The Owensboro Metropolitan Planning Commission met in regular session at 6:00 p.m. on Thursday, July 14, 2005, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  Drew Kirkland, Chairman
Gary Noffsinger
Dave Appleby
Jimmy Gilles
Irvin Rogers
Sister Vivian Bowles
Judy Dixon
Dr. Bothwell
Stewart Elliott,
Attorney

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CHAIRMAN:  Want to welcome everybody to the July 14, 2005, Owensboro Metropolitan Planning & Zoning. Our invocation will be given by Mr. Jimmy Gillis.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  Our first order of business is the minutes of our previous meeting. Are there any questions, suggestions or additions?

(NO RESPONSE)

CHAIRMAN:  If not the chair is ready for a motion.
MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

SISTER VIVIAN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Mr. Noffsinger.

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ZONING CHANGES - CITY

ITEM 2

2820 Brooks Parkway, 0.699 acres
Consider zoning change: From I-2 Heavy Industrial
to R-1C Single-Family Residential
Applicant: Owensboro Master Builder, Inc.

MR. ELLIOTT: State your name, please.

MR. HOWARD: Brian Howard.

(MR. BRIAN HOWARD SWORN BY ATTORNEY.)

PLANNING STAFF RECOMMENDATIONS

Staff recommends approval because there have been major changes of a physical, social or economic nature that were not anticipated in the adopted Comprehensive Plan and those changes have substantially altered the basic character of the general vicinity. The conditions and findings of fact

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that support this recommendation include the following:

Conditions:

1. No direct access from Fairview Drive.
Access to the subject property shall be limited to Brooks Parkway; and,

2. A 10 foot landscape easement with a six foot high planting, hedge, fence, wall or earth mound and one tree every 40 linear feet shall be installed along the adjacent industrially zoned property.

Findings of Fact:

1. The subject property is located in an Industrial Plan Area where low-density residential uses are not recommended;

2. The availability of sanitary sewers to the immediate vicinity has resulted in the creation of an urban residential growth area immediately adjacent to an Industrial Plan Area; and,

3. The subject property is immediately adjacent to this urban growth area and R-1C Single-Family Residential zoning and uses.

MR. HOWARD: We would like to enter the Staff Report as Exhibit A.

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

APPLICANT REP: Yes.

CHAIRMAN: Does anybody have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody from the Commission have a question for the applicant?

(NO RESPONSE)

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

MS. DIXON: Move to approved based upon Findings of Fact 1, 2, and 3 and subject to Conditions 1 and 2.

CHAIRMAN: Motion for approval by Ms. Dixon.

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.

Related Item:

ITEM 2A

The Brooks, 28.013 acres
Consider approval of revised major subdivision preliminary plat.

Ohio Valley Reporting
(270) 683-7383
Applicant: Owensboro Master Builder, Inc.

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this plan. We find that it's in agreement with the comprehensive plan and an agreement with the locally adopted zoning ordinance and subdivision regulations.

CHAIRMAN: Does anybody have any questions?

(NO RESPONSE)

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

DR. BOTHWELL: Motion to approve.

CHAIRMAN: Motion for approval by Dr. Bothwell.

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 3

Portion of 1213 Nicholas Drive, 4.473 acres Consider zoning change: From B-4 General Business to R-3MF Multi-Family Residential Applicant: James L. Hawkins, Bertha Goetz Estate

PLANNING STAFF RECOMMENDATIONS

Ohio Valley Reporting
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Staff recommends approval because the proposal is in substantial compliance with the community's adopted Comprehensive Plan. The condition and findings of fact that support this recommendation include the following:

Condition:

1. Install a 10 foot landscape buffer adjacent to all commercially zoned properties with a continuous six foot high planting, hedge, fence, wall or earth mound with one tree every 40 linear feet.

2. The owner/applicant of the subject property shall file a variance to remove the 100' buffer requirement for the kennel/vet office located at 1201 Nicholas Drive prior to the issuance of any building permit.

Findings of Fact:

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

2. Sanitary sewers currently exist to serve the site;

3. The proposal is immediately adjacent to a tract of land to the north that has an approved 82 unit residential development for an elderly and memory care facility;

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4. The subject property is immediately east of an existing R-3MF Multi-Family Residential zone; and,

5. The subject property is near the intersection of Goetz Drive which is classified as a major collector roadway.

MR. HOWARD: We would like to enter the Staff Report as Exhibit B.

CHAIRMAN: Is there anybody here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody have any questions of the applicant?

(NO RESPONSE)

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

SISTER VIVIAN: Move for approval based on Conditions 1 and 2 and Findings of Fact 1 through 5.

CHAIRMAN: Motion for approval by Sister Vivian.

MR. GILLES: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.
Related Items:

ITEM 3A

Bertha Goetze Estate, 9.718 acres
Consider approval of combined revised final development plan/major subdivision preliminary plat.
Applicant: Bertha Goetz Estate, c/o Jim Goetz

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this development plan. We find it to be in agreement with the Comprehensive Plan as well as the locally adopted zoning ordinance and subdivision regulations.

CHAIRMAN: Are there any questions?
(NO RESPONSE)

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

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

SISTER VIVIAN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.
ITEM 3B

Jim Hawkins Development, 4.473 acres
Consider approval of combined final development
plan/major subdivision preliminary plat
Applicant: James L. Hawkins

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this application. We find it to be consistent with the adopted comprehensive plan and we also find that it's consistent with the adopted local zoning ordinance and subdivision regulations.

CHAIRMAN: Is anybody here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody have any questions of the applicant?

(NO RESPONSE)

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

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

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 3C

Bertha Goetz Estate, Unit 5, 6.962 acres
Consider approval of major subdivision final plat.
Surety (Certified Check) posted $1,300
Applicant: Bertha Goetz Estate, c/o Jim Goetz

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this application. We find the application to be consistent with the adopted comprehensive plan, to be consistent with the locally adopted zoning ordinance and the subdivision regulations.

CHAIRMAN: Is anybody here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody have any questions of the applicant?

(NO RESPONSE)

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

SISTER VIVIAN: Move for approval.

CHAIRMAN: Motion for approval by Sister Vivian.

MR. ROGERS: Second.

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

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(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.
Next item, please.

ITEM 4

2003-2029 West 5th Street, 0.688 acres
Consider zoning change: From R-4DT Inner-City
Residential and B-4 General Business to P-1
Professional/Service
Applicant: Crabtree Avenue Baptist Church

PLANNING STAFF RECOMMENDATIONS

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

Conditions:

1. Submittal of a consolidation plat for the subject properties prior to the issuance of any building permits; and,

2. No direct access to West Fifth Street shall be permitted. Access shall be from the church tract to the north to which the subject property will be consolidated.

Findings of Fact:

1. The subject property is partially located in a Professional/Service Plan area where Professional/Services uses are appropriate in general
locations and partially located in a Central
Residential Plan area, where Professional/Service uses
are appropriate in limited locations;

2. The proposal is a logical expansion of
existing P-1 Professional/Service zone immediately
north of the subject property; and,

3. Expansion of the contiguous P-1
Professional/Service zone should not significantly
increase the extent of the zone within the vicinity
and should not overburden the capacity of roadways and
other necessary urban services that are available in
the affected area.

MR. HOWARD: We'd like to enter the Staff
Report as Exhibit C.

CHAIRMAN: Is there anybody here
representing the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody have any
questions?

Yes, sir. Would you step to the podium,
please.

MR. ELLIOTT: State your name, please.

MR. PAYNE: Alan Payne.

(MR. ALAN PAYNE SWORN BY ATTORNEY.)

MR. PAYNE: I would just like to know what
the professional service is going to be. It's from general business to professional service. I live right across the street from the church.

    CHAIRMAN: Let me bring one of the staff members back to answer your question, please. Just have a seat and I'll have him explain.

    MR. HOWARD: According to the application the proposed use was for a shelter on the property and storage that's accessory to the church use.

    MR. NOFFSINGER: That be a picnic shelter?

    MR. HOWARD: I believe that's right. Just a covered shelter that they could use for outdoor activities.

    MR. PAYNE: Thank you.

    CHAIRMAN: Does that answer your question?

    MR. PAYNE: Yes.

    CHAIRMAN: Are there any further questions?

    (NO RESPONSE)

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

    MR. ROGERS: Motion for approval based on Planning Staff Recommendations and Findings of Facts 1, 2 and 3 with Conditions 1 and 2.

    CHAIRMAN: We've got a motion for approval
by Mr. Rogers.

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.

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ZONING CHANGES - COUNTY

ITEM 5

10091 KY 405, 0.28 acres
Consider zoning change: From B-4 General Business
to R-1A Single-Family Residential
Applicant: Nancy Keeton

PLANNING STAFF RECOMMENDATIONS

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

Findings of Fact:

1. The subject property is located in the Rural Community of Maceo where Rural Small-lot Residential Uses are appropriate in general locations.

2. The subject property has separate road frontage on KY 405; and,

3. The site has an existing septic system

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that is functioning properly.

MR. HOWARD: We would like to enter the Staff Report as Exhibit D.

CHAIRMAN: Is there anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: If nobody has any questions, would the applicant like to make a statement?

APPLICANT REP: No.

CHAIRMAN: We're ready for a motion then.

DR. BOTHWELL: Motion to approve based on Findings of Fact 1, 2 and 3.

CHAIRMAN: Motion for approval by Dr. Bothwell.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 6

8753 Mulligan Road, 38.5 acres

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

Applicant: Michael W. Timbrook

PLANNING STAFF RECOMMENDATIONS

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

Findings of Fact:

1. The subject property is located in a Rural Maintenance Plan Area, where Rural Farm Residential Uses are appropriate in general locations;
2. The subject property is currently being used for agricultural purposes as cropland;
3. A portion of the subject property is designated as prime agricultural land according to the "Important Farmlands" map created by the US Department of Agriculture Soil Conservation Service dated March 1980;
4. Mining activities never took place on the subject property; and,
5. The Owensboro Metropolitan Zoning Ordinance Article 12a.31 requires that property shall revert to its original zoning classification after mining.

MR. HOWARD: We would like to enter the Ohio Valley Reporting
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Staff Report as Exhibit E.

CHAIRMAN: Is anybody representing the applicant?

(NO RESPONSE)

CHAIRMAN: Does anybody have any questions?

(NO RESPONSE)

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

MR. GILLES: Motion to approve based on Findings of Facts 1 through 5.

CHAIRMAN: Motion for approval by Mr. Gilles.

SISTER VIVIAN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 7

3738 Ralph Avenue, 1.445 acres
Consider zoning change: From R-1A Single-Family Residential and A-U Urban Agriculture to B-4 General Business
Applicant: Woodlands Investment, LLC, Frank and Linda Hayden

PLANNING STAFF RECOMMENDATIONS

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

Conditions:

1. No direct access shall be permitted to Ralph Avenue. Access to the subject property shall be limited to Villa Point Drive only;

2. A 10 foot landscape buffer with one tree every 40 linear feet and a 6 foot high planting, hedge, fence wall or earth mound shall be installed as a buffer along adjoining residentially zoned properties;

3. The applicant shall improve Ralph Avenue from KY 54 through the intersection of Villa Point Drive. This improvement includes widening to the southern end of the radii at the intersection and tapering from the 34 foot cross-section to the existing cross-section at a speed limit: 1 taper. Surety for the improvements shall be posted with the final plat submission;

4. No building permits shall be issued until a final development plan is submitted and approved by the OMPC; and,

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5. A preliminary and final subdivision plat must be submitted for the subject property due to the extension of public services.

