. A development plan has been submitted in conjunction with this zoning request addressing access points and zoning ordinance requirements.
MS. WATSON: We'd like this Staff Report entered into the record as Exhibit B.

CHAIRMAN: Is there anybody representing the applicant here?

APPLICANT: Yes.

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

(NO RESPONSE)

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

(NO RESPONSE)

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

MR. CAMBRON: Motion for approval based upon the Findings of Fact 1 through 3 and the one condition that they have on.

CHAIRMAN: Motion by Mr. Cambron for approval.

MR. ROGERS: Second.

CHAIRMAN: We have a second by Mr. Rogers.

All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.
Related Item:

ITEM 5A

1700 Breckenridge Street, 1.157+ acres
Consider approval of final development plan.
Applicant: Barney Lain's Auto Mart, J.E.D. Rentals
Family Partnership, LTD

MR. NOFFSINGER: Mr. Chairman, this
development plan has been reviewed by the Planning
Staff and the Engineering Staff. It's found to be in
order.

There is an existing building that's
located on the property. The property being rezoned
is only a portion of the parent tract. It's going to
be for general business so that the majority of the
building can continue to be used for warehouse space
and then a small portion of the building will be used
for a furniture store as well as an auction barn and
car lot. There are some improvements that are being
proposed for the site including paving of a portion of
the vehicle use area as well as some landscape
requirements along Breckenridge Street. With that
it's ready for your consideration.

CHAIRMAN: Is anybody here representing
the applicant?

APPLICANT: Yes.

CHAIRMAN: Does anybody have any
questions?
(NO RESPONSE)
CHAIRMAN: Anybody from the audience have
any questions?
(NO RESPONSE)
CHAIRMAN: If not the Chair is ready for a
motion.
MR. ROGERS: Mr. Chairman, motion for
approval.
CHAIRMAN: Motion for approval by Mr.
Rogers.
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 6
614 Poindexter Street, 0.106 acres
Consider zoning change: From B-4 General Business to
R-4DT Inner-City Residential
Applicant: Martha Jones-Foster

PLANNING STAFF RECOMMENDATIONS
Staff recommends approval because the proposal is
in compliance with the adopted Comprehensive Plan.
Findings of fact in support of this recommendation are

Ohio Valley Reporting
(270) 683-7383
as follow:

1. The subject property is located in a Central Residential Plan Area, where urban low-density residential uses are appropriate in general locations;

2. The current zoning classification of B-4 General Business is not appropriate for the subject property because the surrounding neighborhood consists of residential uses;

3. The proposed zoning of R-4DT Inner-City Residential is appropriate for the subject property because it is currently in use as a single-family residence and adjoining and surrounding properties are residential in nature; and

4. All urban services are available to the subject property, including sanitary sewers.

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

CHAIRMAN: Anybody here representing the applicant?

APPLICANT: Yes.

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

(NO RESPONSE)

CHAIRMAN: Does anybody from the audience have any questions of the applicant?
MR. CAMBRON: Motion for approval upon the Staff's findings of fact 1 through 4.

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 7

Portion of 400 Block West 11th Street, 0.07 acres
Consider zoning change: From I-1 Light Industrial to B-4 General Business
Applicant: Blue Grass Real Estate Company, LLC

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. Submittal and approval of a revised final development plan for property at 400 West 11th Street.

2. Submittal and approval of a final development plan with notification to adjacent property owners
before consolidation of property to 1118 Frederica Street and prior to issuance of a building permit.

3. The final development plan for the property located at 1118 Frederica Street shall provide a joint access point to be shared by 1110 Frederica Street and 1118 Frederica Street.

Findings of Fact:

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

2. The subject property consists of only 0.07 acres of land and is proposed to be consolidated to an adjacent lot fronting on Frederica Street that is currently zoned B-4 General Business; and

3. The zoning of this small portion of property to allow consolidation to an existing lot is a logical expansion of existing B-4 General Business zoning that will not significantly increase the extent of B-4 General Business zoning in the vicinity and will not overburden the capacity of roadways or other necessary urban services.

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

CHAIRMAN: Is anybody here representing the applicant?
APPLICANT: Yes.

CHAIRMAN: Does anybody on the commission have a question of the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody in the audience have a question of the applicant?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. HAYDEN: Make a motion we approve Condition 1 through 3 and Facts of Finding 1 through 3.

