CHAIRMAN: I'm going to make some remarks before we start taking testimony on this.

I want to know that as long as I'm Chair of this Board, we will hear what testimony people want to give on any issue, as long as there's pertinent testimony to be given. We're not going to say you have one minute, two minutes or whatever. We're going to hear you out because these issues are important to you whether you're for the issue or whether you're opposed to the issue.

However, I am always going to set the parameters on the discussion. In anyone wanders from those parameters, I will not be reluctant to tell you to get back within the fence or it's time to conclude. So let me tell you what the parameters are this evening. I discussed this with counsel. If she disagrees with me, she won't have any reluctant to correct me. Okay.

First of all, we're not going to visit rezoning. This has been done. Fiscal Court rezoned this with some conditions. That rezoning is a fact so we're not going to revisit rezoning.

The only thing we're going to be looking at is does this meet the development plan requirements. I'm going to ask Mr. Howard in a moment his opinion on
that, but certainly others may have opinions as to whether or not it meets those requirements.

Any ongoing litigation is not an issue for us here this evening, one way or the other. Proceed or not proceed, we'll have outcome that will not effect this hearing tonight.

For the Commissioners, I will tell you this does not require findings of fact. It requires a simple motion at the end our discussion, either approve this development plan or disapprove this development plan.

MS. KNIGHT: The only qualification, I will let you know, that if it is denied I believe we do have to state the reasons for denial or if there's conditions. There are certain things that would have to be done and findings made and reasons set forth, but we'll jump off that bridge when we get there.

CHAIRMAN: Mr. Howard, in your professional opinion, this development plan meets the necessary requirements?

MR. HOWARD: That's right. We've reviewed it. The property is zoned B-4. We reviewed it looking at the parking, the landscaping, the buffers, the conditions that Fiscal Court established for it. In looking at that and everything that's been provided to
us, it's been reviewed by the county engineer to
address drainage. It's had a Traffic Impact Study
that was submitted and approved by the State that we
also reviewed, along with the county engineer.

So it would be our opinion that it is ready to
move forward and meets the requirements as set forth.

CHAIRMAN: Is anyone here representing the
applicant?

Mr. Overstreet, do you wish to make a

statement?

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

MR. OVERSTREET: Thank you.

We're not going to take a lot of time because,
as you indicated, we're not here about rezoning.
We're simply here to see whether or not the
development plan as submitted complies, complies with
the requirements that have been imposed by Fiscal
Court, in addition to the legal requirements.

As Mr. Howard just stated, those have been
met. All of the requirements have been set forth.
The development plan is exceptionally detailed. All
of the additional requirements that other developments
have not been required to meet that were imposed on
this particular project have also been met, including
all the fencing, the additional plantings. Everything
that was set forth has been provided for in the
development plan.

One thing that I would note is the Traffic
Impact Study was completed, but it was also updated.
I know Mr. Howard had the updated version as well.

I just want to make sure that you all are
aware that because of the length of the litigation
there was an updated Traffic Impact Study that was
submitted. It was approved by the Kentucky
Transportation Cabinet. That verification has also
been provided to Mr. Howard. There's an e-mail where
they confirmed that with Mr. Potts with the
Transportation Cabinet.

As the time elapsed and the issues rose, my
client went ahead got that additional informing just
to make sure that nothing had changed. That there
were no additional requirements. As Mr. Howard also
stated, he has worked along with the engineering firm
employed to assure that all of the requirements have
been met, all of the required signatures have been
obtained. There's been absolutely every attempt to
comply with every requirement that was sought, every
requirement that's been imposed, and to assure that
they've been met to the letter.
So at this point we are simply asking consistent with what Mr. Howard indicated, that the development plan be approved. We are prepared to provide a presentation, but to expedite us, we would just reserve that right for later. If you all believe that it's necessary, we do have a power point available. We also have the professional engineers available for any questions that you all may have. One would be available by telephone, which I let Ms. Knight know about that. We would just have to text that person to have him available because they're actually testifying in another county.

CHAIRMAN: Thank you, Mr. Overstreet.

Appreciate you standing by.