Findings of Fact:

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

2. The proposal is a logical expansion of existing B-4 General Business zone immediately west of the subject property; and,

3. If commitments are made by the developer to bond improvements to Ralph Avenue expansion of the contiguous B-4 General Business zone should not significantly increase the extent of the zone within the vicinity and should not overburden the capacity of roadways and other necessary urban services that are available in the affected area.

MR. HOWARD: We would like to enter the Staff Report as Exhibit F.

CHAIRMAN: Somebody here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody have any questions of the applicant?

MR. ELLIOTT: State your name, please.
MR. BRYANT: Don Bryant.

(MR. DON BRYANT SWORN BY ATTORNEY.)

MR. BRYANT: Couple of points. On the conditions, on Condition 1 we were limiting access as before to Ralph Avenue. The developer and Mr. Walker are working with the other property owners on Ralph Avenue. There's a good possibility we could get all of that work out that we're going to improve Ralph Avenue with curb and gutter all the way to Splash. If we can get that worked out and improve the street, we'd like to reserve the right to have an access point or access points on to Ralph Avenue, if we can do that; otherwise, we agree to restricting access to Villa Point.

MR. HOWARD: As the property last month were rezoned, access as you say was restricted to Villa Point Drive. In order for an access to be permitted along any of those properties, they would have to be rezoned with that restriction being removed. I don't feel or I don't think that we would necessarily be an objection to that in the future, provided that the road is widened, but we would need to take into consideration the residential property that does currently exist along the other side of Ralph Avenue and the impact the commercial traffic
would have on them until they probably in the future rezone to commercial as well.

MR. BRYANT: If we could address this with the future subdivision plat when we come back with improvements to the portion of Ralph Avenue that we've already agreed to improve. We could address these then. We just want to not totally restrict access to Ralph Avenue if we can work out a way to improve it all the way back to the end.

MR. APPLEBY: If I'm understanding you, you're talking about improving it on both sides all the way back?

MR. BRYANT: We're talking about total width 30 foot curve and gutter with sidewalks. The same improvement that's been proposed up to Villa Point at this point to the very far end; of course, the county maintains at this point. Be a complete new street and structure. We have to work with the other property owners because of the grading issues on the opposite side. If I could get this worked out, I believe the developer has worked out the detail with Mr. Walker at Splash, but we have other property owners still involved and some issues to work out.

We just want to reserve that right. If we can get that worked out and we do improve the street.
MR. HOWARD: And once that is resolved, you would have the right to come back and amend the previous or amend the zonings of those properties and remove the stipulation that access would be from Villa Point.—

MR. BRYANT: On the previous one.

MR. HOWARD: Right.

MR. BRYANT: Yes.

MR. HOWARD: And this one as well at this point. I don't think we would want to see a commercial access at this point provided that there is still significant residential property along the other side of Ralph Avenue. I think once we have plans to wide the road, if that does in the future goes towards a commercial use, then I don't think we would have any major objections to access on Ralph.

MR. BRYANT: Okay.

Second item just for point of clarification under Item 2. We're talking about a 10-foot buffer where we're joining residential properties. I believe with this zoning that we're actually not adjoining residential properties unless we're considering property across on the opposite side of Ralph Avenue. Just point of clarification that we would propose a 3-foot parameter landscaping along
Ralph Avenue. Not a 10-foot buffer with 6-foot screen. Would that be correct?

MR. HOWARD: That would be correct. As it stands right now the properties that went through the Planning Commission last month, they're not officially rezoned at this point. They'll have to go before the fiscal court to receive the two readings of the ordinance before final approval. We put that in there in case for some reason they don't proceed forward, and this one does, that that buffer would have to be installed.

MR. BRYANT: I see. That's all I have.

CHAIRMAN: Thank you, Mr. Bryant. Are there any other questions or comments?

(NO RESPONSE)

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

DR. BOTHWELL: Motion to approve, Mr. Chairman, based on Conditions 1 through 5 and Findings of 1 through 3.

CHAIRMAN: Motion for approval by Dr. Bothwell.

SISTER VIVIAN: Second.

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

CHAIRMAN: Motion carries unanimously.

Next item, please.

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DEVELOPMENT PLANS

ITEM 8

3020, 3030, 3040, 3050, 3060, 3070, 3080 Fairview Drive, 6.553 acres
Consider approval of final development plan
Applicant: Gulfstream Development, LLC

MR. NOFFSINGER: Mr. Chairman, the Planning Staff has reviewed this application. The reason it's on the agenda tonight is because this item and the Staff's opinion does not meet the requirements of the adopted zoning ordinance where it pertains to development plan requirements and site development requirements. Mr. Brian Howard will give a presentation in terms of what deficiencies Staff sees and why the correction of those deficiencies would be important.

MR. HOWARD: The site is currently zoned P-1 Professional Service. Within that zoning classifications there are many uses that are appropriate. Based upon the type of use, there are different parking requirements. They vary from one parking space for every 200 square feet of use to one.
parking face for every 400 square feet of use.

Similar developments to this one have done an overall parking requirement of 1 to 200 for the entire development to make ensure that no matter what type of use they propose that it is acceptable and it could go in without any issue.

The development as is proposed right now there's seven buildings and there's not sufficient room on site to accomplish a 1 to 200 ratio for parking.

The importance of it is an approved development plan is required prior to the issuance of any building permits. According to the ordinance the development plan is there to restrict the construction location and use of all land structures to the conditions as set forth in the plan. Also must show design of the detail level to dictate the approved locations of the building, parking areas, open space access points and any other site design feature.

While the applicant plan has limited parking in a generally 1 to 200 category to 28,000 square feet they have not indicated the location of the square footage in each building. With 7 buildings approximately 84,000 square feet of total space and multiple owners since these units will be sold as
future condos, it would be almost impossible for the building department to track each use as it comes in and keep a running tally of how much square footage is occupied for the 1 to 200 or 1 to 400.

So since the site is not large enough or since that's an issue and the site isn't large enough to do 1 to 200 parking overall, we need to figure out a way that we could monitor what's going on with the site. We've come up with a view options in a way that that can be accomplished.

One option would be that they submit a preliminary development plan so this plan could be used as a preliminary development plan that shows the overall design where the building could be located. They could use that for earmarking purposes. Then once they have interested clients to purchase the individual squeeze, then they could come back when a building or two is full or approaching full and then do a final development plan for those two buildings and use the preliminary still to market the site. They could still do the infrastructure improvements and such with the preliminary plan. That way we would know as the final plans come in what's going on. We could keep better track of what's happening with the usage.
Another option would be at this point on the final plan just indicate what specific uses and assign square footage on the buildings to be used.

The third option that we've come up with would be reducing the number of buildings that's shown on the final development plan so that they could meet a 1 to 200 ratio of parking overall. Now with that being said, once those buildings are full, they would leave the space open where the other buildings were proposed. Once those building become full, they could look and actually determine, well, we have X amount of square footage and say a medical or doctor offices X amount of square footage in office space. Based on those number, then they could determine how much more building they could put on the site based on the number of overall parking spaces that they have.

As far as similar examples to what is being proposed at this development, one that come to mind is the Springs Development which is off Parrish Avenue. That site was zoned partially B-1 and partial P-1. It has a mix of overall uses. In order to meet the parking requirement, they did a 1 to 200 overall. The Planning Commission also approved the development plan in 2001 at Souhttown Boulevard. That is what we're anticipating seeing on this plan. They actually
went through and divided the building up into sections and said, this much square footage is going to be used for whatever. That's what we need to see as far as this plan goes. How much square footage you're proposing for two different parking requirements. So when they come in for permits in the building commission that they can track what uses are going on.

If you have any questions, I'll be happy to answer them.

DR. BOTHWELL: Mr. Howard, what currently is the ratio of parking to square footage that they're proposing?

MR. HOWARD: Like I said, they're proposing that in the 1 to 200 category, which those could be, I know that they're not limited to, but they could be things like doctors offices, dentist office, things other than medical profession. I know they don't want to limit it just to medical type uses, but those type. Then I believe it's 54,000 square feet that's being allotted to the 1 to 400 square foot ratio.

DR. BOTHWELL: But I guess my question is: Overall what is the ratio for the square footage that they're showing that they're going to build eventually? Do you have that number?
MR. HOWARD: I do not.

MR. APPLEBY: If I'm understanding you correctly, they have enough parking to accommodate 28,000 feet of 1 to 200 ratio and the rest is at 1 to 400 feet.

MR. HOWARD: correct.

MR. APPLEBY: What do you do right now? What's the building department do right now if the use of a building changes, an existing facility?

MR. HOWARD: It depends. We have an example of the Townsquare North where they were doing some changes there in order to make sure that they were meeting the parking requirement. On that existing use, we made them show every use that existed within the facility and calculate the parking requirement to make sure that they did meet the requirement.

MR. APPLEBY: You're saying if the use changes, you made them come back and say, here is what we've got?

MR. HOWARD: When they come back in, they revise the development plan. The same would hold true, you know, new businesses come in and out of the mall all the time, but they do a 1 to 200 parking overall requirement. So that pretty much permits
anything other than a fast food restaurant.

MR. APPLEBY: What would be the difference
then when they'd come in for a permit for another or
somebody gets a license or they come in and propose to
build this building, you say, all right, what have you
got in the other buildings so far? What's the
difference there? I don't guess I'm following you.

MR. HOWARD: We just need something that
shows how much square footage that they have for each
use. What they're proposing right now, they limit
their square footage in their site statistics, but
they don't show any type of limitations on the
building whatsoever.

MR. APPLEBY: That's what I'm getting at.
What if they come in and they say, well, they're
building their third building. You say, what's in the
first two buildings? They say, that's all medical
offices. They're wanting to put medical offices in
the third building. You say, you don't have the
parking requirement. I don't understand where the
problem of tracking it is, I guess, is what I'm
getting at.

MR. HOWARD: The problem is what they're
proposing to do right now is seven buildings at one
time right now. There's no phase in as what you're
indicating.

One of the options that we suggested was they do a preliminary overall. Then as a couple of buildings fill up, they come in and get a final development plan. Then that way we could track what they're doing. What they're proposing is 7 buildings at 84,000 square feet all at one time with no means of actually limiting what happens.

MR. APPLEBY: We can ask them if they intend to build them all at one time. The plan is to approve it all at one time. When you build a building and get a certificate of occupancy, you know what that use of the building is going to be, right?

MR. HOWARD: Right. Yes. The other issue that enters into this is they're planning on selling the individual suites within the building to individual owners. So that presents a problem where if they were to come in the future how do we update the development plan because there's not one central person or development company that is overall on the plan so it's hard to track.

MR. APPLEBY: That's why I'm going back to what you do having existing property today. How in the world do you track it on the existing development out there today? If, for example, the Springs didn't
meet the 1 to 200 and their use changes out there, how
would you know? How would you track it?

MR. HOWARD: Well, if the 1 to 200 ratio
that would be pretty much any type of use that's
permitted --

MR. APPLEBY: I'm saying if they didn't do
that. They knew in that case. Of course, they knew
it was pretty all going to be medical when they built
it.

DR. BOTHWELL: Mr. Howard, have you spoken
to the developer of this yet and raised this issue,
the issues of the three possible solutions to the
problem?

MR. HOWARD: We have spoken with Don
Bryant discussing some of these issues with him.

The third option that I mentioned was
something that we actually, just trying to come up
with solution, something we came up with today and we
didn't have time to present it to them. They have
known from the beginning that we want to see some form
of label on the buildings about the amount of square
footage that's allotted to the parking requirements.

DR. BOTHWELL: What was their response?

