The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, April 10, 2014, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  Ward Pedley, Chairman
Fred Reeves, Vice Chairman
David Appleby, Secretary
Terra Knight, Attorney
Brian Howard
Steve Frey
Wally Taylor
John Kazlauskas
Larry Boswell
Beverly McEnroe
Larry Moore

CHAIRMAN:  Call the Owensboro Metropolitan Planning Commission April 10, 2014 meeting to order. We will begin our meeting with a prayer and pledge of allegiance to the flag. Mr. Reeves will lead us. Will you stand, please.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  I would like to welcome everyone. Anyone wishing to speak on any item may do so. We ask that you come to one of the podiums and state your name and be sworn in. Please speak into the microphone if you will, please.
With that the first item on the agenda is to consider the minutes of the March 13, 2014 meeting. Commissioners, you have a copy of the minutes in your packet. Are there any additions or corrections?

(NO RESPONSE)

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

MR. KAZLAUSKAS: So move.

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

MR. APPLEBY: Second.

CHAIRMAN: We have a second by Mr. Appleby. All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item we also have approval of the minutes of March 20, 2014 work session on the Mayor's Business Development Committee. You have that copy in your packet. Are there any comments or questions on it?

(NO RESPONSE)

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

MR. REEVES: Motion to approve.

CHAIRMAN: We have a motion to approve by
Mr. Reeves.

MR. TAYLOR: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

Next item, please.

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GENERAL BUSINESS

CELLULAR TELECOMMUNICATIONS FACILITIES PER KRS 100.987

ITEM 3

720 Frederica Street
Consider approval of a temporary wireless telecommunications tower.
Applicant: New Cingular Wireless PCS, LLC

MS. KNIGHT: State your name for the record, please.

MS. EVANS: Melissa Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

MS. EVANS: This is a temporary cell tower, cellular tower on wheels. It's 100 feet tall. It's going to be in place for a couple of months. It will be removed by the end of May.

It's on the site while they do some work on the tower that is existing so this area will not lose cell service. They're going to put this tower up to
take place of that tower while they're making some repairs to it.

They do meet all of the design standards and the criteria in the zoning ordinance. They are asking for a waiver of the required evergreen trees and around the perimeter of compound since this is a temporary power.

FINDINGS:

1. The application is complete with all materials in accordance with the Owensboro Metropolitan Zoning Ordinance;

2. The proposal is in compliance with all design criteria of the Owensboro Metropolitan Zoning Ordinance;

3. Temporary in nature, the proposed tower will provide much needed cellular phone service while modifications are made to the existing permanent tower to allow heavier equipment to be installed.

We would like to enter the Staff Report into the record as Exhibit A.

CHAIRMAN: Is there anyone here representing the applicant?

MR. PAYTON: Yes, sir.

CHAIRMAN: Anyone have any comments or questions on this application?
MR. KAMUF: Yes, Mr. Chairman. Charles Kamuf.

MS. KNIGHT: Mr. Kamuf, you're sworn as an attorney.

MR. KAMUF: I represent Joe Hayden, a CPA firm, who operates an accounting office right next-door to this AT&T tower. It's right at the intersection of Seventh and Frederica.

Mr. Hayden couldn't be here tonight. The reason he couldn't be here is he's a tax accountant and he had a meeting outside of Owensboro that he couldn't cancel, but he asked me to represent him.

Joe Hayden and his dad built this office prior to the construction of the AT&T tower. What I'm saying is, in other words, Hayden was there first.

Twenty-five years ago AT&T built this telecommunication tower next to the Hayden property. Don Hayden was my next-door neighbor. I represented him before this board 25 years ago. When they requested permission to build this tower, we all told them it was a bad idea. You had Brescia College right across the street. Next-door was great Financial Federal. You have Don Hayden right behind it. We told them we thought it was a bad idea. They advised us there would never be any problem with the communication system, computers in the area.
I would like to show you, if I could.

What I show you is the aerial photograph of the subject property. The PVA prepared it and you can see exactly where all of the property is located. You can see the bank, and you can see where South Central Bell is, and you can see where Joe Hayden's property is. Donald Hayden Building Trust, that was the building we're talking about. Don owned that then and he's transferred the property over to his son, Joe. You can see this tower is pretty close, within feet, of the Hayden property.

The next two exhibits that I show you show you exactly how far it is, how high that tower is relative to the Hayden property. It's over 100 feet tall and the temporary tower that they're talking about is smaller, but it's still rises over the building.

The Haydens have had a CPA office there and as part of their operation they have many computers and electrical devices which are affected as a result of the AT&T tower being built. As we expected AT&T tower has caused many problems. For years the Haydens have been apprised by their own technical people who work on them and the AT&T repairmen that the telecommunication tower is the cause of a surge problem that affects their computers.
Here is the issue: The electrical waves from the AT&T tower interfere with the Hayden's internet service and telephone service. The waves from the AT&T tower create a surge of electrical current coming into the Hayden building. The electrical current is magnified by the AT&T tower and creates an electrical surge that causes problems to the Hayden building. The surge shuts down and destroys components in the Hayden's internet system. At one time Mr. Hayden pointed out to me, from here to that desk, there was chips on a telephone system and it blew the chips off of the system all the way over to approximately where I'm standing.