I want to say one other thing, especially the commissioners. We were having some problems with TV transmission awhile ago. It's very important to try to speak within four or five inches of the mike, if you would, because the audience at home was having difficulty hearing us. We don't want them to have that difficulty.

I think I will the opposition speak before we ask question of the audience.

Judge Taylor.

MS. KNIGHT: Judge Taylor, you're sworn.
JUDGE TAYLOR: I appreciate the opportunity to speak this evening. I am going to make some references to some things that did happen before, if you'll indulge me, because there are a few things that need to be referenced and you have three new members at least that were not present with what happened in the earlier event.

I will say the appeal has been filed. That has to do with setting aside the original ruling that had affirmed the rezoning by Fiscal Court.

For those members who were not present, when this rezoning was before the commission two years ago on May 9, 2013, it was voted down 10 to 0.

I'm not sure in my experience, my 33 years of legal experience in Daviess County, and I used to practice in this agency some. It's been 13 years since I've had a case over here so you have to indulge me a little bit. I don't think there's ever been, maybe you all have had since, but I've never seen one, never heard of one. That was a significant matter.

I would point out my wife and I, let me emphasize I am pro se. I am representing myself individually. I don't speak for any homeowners. I'm required by law to say that. I am representing myself as an individual. My wife has an attorney here, David
Reynolds, and then the Homeowners Association has an attorney here, John Stevenson.

Let me just say, starting for the benefit of the new members, when this project was proposed, I was quiet. I didn't talk. You may recall, those of you that were present, I was quiet because I had reached an agreement with the developer about maintaining a buffer. Buffers are part of the developer plan. In Article 16, buffering of neighborhoods is a critical element that has to be addressed. Of course, from my standpoint, the integrity of my home, and for the rest of neighborhood for that matter, we were adamant about trying to maintain a buffer of trees. For those of you that have been out there in that area, as a background, the whole track of land that is the Woodlands was originally 38 acres, and 2 acres was carved out in 1965 to John Grimes by his mother Mammie Grimes and father H.M. Grimes. Later in the '70s the rest of that 36 acres was sold to Charlie Kamuf and Tommy Thompson. They ultimately developed the neighborhood.

So all of that property was contiguous, was part of the same tract. So it's all wooded. It's unusual. If you've ever been out, if you ever go out 54 there's a lot of farmland, and then you have this
wooded area. In that wooded area is where Woodlands became. In fact, I think the homestead was actually moved down 54 when they developed the subdivision.

When this thing came up, I entered into an agreement with Mr. Lambert and my wife to have a 10 foot extra buffer, 20 foot buffer of trees. I thought there was enough trees. Over an acre of trees between myself and the house that was on the property owned by Mr. Grimes. Then as you go on further north you've got the frontage up there that goes to 54. We had 20 foot and he agreed to put a fence up. That was our deal. It was introduced in the Planning and Zoning hearing where it was still overturned. Later ratified by him again that we had an agreement in his deposition that I took in March 26 of 2014, which was over a year after the rezoning and then, of course, it went to Fiscal Court.

I have already tendered some exhibits to the court reporter.

Mr. Chairman, if I may, I'll just go ahead and ask that all of them be introduced as part of the record. That this is a substantial record that needs to -- I don't want to dwell on some of the things of the rezoning, but I do think this stuff needs to be in the record.
For example, the transcripts of what happened for purposes of what -- if either party takes it up, is relevant to the arguments for the development plan. Historically it's been permitted in the past.

MS. KNIGHT: I would just ask that if any of the Commissioners want to see the exhibits, because I assume there's not extra copies to be given.

JUDGE TAYLOR: Actually, I do have extra copies of everything except -- David is going to help me hand this stuff out. I'm not going to put the transcripts up here for you to have. I'm obviously not going to inundate you with all of that.

What we will do is give you copies that you can do what you need to with them.

David, if you'll go ahead and hand out. They're what I call Exhibits 5 through 8 which are just excerpts from these minutes that were relevant to the issues and that are still relevant to the development plan. The buffering, the safety issue is still a relevant issue. I know you had a lot of concern about that before. It's still an issue in the development plan process. I'm going to show you that when I go through these ordinances and point it out. That's just some excerpts in the record.