MR. HOWARD: They felt that it was, and
maybe they would be better to address it than me.
They felt that it's something that could be handled when it comes down as far as the building office. We feel that the building office is busy enough as it is issuing hundreds of permits per months. For them to keep files tracking how much square footage comes in for each type of use is a burden on them that we shouldn't place when this doesn't happen with other developments that come through our office and before this commission.

CHAIRMAN: Mr. Bryant, would you like to make a statement?

MR. BRYANT: We were asked early on when the plan was submitted to designate which buildings would be used for medical or uses that require 1 and 200. We don't know. We just know that we meet the parking requirements required by the ordinance for up to 28,000 square feet. That will change over time. At some point the developer will be completely out of the picture. He'll sell out the property and go have an Owners Association out there with several owners. What we've been asked to do is that every time there's a change in use that we would have to resubmit an amended final development plan, have it brought before this board or in-house possibly, and have it approved every time there's a change of use, which all we would
be doing is updating sites statistics for purposes of keeping records. To designate certain buildings, we have 7 buildings, 28,000 square feet which you could designate two buildings for 1 and 200 parking and 4,000 square feet in a third building. It's a marketing issue really because if someone wants to buy the building in the back that's not designated for 1 to 200 parking, but that's the building they want, then we have to come back and resubmit the development plan each time. We do that develop plan we have to circulate that development plan to all utilities for review and approval. It has to go to the city engineer. We've got to go through that whole process, you know, several hundred dollars in cost plus the time involved. This will go on and on. The bottom line is we see it as the purpose of this just so that we can monitor compliance with the parking requirements. There's got to be a better way to do that. Through occupancy permits. We feel like that you start out from scratch and keep a master file in Jim's office and update that each time an occupancy permit is issued. As uses change, then through the business license that's issued by the city, I think those are all sent to, Jim, to your office. There's a method of monitoring that without redoing a final
development plan every time we have a change of use.

CHAIRMAN: Mr. Bryant, what would you do, it looks like it's about one-third/two-thirds as far as breakdown to office space. What if it went to 70/30? Say it went the other way. Say you had more 1 to 200. What would be your options?

MR. BRYANT: Well, we don't propose to ever exceed 28,000 square feet. In fact, we may never approach 28,000. I suspect that will be the case, but we would -- in terms of a performance standard, we could go up to 28,000 square feet that require 1 and 200 parking and be in total compliance with the ordinance.

CHAIRMAN: Absolutely. But I'm saying if you went to 35,000 square feet.

MR. BRYANT: We can't do that. We can't exceed 28,000.

CHAIRMAN: It looks to me, as far as your drawing, there are no extra parking spots.

MR. BRYANT: No, but we could have a medical use, let's use medical for example. We could have a medical use in every one of those seven buildings, but not fill up that building. It could be one unit or two units and still they're not associated with each other. A dentist might be in Building 3, a
doctor in Building 1. This is all shared parking. We
don't have designated parking for each building. We
don't have lot lines. This is a condominium
concept. So we have one track and shared parking,
shared maintenance of that parking. As long as we
meet that performance standard, we are in
compliance. The only issue here is how do we monitor
this to see that that project is in compliance at any
point in time. We've got to find a better way, a more
effective less costly way to do that than amending a
final development plan every time we have a change of
use.

CHAIRMAN: Mr. Howard, do you have a
solution to the situation?

MR. HOWARD: We wouldn't necessarily have
to amend the final development plan with every change
of use. If the building is or a portion of the
building, say you have some medical in each one of the
buildings and you've designated 4,000 per building,
that equal 28,000. If one medical use moves out and
another one moves in, then that would be perfectly
acceptable and you wouldn't have to amend the
development because the parking requirement would stay
the same.

Say, for example, medical use moves out of
that 4,000 square feet and just a general office moves in. That would still be acceptable because the parking requirement for a general office is 1 to 400. The area sectioned off at 1 to 200. So you'd actually be better or improve the parking requirement if an instance like that were to occur. That's why one of the recommendations that we propose was that they use this as a preliminary plan and as each building develops, then you could do a final development plan. Not do everything all at once as far as submitting for final approval.

MR. APPLEBY: The problem I see with that is ten years down the road they've sold this office, and those uses are going to continue to change. There's going to have to be some way down here to track it when these guys are not in it. Those uses will change. If you're saying that you can only use this building and this building, that limits what they can do with it.

MR. HOWARD: It does limit what you can do with it, but that's the point of the development plan is to dictate what uses are going to happen on the property and what fashion. When the building permit is issued, like I said what Jim will do is he'll pull the plan and if the parking requirement is met then
there's no problem with it. It's not necessarily
going to be an issue that has to come back over and
over again provided that the medical doesn't
necessarily exceed the 28,000 square foot and that
those uses continue to turn over or remain the same
over time.

CHAIRMAN: What safeguards do we have for
the public if we're right now at the exact ideal ratio
and a doctor buys into the building, buys a condo and
then he finds out later, you know, you can't open up
your office there?

DR. BOTHWELL: Insufficient parking.

MR. HOWARD: The plan would have to be
reviewed by Jim. I don't know if Jim would be better
to address a situation like that. It would have to be
evaluated by Jim to make sure that they did meet the
parking requirement. If they didn't, he would have to
say, as the applicant said, we don't meet the parking
requirement at this point and that's not an acceptable
use.

Jim, do you have a better idea about how -

DR. BOTHWELL: Mr. Chairman, could I ask a
question.

CHAIRMAN: Wait a minute. Dr. Bothwell
has a question.

DR. BOTHWELL: I guess the easiest solution, your square footage go to 1 to 200 for everything and everybody is happy and it's good to do.

CHAIRMAN: There's no parking.

MR. APPLEBY: That eliminates how much you can build on the property.

DR. BOTHWELL: I understand that.

MR. ELLIOTT: State your name, please.

MR. HUTCHINSON: Randy Hutchinson.

(MR. RANDY HUTCHINSON SWORN BY ATTORNEY.)

MR. HUTCHINSON: Part of the problem is that makes this project virtually unfeasible. We're talking about a project here that's buildings, improvements out there that probably put 15, $16 million in tax roll. That type of project is not feasible as we've develop it and planned it if we have to go to that ratio. We don't intend to have that many medical office buildings out there.

There was an interesting comment that was made that this would be a burden if we didn't do it this way. It would be a burden on Jim Mischel's office and others.

I guess I'd like to ask, what about the burden on the people out here trying to make this

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community better, putting money in making the developments that will put more money in the tax rolls. By doing this, by putting this bookkeeping in place, it's significantly adversely affects our building to market this property.

It seems to like there are two stages here. First of all talking about during the construction period. What's been placed to protect it, to monitor it. It seems to me there's already processes in place which would be the building permits. When the tenants go to finish out their space, I believe they have to get a permit from Jim's office. So certainly during the construction phase, there's a process already in place to make sure we know exactly what uses is being put at that point in time. After the construction period, you're in a different situation, but unless we're mistaken I think there's still a process in place because if there is a change of use in the building or change of business, they have to get a business license. They have to notify of any change in business.

I was under the impression, Jim, that those business licenses were copied, copies were sent to you. Is that correct?

CHAIRMAN: Wait just a minute, Mr.
Hutchinson. He needs to be sworn in. Can we hold you for just a minute and let Mr. Mischel respond to a previous situation before you were sworn. Let me hold you for a minute.

Counsel, would you swear in Mr. Mischel.

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

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: The question beforehand about what happens if somebody buys the property and finds out they can't use it. I guess that's one of the biggest problems we have now. Where somebody comes in and wants to use it and we tell them just that. They say, well, I've already bought the property. We've got to work something out. They did not know the limits going in. So that is a problem that you have on this if it's not set.

CHAIRMAN: That was the question that I have. Maybe we can solve this or make this very probable for everybody.

Mr. Hutchinson, you realize our situation in protecting the public?

MR. HUTCHINSON: Absolutely.

CHAIRMAN: We absolutely want the tax
rolls. We want buildings to go up. We definitely want to work with any developer. I think this commission has shown that throughout our tenure.

However, in this situation if we could get some sort of agreement from your alls group, if this situation were to arise, then we could protect the public. Because, you know, you wouldn't want a buyer to think he's buying into a condo to open up an office, unbeknownst to you all possibly and then come to Mr. Mischel and find out, oh, I've bought a condo I can't use.

MR. HUTCHINSON: This doesn't change that situation that I can see. I mean you're still going to -- you're saying that they're going to put a public record over here in the record room on a recorded plat that this particular 400 square feet is medical use only? Is that what you're saying? Therefore they're on notice?

CHAIRMAN: No. What I'm saying is if the public buys a condo from you all later on, ten years down the road, whatever, from whoever, whatever group is managing it at the time, and then they come to our office and Mr. Mischel or whoever is in his position at that time says, I'm sorry, we can't issue a license. Would you all be willing to put something in
MR. HUTCHINSON: Excuse me.

(MR. HUTCHINSON CONFERS WITH CLIENT.)

MR. HUTCHINSON: What we were talking about, again, we're going back to notice to the public. In the deed restriction, the parking limitations will be set forth in the deed of restrictions as to how much parking is permitted for the difference uses. There also has to be some obligation when you buy a piece of property to do your due diligence. Run the title. Make sure you're clear. To check with Planning & Zoning to make sure you're clear. To check with building office. What you're proposing here is some person who just goes out and buys a piece of property and doesn't check about anything. I don't see that we should make such a significant policy decision here today on how these properties are handled on that basis. There should be some obligation for them to check before they buy the property. I mean there's going to be record notice that there's a limited number of parking spaces in each classification. That puts people on notice to buy a piece of property. They've got to make sure that they're in compliance.

MR. APPLEBY: As I see it, the issue

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there's going to have to be some method of tracking this down here. I don't care if write in here in three inch letters, medical offices on two of these building, there's going to be somebody some day buy in one of these others and try to change the use of it. We're going to have to have some means of tracking it. My thought is -- if I'm reading this right, it notes on here as 28,000 feet that meets -- there is required parking. Under required parking it tells general offices 56,000 feet at 1 per 400, medical offices 28,000 square feet at 1 per 200. That limits what can be done on this site. In my way of thinking, the plan is in order on that basis. I don't know that -- I think it puts -- we're trying to limit and say, you know, where you can put medical offices in here and they don't know at this point. Anybody building this development is not going to know exactly what they're going to have in there unless you've all presold up front. That still doesn't change the issue. Down ten years from now somebody else buys it and wants to change the use of it, we still have got to have some way to track it. So we need to have a handle on it down here anyway.

CHAIRMAN: Mr. Mischel.

MR. MISCHEL: Essentially when anyone
brings a plan in for a building permit, we have two
ways to review that. One is a site plan in-house and
the other is when you have multiple buildings on a lot
it goes to Planning Commission for development plan.
Two I guess the most important things that are looked
at is parking and access. I guess that's why we're
here tonight because of these multiple buildings and
to ensure the parking is there for future buyers.

CHAIRMAN: Say five years from now or ten
years from now, will you be able to track that
situation from their development whether they're in
compliance or not?

MR. MISCHEL: I can say we have some in
the past that has not been easy to do. That's been
difficult to keep up.

CHAIRMAN: Does this cause a tremendous
burden to the public in the parking situation?

MR. MISCHEL: Just so far as if you're the
person that buys one of these and you didn't know
that. That's a burden to that person.

CHAIRMAN: Then obviously they've got a
piece of property they can't for their use.

Mr. Noffinger.

MR. NOFFSINGER: If I just might add.

These are spec buildings. The applicant has stated
that here tonight. They're purely spec buildings.

This is the first that I've ever dealt with such as
this where you come in and you're splitting the
parking and you're saying so much square footage is
allocated toward the 1 per 200 so much. General

office they require different parking arrangements.