At times the Haydens cannot communicate inside or outside with their internet. The electrical waves causing a surge are most frequent in the storm season such as we have now. Listen to this. If there's an electrical storm approaching, Mr. Hayden has to stay in his office at night monitoring his system so if something comes or if a storm comes he can unplug it. If he does not stay in the building, he fears surges will shutdown the equipment and create additional damage to his system.

As of now, Mr. Hayden is responsible for these repairs. Sometimes they're repaired by AT&T and
sometimes he has to pay for them. It's our position that AT&T should not put Mr. Hayden in this position. Think of this. Especially, Chief, if you were operating say the police department, how would you like it if you had to wait with an electric storm coming, wait and monitor the program and unplug the system because these current surges were coming in times of storm.

No later than March 1, 2014 Mr. Hayden had a problem with his office equipment resulting from these surges created by the telecommunication tower. He called AT&T and they sent a technician there to repair the damage.

He doesn't work there. I think this was his last month to work for AT&T, and you'll see why.

Mr. Hayden was told by the AT&T repairman that the telecommunication tower was built too close to the building. The AT&T employee says he does not think he can fix the problem; however, the AT&T repairman replaced the outside line with a new line. This is just one of the numerous problems Mr. Hayden is having with AT&T. By the fact that they sent their repairman down to work on it shows you they're responsible for the problems. The problem is getting worse over the last 25 years and will continue to get worse due to

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the inherent new use of technology. The more complicated the technology the better chance the computers are going to break down.

Here is what we're asking you to do. Is to require AT&T to fix this problem before you approve any waiver or any zoning request.

Require AT&T to build a shield or a surge, they call it a surge protector. I know very little about it. I just found out in the last two days, that will protect the Haydens internet system, the communication system and the telephone system from surges that are created by AT&T tower.

I'm not familiar with surge mechanism; however, my client called Kenergy concerning this problem. They advised him that a surge protector can be installed in the electrical line coming to his building and would alleviate most of Mr. Hayden's problem.

Mr. Hayden shouldn't have to fix this problem. This problem was created 25 years ago by AT&T. They promised us at that meeting there wouldn't be any problems. I'm not here to cause any trouble. I didn't go to Brescia College to see if their system, if there was a problem. I didn't go to U.S. Bank. All we want is for them to fix this problem.
One thing I learned in the '60s and '70s when I represented this board, this board is the most powerful board in Daviess County. You can stop anything if you want to. The only way for -- this is good that we're down here. We've been looking for some venue to correct this problem.

The only way you're going to get AT&T's attention is to deny any repairs or additional construction on the AT&T tower until this problem has been corrected.

We're asking the board one of two things. To deny the approval of the waiver until such time as a surge protector has been constructed to protect the Hayden property from the AT&T surges or continue the case until such time they come down here and say they've corrected this problem.

At that time the cheapest way to have done this was the way they did it. They could have put it on top of a building. Look at those pictures. This antenna or telecommunication tower is right next to this building. They knew there was going to be a problem. I'm just asking you -- I'm sorry he couldn't be here where he could explain it himself. If you put this on hold until they fix that problem, I think it's going to be beneficial to everybody. Thank you.
CHAIRMAN: Would the applicant step up and address Mr. Kamuf's concerns.

MS. KNIGHT: Would you state your name for the record, please.

MR. PAYTON: My name is Mark Payton. I'm a representative from AT&T.

(MARK PAYTON SWORN BY ATTORNEY.)

MR. PAYTON: Members of the board, thank you for having us tonight.

First of all, I'm not familiar with the situation that's at 720 Frederica that the gentleman is referring to. AT&T is usually very good about coming about coming in and looking at those things, if we think we've got issues.

What I can tell you is that we have telecommunication towers all over the country. We have them on top of roof tops. We have them on top of water tanks, and we don't really hear of these kind of problems. They're very well-grounded. They're FCC regulated. It's just not something that we hear a lot about. Not to say that is not the case that we need to take a look at. Typically with where we place towers at and where we place antennas at we have not seen any type of those type of issues.

Again, we would certainly want to look at the
gentleman's situation, but looking out what happens across the entire country we just don't see these type of problems. I wasn't here 25 years ago. I don't know what commitments were made at that point in time.

We work with this technology every single day within businesses. We worked on one the other day on top of a medical building that had a surgical center right underneath. It's not causing any problems. We enhanced our equipment there and no such problems there as well.

I don't believe that the technology we're working with now is a major cause of these problems or at lease it's not been in my many years of experience with AT&T.

CHAIRMAN: Sir, have you heard of these complaints before? Is this the first time you've heard of this complaint?

MR. PAYTON: Yes, sir, it is. Yes, sir, it is. Again, I'm not the person that typically represents this area. It may have been directed to someone else at AT&T, but I'm not familiar with it. I would certainly be glad to take a look at it or have someone.

CHAIRMAN: Commissioners, do you have any comments or questions on this?
MR. REEVES: I've got a question of this gentleman.

I know how important 4G service is for business and physicians. Where is the next tower that would serve the downtown, if this town were inoperable?

MR. PAYTON: I don't have the answer. Do you know?