What is really important, I think, for those
members, especially the members who were not present before -- this was identified as Exhibit 9, David, if you will.

This is what the proposal was that was presented that was voted down here; and of course, it was ultimately reversed by the Fiscal Court. You will see that is a one building project. That project came about, that plan and that conceptual plan has got several different names to it. It came about as a result of, after the first meeting that we had here, I think Charlie Kamuf I think was representing his daughter and there was a lot of questions about development of the property and having a plan. So that particular document was proposed to the homeowners for the first time on May 8, 2013. It was resented to you as an exhibit on May 9th. The questions and testimony and everything was resolving around this one building.

One thing from the excerpt that I pointed out to you, that I brought out, there was never ever, ever a question or a discussion or a comment by any of the parties promoting this project about buildings, plural. Buildings, plural. If you view the excerpts, again, had there been buildings, plural, brought before Fiscal Court, in my opinion, it probably would
not have been approved. Those are political decisions that have to be made by the politicians so be it.

It's been made. Whether or not the courts take care of that, I don't know. This development plan is a completely different issue.

So now we've got this one building plan. We go to Fiscal Court. It's the same plan, because your record here is the same record that Fiscal Court uses. They can't use any other evidence. They had people testify and talk like we're doing now. There was no other evidence presented. Again, everything was premised on one building. One building. With that discussion about one building there was never ever any mention about anything else going on the property. In fact, when you look at that plat, the back part of the lot says, no conceptual use. That's the consistency of what happened before us. If weren't going to do anything with the property back there, we couldn't do anything with the property. We have no plans. It's all woods and it's all about trees.

I know Mr. Frey, that was your first meeting, if you recall. You, and I've got it referenced in the transcript, but you had concern about the trees. You asked questions about the trees. I've got it marked in there on Page 7 of the May 9th meeting. They told
you, there's lots of trees back there. And that's the
consistent testimony, we're leaving the trees. We've
got 40, 50 foot trees back there. They weren't trees
on my property. I have a few trees, but these were
the trees that were providing the buffer. I
referenced the agreement. It was introduced before to
you, but I think it needs to be in this record. We've
got it premarked as Exhibit 10. This was the
agreement. This is the only written discussion ever
about the buffer between my property, which is 3952
Wood Trace on the south side of the Grimes tract.
This is only writing that you'll see. There's no
writing anywhere else. Mr. Lambert begged me, I mean
he was calling and calling because he had to have
something to present to you. Again, the importance of
this is because of the buffer.

If you look at paragraph 3, I don't know how
it's more explicit because we went back and forth on
it. He's going to maintain the trees, the shrubbery,
etcetera. There were tons of brush, saplings. Most
of you know what saplings are. This is kind of a
forested area. The saplings is how wooded areas
regenerate themselves. I mean there was tons, dozens
of saplings. I've watched over the last 21 years of
these saplings develop into trees. That's how wooded
areas, you know, Mother Nature does things kind of strange sometimes. It's unique and hard to understand, but that's how Mother Nature rebuilds these forest. So there were a lot of saplings. I thought 20 foot would give me enough buffer, along with the fence up on the same level, that that would protect my property. He said that, in these excepts you will see he says he said it. If he said it once, he said it 20 times, I'm going to be a good neighbor. I want to protect the Taylors. He said that dozens of times. Again, this law looks back to the buffer, and I'm going to tie the relevance of it back shortly.

One of the most relevant part of this now is you've seen the discussion about the trees. You've seen the discussion about the buffers. Single building. Want to be a good neighbor, this whole thing. We come down and we get into the actual ordinance, and when it's finalized it reflects these conditions. I'm going to respectfully disagree and I'm going to point out several reasons why with your Staff. I know you don't always agree with your Staff, but there's several problems with this recommendation or with this agreement as trying to match these conditions into what you have.
You've got to remember these conditions, this ordinance came about from a presentation of a one building plan, that plan that you have in front of you. That's what this ordinance represents. Those excerpts I've given you is a discussion by the Fiscal Court members concerning the relevance of this building.