MR. CAMBRON: Second.

CHAIRMAN: We have a motion for approval by Mr. Hayden. We've got a second by Mr. Cambron.

All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

-------------------------------

ZONING CHANGES - COUNTY

ITEM 8

8171 Jack Hinton Road, 8234 Short Station Road, 142 acres (POSTPONED)

Consider zoning change: From A-R Rural Agriculture to EX-1 Coal Mining

Applicant: Rust Mining, LLC, Dorothy Barnett, Monnie Dawson Rev. Living Trust

Ohio Valley Reporting
(270) 683-7383
MR. NOFFSINGER: Mr. Chairman, this application has been considered by this commission in November. At that time it was postponed with no other action taken to give the applicants an opportunity to work out an alternative coal haul route and what came into question was the use of Short Station Road in the mining process as well as there was some concerns from residents in the area about additional mining. The applicant is here tonight as well as I believe some adjoining property owners and it's ready for your consideration.

MR. HAYDEN: Mr. Chairman, I think I should disqualify myself.

CHAIRMAN: Be noted that Mr. Hayden is disqualify himself.

MR. ROGERS: Mr. Chairman, I also need to disqualify myself.

CHAIRMAN: Mr. Rogers is disqualifying himself.

Let the record show we have seven members voting so we still have a quarum. Why don't we start off -- I think, Mr. Noffsinger, the best thing to do would be to start off with maybe the report from the applicant on the situation they had on postponement.
Is somebody here representing the applicant? Would you mind stepping forward.

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

MR. BRANCATO: My name is Frank Brancato.

(MR. FRANK BRANCATO SWORN BY ATTORNEY.)

CHAIRMAN: Mr. Brancato, why don't you just rather than to go back over things that the commission and most of the people in the audience are aware of, I think the sole reason for postponement was the possibility of your company being able to negotiate an alternate route for removal of the coal to a different road through other property owners; is that correct?

MR. BRANCATO: That's my understanding of the postponement, yes, sir.

CHAIRMAN: Would you report and just bring us an up date on that because I think there was, that was basically the reason that we did the postponement. So why don't you go ahead and bring us up to date on that and then we can move forward.

MR. BRANCATO: Yes, sir. I may not have made myself perfectly clear last time at this hearing. What I tried to do on this map to modify it is that what you see in purple has all been zoned for surface
mining EX-1. The one property in about the middle of
the map which has crossed marks in orange is zoned,
lease and is in the process of being permitted to use
that road.

What we are asking the commission for is
authority to rezone two other properties which are
south of the currently rezoned, currently leased and
in process permitting for surface mining.

The suggestion was made, is there another
route out of this property. There are two or were two
potential possibilities. One of which crossed four
different land owners. I visited the one land owner
where property would terminate on Aull Road and they
are not interested in leasing their property. I have
been discussing and negotiating with a land owner to
the east of this property in an area that is not
leased but is currently rezoned and we have not been
able to conclude any negotiations.

CHAIRMAN: Thank you for your update.
That's pretty much where we had the postponement in
our last meeting. Mr. Cambron made this proposal, and
I thought it was a very good one, to see if the
different parties could get together and form an
alternate route. So obviously this is not being able
to be worked out so we're at the point of the same
proposal which you had at the last meeting which the staff reported on which they reported a favorable recommendation, correct?

MR. BRANCATO: Yes, sir.

CHAIRMAN: At this point in time does anybody from the commission have any questions?

(NO RESPONSE)

CHAIRMAN: Does anybody in the audience have any questions?

Step forward, ma'am.

MR. ELLIOTT: State your name, please.

MS. GRAY: My name is Theresa Gray.

(MS. THERESA GRAY SWORN BY ATTORNEY.)

MS. GRAY: I'm here tonight with several issues that I'm still concerned about. You know, we've been told or what it came up in front of us was that is a rural area, but there's 51 residents that live down this Short Station Road that will be effected one way or another between Jack Hinton Road and 144. We all have concerns on damages to our homes which is our life-time investment, but our major concern is our safety. Short Station is narrow, windy, hilly road for the coal trucks to travel. Personally I'm concerned about my safety and my family's safety in reference to my driveway and my
Let me point out. I'm right here. Mr. Brancato said, you know, there will be a short time that I'll be inconvenienced. Well, I think I'll be inconvenienced quite awhile considering what all the acreage that's he's wanting to do and pass in front of my driveway. I'm concerned about the coal, all the coal traffic coming in front of my driveway because of the access road will go from here and out here.