CHAIRMAN: Sir, would you step to one of the podiums.

MR. BOWD: My name is John Bowd. I'm with WesTower Communications. We are contracted with AT&T. (JOHN BOWD SWORN BY ATTORNEY.)

MR. BOWD: I know this cell is an important part of a cluster of cells that was launched to provide service in this area. I don't have specifics on where the next cell would be located, but this is a key part of the cluster.

I'm sorry to hear about the problems this attorney's client is experiencing; although, I didn't hear any expert testimony that would really pinpoint that AT&T was the cause.

(LARRY BOSWELL JOINS MEETING AT THIS TIME.)

MR. BOWD: It may or may not be. What I heard there is conjecture there. We would certainly want to
be a good neighbor and do our part of finding the problem, especially if it's in any way related to what we may be involved with. I don't think there's any specific evidence to really pinpoint what is causing this.

MR. REEVES: That's fine. That didn't quite answer my question.

My main concern is delivery of 4G service to the downtown area. Banks, everybody depends on that kind of speed to do their business. If that tower becomes inoperable, what impact is it going to have on downtown businesses that require 4G service?

MR. PAYTON: I'm sorry, misunderstood the initial question.

The tower that is going up at 720 Frederica Street is part of a cluster of 21 towers that are around the city. The reason that we're asking permission to have the temporary tower there is because we have the service, LTE service ready to go. As a matter of fact, it's been launched on all those other sites. The downtown site is the only one that we have that needed modifications to the existing tower. That's the reason we brought in the temporary tower. Because what would happen is we would have a huge hole of coverage in the downtown area. It's an
important part of this cluster that we have launched.

That's the reason that we had come to Mr. Howard about
a variance to try to get that done.

I hope you've seen a significant increase in
service since that launch happened around the end of
March. Taking that cluster out of service, basically
what will happen is customers will be driving around
town and when they come into that area it's just going
to drop them down to a lower speed. It will be
significantly noticeable. This is just a very
important site for us, Frederica Street.

MR. REEVES: Thank you.

CHAIRMAN: Any other commission have questions
or comments?

MR. APPLEBY: My concern here is Charlie has
talked to Kenergy and Kenergy says they need a surge
protector. He's talking about on the electrical
entrance is where he's talking about surge protection
there.

This board doesn't have any expertise in my
opinion to determine whether AT&T is at fault, OMU's
is at fault, Kenergy's is at fault. We're strictly
here to determine whether or not there's a need for
them, if their application is in compliance with our
ordinance regarding temporary cell towers. I don't
know where the problem is. I don't doubt they have a problem, but I don't think we're qualified to make that determination.

CHAIRMAN: Mr. Moore.

MR. MOORE: When you put the temporary tower to make improvements on the permanent tower, would that perhaps alleviate some of those problem with what Mr. Kamuf talked about?

MR. PAYTON: Again, I'm not familiar with the problems he's having. It's not typical for cell towers to have those kind of problems. Without doing some in-depth analysis I couldn't say for sure whether or not it will have anything to do with that particular problem.

What I can tell you is that we need to do some modifications to the existing tower so we can keep this service up and running. That's the reason the temporary tower is in place at that time.

MR. APPLEBY: I have another question for you. I'm sure there are multiple users on this tower. It's not just cell tower, cell antennas; is that correct? You're strictly working with the cell antenna right now?

MR. PAYTON: Yes. We are working with AT&T. I believe we're sitting at about 100 feet, but there's
also some carriers that are a little bit higher. The work we're doing is strictly AT&T, which is about 100 foot level.

CHAIRMAN: Mr. Kazlauskas.

MR. KAZLAUSKAS: I would like to ask Mr. Kamuf a question.

MR. KAMUF: I'll do my best. I don't know anything about surges.

MR. KAZLAUSKAS: Through your presentation I was led to believe that the Haydens are customers of South Central Bell; is that correct?

MR. KAMUF: I know this: When they have it repaired, they call AT&T. I know in March what the AT&T repairman allegedly told them what the problem was.

MR. KAZLAUSKAS: But you can't say that they are, their telephone service is South Central Bell?

MR. KAMUF: I can't answer that.

MR. KAZLAUSKAS: Of course, you can't speak for Star Bank. You're not going to represent them to tell us if they're having any significant problems or additional problems?

MR. KAMUF: I didn't come down here to cause a problem with other people or I didn't -- I'm on the
board there at Brescia. I didn't call them. I didn't want to cause any problem, but my position was we've got a problem. Now is the time to fix it.

To continue that until they get it fixed, if there's not a problem and they investigate it, okay. I'm just telling you what the repairman told my client. One reason that I remember well what my client told me is that he said, the repairman told me that and said he's going to retire right away.

MR. KAZLAUSKAS: I have to agree with what Mr. Appleby has said. We're not experts in this. You know as well as I do, that we're getting second, third information here about what was said and who was said. At this point we really don't know where the problem originates at.

MR. KAMUF: All I'm telling you is that two things entered my mind quickly. He showed me where the telephone system was. He and Bill Hines, who used to work for the telephone company, but also he did his telephone work. He did the telephone work at my office. He showed me where the telephone circuit was and when this surge came through it blew the chips off of this circuit as far as where I'm standing. That's number one.