We've got to be mindful that if we're
going to construct buildings without a plan, we're
going to create problems for a number of individuals
down the road. That includes the current developers
as well as the zoning staff and perspective buyers
because unless you designate on this plan as to what
area is going to be used for medical offices and what
area would be general offices, you're building without
a plan and it's dangerous.

Let's just say I buy one of these condos
and I buy it initially I'm going to run a general
office out of it. Well, my neighbor is going to run a
medical office out of theirs. Different parking

standards. We're both okay at the initial onset of
it. But then it's when uses start changing and we go
to selling those properties. How do you track it and
how do you say, well, this person can have medical

offices but you can't because someone else wants to do
medical offices. Which comes first? Who do you let
do the medical offices? Which one? This is first of its kind to where the developer did not come in and provide parking at the highest, for the highest use. If we provide parking in this development at 1 per 200, we're not having this discussion.

What we've done here is we've maximized the site. I can respect that. These spec buildings, you know, I hope they do great. I think they'll do great and it's wonderful for the tax base. We've got to have a plan to go by. If not you're going to have people up here before future Planning Commissions and future zoning administrators with a real problem. They're going to have a real problem because they just bought a condo that they can't use or they want to sell their condo to someone for medical offices and they can't because there's no more square footage allowed.

So who's going to pick and choose as to who gets the medical use and who gets the general office use? I don't think it should be the Planning Commission. I think it should be the developers. If this is truly a plan development and a developer plan, we should be addressing that very issue, the use of the buildings.

DR. BOTHWELL: I guess my point is
avoiding the future headache. I see this as future headache. Big headache. We're the ones that are going to have to face it.

I mean you guys build it. You sell it. You walk away. You're clean, but we get stuck with the headache. That's why I think you would be smarter to plan the maximum parking. I understand the finances. I understand all that part too, but I'm just saying this is a headache for us in the making right here.

CHAIRMAN: Mr. Bryant, do the math real quick for us. We've got one-thirds/two-thirds. That's pretty simple. How many more parking spaces are we looking to do a 1 to 200 about?

MR. BRYANT: Another 140.

CHAIRMAN: Another 140 parking spaces.

MR. BRYANT: The question was asked what if someone sells an office at some point, five, ten years from now, a non-medical use to a doctor that wants to put an office in there that requires 1 and 200. That building, that unit is not designated on the current final development plan for that parking ratio. There's not anything to keep that transaction from taking place just because it's shown on the development plan. The public is not aware of the
development plans on file at the Planning Commission. There's no protection to the general public there. They're going to find out after that unit is sold it's no different than what we're proposing. There's no protection there. They'll never see that development plan. I don't believe a develop plan shows up on a title opinion.

MR. NOFFSINGER: It's not going to e in your restrictions, in your covenants?

MR. BRYANT: We're going to address it under restrictions.

MR. NOFFSINGER: So they would become aware of it at that point.

MR. BRYANT: We're going to do that and the development plan is not necessary in order to do that. It's going to be addressed through the restrictions. It's going to be monitored by the Owners Association. The developer first and then later by the Owners Association. It could also be monitored by the building office. In a likewise manner through building permits and later through business licenses. That development plan doesn't offer any protection whatsoever. Doesn't accomplish what we're saying the issue is here. It does not accomplish that in any way.

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MR. HUTCHINSON: I think to kind of re-emphasize here. Once the developer is out, the long-term Owners Association documents will have an Owners Association that will be encumbered upon them to enforce all of the covenants including this covenant. This is another covenant just like there are covenants of all different kinds in these developments. It's like the Owners Association to enforce them. If there's a problem, anybody, any owner in that development, if there's a parking problem that's being exceed, it's not being followed, they have recourse under the owners documents. I don't think we're creating a future headache for this commission by not forcing us to designate today exactly which buildings or portion of the building have to be a particular use.

MR. APPLEBY: Is it possible to put a notation on this, that we require notation on this plat that references this association and restrictive, the restricting that it's required to enforce?

MR. NOFFSINGER: I'm not sure what you achieve by doing that because as Mr. Bryant stated the general public is probably going to review the development plan anyway. My point was they should be made aware of the covenants which could be make
reference to a development plan on file.

I do have a question, Mr. Hutchinson.

Will this complex be annexed into the City of Owensboro?

MR. HUTCHINSON: We intend for it to be.

MR. NOFFSINGER: Because if it's not, then we do not --

MR. HUTCHINSON: It's been approved.

MR. NOFFSINGER: We do not review business license outside of the City of Owensboro. So we do not sign off on those.

MR. HUTCHINSON: We're mindful of the concerns of the Commission and the Staff, but doing it this way in this fashion it creates -- I mean it's no easy task, it's no inexpensive task beyond the marketing concerns of going out here and getting an amendment development plans done, getting signed off by eight different agencies. I mean you're creating a tremendous headache here for the developer that we don't think is necessary because systems are in place that you can monitor it. After we're out of it, the Owners Association monitors it. We have no problem in the condition of this to putting in appropriate restrictions in the Owners Association provisions that make a special reference to these parking limitations.
Make a requirement that they not be exceeded.

CHAIRMAN: Mr. Mischel, do you have any other suggestions for the Commission?

MR. MISCHEL: No, not at this time.

CHAIRMAN: Mr. Howard.

MR. HOWARD: No.

CHAIRMAN: Mr. Appleby.

MR. APPLEBY: No

CHAIRMAN: I think the Commission has pretty well reviewed all angles and suggestions. I think we're at the point now, unless somebody has a solution or an idea or a compromise, the Commission has to face the question.

MR. BRYANT: Can I bring up one other point?

CHAIRMAN: Yes.

MR. BRYANT: This is a development plan. As these buildings are constructed, we'll have to come back with final plats. Since it is a condominium concept, there will be division lines that we'll be doing for record as-built plats of each of these buildings for recording. If we're going to try to address it through a document that be submitted for review, let's at least get away from the development plan and go to the plat because we don't want to have
to go back to the sewer agency, the water district, the utility companies. They're going to want to additional easements that they forgot to get before. You know, the sewer agency is going to decide, well, we want another sewer run and they're not going to sign off on it until you do that. This happens to us all the time. They use that for leverage to get what they want without paying for it. If we're going to tie it to something, let's not tie it to a revised development plan. Let's amend the plat for that individual building at least.

CHAIRMAN: Mr. Noffsinger.

MR. NOFFSINGER: Mr. Bryant, are you saying that or are you recommending that as each plat comes in that at that point you would be able to designate the square footage that would be attributed to?

MR. BRYANT: I don't like that solution, but it's better than resubmitting the development plan for the entire project each time we have a change of use.

MR. NOFFSINGER: But you're agreeable to that as a --

MR. BRYANT: I'm stating that there will be up to seven final plats submitted for this
development. One for each building, unless they do multiple buildings on one plat. Most likely it will be one plat per building.

MR. NOFFSINGER: So what have we gained if we don't -- that doesn't address the issue of the square footage that would be attributed to the medical and then the general office.

MR. BRYANT: You realize how many -- where are you going to keep all of these records, Gary? Over a period of years, you're going to have so many amended plats that you're going to have to add on to city hall.

MR. NOFFSINGER: This is not the first type of development that we've had. Again, we've had residential condo developments that come in on a final plat basis and that's how the square footage was dealt with. Again, that's why I'm asking you. If you're going to submit a final plat, can you address the square footage at that point? I think that's certainly acceptable --

MR. BRYANT: So we're going to revise the final --

MR. NOFFSINGER: -- because that's not going to create any additional documents.

CHAIRMAN: Wait just a minute. Let Mr.
Noffsinger complete and then you may speak.

MR. NOFFSINGER: My only point was you're going to have seven plats anyway. So we're not creating any additional records. We're addressing it at the final plat stage. Sure we have a lot of paperwork and we'll find a place to put it, but it's necessary paperwork. As I can tell you without addressing the square footage, there are going to be major headaches for not just the Planning Staff but for perspective owners and future buyers out there in that development.

CHAIRMAN: Mr. Bryant.

MR. BRYANT: We will have up to seven final plats initially. These plats will have to be approved and recorded before any units can be sold. We have a situation where we have up to six units in these buildings, four to six units. You could final a building and have two units sold, one unit sold, and not have any idea what the use is going to be for the remainder of the building. So to do this we will have to designate the use for every unit in that building when that plat is filed. We may not know that.

MR. NOFFSINGER: Use meaning medical versus non-medical?

MR. BRYANT: Well, we use the term Ohio Valley Reporting (270) 683-7383
medical. I think there are some uses that are
non-medical that require 1 and 200, but for the most
part it will be a medical use. Any use, any use that
requires 1 and 200 parking.

CHAIRMAN: I think we've explored this
unless somebody has some other comment or suggestion
to the point where I think the chair is ready for a
motion. I think it's been pretty well reviewed and
questioned. There are some checks and balances down
the road that we can review at a later time, but I
think at this point in time I think the chair -- - Mr.
Hutchinson, did you have one more comment?

MR. HUTCHINSON: The only thing I guess
that's bothering me, I mean from a developer's point
of view here we recognize the need the Commission
feels for having some monitoring on that. We just
feel like the approach that's being suggested really
creates a tremendous hardships on the developer. I
guess I'm kind of inclined to say, you know,
reasonable people should be able to come up with a
better solution with all or nothing.

CHAIRMAN: Wait just a minute. I'm not
going to interrupt you. I just want to correct you.
We have made no all or nothing proposal. We've asked
for solutions, suggestions and compromises from your
side, from the Commission, from the Staff. We're
open-minded about this. Nobody is giving you an
ultimatum either all or nothing.

MR. HUTCHINSON: I haven't heard anything
different so I figured you're either going to approve
it with that require or without. It's all or nothing.

CHAIRMAN: If you heard it that way, as
the chair I did not direct it that way.

MR. HUTCHINSON: It seems like there ought
to be some way that there could be -- part of this
would be a requirement of the developer's part to
notify as units are sold or rented, at least through
the initial process, to the Planning & Zoning Staff
office so they can monitor through that process and
then have the same requirement on the Owners
Association, but not make it a formal going through
resign, the engineers doing all of those things, but a
requirement on our part to notify, give written notice
to the Commission when a unit is sold. I don't know.

CHAIRMAN: That is in your present plan or
you will add that as an addition?

MR. HUTCHINSON: No, it's not in there
now.

CHAIRMAN: You would make that as an
addition?
MR. HUTCHINSON: Yes. We would say yes.

It just seems like that kind of maybe satisfies the need for the Commission, Staff and Jim's office and yet not put us through all these hurdles that we have to go through.

CHAIRMAN: Well, there is a suggestion then.

DR. BOTHWELL: May I make a suggestion and fill you out on this. Why don't we table this and you guys meet again and see if we can come up with something or we're going to vote right now. That's the solution.

MR. BRYANT: I've got the answer.

CHAIRMAN: Mr. Bryant.

MR. BRYANT: Really all we're going to update here is site statistics, and we can do that with a letter of notification to be submitted to the building office with the provision for a sign off from Jim Mischel before we revise the site statistics, actual site statistics each time there's a change of use. Then that will be submitted and signed off on before any transfers of any units.

CHAIRMAN: That protect the public.

MR. BRYANT: And we're submitting letters and not getting development plans signed by all
utility companies and paying fees, paying submittal fee each time we change it.

CHAIRMAN: That's saves you all.

MR. BRYANT: And it's something that can be done and the Owners Association can assume that responsibility when the developer is out of the picture.

CHAIRMAN: And puts the responsibility --

Mr. Mischel, would you step back to the podium.