For example, back parking lot. There was a discussion about the back parking lot. Well, when you look at that, that back parking lot is 280 feet from my property line. The building is 350 feet from my property line. All of that said there was not going to be any other additional development. We're going to keep the 20 foot barrier. I'm going to put a fence thereupon. Then they come back and put additional requirements on him because of what you see in that conceptual plan. Because that's what they -- he said that to them in Fiscal Court. If he said it once, he said it a dozen times, one building. They quizzed him on it. Judge Mattingly quizzed about how many fronts. Just like you did, Mr. Reeves. You quizzed him several times about how many store fronts do you have.

Four.

Now today, you've got a three building development plan over the entire property. At no time
before this body, before Fiscal Court in the course of that litigation, even when I took his deposition, at no time was there ever any mention or discussion about a three building development on this property. It never came out. It was never mentioned. For the first time there was anyone in this neighborhood or any of us ever had any idea that it was going to be a three building development plan was on November 19th when it was filed. Of course, we didn't get it for several days because of the mail process. You have to go down there and pay your 5 bucks to get a copy of it. So we didn't know it until November 23rd. Although, we had some idea because of the excavation that was going on on this property. We had zero idea that this was going to be a three building plan. I'm going to show you some pictures here directly.

Now under this plan, that building that's in the back, instead of the one building was 6,000 square feet, just slightly larger than what's across the street. That's what he said he was going to do. We're going to match up.

Now we have three buildings 17,000 square feet. 17,000 square feet. The back building all the trees are gone. There's not a single tree. I'm going to show you some pictures, if you haven't seen it.
Every tree on that lot is gone. Every tree.

Now, I assure you back in May had I been told that, if Mr. Lambert had come to me up front, had the agreement, if he had come to me up front and said, I'm going to cut every tree off this property and I'm going to scale it down, I would have been down here screaming more than Charlie Kamuf, and that would not have been good. I would have been down here doing that, but I didn't. I would have probably been standing on my head if he had told me, I'm going to scale down that bank 30 feet on one end, on the west end is 30 feet deep and its 20, 25 feet 3-feet off my property all the way down. That was never said. Nobody ever said that. I don't think -- of course, you all didn't approve it anyway. Fiscal Court would have never approved that under any scenario. Even Judge Mattingly, you'll see in the excerpts, questioned one building, but he said, two buildings I've got a problem with that, in his comments.

So we've got what's going on what I call bait and switch by analogy to commercial litigation which don't permit, in fact, there's some criminal laws about that in advertising, about coming in and feeding one can of worms and then switching to something else later. That's what you're experiencing here tonight.
The develop plan is a complete switch from what was presented and what was approved. This rezoning was conditioned on a one building plan.

I'm going to some show you some precedent in just a second from Daviess County, cases that originated in this room, that this commission has not allowed to happen. Just bear with me. I'm going to get to it in just a second.

I do want you to have a copy of the ordinance. I'm going to come back to that.

MR. OVERSTREET: If I may. When you announced the parameters, I think this is exactly what we were talking about.

So far we've entered in exhibits, which I object to the transcripts, the e-mail. The e-mail has already been ruled on by the Judge in the underlying court action. I've got the page. That was never introduced in the record ever. It was never mentioned by Judge Taylor, which is what the judge found.

So I have a problem because he is now attempting to correct an error that was made before by doing it now through this proceeding, and he is attempting to relitigate the rezoning, but he's also attempting to include evidence that he failed to include that was not found to be in agreement, that
was not found to be part of the record. It was not
part of your record, nor was it part of Fiscal Court's
record. He was represented by another attorney at
Fiscal Court. The Judge specifically found that that
lawyer talked about something but never entered it in
the record either. That's part of the opinion.

I object to going down this road because we're
here on the site development plan. We're not here
about a conceptual drawing.

As you know, the site development plan is
defined by statute. It does not include what Judge
Taylor is asking you to make it include.