Number two, he told me about the repairman
that came to the property in March and what he told
him.

MR. KAZLAUSKAS: I think this board would like
to hear that from the repairman though.

MR. KAMUF: Exactly. And this is the question
I asked my client. I said, who is he? He said, well,
I didn't know it was coming up. Why would I ask the
repairman what his name with. You understand. I
agree. Hey, a lot of it is hearsay. I told my client
that when I was going to represent him. It is a big
issue. It's a big issue with him.

MR. KAZLAUSKAS: My problem is no one has told
this board where the problem actually originates from.
Nobody is for sure.

MR. KAMUF: Didn't have it before. I
understand, Chief.

CHAIRMAN: Any other commissioners have any
questions of Mr. Kamuf?

(NO RESPONSE)

CHAIRMAN: If not would the applicant step
back up, please.

What would be Mr. Kamuf's process to and who
would he address to get this problem resolved? What
direction can you give him? As Mr. Appleby state, we
don't have the authority to solve this problem. This
problem is to come from the property owner, Mr. Kamuf, and AT&T, whoever it is. He needs direction and we would like to hear if there is a direction to solve this problem.

MR. PAYTON: We'll certainly entertain that. I'll be happy to give him my card tonight. I'll have him in touch with some of our local forces here that could come in and take a look at that. We want to be good neighbors obviously. These folk are probably customers of our anyway. I'm sure if there are issues out there, we want to take care of that. I'll be happy to give him my card. We can start from there and he'll have my name as a representative of AT&T and we'll look to see if we can figure out what's going on.

CHAIRMAN: We can do one of two things. We can approve this or we can deny, or one of three things, or we can postpone it to give Mr. Kamuf time and get with the proper authority to solve this problem and come back to us. Say, okay, this problem is resolved.

It would be up to the commissioners how they want to handle that.

I would like to hear from Mr. Howard, his opinion. The application is in full compliance. Any
other comments you have, Mr. Howard?

MR. HOWARD: Yes, Mr. Pedley.

In the Staff's opinion, the application is in compliance. I would take this opportunity to remind the board that what you all are here to potentially take action on tonight is the temporary tower. Not the main tower structure itself, the existing tower. They have submitted building plans to our office to modify the existing tower, but that does not require public hearing. So what you all are to take action on tonight potentially is the temporary tower which is the information that's in your packet.

CHAIRMAN: Thank you, Mr. Howard.

Any other comments or questions from the commissioners?

(NO RESPONSE)

MR. APPLEBY: Is chair ready for a motion?

CHAIRMAN: Yes, the chair is ready for a motion.

MR. APPLEBY: Mr. Chairman, I make a motion to approve the temporary tower with the findings of fact and to grant the waiver to the staggered trees be planted.

CHAIRMAN: We have a motion by Mr. Appleby to approve the application.
MR. REEVES: I'll second it.

CHAIRMAN: We have a second by Mr. Reeves.

Comments or questions on the motion?

MR. KAZLAUSKAS: Mr. Chairman, the last sentence in the top paragraph says, "the tower will not be in place beyond May of 2014, without additional approval by the OMPC."

I wonder if we can put that in our findings to make it mandatory or if that tower stays there longer, that they can't leave it there longer than May 14th. I believe that in this time span that's going to give some time for these parties to work together to see if they can come to some type of an understanding and try to you figure out, you know, why this is happening. With that time constraint added on there, this might be a help to both parties. Does that make sense?

MR. PAYTON: Yes, sir.

CHAIRMAN: Are you making an amendment to the motion?

MR. KAZLAUSKAS: Yes, sir, I will.

CHAIRMAN: Mr. Appleby, do you accept the amendment?

MR. APPLEBY: Yes.

CHAIRMAN: Mr. Reeves?

MR. REEVES: Absolutely, yes.
Chairman: Any more comments or questions?

(NO RESPONSE)

Chairman: If not, all in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

Chairman: Motion carries unanimous.

Next item, please.

Zoning Changes

Item 4

3283 Alvey Park Drive East, 3.51 acres
Consider zoning change: From I-1 Light Industrial to B-4 General Business
Applicant: R.A.S. Enterprises; ADCO Realty, Inc.

Specific Land Use Criteria

The applicant's proposal is in compliance with the Comprehensive Plan. The proposed B-4 General Business zoning and proposed use of a childcare facility are non-residential in nature.

Planning Staff Recommendations

The Planning Staff recommends approval subject to the findings of fact that follow:

Findings of Fact:

1. Staff recommends approval because the proposal is in compliance with the community’s adopted Comprehensive Plan;

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

3. The proposed B-4 General Business zoning
and proposed use of a childcare facility are
non-residential in nature.

We would like to enter the Staff Report into
the record as Exhibit B.

CHAIRMAN: Is anyone here representing the
applicant?

(NO RESPONSE)

CHAIRMAN: Anyone here have any comments or
questions on the application?

(NO RESPONSE)

CHAIRMAN: Commissioners, do you any comments
or questions on the application?

(NO RESPONSE)

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

MR. APPLEBY: Motion for approval based on the
Staff's Recommendations with Findings of Fact 1
through 3.

CHAIRMAN: We have motion for approval by
Mr. Appleby.