I have a grandchild. You know, I'm concerned about her playing out in the yard.

Due to the coal traffic the blasting and open pits that will be around my house. Mr. Brancato made reference to the coal dust last time. Well, the wind usually comes out of southeast which directly comes where I live. It can't be healthy to breathe it. Even if I don't open my windows that dust will be in my house.

He said he would water the roads down, but you can't control when the blast is in the air, when the coal is blasted.

I'm still concerned about how am I going to be notified on these blasting times. I also would like to know who's responsible when I have a problem when I think my safety is in danger, my health and the
CHAIRMAN: Thank you. I believe in our last meeting that Mr. Brancato outlined that, but I'm sure he'd be happy to give you phone numbers. I think he gave you several mobile numbers and a direct number that you could use, but I'm sure he wouldn't mind doing that again. We will call him back and ask him to do that for you.

MS. GRAY: Yes, sir. Like I said the issue that I have mainly is the safety part. This driveway goes in-between Mr. Lampkin and Mr. Dawson. We have our water and our phone that goes down there. I'm concerned about losing my phone service and the water for a time. Like I said I'm not crazy about drive through a coal mine. My road goes down there. If there's only one way to do it and that is to move the road and like I said I will have to go past it. My family will. My friends will.

CHAIRMAN: We're going to bring Mr. Brancato back.

MR. APPLEBY: I've got a question for Ms. Gray.

If I understood this right at the last meeting, apparently you've got an easement or right-of-way of some sort to get out there?

Ohio Valley Reporting
(270) 683-7383
MS. GRAY: Yes. Yes, we do.

MR. APPLEBY: I assume when you bought your property there was some understanding as to how that -- this goes across someone else's property. Obviously, they've got the right to move it and you must be aware of that.

MS. GRAY: No. This was a county road. We came before Planning & Zoning.

MR. APPLEBY: This road that goes to your driveway is a county road?

MS. GRAY: Was an old county road.

MR. APPLEBY: It's not county road now though that I can tell?

MS. GRAY: Right.

MR. APPLEBY: So it's just an easement across these people's property?

MS. GRAY: Right.

MR. APPLEBY: You don't own that easement?

MS. GRAY: No, not that I'm aware of. I still have to get back there and to me it's a scary thought going through there and my family going through there.

CHAIRMAN: Let's bring Mr. Brancato back to answer those questions once again if you would.

MR. BRANCATO: Wonder if I could address

Ohio Valley Reporting (270) 683-7383
the question that Mr. Appleby raised and show another
map here.

I ran title on this area back to 1852. In
1892 this property was part of a large farm which I
have outlined in yellow here. The property was
divided among the Higdon family, two sisters and two
brothers. The brothers taking the southern most
portion of the property. The older brother granted to
the younger brother a right to access this farm area
right here for purposes of farming. That's in an 1892
grant. That's the only record that I could find and
that Jack could find concerning the access to this
property.

MR. CAMBRON: Where does she live at now?

MR. BRANCATO: She lives here. Now, the
Grays one acre lot was carved out of this
approximately 110 acre tract of land which does have
frontage to Jack Hinton Road.

In 1981 when this one acre tract was
carved out, a petition was made to Planning & Zoning
identifying this lane as a county road, but that lane
has never been in the county road system of any
records that I could find.

Now, under Kentucky property law, if a
parcel is carved out of a larger tract of land that
has access to a county road or a public road, then
that one acre or that carving out of that property can
not obtain an easement by prescription across adjacent
land as long as there was access to a county road. So
what I believe the Grays have is a license and
accommodation to cross this property. Not a
right-of-way or not an easement by description.

MR. JAGOE: There's not an easement of
record there, not a prescriptive easement but there's
not an easement of record?

MR. BRANCATO: There is no easement of
record. When the one Higdon brother granted to his
second brother the right to access this property, that
right terminated at this point where the second
brother's property began. The Grays' property is back
here.