In hearing Mr. Bryant's suggestion, does that solve a lot of the situations that your office would face?

MR. MISCHEL: You mean as far as when a property sells and it would be brought into the office first?

CHAIRMAN: Yes.

MR. MISCHEL: Would I guess an attorney do that on the title, I mean bring it in or who would bring it in to us?

MR. HUTCHINSON: It would assume the developer. It would be his responsibility.

CHAIRMAN: Mr. Hutchinson, would you step to the mike.

MR. HUTCHINSON: It would be the
developer's responsibility, Jim. If they want to
assign that to the lawyer to do or to the engineer to
do.

MR. MISCHEL: After the developer is out
of the picture, who would bring that?

MR. HUTCHINSON: The Owners Association
would be, I think they would be the entity charged.
We would put that in our documents they be the entity
in charge to make whatever reports to come up with.
This is a concept that needs a little fine tuning
between me, Gary and you.

CHAIRMAN: We're getting there in a very
short period of time.

MR. HUTCHINSON: You're asking a couple of
details that we haven't thought through as to --

MR. MISCHEL: I guess the association
would have to --

MR. HUTCHINSON: Yes. The answer to your
question is the association. it would be their
responsibility.

DR. BOTHWELL: Mr. Chairman, can I go back
to my original question. Rather than vote tonight,
why don't we table this until next month, work these
issue out, give everyone the satisfaction and then
re-address it in a more positive fashion.
SISTER VIVIAN: Mr. Chairman, would there not be a possibility of reducing the number of units? Not reducing the number of buildings but the number of units within a couple of the buildings to accommodate that parking? I keep getting the feeling that you're trying to put too much on too little property if you cannot do that to accommodate the parking.

CHAIRMAN: I don't think number of units would solve the problem. It's the square footage ratio is the problem.

MR. HUTCHINSON: Sister, all I can say is that what we propose is in compliance with the requirements that are in place. I don't think there's a parking problem.

SISTER VIVIAN: It sounds like to me that the whole issue tonight has been it's not in compliance.

MR. HUTCHINSON: I think we're absolutely in compliance with the number of parking places per square footage and we're showing that in lots. The only issue has been in each individual these seven buildings --

SISTER VIVIAN: When you go to sell and you come to a medical. I followed all that.

MR. HUTCHINSON: We're in full compliance
with the parking requirements. It's just how much
detail should we be required to put in at this point
as to which units will have which parking area
limitations.

DR. BOTHWELL: Mr. Chairman, may I again
make the suggestion.

CHAIRMAN: Dr. Bothwell.

DR. BOTHWELL: I'm going to make a motion
that we table this issue until next month and subject
to further study and compromise.

CHAIRMAN: Let me ask Mr. Bryant.

I know that time is of the essence.
Tabling the motion, how does that affect you all?

DR. BOTHWELL: We're ready to break
ground. We're doing demolition work on the site now
and we're ready to start the improvements. We will be
submitting plats at a later date.

I would say that we could work this out to
everyone's satisfaction prior to the submittal of any
final plats which would be prior to the sale of any
properties.

CHAIRMAN: Mr. Hutchinson.

MR. HUTCHINSON: Maybe, Mark, rather than
table, could we have it approved maybe subject to the
resolution be reached before we submit our first plat?
MR. APPLEBY: I've got a question.

If this compromise that Don has proposed is something that you're comfortable with, you can sign this plat, can you not? Does it have to come back before the board?

MR. NOFFSINGER: I don't know. There's just so many unknowns.

I go back to the idea of what if we hold up on two of these buildings, occupancy, until we have the square footage straightened out and then you can market the other five and sell those. Is that an option? That's not on option. I don't know. It concerns me that the monitoring, this is about monitoring of it. This is a first of its kind where we have not addressed truly the use of the building and parking. I think it's an issue that warrants consideration and approval by this commission on record and not -- obviously that's why it's here tonight. I did not sign that plat.

MR. APPLEBY: I have great confidence in Jim Mischel's building department. I believe they're capable of monitoring it. I feel like that we are the body that needs to do it. I think somewhere down the road a lot of these people are going to be out of the picture and things are going to change and we've got
to be able to keep track of it. I feel like that's something we should do.

CHAIRMAN: Mr. Appleby, are we in the position to make a motion?

MR. APPLEBY: Well, the doctor was --

DR. BOTHWELL: I haven't made it yet. I was just exploring that option. I certainly will defer to whatever motion you care to make.

MR. APPLEBY: I would make motion for approval.

CHAIRMAN: Will there be conditions?

MR. APPLEBY: Other than the conditions that are already on there. I would like to -- I don't know.

CHAIRMAN: Mr. Hutchinson's suggestion about making the property association responsible for --

MR. APPLEBY: I don't know how we qualify that on this plan. Don said something about resolving the square footage issue prior to submission of the final plat.

MR. BRYANT: Would be prior to the submission of even the first final plat, which would be prior to the transfer of any properties, any unit. That we would work something out that is agreeable
with the building office and the developer. That
would keep the building office updated prior to any
sales of what the actual site statistics are out
there. That's what you're going to get on the
development plan, is updated site statistics
indicating the building. That can be done with an
exhibit drawing attached to the revised actual site
statistics. Not proposed but actual. That way you
know if it's in compliance or not. If it's not signed
off on, they can't transfer the unit. That will be
addressed on the plats as well as in the master deed
which contains the restrictions for the property.
Everyone is protected. All we need to do is come up
with the proper format which I think that would be
very easily done.

MR. APPLEBY: I make a motion for approval
subject to the developer and building department
reaching an agreement on a means by which the
developer and their successors notify our building
department of the uses and change of uses prior to
transfer of property.

CHAIRMAN: We've got a motion by Mr. Appleby with conditions. Do we have a second?

MR. ROGERS: Second.

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

(ALL BOARD MEMBERS - JUDY DIXON, DREW KIRKLAND, SISTER VIVIAN, IRVIN ROGERS, JIMMY GILLES AND DAVE APPLEBY - RESPONDED AYE.)

CHAIRMAN: All opposed.

(PRODUCT MEMBER DR. MARK BOTHWELL RESPONDED NAY.)

CHAIRMAN: The motion carries six to one.

Next item, please.

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MAJOR SUBDIVISIONS

ITEM 9

Carlton Drive, 11.369 acres
Consider approval of revised major subdivision preliminary plat.
Applicant: James C. Roby.

MR. NOFFSINGER: Mr. Chairman, this plat has been reviewed by Planning Staff. It's found to be consistent with the adopted comprehensive plan as well as the adopted zoning ordinance and subdivision regulations.

CHAIRMAN: Anybody representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Do we have any questions of the applicant?
CHAIRMAN: If not the chair is ready for a motion.

DR. BOTHWELL: Motion for approval.

CHAIRMAN: Motion for approval by Dr. Bothwell.

SISTER VIVIAN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 10

Sterling Park, Unit 2, 9.827 acres
Consider approval of major subdivision final plat.
Surety (Certified Check) posted: $52,652.00
Applicant: Jerry & Donna Butler, John & Pam Vanover

MR. NOFFSINGER: Mr. Chairman, this plat has been reviewed by the Planning Staff. It's found to be consistent with the adopted comprehensive plan, the zoning ordinance and subdivision regulations.

CHAIRMAN: Is anybody here representing the applicant?

APPLICANT: Yes.

CHAIRMAN: If not does anybody have any questions?
CHAIRMAN: Chair is ready for a motion.

MR. GILLES: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Gilles.

SISTER VIVIAN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 11

Thorobred Crossing, Unit 3, 6.859 acres
Consider approval of major subdivision final plat.
Surety (Letter of Credit) posted: $84,715.20
Applicant: Thompson Homes, Inc.

MR. NOFFSINGER: Mr. Chairman, this plat has been reviewed by the Planning Staff. It's found to be consistent with the adopted comprehensive plan as well as the zoning ordinance and subdivision regulations.

CHAIRMAN: Is anybody here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody have any questions?

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(NO RESPONSE)

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

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

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.

MINOR SUBDIVISIONS

ITEM 12

6701, 6721 Sutherlin Lane, 18.206 acres
Consider approval of minor subdivision plat.

Applicant: Damon & Janice Park, Melissa W. Chapman

MR. NOFFSINGER: Mr. Chairman, this plat does not meet the requirements of the regulations and someone from the Staff will need to address that issue.

MR. HOWARD: Currently there is a large tract of ground that is irregular in shape. It's shaped in the form of a flag and it currently exceeds the three to one depth to width ratio. What they're
doing is cutting off the back portion of the flag and consolidating it to the adjoining lot creating one regularly shaped triangle box that still exceeds the length to width ratio and then attaching the flag to another lot that actually brings that a little closer in conformance as well; although, they both still don't meet the three to one depth to width ratio requirement, but they're not creating any new tract with this division at this time. Just division of consolidation.

CHAIRMAN: Is there anybody here representing an applicant?

(NO RESPONSE)

DR. BOTHWELL: Mr. Chairman, did I understand that they're saying that were recommending approval or not? I didn't quite understand.

MR. HOWARD: We would recommend approval, yes.

CHAIRMAN: Are there any questions?

(NO RESPONSE)

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

MS. DIXON: Move for approval.

CHAIRMAN: Motion for approval by Ms. Dixon.
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

2415, 2419 West 10th Street, 0.313 acres
Consider approval of minor subdivision plat.

Applicant: Kenneth L. & Penny S. Robb

MR. NOFFSINGER: Mr. Chairman, this plat is asking for an exception to the regulations and someone from the Staff will address the issue.

MR. HOWARD: In this situation there are three lots along West 10th Street that are very narrow in nature. What they're doing is actually reducing a lot number from three to two. They're both narrower than what is currently acceptable in the zoning ordinance; however, it is improving the situation by reduction of one lot and removing some narrow lots that are currently there. We would recommend approval on this plat as well.

CHAIRMAN: Are there any questions?

(NO RESPONSE)

CHAIRMAN: If not the chair is ready for a motion.
MS. DIXON: Move for approval.

CHAIRMAN: Motion for by Ms. Dixon.

SISTER VIVIAN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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AGRICULTURAL DIVISIONS

ITEM 14

4400-4500 Blocks Medley Road, 10.015 acres
Consider approval of agricultural division.
Applicant: Robert Wimsatt

MR. NOFFSINGER: Mr. Chairman, this property is part of a parent tract that has ongoing development. I question the rationale used in terms of this being agricultural division; however, the applicant has submitted it as an agricultural division. Mr. Howard is here to present the findings of the Staff.

MR. HOWARD: This tract is ten acres in size which is the minimum for an agricultural division. The lot is currently zoned urban agricultural, but the proposed use is not to be for agricultural purposes. According to the applicant,
it's going to be used for a single-family residence.

As Mr. Noffsinger said, this is ten acres of a parent tract that is currently under development by Mr. Wimsatt. It's also under an annexation agreement with the city, which I have a copy of that that I'm going to entered into the record at this point as well.

In conversations today with the city engineer, he spoke with other city officials and he expressed the city's disappointment in the proposed agricultural division of this property. That the city entered into an agreement from good faith that this was going to be part of an annexation of a residential subdivision. With an agricultural division of this tract, that's not going to be the case.

We're not opposed to the creation of a tract provided that it is recognized that this is a ten acre tract off of a parent partial that is currently under development and that it does have the potential in the future to develop as a single-family residential subdivision of somewhat high density.

It is like I said within an urban service area. Sewers are also available to the site. So that means that you could have smaller lot sizes.

What we are proposing is that with any future subdivision of this ten acre tract that a note

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be placed on the plat that says any future subdivision will require the extension of a road from the single proposed access that they have on Medley Road to the southern property line that would abut the property that's currently under development or part of the partner tract that's currently under development by Mr. Wimsatt.