MR. FREY: Second.

CHAIRMAN: Second by Mr. Frey. Comments or
questions on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

Next item, please.

ITEM 5

4194, 4198 Highway 554, 27.765 acres
Consider zoning change: From EX-1 Coal Mining and R-1A Single-Family Residential to I-2 Heavy Industrial Applicant: Panther Motors and Auto Salvage, Inc., Chris Clark

PLANNING STAFF RECOMMENDATION

The Planning Staff recommends approval subject to the conditions and findings of fact that follow:

CONDITIONS:

1. Access to Highway 554 shall be reduced to 40 percent of the total road frontage or a maximum of 50 feet wide, whichever is greater; and,

2. Vehicular use areas for the driveway and customer parking shall be paved.

FINDINGS OF FACT:

1. The proposed I-2 Heavy Industrial zoning is more appropriate than the current zoning classifications since mining activity ceased on the property and the auto salvage business was opened in
the late 1940’s;

2. The property has been historically used as an auto salvage yard for more than 60 years;

3. With the industrial use already established on the property the I-2 zoning should not cause a burden to neighboring properties; and,

4. Given the ongoing use of the property, the proposed zoning should not overburden the capacity of roadways and other necessary urban services that are available in the affected area.

We would like to enter the Staff Report into the record as Exhibit C.

CHAIRMAN: Anyone here representing the applicant?

MS. CLARK: April Clark.

(APRIL CLARK SWORN BY ATTORNEY.)

MR. CLARK: Chris Clark.

(CHRIS CLARK SWORN BY ATTORNEY.)

MR. CLARK: I would just like to ask to waive the paved parking. The parking lot has been gravel for 25 plus years. It's not necessarily in the budget right now for us to pave the parking lot. That's my only request.

CHAIRMAN: Commissioners, do you have any comments or questions of the applicant?
CHAIRMAN: Anyone in the audience have any comments or questions on the application?

CHAIRMAN: Mr. Howard, do you have any comments on the request?

MR. HOWARD: They have been there for a long time. It predates the zoning regulations. I think they want to build a new building, if my memory serves me correctly.

MR. CLARK: Yes. I would like to build a warehouse. There's some sheds on the front property that I would eventually remove, cleanup that area, and build a new warehouse. That's in future plans also. Zoning is first.

MR. HOWARD: Sure. They've talked to us about it beforehand. It's one of those things that it is what it is. It's existing the way it is right now. It can remain that way. When I went out to the site to post the zoning, I noticed that they had a large driveway that was gravel. As you all have heard over the years, as a site is rezoned or brought into compliance, we look to bring some things into compliance as well. The zoning ordinance would require paving for an industrial type use. The
ordinance does allow provision for a sixth month grace
period to have the parking lot paved, but just out
right waiver on the pavement itself, there's really
not a provision of the ordinance that allow would that
to take place.

CHAIRMAN: Thank you, Mr. Howard.

Commissioners, do you have any further
comments or questions?

MR. APPLEBY: Brian, on this aerial, how much
of that parking area that you're requesting that they
pave? What is the vehicular use area?

MR. HOWARD: Basically when I was out on the
site, what I envision was anything forward of the
building, anything between the building and 554.
Basically there's a pretty narrow drive that goes to
the back. You can't see any of the back from the
road. We would consider the back area really to be
the outdoor storage portion of the property. We would
just envision that that front parking be brought into
compliance with the pavement.

MR. REEVES: I have a question of Mr. Howard,
and maybe also for the applicant.

They can continue on doing business as is
right now. Is there some particular reason they want
the rezoning change?
MR. HOWARD: With it being zoned EX-1 it's a coal mining classification, in order for them to get a building permit to build a new building. The building department, Manuel cannot issue that permit because it is not zoned appropriately.

So in order for them to be able to do that, they need a zoning classification change. You're correct. Until they come in -- that's really the mechanism. Where we will look for it to be paved is when they come in and submit a site plan to build that new building, you know, that's the time we're going to have to look at it to be paved. Even if they rezone tonight, it can remain as it is until they come in to get that building permit for the new structure.

MR. BOSWELL: I have a question for the applicant.

He mentioned six months. Do you have any feel for whether you would be in a position to do the paving within this six month time frame?

MR. CLARK: Six months probably not.

MR. APPLEBY: When do you intend to build your building?

MR. CLARK: Whenever -- I would like to start within a year. We'll just see. Right now I'm working two jobs anyway.
MR. APPLEBY: If I understand you correctly, if we approve this zoning, until he comes in with that building permit in a year or whenever, that's when we'll look for him to --

MR. HOWARD: That's right. Basically we're using the zoning change as an opportunity to put them on notice, as far as what would be expected in the future.

You all have seen zoning cases before where someone has speculatively rezoned property on the corner of two major roads to commercial, they don't have to bring the site to commercial standard until such time that they actually break ground to put a commercial structure on the property.

MR. APPLEBY: Do you understand what he's saying there? That until such time that you're ready to build that building, we're not going to look to you to pave that area?

MR. CLARK: Yes.

MR. APPLEBY: If you never build it, you never have to pave it.

MR. CLARK: Fair enough.

CHAIRMAN: But the applicant is requesting that we waive the paving requirements.