MR. CAMBRON: So where would the easement
to their property originate at this point in time if
this easement is incorrect?

MR. BRANCATO: Well, under Kentucky law if
you take 100 acre parcel of land and carve it out, it
would have an easement, a prescriptive easement across
this property to come to Jack Hinton Road. There's no
disagreement among the neighbors. I mean there's an
existing verbal license and accommodation across that
Also could not find any easement of record for the water line or the phone line that was installed along this driveway.

MR. APPLEBY: In your opinion the property owner's obligation is only to provide some means of access back to this Gray property?

MR. BRANCATO: Well, actually the people who are providing that accommodation have no obligation to them because the one acre wasn't carved out of their property and they have access to another county road from the larger tract from which it was carved out.

Mrs. Gray mentioned coal dust and unfortunately that term gets thrown around. It's not coal dust. That's the challenge out there. It's regular dust. Same kind of dust farms kick up when they plow and when they harvest and when they cultivate.

We do have equipment to water the roads. It particularly challenged during a drought in summer seasons. A number of years ago in the 1988 drought I was mining in Henderson County, Kentucky. During the height of the drought I was putting 120,000 gallons of water on the road a day which seemed incongruous to...
me, but that's what we were obligated to do. So I was pulling water out of the Green River at the very time power plants along the Green River were starving for water. So we do water our roads regularly.

The areas we are not able to water is the physical area that were mined. It's not possible to water in those areas, but those are not the areas that generate objectionable dust. It's the haul roads and the movement of the coal and the overburden along the haul roads.

In terms of blasting notices. Everyone within a mile of the property will receive a certified letter 30 days before blasting will commence. In that letter there will be a proposed blasting schedule. It'll also be published three times in the Messenger-Inquirer 30 days before blasting will commence.

Now, in addition the blasting operations require audible alarms at five minutes, three minutes and one minute before the explosives are detonated. Those alarms are using an air horn which can be heard for a minimum of three-quarters of a mile and there are three short blasts, two long blasts and one very long blast which is an all clear sign to let people know about the forthcoming detonation.
I think I answered the questions, but I'm not sure if there was another one.

CHAIRMAN: And then give her once again the phone number. She was concerned about who to call, how to locate. I believe you had given her your cell phone number.

MR. BRANCATO: I'd be glad to do that after the hearing again. All of these numbers are posted on the signs at the entrance to the mine as required by federal and state law.

CHAIRMAN: Thank you.

Does anybody from the commission have any questions for Mr. Brancato before he leaves?

(NO RESPONSE)

CHAIRMAN: Thank you.

Does anybody else from the audience have anything different that they would like to bring up that we haven't covered?

Yes, ma'am, you've got something different that we haven't covered?

MR. ELLIOTT: State your name, please.

MS. KUYKENDALL: Janell Kuykendall.

(MS. KUYKENDALL SWORN BY ATTORNEY.)

MS. KUYKENDALL: I know Russ Mining are the ones that's going to be doing this mining. If
I've missed it, who will be doing the blasting? What company will be doing that?

CHAIRMAN: Let's bring Mr. Brancato back up to answer that question. Do you have any other questions or is that it?

MS. KUYKENDALL: I think that's it.

Everything other than safety issues, the water, the phone. The right-of-way that they have to their property is straight across from mine which I know.

When I had my phone turned on they told me that's where it lays at. Same issues. If I'm without phone or without water, I guess they're going to bring me phone or bring me some water to use. I don't know.

CHAIRMAN: Well, let's have him answer that question that you have.

MR. BRANCATO: I think there's a misunderstanding here. What Ms. Gray is concerned about is that we will be crossing the lane that they now use as the driveway. That is not the area where the coal will be coming out which would affect, which I believe she believes would affect her property.

Did I state that right? That's not where the coal haul is going to be. What the Grays are concerned about is that we're simply going to be crossing in the north/south direction, the road that
runs east/west.

   In terms of who would be doing the
3 blasting; well, Russ will be responsible for the
4 blasting. Currently we're using what's called Down
5 Hole Service where we hire a license blasting company
6 to come in and load the holes with ammonia nitrate and
7 fertilizer and then we detonate that mixed
8 combination. The company we're currently using is
9 called Kentext, Inc.