Under KRS 100.111 Subsection 8, a Development
Plan is defined as "Written and graphic material for
the provision of a development; including any or all
of the following: Location in bulk of buildings and
other structures, intensity of use, density of
development, streets, ways, parking facilities, signs,
drainage of surface water, access point, a plan for
screening or buffering, utility, existing manmade and
natural conditions and all other conditions agreed to
by the applicant," which were those conditions imposed
by Fiscal Court.

He's now talking about an agreement that has
been found not to exist by a court of law. He's
talking about this agreement and referring to it repeatedly as an agreement. Presenting it to you all as if it's an agreement. It's an e-mail from him to my client. Doesn't indicate there's any agreement to it. It's just a dictate this is what it is. Nonetheless, it was found not to be, he did not question my client during his deposition about the trees. They were never brought up before Fiscal Court, and they were never brought up in the Circuit Court action. The underlying judge specifically found that. That the trees were never mentioned. Only the 20 foot buffer was mentioned, and that's what she found existed and that's what she found the agreement was. That's what my client acknowledged. She specifically said that at no time did either Mr. Lambert or myself ever reference a 20 foot buffer leaving all trees intact.

CHAIRMAN: I totally understand that e-mail was not an agreement. I understand that. I'm sure the other board members can understand that also.

I'm going to ask the attorney to help me for just a moment.

I'm granting Judge Taylor a little bit of leeway because some of the members were not here. So some of that background information is important, but
I will tell you that we will be focused, does the develop plan meet the requirements. That's what we're going to be focused on. We'll let you make a presentation, if you choose. I don't mean to be harsh, but understand what we're doesn't mean we're agreeing. Okay?

MR. OVERSTREET: Okay.

MS. KNIGHT: I was going to say, at your pleasure, Mr. Chair. You're conducting the meeting, as we always do, each pert party gets to state their side. The objection is noted for the record. You'll get another chance to speak. It's going to go back and forth. So I think at this point we have to -- Judge Taylor indicated he's going to circle this back to reasons you mentioned.

CHAIRMAN: And I think Judge Taylor is getting there. He was getting there.

JUDGE TAYLOR: I do want to clarify. You can look at your excerpts on Page 5 of the May 9th meeting, Exhibit B was introduced in this proceeding. It's listed there. It was that e-mail. It states and talks about it. That's a misrepresentation. The court case on the rezoning, that's a misrepresentation of what's happened.

MS. KNIGHT: I just wanted to make sure, I
just want to make sure everybody for the same of due
process. Everybody gets their chance to speak.

JUDGE TAYLOR: This is a different proceeding.

It is what it is.

Let's go to, if you would, this Exhibit 11.

This is the Ordinance that was passed. What's
relevant in this Ordinance are the conditions that
were imposed in paragraph 6. He referenced about the
Judge not making a finding about the buffer, but the
buffer was left out of this Ordinance originally. The
Ordinance you have in front you is the amended
Ordinance that was entered June of 2015.

In July of 2013, the Fiscal Court talked, and
it's in those excerpts, consistently about maintaining
the tree buffer. They did talk about that. That's in
the record. Then when they passed the Ordinance for
whatever reason, they left out reference to the
buffer. That was the only reason that I got involved
in the appeal, was the fact that the buffer was there.
It was not in the Ordinance and it had been basically
agreed to, but they had discussed it and they were
going to put it in.

So when we took the appeal up, the Judge in
her ruling, which was not appealed, that was not
appealed, the other party appealed that the ruling
that came down affirming Fiscal Court ruling. In that ruling, the Judge put the 20 foot buffer back. She put it back in. That was the one thing that she did change in the Ordinance.

Then the Court came back in June, I think June 4th, and they amended, and we're going to get down in paragraph 6. They added the reference to the 20 foot buffer.

Now, you all had to make your own decision of what you think a 20 foot buffer means. The only time it was ever discussed was between me and Mr. Lambert. You know what a buffer is. I didn't ask for a buffer of air. No reasonable logical person, and you all see a lot of this stuff. You know what we're talking bout in buffer. We're talking about landscaping buffers. In this instance we have existing trees that were already there that we had agreed to leave, and he told me he was going to keep them. We'll come back around.