An issue that also would be present is the need for the road extension. With the limited road frontage that this property has and the length of the property that no future road frontage division would actually be able to be made that would meet the regulations of the zoning ordinance. If they were ever trying to do any type of subdivision, it would require the extension of the street.

The main purpose of that note is so that we don't develop this ten acre tract as an isolated ten acre subdivision that definitely does have potential to do that in the future. So that way we can construct the street to the property line and it resolves that issue now and in the future if it were to be subdivided.

I think Mr. Noffsinger just passed out as well a concept plan of the overall development. We did request the change that the cul-de-sac that abuts
this property be extended to the property line so that
in the future if this ten acre tract was subdivided
there would be a logical tie-in point for that road.
Then we also ask the same be done to an adjoining
tract that's currently around 13 acres. That the
cul-de-sac be extended to that property line as well.

That's all the comments I have at this
point. I'd be happy to answer any questions that you
have pertaining to the issue.

CHAIRMAN: Thank you.

Anybody representing the applicant?

MR. ELLIOTT: State your name, please.

MR. WIMSATT: Bob Wimsatt.

(MR. BOB WIMSATT SWORN BY ATTORNEY.)

MR. WIMSATT: Mr. Chairman, fellow
commissioners, I'm kind of a little bit caught off

guard here tonight because there were some issues

brought up that have not been mentioned to me prior to

this discussion right now.

When I spoke with Mr. Howard as early as

this afternoon, it was my understanding that the Staff

really didn't expect the challenge of the fact that

this was an agricultural division. This plat was

turned in as an agricultural division. The fees were

paid as an agricultural division. It was accepted as
an agricultural division. It was my understanding that the reason that this plat was being brought before the Commission tonight was to have an opportunity to have a discussion about an additional note that the staff had requested that we put on that plat. That was my understanding as late as this afternoon.

As far as the annexation agreement, that is on record with the city. I do have an annexation agreement for that property, but that annexation agreement does not necessarily require that I develop all of that property or any particular part of that property at any particular time. All it requires is as I develop it, if and as I develop that property that I will annex that property into the city. We have kind of a blanket annexation agreement. Then we have individual annexation subagreements or whatever you want to call it that provide me some composition over five years as I decided to develop certain pieces of that property. There is no requirement in that annexation agreement that I develop any particular piece of that property during any particular time frame period. That's exactly the way I've been operating for ten years now on this piece of property.

Also there's no requirement as far as what
density, how I develop that property. Whether I do quarter acre lots, ten lots per acre, or I do two lots per acre, or one per ten acres. There's no requirement on the density as to how I develop that piece of property. I just set that record straight. Certainly the city has not called me and expressed any concerns about my plans for this property, some of the comments that I've just heard here tonight.

Again, our only concern is that I found out yesterday from the engineer that the staff was requesting two notes be added to the agricultural plat. One note, you all have the plat, but one note was that this tract shall not be further subdivided to create additional irregular shape lots not meeting the requirement of the subdivision regulations. I spoke with the buyer for this property, and his attorney is here tonight to represent him as well. He has no problem with that. He has made it clear to the staff for several weeks now that he has no intention of doing any development on this property as far as the high density type development or anything of that nature other than possibly he wanted some kind of protection that if something happens to him in several years, whenever, that he might have the option of being able to break off one or two lots to be able to
-- he doesn't want his wife to necessarily -- he wanted a ten acre agricultural, wooded agricultural tract. This tract meets all the definitions of an agricultural tract. An agricultural tract does not necessarily have to be row cropped. This is a ten acre wooded agricultural tract that meets all those definitions. As late as this afternoon, I haven't heard any challenges to that affect. It was my understanding that the reason that we were going to have this discussion tonight was to talk about the additional note that the Staff had requested that neither myself nor the buyer felt comfortable committing to. That note says, future subdivision of this ten acre tract will require the extension of the road to the south property line..

This is the concept plan, and I believe you've just been given a copy of. This concept plan by the way is for this entire what was originally 180 or 190 acres. That concept plan has been revised several times over the years as I've decided to make changes and as the staff has requested certain changes that I didn't feel comfortable with committing to. So those changes were initiated by me. Some were requested by the Staff. So that concept plan is a concept plan that one way that this property could
potentially be developed. That concept plan has been
revised several times over the years. Some initiated
by me and some initiated by the staff.

It is not a development plan. It's not a
plan of residential development. All this is is a
concept. If it and when, according to the terms of my
annexation agreement to the city, if and when I decide
I'm ready to go forward with developing any piece of
this property, then I take whatever piece of that
property I'm ready to develop, sit down with the Staff
and whatever size lots, what density I decide I'm
ready to do, then we make for sure that that part of
that property is in compliance with the subdivision
plans and the zoning ordinance.

Other than that, I've never made any
commitments on the rest of the property. Never turned
any plan, residential development plan or subdivision
plan or anything of that nature at all because it just
simply is questions I can't answer at this time. The
idea -- let me kind of orient it to the Commission.

The ten acres that we've submitted as an
agricultural division, that ten acres sits right here.
Some good portion of this property has been developed.
There's another development occurring right down here.
A lot of this property hasn't been developed. There's
no formal or final plan at all as to when or if or how
that would be developed. That's been understanding
all along. When I got ready to do it, I requested
approval and go forward with the formal plan.

What we proposed is the buyer is wanting
to buy that ten acres. He looked at the topography of
the ground. There's ridge that lies right in here.
That buyer is going to put a personal residence on
that ten acre wooded agricultural tract. He by the
way is a farmer too. If he wanted to, he could clear
it and he could row crop it, but there's no
requirement as an agricultural tract that he row crops
it. It's a wooded tract, agricultural tract.

He's going to put a personal residence on
that ridge. Prior to this concept plan, there was a
concept that showed that this street, which is not
built and has not been finalized, there was a concept
that this street might come this way. It would go
this way across this ridge and it come out this ridge
and potentially have an entrance on Medley Road. That
was on the previous concept. What we're doing now is
we're breaking off this ten acre wooded agricultural
tract. He's going to put a personal residence on this
ridge. He asked me to allow him the opportunity to at
least be able to do one or two lots at some point in
the future, which I was agreeable to. I'm not agreeable to him necessarily going in here and doing any kind of high density development right in the middle of the high density development that I may be doing. It kind of cuts my own throat, create my own competition.

I'm not opposed at all to taking part of this property and not necessarily doing high density development. It's not uncommon to have pieces of property with large tracts of ground with different densities. Not everybody wants ten houses right behind their house. From a marketing standpoint and an appeals standpoint, it's also nice to have buffers and have areas that necessarily are not developed high density. This make sense to me.

The note, the second note, the first note which we all agreed to and is on the plat. The second note that was requested by the Staff yesterday requires that if the buyer who going is build a personal residence right here on this ridge, right in the center of that property, if that buyer some day decides to develop that property, period. One lot, two lots, ten lots, thirty lots, if that buyer some day decides to develop that property, then he'll have to run that street all the way to the back of his ten Ohio Valley Reporting (270) 683-7383
acres. That street would run right through his living
room. From a practical standpoint, that street, as
was in my prior concept, that street has to come
across that ridge. Once you come off that ridge, it
drops off pretty severely on both sides. From an
engineering standpoint, a practical standpoint, it
would be very difficult to put a street anywhere but
on that ridge. Exactly where he intends to put his
personal residence.

CHAIRMAN: Mr. Wimsatt, let me not
interrupt you, but let me just get you to pause for a
minute.

Mr. Howard, would you address a few of the
situations that he's brought up.

MR. HOWARD: Certainly.

I've had numerous conversations with Mr.
Wimsatt. Based on our conversations, it was agreed
that this is a ten acre tract. That is the limited
requirement for an agricultural division. It is zoned
urban agricultural, it is zoned agricultural.

I expressed to him what we are trying to
do to accomplish what this note that we're talking
about is for future development plan accordingly for
this ten tract that is part of a parent that is
currently under development. Again, we understand
that this portion on the west side of the property has
not been final plated. We understand that, but we're
taking ten acres out of what was a developing parent
tract of ground. We want to address the future need
of what could happen on that site. I told Mr. Wimsatt
with the other note that we put on there, if this note
was placed on the plat we wouldn't have any problem
going forward with this tonight as an agricultural
division, but we want to address what could happen on
this site in the future instead of having the
potential to isolate a ten acre subdivision.

CHAIRMAN: Mr. Wimsatt.

MR. WIMSATT: Let me just make that very
clear that Mr. Howard did say -- that was our
discussion. That was the way I thought I felt like
understood our conversation as late as this afternoon.

So the issue really is the appropriateness
of that note. Whether or not that additional note
should be placed on this agricultural plan.

What that note says by requiring that any
future divisions period, one lot, two lots, thirty
lots, what that note says is any divisions of that ten
acres will require that street be built all the way to
that rear property line which, again, will go right
through this gentleman's house. It's just not
practical to put that note on there.

MR. APPLEBY: Bob, there's no assurance that that house is going to be built there. That's his intent right now, but if he buys that property tomorrow and decides to subdivide it, what they're asking, which is not anything we don't ask of anybody that develops subdivision, as you know, is that we require access to the adjacent property.

MR. WIMSATT: Except there is one difference here. Let me make sure I make that very clear.

The difference in this case is that I have an agreement, it's part of my real estate sales agreement with this buyer that he is restricted. That he cannot put any more than -- he can do no more than two subdivisions on this property at any time in the future of no more than one acre each.

MR. APPLEBY: Bob, if he does that, he's going to have to have access to a public street because he doesn't have enough frontage.

MR. WIMSATT: That's right. No. He'll access on Medley Road. He can build a public street on Medley Road, and he can make that decision. He has an approved access point on Medley Road. At some point in the future if he decides that he wants to do
one or two lots for a family, he can build that road.
He absolutely can build that road. He can put his
personal residence on the ridge in the middle of this
property right here where this road was previously --
there was a concept that this road would come out here
on this ridge. There's an access point being shown
and being approved on this agricultural plat. That
access point is there. He can still come in off that
access point, if he chooses. At that time he'll have
to meet the subdivision regs. He could build a short
little cul-de-sac or whatever. Something that meets
the regs. It would come to this commission for
approval and Staff have to review just like anybody
else that wanted to subdivide lots off a tract of
ground that they have. At that time he could come in
here and he could potentially do a couple of lots up
front. That would be subject to full review of the
Staff and the Commission. He could still put personal
residence in the center of this property.

Again, very clearly my sales agreement, my
real estate agreement with this gentleman specifically
says that he and any future property owner, so I don't
have to worry about who he sales it to, can do no more
than two lots, subdivide no more than two lots of no
more than an acre apiece. So to suggest or require

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that a street go all the way through this property
puts a burden that's not necessary on this property.

DR. BOTHWELL: Mr. Chairman, I'm confused.

CHAIRMAN: Dr. Bothwell.

DR. BOTHWELL: One minute he's talking
about only two lots out of this whole ten acres. Then
in another breath I hear two possible subdivisions of
one acre per - -

MR. WIMSATT: I'm saying the same thing,
Dr. Bothwell. That's what I'm saying. Two lots of
one acre apiece. That's what I'm saying. He could do
it under one subdivision or he could do - - the point
to make clear, only two lots of no more than one acre
apiece. I suggested to the Staff - -

DR. BOTHWELL: Let me finish. I'm still
not clear at what we're getting to here.

What you're saying is, if I understand
correctly, he could only put two more houses on this
ten acres period. Is that what you're saying?

MR. WIMSATT: Absolutely.

DR. BOTHWELL: No more?