MR. APPLEBY: One question. On your use
10 of Short Station Road, is it the county and the state
11 that permit the use of Short Station to haul coal?
12 Who do you go to to get that permission?

MR. BRANCATO: We actually go through
14 both, but the bond and maintenance agreement that we
15 would enter into would be with the county for Short
16 Station Road. You would also ordinarily enter into a
17 similar agreement with the state for use of a Kentucky
18 highway until 50,000 tons are hauled across that
19 highway.

   Kentucky 144 has already crossed that
21 threshold and it is in what is called the extended
22 weight program. So that by purchasing a special
23 license from the Transportation Cabinet, you're
24 authorized to haul on that road. We report that
tonnage every month to the state.

A portion of our revenue stream then is
paid to the state for maintenance of Kentucky 144.

Approximately $200,000 a year is paid to the county
for the maintenance on Short Station Road or I assume
they would do that. Don't want to expect or predict
what the county would do.

MR. CAMBRON: Can you again show me, Mr.
Brancato, show me on the other map there exactly where
you're going to be hauling from and down which roads
there and give me some direction there again, please?

MR. BRANCATO: The lane that the Grays are
concerned about is right here.

MR. CAMBRON: Right. Then we go to a
county road, right?

MR. BRANCATO: Well, the green line shows
the county road, but the proposed exit point for the
haul road is up here.

MR. CAMBRON: And that county road is?

MR. BRANCATO: Short Station Road. Once
upon a time it was called Boston Road. We would
follow Short Station Road north to Highway 144 and
there are 19 homes between this point and 144.

MR. CAMBRON: And what's the distance
between the exit here onto the county road to 144?
MR. BRANCATO: Just under a mile and a half.

MR. CAMBRON: Okay. That's all I need.

CHAIRMAN: Yes, ma'am.

MS. GRAY: My question is: When we bought the property from my dad it was a county road and it shows on our plat that it was an old county road. We had to become before this Planning & Zoning and sign a waiver that they would no longer maintain it.

CHAIRMAN: Mr. Brancato would not have the answer to that question. I think Mr. Noffsinger.

Mr. Noffsinger, in regards to her question about the status of this road whether it be a right-of-way or a former county road that was turned over to residents, can you answer that question?

MR. NOFFSINGER: No, sir. Only thing I can state is that there is a plat. That plat was approved. The plat makes reference I believe to an old county road not maintained by the public and that's the only information we have. They did not survey any right-of-way for that road. The lot, the lot in question was surveyed, but there's only a reference made to this passageway, if you will.

MR. APPLEBY: If there's some question as to whether or not they have legal access to a county
road, that's a legal question that has to be resolved. That's not something that we -- it's not in our proof.

MS. GRAY: Okay.

CHAIRMAN: I think everybody has had their say.

Yes, ma'am. Would you like to say something we haven't covered?

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

MS. BAISDEN-WADE: Cheryl Baisden-Wade.

(MS. BAISDEN-WADE SWORN BY ATTORNEY.)

MS. BAISDEN-WADE: I live at 8065 Jack Hinton Road. I just have one question I guess for the commission.

We've tried to -- we want to know if anybody knows what the noise ordinance is for the county? We tried to contact Reid Haire's office and he told us to call Criminal Division of the County Attorney's office. We've left messages for two weeks and nobody will return our call. We're mainly concerned about noise when dozers are running all night long, which is right next to our property, and I guess the blasting also.

CHAIRMAN: Mr. Noffsinger.
MR. NOFFSINGER: I'm not aware of any noise ordinance. The county may have. Now, they may very well have one and you would need to contact Mr. Bob Kirtley. He's the county attorney.

MS. BAISDEN-WADE: We couldn't get a response from him in two weeks.

MR. NOFFSINGER: I would knock on his door.

CHAIRMAN: Does anybody else have any areas or any concerns we have not covered in the last two meetings?

Yes, sir. Please step to the podium.

MR. ELLIOTT: State your name, please.

MR. HAMILTON: James Hamilton.

(MR. JAMES HAMILTON SWORN BY ATTORNEY.)