Now let's look at 6. Go down to, I think -- do you have, on the screen I assume that is the three building plan. I've got a copy of it here. Is that the actual develop plan?

MR. HOWARD: Yes.

JUDGE TAYLOR: If you look at that plan, look at 6. Again, remember, this was dictated and written
as it came off of that meeting on July 30, 2013. The
only thing that Fiscal Court had addressed was that
building, and they were looking at that building, one
building, 200 feet back off, which Judge Mattingly
questioned them on, 200 feet back off of the property.

CHAIRMAN: Judge Taylor, was that put in as a
condition in the Ordinance.

JUDGE TAYLOR: No. I'm saying the building,
when they --

CHAIRMAN: I understand what you're saying.

My question is: Did they prohibit any additional
buildings on the final development plan in the
ordinance?

JUDGE TAYLOR: They did not prohibit it per
se, but you have to look at this condition in F, and
that's why it won't fit with what they proposed.

If you've got your one building exhibit in
front of you, it says, "Applicant shall install an
eight-foot (8) continuous element fence." They talked
about the 5 foot pine trees, which is normal. And
"Applicant shall include a twenty-foot (20') rear
perimeter buffer along the south boundary line where
Applicant's property adjoins the Taylor property."

At top of this where it talks about continuous
element fence, 8 foot, it says, "at the edge of
Applicant's rear parking lot." That's a requirement. It has to be -- you can't change that. It says, "at the edge of the rear parking lot."

Look at that document and look where the rear parking lot is. Do you see an 8 foot continuous fence on that document across the rear parking lot? It's not there, and that's a requirement. Excuse me. That's a mandatory requirement in there. You had the 8 foot fence across the parking lot. You had two rows of trees, five foot trees. Then you have the 20 foot buffer. You don't see any of that because if they put the fence up across the back of the parking lot, it's going to be in front of that building. The back building is 6600 square feet. It's the largest building on the lot. So you cannot make Section F fit the way it's written because they wrote it for the one building plan to go behind the parking lot which was 280 feet from my property line. That's what that means. If you're going to follow this Ordinance, you have to mandate a fence across in front of that building at the end of the parking lot because there is no -- that building is 20 foot or so from my property line. It's literally in my backside and front yard. A 6600 square foot building is in my front yard.
For the other folks that live in the cul-de-sac, the O'Bryans, the Myers and Owens, they're staring down literally up in our, which again is a violation of the Ordinance, as it concerns the development plan, which I will come to in a second.

That's first thing and foremost. You can't fit the fence in there and you don't have the buffer in there.

They're going to say, yes, we have a buffer back there, back behind you there. You're going to see that 20 foot and puts the little trees down there and say, there's your buffer. Let me tell you. They have cut down that bank 30 feet on the one side coming down to 20, 25 feet. If you set an 8 foot fence behind that building and 5 foot trees, it will not buffer anything on my property. If you stand in my backyard, I'm still going to be staring across the street and staring up into Thoroughbred East Subdivision. Literally I can now see for the first time in 21 years the smokestack from OMU on Highway 60 East, which is over three miles as the bird flies from my house, and I didn't even know you could see them from there. So you can't make the Ordinance fit.

Now, there was a case on point on this out of this body in 2006. This is our Exhibit 12. I think a
couple of you were on the Commission at that time. It was called Clark versus OMPC. Out there on Highway 54 just down the road from where we are. In this case, there were conditions on the rezoning ordinance. This is one of the conditions of the development plan. I think the development plan is controlled really by three things. You've got the rezoning ordinance, the conditions of it. You've got the zoning ordinance itself, which I'm going to go into in just a second. Then you've got the Comprehensive Plan that still meet all the objectives of the comprehensive plan.

This case involved in 2005, these folks I think it was Independence Bank had come out there and rezoned some property on 54. Fiscal Court put the condition on the property that there would be one access road over to Fairview Drive. One access road only. Apparently, that property got divided up a little bit somehow down the road. In that situation in dividing the property up, they came back and put a second access point, vis-a-vis coming to this commission on a development plan to access Fairview Road off this property. This commission approved it. Effectively amending the zoning ordinance that had been passed by Fiscal Court. The Clarks appealed this to the Kentucky Court of Appeals. The opinion you
have was written by Judge Dan Guidugli. It's all about a final development plan that altered a rezoning ordinance like we have here tonight. The Court goes into a long discussion about you can't do that. The OMPC through a development plan has no authority to amend or alter the exact wording of the zoning ordinance. The rezoning ordinance in this instance.