MR. WIMSATT: That's it. That's our
agreement. Absolutely. And any further owner would
be bound by that same restriction.

DR. BOTHWELL: He could add two more on

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top of the two?

MR. WIMSATT: No.

DR. BOTHWELL: So you're saying total of three houses. Ever could be on this ten acres is three?

MR. WIMSATT: Three, that's right.

DR. BOTHWELL: Period.

MR. WIMSATT: Absolutely. That is our restriction. I offered to the Staff that if their concern is that some day this ten acres might be developed in some kind of a high density fashion that might necessitate a road go all the way from the front to the back of this property, that we go ahead put the note on the plat limiting it to only three homes. Exactly what the buyer and I have agreed to.

CHAIRMAN: Wait, Mr. Wimsatt. Take a break here. Let's let Mr. Howard address that proposal.

MR. HOWARD: I guess one of the concerns we have is that this is a private agreement and a real estate transaction. If both of the properties agreed, at least it's my understanding, if both of the parties agreed to change those regulations if they could, then it could open this up to develop further in the future, if it was agreeable to both the buyer and the
applicant at this time.

CHAIRMAN: Mr. Elliott.

MR. ELLIOTT: That's right. It's their private agreement. We're not involved and it can be changed.

DR. BOTHWELL: Can't we put on this plat that no more than two more residents can be placed on this ten acres without --

CHAIRMAN: Mr. Noffsinger.

MR. NOFFSINGER: Let me address that because it's a real slick move. We've already addressed that there's not enough frontage on that property to create an additional tract without constructing a public street. You cannot meet the depth to width ratio. So if you do that, it's setting up to where it puts you in the position of having to approve substandard lots or you get a street that serves a couple of houses that's in isolation, which is exactly what we've tried to avoid in other residential developments.

MR. WIMSATT: Mr. Bothwell, let me --

DR. BOTHWELL: It's been answered. Thank you.

CHAIRMAN: Let me ask a question.

The house has not been built. This is a
standard, Mr. Howard, standard requirement, the
through street?

MR. WIMSATT: No, Mr. Chairman. It's my
understanding -- granted I don't do this every day.
I'm not aware of this type of note being requested on
any other agricultural division.

CHAIRMAN: That's why I'm asking Mr.
Howard.

MR. WIMSATT: I mean this particular note,
this is an agricultural division, agricultural tract.

CHAIRMAN: That's what I'm getting to, Mr.
Howard. I'm asking him that question specifically.
The through street.

MR. HOWARD: Correct. It is our practice
that if a tract of ground is under development that is
adjacent to another large tract of ground that's
undeveloped that we require the street be stubbed at
the property line for future activity of residential
uses. We do that in commercial and industrial
subdivisions as well.

CHAIRMAN: Mr. Appleby.

MR. WIMSATT: And the reason for doing
that, Mr. Chairman, is that you assume that there may
be some high density development some time and you
protect for that. If there is a requirement that
there will not be any high density development, that
clearly says that there's no need for a through
street, then there's no need to put that requirement
on there. That's what I've suggested. If the Staff
is actually concerned about whether or not this
property may be developed at some time in some kind of
high density fashion, that we just put that note on
our agreement. I've sat here and listened — —

CHAIRMAN: Wait a minute.

Mr. Elliott, didn't you just tell me that
if we put that note on there, that note becomes
unenforceable by the Commission, the note that he's
talking about?

MR. WIMSATT: I don't believe that's what
he said.

MR. ELLIOTT: His agreement, we don't have
a copy of the agreement. We don't know what kind of
agreement he has. He's told us what his personal
agreement is, but there's no record of it. It hasn't
been recorded.

MR. WIMSATT: I think what Mr. Elliott
said was that my personal agreement would not
necessarily be enforceable. I sat here and listened
to the dialogue about the discussion about putting
restrictions on this commercial development just a few
moments ago and there was discussion about putting notes on the plats and all that. The reason you do that is you put it on record. If you put it on record, then it is enforceable. Everybody knows. That's exactly what the Staff is requesting. That we put a note on there requiring --

CHAIRMAN: Wait a minute. Staff will speak for themselves.

MR. WIMSATT: Well, the Staff has said --

CHAIRMAN: The Staff will speak for themselves as you will speak for yourself.

MR. WIMSATT: The Staff has said that it was their request that a note be put on the drawing requiring at any time in the future any lots are --

CHAIRMAN: Let me just stop you right there and I'll go right to the Staff.

Mr. Howard, through street connecting, stubbed.

MR. HOWARD: Correct. It is something that we would like to see. We don't have a concern for this tract if it does develop as a higher density residential use. It's within the urban service area. It has sewer service. I mean we don't have any concern if it does in the future develop as a higher density residential use. It's appropriate based upon
everything else that's going on around it as far as the parent tract. We don't have a concern, we don't have an issue with that. We would support that that be done at some point in the future if it needs to be. If that does happen though, we want to make sure that the road does connect between the ten acre tract and we don't isolate it from the parent tract that is currently under development.

CHAIRMAN: I think we've at least or I have it clear in my mind of what you're requiring and the reason why.

Are there any other questions of anybody on the Commission or anybody in the audience?

Yes, sir.

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

MR. CASLIN: Dan Caslin.

(MR. DAN CASLIN SWORN BY ATTORNEY.)

MR. CASLIN: The buyer, Brett Stallings, is out of town today so he asked me to come speak for him.

His only concern is this: If that note is placed on there, his desire is primarily just to put his house on there and probably always remain that way, but he wanted the opportunity to maybe have two
more lots of one acre in size. Only two as the
maximum. Maybe family members have a house nearby
his. An extremely low density development. If this
note is put on there, he will essentially be
restricted from doing that he feels because it will be
cost prohibited. All he wants to be able to do is put
his house, maybe two others, he won't be able to put
those two if that street is required.

CHAIRMAN: Mr. Caslin, if you don't care,
let me have Mr. Howard address that point.

Mr. Howard.

MR. HOWARD: As far as the two additional
lots?

CHAIRMAN: If they put two additional lots
and say we're done, will they still be required if
they started those two additional lots to run the
street through the property?

MR. ELLIOTT: State your name, please.

MS. STONE: Becky Stone.

(MS. BECKY STONE SWORN BY ATTORNEY.)

MS. STONE: We're saying, yes, that would
be required to do that. They're going to have to
construct a street if they do one lot. There isn't
sufficient road frontage to create acre lots for
family members without constructing that street.

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CHAIRMAN: Excuse me. Would the street still have to go completely through the property at that point in time, if they built one lot, one additional lot?

MS. STONE: If we put this note on the plat, yes, it would have to. If we don't get the note on the plat, then we would have a subdivision that's not connected to the rest of the subdivisions around it.

CHAIRMAN: Thank you.

MR. CASLIN: You want to essentially put in a very short street that ends in a cul-de-sac and not be required to put a street all the way through the ten acres. I understand.

MR. WIMSATT: And that's perfectly reasonable, if there's a requirement that you can only do two more houses. If it's open where you could do 30 houses, I could see where that might be a concern. We don't mind putting that note on record on the plat or put it in the restrictions on record at the courthouse that there only be two additional homes at any time in the future on that ten acres.

CHAIRMAN: Thank you, Mr. Wimsatt.

Mr. Noffsinger.

MR. NOFFSINGER: I have a question of Mr.
This property is under an annexation agreement. Once you sell the ten acre tract, will that tract be annexed?

MR. WIMSATT: Mr. Stallings and I have had that discussion and I told him that I felt like we should go ahead and put it in the city, even if it stays as a ten acre agricultural tract. That we should do it in the city or go ahead and annex it in the city. He's agreeable to that, even if he does no future subdivisions. So he is agreeable that we go ahead and put that ten acres into the city. Agricultural tract is still an agricultural tract whether it's in the city or the county. Ron Durbin with PVA has already assured me of that. Doesn't matter whether it's city or county. If it's more than ten acres, it's an agricultural tract.

MR. NOFFSINGER: Mr. Chairman, Planning Staff would take issue that this is clearly not an agricultural tract in that it is for development purposes. The property is part of a parent tract that has ongoing development. This is a ten acre division of that parent tract. Just because they plan to build a home on this property does not make it an agricultural tract. Just because it's wooded does not
make it an agricultural tract. Yes, it is over ten acres in size, but they have clearly stated to you here tonight that they intend to develop this property in the future.

MR. WIMSATT: Absolutely not. We did not say that.

MR. NOFFSINGER: Therefore, we would recommend that it be submitted as a major/minor subdivision and that that note be placed on the property. In the future streets on this property and divisions be required to have a street that connects with the adjoining property.

MR. WIMSATT: Let me make it very clear we can certainly --

CHAIRMAN: Hold on, Mr. Wimsatt, please. Does anybody else have any other comments?

MS. STONE: I would just like to reiterate the point that as the Planning Staff I don't know that we would encourage limiting the development of this tract to three acres. It's in an area that is being developed for residential lots at a higher density. It's served by sanitary sewer. These are the type of residential developments we like to see at a higher density. It's where services are available and it's in essence helps reduce urban sprawl by developing at
higher density where services are already existing.

MR. WIMSATT: Mr. Chairman, I ---

CHAIRMAN: Just a moment, please.

Dr. Bothwell.

DR. BOTHWELL: No matter what they promise, no matter what they say, two lots now, next owner more lots. I think the requirement is legitimate. One house no street. Anything more a street.

CHAIRMAN: I believe that's exactly what the Staff recommends.

DR. BOTHWELL: That's exactly what I said.

CHAIRMAN: Mr. Wimsatt, would you like a moment for a summary before we call for a motion?

MR. WIMSATT: I think I hear Mr. Bothwell say that he thinks that's appropriate. Of course, obviously myself and Mr. Stallings doesn't feel that it's appropriate. If we came in with a subdivision plat for a short cul-de-sac off of Medley Road to do two lots, I don't think that it's reasonable to expect that the Staff would say, build that street all the way through that ten acres.

CHAIRMAN: But that's not what you've come in with. That's not the issue.

MR. WIMSATT: Absolutely. What we've come
with is no plan for development and a restriction that if there ever is any attempt to develop it, that it be very limited. At that time the issue would be addressed, but it can be very clearly put on record.

Certainly I don't think, I don't think this commission or the Staff wants to kind of create a situation where it necessarily forces people to develop property, you know, private property owners and say, you put a restriction on there that requires you, as a private property owner requiring you that you have to build a street all the way through your property if you ever decide to do anything.

CHAIRMAN: Mr. Wimsatt, there are certain conditions to trigger that and I think we've been through that, a great deal of extent and I think we've all aired that out. I think we're at the point now where it's time to ask for a motion and move forward with it, unless there's any further evidence or anything different. We're not trying to be unjust to you or anybody. Until we vote, until we have a motion, we have no idea which way the commission is going to go.

MR. WIMSATT: All I ask for is what's reasonable and what's customary. It's not customary to put this note on an agricultural division and it's
not reasonable to expect that a piece of property that
has a restriction of only three house, that a street
have to be built 1,000 foot or whatever all the way
through that property when we don't know whether or
not they would even at some point in the future even
try to do that. That's all I ask.

CHAIRMAN: Thank you.

The Chair is now ready for a motion.

DR. BOTHWELL: As I understand, we are
either for this division or we are opposed unless the
restrictions are added. So I'm not really sure how we
approach this. Do we make a proposal that this be
accepted provided that the restrictions be attached as
as far as the street or do we make a proposal that we
turn down this division because they're not offering
to do the street?

CHAIRMAN: Ms. Stone.