MR. HAMILTON: I'm the land owner on Short Station Road also up there. That joining where Aull Road is suppose to come out onto Short Station Road. It's in this 22 houses to be concerned when - - I'm not against improvements or whatever, but what I would like to know is why they can't make a new haul road across the back of the property instead of using Short Station Road because it will not hold up very long. I was working with Lanham Coal, United Coal and that Aull Road it was a continuous mess. They didn't haul
very long until the blacktop was gone and they had nothing but a gravel road. They watered pretty good, but you go through there you'll hate to take a white car because it won't be white when you drive a mile on it. And this won't be any different. But if it could be possible to go through on the back side and come out from Hayden, Pedley, the Aud farm, and I don't know who, onto 144. It would be possible maybe. I'd just like for them to think about it, and against the cost of widening Short Station, rebuilding it back and keeping it up against making a road back there which they could when they get through with coal they could eliminate it by putting the top soil back on it and putting grass back on it. If that would be possible. I don't know. I've worked for -- well, I'm a truck driver. Not a good one, but I can get there and back. Nevertheless I've hauled tons of rock on Aull Road to keep it up. There's three houses concerned on that road. The link from 144 back to the Allen place.

On our road now we've got 22 of the driveway where I presume they're going to come out on Short Station Road.

In all consideration I'd just like for them to, if they could, go as far as they can towards
figuring out an alternate route.

CHAIRMAN: Well, we did have a postponement so they could try to work out an alternate route, but I'll have Mr. Brancato address that. You must have been a pretty successful truck driver. You're still with us.

MR. HAMILTON: Well, I'm 78 years old.

CHAIRMAN: That's what I mean. You've answered the roll call quite a few times.

MR. HAMILTON: Let me mention one more thing. That road at one time was Boston Road, but the old Bost Road is where they live. That wasn't original Short Station Road where I had the farm out there. Well, we've still got it. Short Station Road goes here. The old road went down through a holler and across the Payne place to where they live on into the Jack Hinton Road. Now, that's been done away with years. I know it has a long time, but it was Boston Road, but the original Short Station Road was not Boston Road.

CHAIRMAN: Well, the road system really doesn't come under anything that we're ruling on here. That's nothing we really control. That would be the county, depends on whether it's a county road or a state road. I will bring Mr. Brancato back to answer
your suggestion and question.

MR. HAMILTON: If he can it's good for all
people concerned.

CHAIRMAN: I think you've got a suggestion
question and we'll get him back to address it. Thank
you.

MR. BRANCATO: The road that he's talking
about would start in Payne's lane. It's still shown
on this map here. That was a public road. In
Kentucky public roads connect I think one county road
to another county road. It's one of the requirements
to be a public road. A road that goes to somebody's
house is a private road or private lane. At some
point in time over the last 90 years, this public road
fell into disuse. Once it falls into disuse it
reverses to the landowner. It's no longer available
as a public road. This is one of the landowners we
are talking with and that would be the approximate
location if we could make an agreement with him, but
we have not made that agreement. The other route is
the very route that we talked about last month which
brought about the postponement. Yes, it's possibly,
physically possible but it's not legally possible
without the owner's approval and permission and we
don't have two landowners approval.
CHAIRMAN: Thank you.

Do we have any other questions of the commission?

(NO RESPONSE)

CHAIRMAN: Any other issues from the audience?

(NO RESPONSE)

CHAIRMAN: The Chair is ready for a motion.

MR. APPLEBY: Mr. Chairman, I sympathize with these folks about the use of Short Station and it's not a good road I don't feel like, but that's an issue that's best taken up probably with the county as we don't permit the use of the road. I don't see that we have any grounds to deny this application as it is in compliance with the Comprehensive Plan.

So I would make a favorable recommendation based on the Staff's Recommendations and Findings of Fact 1 through 6 and the condition.

CHAIRMAN: Mr. Appley has made a motion for proposal.

MR. CAMBRON: Second. I agree with what Mr. Appleby said. You know, we can only do so much here. It's not our place, but we'll see what happens. It'll have to go before the county now.
CHAIRMAN: We've got a motion for approval by Mr. Appleby. A 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 9

Portion 2714 US 60 East, 1.106 acres
Consider zoning change: From B-4 General Business and R-3MF Multi-Family Residential to B-4 General Business
Applicant: Charalambos "Harry" Pavlas, Nicholas Pavlas

MR. NOFFSINGER: Mr. Chairman, the applicant I believe is represented here tonight and may agree to a postponement of this item tonight. At this point the Staff is recommending that this item be postponed until the next meeting so that we can deal with some issues related to the future development of this property.