Mr. Howard, if we do that here tonight with
zoning change and that stands, can he come back when
he makes the application for the building permit and
require him to do the paving, if it's waived tonight
with the zoning change?

MR. HOWARD: Any waiving of pavement, in all
honesty, I don't think the Planning Commission has the
authority do that. The zoning ordinance requires
pavement for an industrially zoned property. There is
a variance process that you can go through, but based
on KRS statutes the variance has to be done for a
dimensional purpose. Pavement would not be a
dimensional purpose. Based on zoning ordinance
requirements, if you have property that's zoned
non-agricultural and has a business use on it, you
have to pave.

MR. APPLEBY: Mr. Chairman, if I understood
him correctly though, I think he is all right with the
paving requirement, as long as he doesn't have to do
it until such time as he brings that building --

MR. CLARK: I would prefer not.

CHAIRMAN: But the question still remains.

Can we actually waive the requirement tonight with the
zoning change?

MR. HOWARD: No, I don't think you can.

MR. APPLEBY: I don't think we can either.
MR. KAZLAUSKAS: Mr. Chairman, I just want to make sure the applicant understands. That if we were to go ahead and approve this tonight, that when he builds his building, he does have to put that pavement down.

MR. APPLEBY: Or you said there's possibly another mechanism. He could apply for a variance, though the criteria is not probably going to be there for the variance.

MR. HOWARD: The reason I mention a variance is that is the relief opportunity; however, KRS is very specific. That the variance has to be for a dimensional purpose. Pavement has not and does not fall under that.

The Board of Adjustment to my knowledge has never heard a variance for pavement because it doesn't meet the statutory requirements for that.

MR. BOSWELL: So point of clarification is, it could not be considered for a variance anyway?

MR. HOWARD: It would be my opinion that pavement cannot be paved by the Board and pavement cannot be waived by the Board of Adjustment through the variance process. It is similar to parking requirement. If a use has a parking requirement of 12 parking spaces, they cannot take that to the Board of
Adjustment and request that number be reduced. It's a requirement of the zoning ordinance. It's not a dimensional request. The Board couldn't take action on that either. They're similar in that regard.

CHAIRMAN: Any further questions of Mr. Howard or Mr. Clark?

(NO RESPONSE)

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

You may be seated.

MR. REEVES: Mr. Chairman, I make a motion for approval based on Findings of Fact 1 through 4 with Conditions 1 and 2.

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

MR. APPLEBY: Second.

CHAIRMAN: We have a second by Mr. Appleby.

Comments or questions on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

COMBINED DEVELOPMENT PLANS/MAJOR SUBDIVISIONS
ITEM 6

Deer Valley, Section 3, 35.342 acres
Consider approval of combined final development
plan/major subdivision preliminary plat.
Applicant: Deer Valley Subdivision, LLC; Robert B. Moorman

MR. HOWARD: Mr. Chairman, this application comes to you in order. It's been reviewed by the Planning Staff and Engineering Staff. It's found to meet all the minimum requirements of the subdivision regulations for the zoning ordinance and the comprehensive plan. We would recommend you consider it for approval.

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Commissioners, do you have any comments or questions?

(NO RESPONSE)

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

MR. BOSWELL: Make a motion for approval.

CHAIRMAN: Motion for approval by Mr. Boswell.

MR. TAYLOR: Second.

CHAIRMAN: Second by Mr. Taylor. Comments or questions on the motion?

(NO RESPONSE)

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CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

Next item, please.

MINOR SUBDIVISION PLATS

ITEM 7

6733 Highway 54, 0.038 +/- acres
Consider approval of minor subdivision plat.
Applicant: Jerry D. Koller; City of Whitesville

MR. HOWARD: Mr. Chairman, this plat comes before you as an exception to the subdivision regulations and zoning ordinance requirements. They are creating a small parcel with frontage on Highway 54 to construct a pump station. It is a non-buildable lot, as noted on the plat, other than for the purpose of constructing a pump station. With that we would ask that you consider it for approval.

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Any commissioners have any comments or questions on the application?

(NO RESPONSE)

CHAIRMAN: If not the chair is ready for a motion.
MR. APPLEBY: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Appleby.

MR. FREY: Second.

CHAIRMAN: Second by Mr. Frey. Comments or questions on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

Next item, please.

ITEM 8

3301 Highway 142, 1.82 acres
Consider approval of minor subdivision plat.
Applicant: Kenson Farms, LLC

MR. HOWARD: Mr. Chairman, this plat comes before you as an exception to the subdivision regulations and zoning ordinance requirements. It is creating a land-lock parcel. There is currently a gravel drive that serves the property, but it does not have frontage on a public road.

Approximately 20 years ago they created a 20 acres parcel on the southwest corner of the property.

There was quite a bit of discussion at that meeting as to what would be the future of the farm. There was no limitation at that time of further division of the
property. On this plat they have noted that the property as it's platted tonight, including the remaining acreage, will not be further subdivided until such time that any of the requirements of the subdivision regulation and zoning requirements are met. Before this property could be further split, there had to be a public street, PI specifications constructed to the property and serve lots. With that concession they are creating a lot around an existing home.