MS. STONE: I think you could probably do
it either way. You could approve the plat subject to
the note for the street being added as the Staff has
required or you could deny the plat if the applicant
is unwilling to place the note on the property.

DR. BOTHWELL: Well, I think we've heard
the applicant is unwilling to place the note on the
property. So I would say that I make a motion that we
MR. WIMSATT: Mr. Bothwell, I can't make the commitment without talking to the buyer. I've stated that I don't think it's appropriate to put the note on there.

CHAIRMAN: Mr. Wimsatt, let Mr. Noffsinger address that question for Dr. Bothwell.

MR. NOFFSINGER: One of two things should occur.

Steward, see if you agree with me.

That is that the plat be approved as submitted with the notation as requested by Staff. If the applicant is not agreeable to that, then I think your other option -- certainly you could approve it as is, but your other option would be to deny the plat based upon it is not an agricultural division, but the subject property is a part of an ongoing tract that is being developed. There is an annexation agreement signed for this property and they have stated to you here tonight the plans for future development of that property. So a motion to deny should be made with findings based upon what I've just stated.

MR. ELLIOTT: That's correct.

MR. WIMSATT: Mr. Chairman, just one comment.
Absolutely have not said there are any plans to develop that property. We serve the option to maybe do two lots at the most. There is no plan, no intention at this time of doing that. We absolutely have not said that tonight. There is no plans for development on that property other than a personal resident. The buyer's attorney is here to reiterate that.

DR. BOTHWELL: Mr. Chairman, Mr. Wimsatt just spoke that the street will never have to be built; therefore it's not a problem for him.

CHAIRMAN: Correct. I think we are ready for a motion. Dr. Bothwell, I think you're there.

DR. BOTHWELL: I tried to get that. I just wanted to make sure we were headed the right direction.

CHAIRMAN: You're headed in the right direction.

DR. BOTHWELL: Since the applicant is unwilling to accept the requirement of the street being run through the property, if it's further developed, based on the findings of fact that Mr. Noffsinger stated just a moment ago, I make a motion that we not approve the division.

MR. WIMSATT: Let me just say that I can't
say exclusively that the buyer will not commit to that.

DR. BOTHWELL: It's not an agricultural division based on the information we've heard. That potentially there's going to be future development of that land. At least two more lots.

CHAIRMAN: Could I --

DR. BOTHWELL: Okay. You want to clean that up?

CHAIRMAN: We're going to turn to Mr. Noffsinger.

Mr. Noffsinger, we could approve it based upon the Staff's recommendation of the through street. Is that not correct?

MR. NOFFSINGER: I do have a concern there that if you take that approach and the applicant is not agreeable to that, that it causes me some concern. I don't know how Stewart feels about that from the legal aspect of it. I feel more comfortable on denial on the basis of it's not being an agricultural.

CHAIRMAN: Let them resubmit it.

MR. WIMSATT: Mr. Chairman, if we want some time to see whether or not the buyer would be willing to make that commitment, I can go back to the buyer and see if he'll make that commitment. If
that's where we're at, we'll table it. Agricultural divisions are customarily agreed at the Staff level from what I understand. I think the Staff has said that they don't have any problem with the agricultural division. They just were requesting this note. I don't have any problem with the Staff if that's where we're --

CHAIRMAN: Let me ask Mr. Noffsinger then. We would have the choice of denial or postponement?

MR. NOFFSINGER: You can table the item, postpone the item.

MR. WIMSATT: I think it could be approved subject to the note as you said and the Staff would have the authority to --

CHAIRMAN: I have somewhat held Dr. Bothwell off on his motion. Now we've got some corrections and we've got some additional advice. Go ahead and follow through with your motion.

DR. BOTHWELL: I don't think it's any clearer now than it was when I made or tried to make a motion. They're not willing to accept that as the plat what I'm hearing. Now I'mm hearing maybe they are.
CHAIRMAN: If you give them a postponement, they can come back. If we give them denial, what's time frame on that?

MR. NOFFSINGER: They resubmit.

CHAIRMAN: Immediately.

MR. APPLEBY: They have to pay again.

MR. NOFFSINGER: Well, they haven't paid anything yet except for the recording fee of $20. I don't think fees are going to be an issue.

CHAIRMAN: Dr. Bothwell, take it.

MR. WIMSATT: Mr. Noffsinger, do I understand that if this was turned down the way it's presented tonight, that we would have the opportunity to represent it next week or whatever with that note? Is that what I understand?

MR. NOFFSINGER: As a subdivision plat. May be a major subdivision plat.

MR. WIMSATT: An agricultural plat, right, just like it's presented tonight?

MR. NOFFSINGER: Okay. Submitted as an agricultural division with that notation and Staff can make the determination that it's an agricultural division then, yes.

DR. BOTHWELL: Now I'm completely -

MR. NOFFSINGER: The answer is yes.
DR. BOTHWELL: The answer is yes to what?

CHAIRMAN: Postponement.

MR. NOFFSINGER: No. That they can submit as an agricultural division.

MR. WIMSATT: I would officially request that we postpone this for 30 days to see if we can work this out with all parties. I'll officially request that we table it. If we work it out and the Staff sign it in-house, we'll sign it in-house. If not, we'll come back before the Commission next month. I officially request we table it.

DR. BOTHWELL: Mr. Chairman, we have spent 45 minutes on this and we've offered this as a compromise and now we're getting back around to it again to postpone it and come back. I'm just a little --

CHAIRMAN: You've got the floor.

DR. BOTHWELL: If he wants to postpone, let's postpone.

CHAIRMAN: We have a motion for postponement by Dr. Bothwell.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Postponement carries unanimously.

Next item.

MR. NOFFSINGER: That's all the items I have at this time, Mr. Chairman.

CHAIRMAN: Do we have any comments from the floor?

MR. ELLIOTT: State your name, please.

MR. STALLINGS: I'm Richard Stallings.

(MR. RICHARD STALLINGS SWORN BY ATTORNEY.)

MR. STALLINGS: Considering this has been a long evening for everyone I'll try to keep this quick and brief.

Good evening everyone. I'm Richard Stallings, Executive Officer for the Home Builders Association of Owensboro.

I represent 330 member companies that employ over 2,800 in our community. We address issues of concern in our industry. We have records which represent our concerns at both state and national levels. In the course of our regular board meetings, it was determined that we needed to address local regulatory concerns. The local governments, this commission and the Planning Staff regulate our industry within the county.

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Based on our survey of our members, these are our findings that I'd like to hand out and read into the record if I may.

CHAIRMAN: Go ahead.

MR. STALLINGS: The Home Builders Association of Owensboro recently surveyed its members regarding the performance of the Owensboro Metropolitan Planning Commission, Gary Noffsinger, and his staff. The HBAO Board of Directors, at its May meeting, held a discussion and decided to poll our membership for our findings stated below:

A large percentage of the actions of the planning commission, planning director and his staff are controlled by the actions of the city and county governments. The Planning Commission, as an agency of the city and county governments, must follow the adopted Comprehensive Plan and related Zoning Ordinances.

1. The Comprehensive Plan

The adopted goals and objectives of the City of Owenboro, Daviess County, and the City of Whitesville as stated in the Comprehensive Plan is the most important tool for guiding growth and economic development of this community. All actions of OMPC are per the adopted Comprehensive Plan. The Plan is

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2. Zoning Ordinances

The zoning ordinances are adopted by the governments of Owensboro, Whitesville, and Daviess County. Ordinances cannot be changed without the approval of the three governments. The purpose of the zoning ordinances is to guide the direction of our residential, business, professional, industrial, and farming land use zones. The ordinances are designed to allow for expansion of our existing zones and growth of future zones in the best interest of our community, without causing adverse influence on existing neighborhoods or future growth. All ordinances are designed according to Kentucky Statute (KRS 100) to protect the public health, safety, and welfare of all citizens. These ordinances are for the good of the community and to protect the whole—and not for benefit of the individual.

3. Public Improvement Specifications

The Public Improvement Specifications were updated in 2003 and approved by the City and County Engineers and the governments of Owensboro, Whitesville, and Daviess County. The specifications
were adopted by the Owensboro Metropolitan Planning Commission. The Public Improvement Specifications are designed to guide the proper installation of our sanitary sewers, storm sewers, detention basins, storm water run-off, flood plain regulations, street construction, sidewalk construction, and handicap accessibility.


GRADD and the manual provide guidelines for the planning staff to control access points for business, industrial, and subdivisions onto city, county, and state streets. Ingress and egress are controlled to promote the safe flow of traffic.

5. Kentucky Building Codes and National Electrical Codes

Issuing building permits, inspection of all construction activity, and enforcement of codes is the responsibility of Jim Mischel and his staff. The Kentucky Building Code, National Electrical Code, and local Zoning Ordinances enforcement are required to assure public safety, and consistency of inspection standards is paramount.

With consideration of these findings, the Home Builders Association of Owensboro realizes the

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Planning Commission members, and Mr. Noffsinger and his planning staff, have a difficult and often challenging task. The responsibility to follow the Comprehensive Plan and enforce the Zoning Ordinances, Building Codes, Access Manual, and all other regulations, outlined by the governing bodies of Owensboro, Whitesville, and Daviess County requires dedication of service to the community which is demonstrated by the commission and the professional staff.

The HBA of Owensboro's over 330 members, as well as the general public, do not want to be restricted in the use of their private property. However, in most cases if made aware of the purpose and need for the regulations and requirements to promote the health, safety, and welfare of the citizens of the community-willingly accept the rules and regulations. Our association finds a significant need to educate the public as to the purpose and function of planning and how important it is to our community. Decisions made today will impact our future growth and the results and goals we attain.

It has been the experience of our members that Mr. Noffsinger, Mr. Mischel, Becky Stone and their staff have always been willing to meet with
Builders and Developers to address problems and concerns and to work to find a solution, if possible. Ultimately, some things are beyond their control and cannot be changed, except by elected officials and their respective governments.

Finally, it is the general consensus of this association and its board that the Planning Commission, Mr. Noffsinger and the planning staff are doing a very good job of planning for the future. Through their research and presentation of their findings and professional interpretations to the Planning Commission, the respective governments, and more importantly, the public, the community's best interest is served.

It is the intent of the Home Builders Association of Owensboro Board of Directors to educate the 330 members of the association concerning the need and purpose of good planning, building codes, electrical codes, local ordinances, and subdivision regulations, for the advancement of the building industry and our community. We encourage effective communications and positive attitudes from planning and all agencies of our local government.

The Home Builders Association of Owensboro and its membership is mindful of the requirements of Ohio Valley Reporting

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proper planning and will remain aware of any actions or regulatory changes which are proposed. We will address any issue which affects the interests of our industry that is not for the greater good of our community.

On behalf of the Board of Directors of The Home Builders Association of Owensboro, I thank you tonight. I appreciate this opportunity to read this into the record.

CHAIRMAN: Mr. Stallings, thank you very much. I appreciate your assessment of our staff. I also think they're doing a great job. As you can see tonight in the job that they did, it was difficult, tiring, but I thought they did an excellent job in preparing the commission for choices that we had to make. Thank you and take our thanks backs to your organization. We appreciate your time and effort.

Now we're ready for one final motion.

MS. DIXON: Move to adjourn.

CHAIRMAN: Motion for adjournment by Ms. Dixon.

DR. BOTHWELL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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CHAIRMAN: We are adjourned.

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

I, LYNNETTE KOLLER, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Planning & Zoning meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 80 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this the 7th day of August, 2005

LYNNETTE KOLLER, NOTARY PUBLIC
OHIO VALLEY REPORTING SERVICE
202 WEST THIRD STREET, SUITE 12
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COMMISSION EXPIRES:
DECEMBER 19, 2006

COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

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