CHAIRMAN: Does the applicant agree?

MR. ELLIOTT: State your name, please.

MR. PENCE: Jack Pence.

(MR. JACK PENCE SWORN BY ATTORNEY.)

MR. PENCE: The applicant, the main applicant he is out of the country at this time. His brother did assure me that he would be here and I see that he's not. So I'm not sure that I'm in a
position. I prepared the application. I'm not sure if I'm in a position to answer for the applicant.

MR. NOFFSINGER: Are you in a position to speak for the applicant in terms of should we move forward with this zoning change?

MR. PENCE: From an engineer standpoint, yes. The fact that there is a question about the access point, the number of access points and with those access points, I personally would be favorable of a postponement to discuss those and look at the overall development plan prior to rezoning.

CHAIRMAN: So, Mr. Pence, on behalf of the applicant you acting as engineer will accept or do want to propose a postponement of this issue, correct?

MR. PENCE: Since he's not here, I think I will be in a position to do that.

CHAIRMAN: Okay.

Mr. Noffsinger, I believe we have a postponement.

MR. NOFFSINGER: We'll need to vote on a postponement.

MS. DIXON: Move to postpone.

CHAIRMAN: Ms. Dixon makes a motion for postponement.

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.

-------------------------------

COMBINED DEVELOPMENT PLAN/MAJOR SUBDIVISION

ITEM 10

Bertha Goetz Estate, 24.358 acres
Consider approval of amended combined major subdivision preliminary plat/final development plan.
Applicant: Bertha Goetz Estate, c/o Jim Goetz

MR. NOFFSINGER: Mr. Chairman, this plan is in order. Has been reviewed by the Planning Staff and the Engineering Staff and ready for your approval.

CHAIRMAN: Is there anybody here representing the applicant?

APPLICANT: Yes.

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

(NO RESPONSE)

CHAIRMAN: Anybody from the audience?

(NO RESPONSE)

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.
MR. JAGOE: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

DEVELOPMENT PLAN

ITEM 11

4617 Sutherland Road, 2.30 acres
Consider approval of amended final development plan.
Applicant: Sports Warehouse, Steve Aull

MR. NOFFSINGER: Mr. Chairman, this plan is in order. Has been reviewed by the Planning Staff and Engineering Staff and is ready for your consideration.

CHAIRMAN: Is anybody -- I believe I see the applicant.

APPLICANT: Yes.

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

(NO RESPONSE)

CHAIRMAN: Anybody from the audience?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. ROGERS: Motion for approval.

CHAIRMAN: Motion for approval by Mr.
Rogers.

MS. DIXON: Second.

CHAIRMAN: Ms. Dixon had a second. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

-----------------------------------------

MAJOR SUBDIVISIONS

ITEM 12

Bertha Goetz Estate, Unit #4, (Lot #8-A) 1.00 acres Consider approval of major subdivision final plat. Surety (Certificate of Deposit) posted: $6,375.00 Applicant: Bertha Goetz Estate, c/o Jim Goetz

MR. NOFFSINGER: Mr. Chairman, this application is in order. Has been reviewed by the Planning Staff and Engineering Staff and ready for your consideration.

CHAIRMAN: Anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Any questions from the commission or audience?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Move to approve.
CHAIRMAN: Motion by Ms. Dixon for approval.

DR. BOTHWELL: Second.

CHAIRMAN: Second by Dr. Bothwell. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 13

Brookhill Estates, Unit #11, (Lots #107-108, 110, 111, 113-117), 3.853 acres
Consider approval of major subdivision final plat. Surety (Certificate of Deposit) posted: $1,000.00
Applicant: Brookhill Estates, Inc.

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

CHAIRMAN: Anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Any questions from the commission or audience?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Move to approve.

CHAIRMAN: 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 14

The Landings of Heartland, Phase 2 (Lots #283-303), 4.671 acres
Consider approval of major subdivision final plat. Surety (Certificate of Deposit) posted: $10,111.60
Applicant: Jagoe Development Corporation

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

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

CHAIRMAN: Mr. Jagoe is disqualified.

Any questions from the audience or commission?