So with that note on the plat and the fact that they're not creating a new buildable lot, they're just creating a lot around an existing home, we would recommend that you consider it for approval.

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Commissioners, do you have any comments or questions on this application?

(NO RESPONSE)

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

MR. MOORE: Motion to approve.

CHAIRMAN: We have a motion for approval by Mr. Moore.
MR. TAYLOR: Second.

CHAIRMAN: We've got a second by Mr. Taylor.

Comments or questions on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

Next item, please.

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NEW BUSINESS

ITEM 9

Consider approval of February 2014 financial statements.

MR. HOWARD: Mr. Chairman, the financial statements were mailed out to each of the commissioners prior to the meeting. They should be ready for your consideration.

CHAIRMAN: Any comments or questions on the financial statement?

(NO RESPONSE)

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

MR. KAZLAUSKAS: Move that they be approved.

CHAIRMAN: Motion for approval by
Mr. Kazlauskas.

MR. BOSWELL:  Second.

CHAIRMAN:  Second by Mr. Boswell.  Comments or
questions on the motion?

(NO RESPONSE)

CHAIRMAN:  All in favor of the motion raise
your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN:  Motion carries unanimous.

Next item.

ITEM 10

Comments by the Chairman

CHAIRMAN:  Commissioners, the work session
that we had on the two meetings has been completed.
In July the mayor has asked that we come before the
City Commission for a work session to present our
findings and our recommendation.  At our last meeting
I think it was agreed that Mr. Reeves would help me to
put a presentation together and we would all as a
commission go and present that.

Is that correct?  Is that what we agreed that
we would like to do?

We've already approved the minutes on that
meeting.

The next thing we have before us tonight is
appointing a committee for the search for a planning
director. I'm going to ask counsel to bring us up on
the process that we need to do here tonight.

Counsel, if you could bring us up on the
personnel policy.

MS. KNIGHT: As far as where we are, as far as
reviewing the personnel policy?

CHAIRMAN: Yes. My understanding that I need
approval from the commission for me to make that
appointment.

MS. KNIGHT: You're asking for a committee for
the director position?

CHAIRMAN: No. I'm asking you to give
direction of the personnel policy required for,
actually me as chair to actually appoint that
committee, it takes the commission to approve. Am I
correct or wrong?

MS. KNIGHT: To approve the change of the
personnel policy?

CHAIRMAN: Yes.

MS. KNIGHT: It's my understanding you've done
the committee to review the personnel policy, present
changes, making suggestions. I've got the personnel
policy right now to be reviewed. That was my
understanding, it was going to be presented at the May
meeting and be presented to the Board beforehand, to
the Commission beforehand for approval. So that's
where we are now.

CHAIRMAN: My question to you, I need approval
from the Commission for me to make that appointment
for the search committee.

MS. KNIGHT: For the director position, yes.
That's because the bylaw doesn't allow you to appoint
ad hoc committees unilaterally.

The procedure then would be to have a motion
to give you the authority to form a specific ad hoc
committee. The motion can include you appoint whoever
you want and however many members you want.

CHAIRMAN: Commissioners, we need a motion to
authorize the chairman to appoint a committee for the
planning director search.

MR. KAZLAUSKAS: I make a motion that we
direct the chairman to appoint a search committee for
the position of planning director for OMPC.

CHAIRMAN: We have motion by Mr. Kazlauskas.

MR. BOSWELL: Second.

CHAIRMAN: We have a second by Mr. Boswell.

Any comments or questions on that motion?

(NO RESPONSE)

CHAIRMAN: All in favor of the motion raise
your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

Now, I will make that appointment. What I would like to do, I would like -- we are selecting five. I'm going to take two from the city, two from the county, and then from the City of Whitesville.

For the city, I will start with the city. I'm appointing Fred Reeves and Steve Frey from the city. From the county I'm appointing Dave Appleby and myself.

From the City of Whitesville, of course, would be Irving Rogers. I'm also appointing myself as chairman on that.

The committee will have a meeting very quickly. Probably next week. We will come to an agreement with a course of action how we're going to do this. Probably search committee, advertise, the committee is going to do this. This is not Ward Pedley by himself. This is what the committee is all about.

Once we've made that decision and got the process that we're going to do, then the next meeting of the Planning Commission we will bring that to you and tell you what our process is. Any meeting we have
legal counsel will be with us.

MS. KNIGHT: I'd be happy to.

CHAIRMAN: We need to pick a place that we can have that meeting and stay legal. Make sure it's legal.

MS. KNIGHT: For public meeting notice, etcetera. Same way we did with the personnel policy.

CHAIRMAN: I'm asking you four appointees and myself, next week I would like to call a meeting. I will be chairman of the committee.

I need to know where we can actually have that meeting. If it's during the day, we can possibly have it in the planning office.

Do you think that could be worked out, Mr. Howard?

MR. HOWARD: Certainly.

CHAIRMAN: Next question would be: Would that be the appropriate place to have it? I'm asking for your input. Where do you think we should have these meetings?

MR. REEVES: I think the planning office is fine myself.

MR. KAZLAUSKAS: Mr. Chairman, in my opinion, we've had several meetings over the last several months there in the conference room of OMPC and it's
worked out very well. The Staff has been very helpful in making the newspaper aware that the meetings were going on, signs were posted on the front doors. The public has been made aware that we're having meetings up there. I think it's worked out quite well. It's working. Why change it.

    CHAIRMAN: I agree with that. That's what I would like to do. We only have one thing. We can't have that meeting in that office after 5:00; is that correct?

    MR. HOWARD: We actually close at 4:30.

    CHAIRMAN: So we could not. The issue is maybe Mr. Rogers might not be able to make those meetings since he can't get off during the day. I know I can any hour of the day. I believe Mr. Reeves can, and I believe Mr. Steve Frey. I believe we all can, but don't know about Mr. Rogers. I would like to have that meeting during the day in the planning office. I will put out a call to Mr. Rogers and see if we can work that out. Okay.

    As Mr. Kazlauskas said, we've had several meeting in there. They usually start at 1:00. We can always finish 3:30, 4:00. It worked really well. I think that's an appropriate place.

    MR. APPLEBY: Tuesday, Wednesday and Thursday
are best for me.

MR. FREY: Same. Any of those day.

CHAIRMAN: Doesn't matter to me. Any day. I just need to try to get Mr. Rogers' schedule for that. With that then I will get e-mail out to all of you and set a date next week because we do need to get moving on this. We need to decide how we're going to do this. We need to advertise. I would like to bring our process back to the commission. This is what the committee is all about. The committee will make all the decision.

My thought is we draw out to four or five candidates. We will have a work session and bring it before the full commission. I would like to see us have a director approved by the August meeting. By doing that then Mr. Noffsinger won't -- his last day will be August 31st. Then Mr. Howard or whoever we decided to do, I don't know who is going to put in application on that. Don't have any idea. That person would be ready to take the seat at the September meeting.

We have a whole lot to do. We have several meetings to do. Finally the full commission needs to be involved.

MR. KAZLAUSKAS: One question, Mr. Chairman.
Counsel, correct me if I'm right or wrong.

The original meeting that the chairman is talking about to set up the process is open to the public, but once the applications start coming in, at that time those meetings become closed because that becomes a personnel matter; is that correct?

MS. KNIGHT: Specific personnel matter and specific things, they may need closed sessions. I think the appropriate way to handle it is go ahead and give the notice. Then at the meeting, just like we would here, make a motion to go to closed session. I'll look at that more closely before the meeting to make sure that is something we can go in close session on. That would be the way that I would suggest we do it.

MR. KAZLAUSKAS: I think the public has an interest and a right to know the process that's going to be used, but after that point everything else should be closed session. Just my opinion.

MR. REEVES: I agree with Mr. Kazlauskas. A lot of people are reluctant to make application and it be noted publically, which might jeopardize their current job. They might even be a credible candidate, but still jeopardize them.

MS. KNIGHT: Yes. Some of those meetings may
actually be interviews.

        MR. REEVES: Absolutely.

        MR. HOWARD: Mr. Chairman, if I could. Staff would be happy to help you out, as far as notifying the newspaper and putting the signs on the door that Mr. Kazlauskas referred to earlier.

        Just remind you that based on state law we have to give 24 hours notice to the paper. So if you are to set up a meeting on Tuesday and you would like Staff to take care of that process, please let us know at least 24 hours in advance so I can get the notice out to the paper.

        CHAIRMAN: Yes, I understand that. I intend to. I certainly understand we need to and I would like Staff to do that.

        MR. HOWARD: Okay.

        CHAIRMAN: Should we not be able to make our selection for a director by August, Mr. Howard can serve as the interim director. I believe I'm right on this. When Roger Anderson retired, then Gary Adams became the interim director until the director was selected. I see no reason why we can't do this by the August meeting, the August commission meeting.

        Counsel, does the commission have to vote on this?
MS. KNIGHT: On what?

CHAIRMAN: On the final selection.

MS. KNIGHT: Yes. Final selection would be approved by the full commission.

CHAIRMAN: Full commission has to vote on it. It takes six votes.

MS. KNIGHT: Yes, I believe it does.

MR. REEVES: I think it takes six membership, doesn't it?

MS. KNIGHT: That would be majority of the full membership. Not majority of the forum. Six would be the majority of the entire membership.

CHAIRMAN: Any other suggestions or questions?

(NO RESPONSE)

CHAIRMAN: If not the next item.

ITEM 11

Comments by the Planning commissioners.

CHAIRMAN: Anyone have anything they would like to comment on?

(NO RESPONSE)

CHAIRMAN: If not the next item.

ITEM 12

Comments by the Director.

MR. HOWARD: I don't have any comments.

CHAIRMAN: Thank you.
We need a motion for adjournment.

MR. BOSWELL: Motion to adjourn.

MR. FREY: Second.

CHAIRMAN: We have a motion and a second to adjourn. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

(Meeting adjourns at 6:30 p.m.)

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

I, LYNNETTE KOLLER FUCHS, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Planning Commission meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 49 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 1st day of May, 2014.

____________________________
LYNNETTE KOLLER FUCHS
NOTARY ID 433397
OHIO VALLEY REPORTING SERVICES
2200 E. PARRISH AVE, SUITE 106E
OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES: DECEMBER 16, 2014
COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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