(NO RESPONSE)

MR. CAMBRON: Move for approval.

CHAIRMAN: Approval by Mr. Cambron.

DR. BOTHWELL: Second.

CHAIRMAN: Second by Dr. Bothwell. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

Ohio Valley Reporting
(270) 683-7383
ITEM 15

Plantation Pointe, Unit #1, 1.734 acres
Consider approval of major subdivision final plat.
Applicant: Steve Baker Building, LLC

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

CHAIRMAN: Anybody here representing the
applicant?

(NO RESPONSE)

CHAIRMAN: Questions from the audience or
commission?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. HAYDEN: Make a motion for approval.

CHAIRMAN: Motion for approval by Mr.
Hayden.

SISTER VIVIAN: Second.

CHAIRMAN: Second by Sister Vivian. All
if favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

MINOR SUBDIVISION

ITEM 16

11757 Red Hill-Maxwell Road, 1.934 acres
Consider approval of minor subdivision plat.
Applicant: Jennifer Carter

MR. NOFFSINGER: Mr. Chairman, this plat comes before the Planning Commission because it exceeds the three to one depth to width ratio; however, this lot was created in 1991 by a deed. The property has been transferred several times since that time and the adjoining properties and the farm that this property came out of are now under different ownership. Because the property was created by deed in 1991 it would have met the requirements of the subdivision regulations at this point. Staff would recommend that you approve this plat as an exception.

CHAIRMAN: Anybody here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody on the commission have any questions?

(NO RESPONSE)

CHAIRMAN: If not Chair is ready for a motion.

MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

-----------------------------------------

SURETY RELEASES

ITEM 17

Creek Haven, Unit #1, $8,738.80
Consider release of surety (Certificate of Deposit) for streets.
Surety posted by: Creek Haven Development, Inc.

ITEM 18

Hagan's Outdoor Equipment, $2,077.00
Consider release of surety (Certified Check) for landscaping
Surety posted by: Hagan's Saw Shop, Inc.

ITEM 19

Mount Moriah Holdings Development, $9,000.00
Consider release of surety (Performance Bond) for landscaping
Surety posted by: Mount Moriah Holdings

ITEM 20

Office Building (1200 Breckendridge Street) $11,402.00
Consider release of surety (Performance Bond) for landscaping
Surety posted by: Shanti Construction Co.

ITEM 21

Bob Roberts Auto Sales, $2,333.00
Consider release of surety (Certified Check) for landscaping
Surety posted by: RKR, Inc.

Ohio Valley Reporting
(270) 683-7383
ITEM 22

Sleep Inn, $12,832.50
Consider release of surety (Performance Bond) for landscaping
Surety posted by: D.F. Crane Construction Corp.

MR. NOFFSINGER: Under Surety Releases Items 17 through 22 are in order and may be released in toto.

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval 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: Motion carries unanimously.

Next item, please.

NEW BUSINESS

ITEM 23

Consider the filing Deadlines and Meeting Dates Schedule for the OMPC and OMBA calendar year of 2002.

MR. NOFFSINGER: Each commissioner has been mailed a copy of this calendar and Planning Staff recommends that you approve this calendar for the next
year.

CHAIRMAN: Any questions by any of the commissioners?

DR. BOTHWELL: I have a question. One of the meetings is set on Valentine's Day.

MR. NOFFSINGER: Bring your sweetheart.

CHAIRMAN: What's the question, Dr. Bothwell?

MR. BOTHWELL: Should we amend that meeting date? I think there might be some reason to do that.

CHAIRMAN: Does anybody else have any other comments they'd like to share with us at this time?

(NO RESPONSE)

DR. BOTHWELL: I can see I'm not getting any support. Okay.

MR. APPLEBY: Motion to approve the calendar.

MR. HAYDEN: Second.

CHAIRMAN: We have a motion by Mr. Appleby including February 14th. Second by Mr. Hayden. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: The motion carried unanimously.
I believe we're at the point where we're ready for one final motion.

SISTER VIVIAN: I move that we adjourn.

CHAIRMAN: Sister Vivian says motion for adjournment.

MR. CAMBRON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Meeting is adjourned.

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

WITNESS my hand and notarial seal on this
the 3rd day of January, 2002.

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

Ohio Valley Reporting
(270) 683-7383