That's what this case is about. It's binding on the Courts here and OMPC because it's a mandate from the Court of Appeals to our body here. To the Fiscal Court, and to the OMPC, and Circuit Court for that matter.

They go into a discussion in this case about how you get around it. There's two options. What happens, when they send it back and said, you have to deny the plan, the development plan. The options are, you file another development plan that complies with the ordinance or you go back into Fiscal Court. Then there's a process in there. It's at 100.211, the statute. You go back into Fiscal Court and go through that amended process, which will probably kick it back here temporarily, and then go back to Fiscal Court to change the Ordinance. That's the process.

If you read this case, it's exactly on point with the situation that we have here tonight. That
you have a Zoning Ordinance that will not fit. A
Rezoning Ordinance that will not fit.

They also require the Fiscal Court -- excuse
me.

Fiscal Court required you in this Zoning
Ordinance that there had to be a traffic study filed.
That traffic study was filed. It was finally
presented to us. I think the first time we got it was
in 2014 when the deposition was taken of Mr. Lambert.

This is an excerpt from that study. This
study was the only study of record in your Planning
Commission office, December 9, 2015. This was the
study for the property. If you go to like the fifth
or sixth page, you look at the site plan for that
study. You'll see for that study it's a one building
plan. That's the site plan for the study.

I went over to see Mr. Howard, and he'll
attest to this, I think, on December 1st and he showed
me, I wanted to see the traffic study because, as I
mentioned, on November 19th was the first time that
anyone had noticed or knowledge of the three building
plan out here. First time ever that anyone knew about
it.

I went over to see Mr. Howard and asked him to
show me the plan, and he did. The plan he handed me,
I looked at it. It's this plan. That was the one that was still of record. I had the highway traffic engineer visit with me December 3rd. This is two months ago. I showed him the new development plan. That was the first time the DOT had seen it. He had never seen it before.

So magically on December 9th here comes a new traffic study. Traffic is a relevant issue in the development plan. It's cited in the Ordinance, and that's why I am hitting on this, Mr. Chairman. This is the traffic study. This is just an excerpt. You've got the traffic study in your record. It basically went through and made some adjustments to the numbers reportedly. You'll notice when you open it up to the first page, there on December 9th for the first time is our three building plan.

Remember from the traffic study on the one building plan we had a four store front. That's all that was ever testified to. Four store front building facing the other buildings across the street; 6,000 square feet.

Now we have 17,000 square feet and 8 to 10 store fronts and three buildings.

The reason I attach the last page, the conclusions, because you folks are reasonable people.
Sometimes in this business we have to use common sense as much as we do anything. He's taken a look at the traffic study. He's updated the traffic study of 18,200 square feet. The project only says 17,000. He says this increase in square footage is going to generate an additional 20 trips to the road network. Twenty trips to the road network. I submit to you, Ladies and Gentlemen, if he has 20 employees out there, that's going to generate 20 trips. This traffic study is not worth the paper it's written on. How do you come up with 20 more trips for almost 11,000 square feet of building and two more buildings. It's not fathomable. So much for the traffic study.

I took Mr. Lambert's deposition. I did mention that. Just for the record, Mr. Chairman, I'm not going to dwell on it. I've just got an excerpt, again, where we talked about him taking care of the Taylors and the 20 foot buffer, but he also introduced at that deposition the traffic study that had the one building traffic plan. There was never any reference to a one building development plan. There were never any reference to a three building development plan during his sworn testimony. I'm sure he changed his mind after that. At that point there was still never any reference to it.
As you know you can tell I am opposed to the development plan. I'm going to give you some more detail reasons why.

You will recall in those excerpts that, I wanted you to see this when you look at these pictures, that Mr. Lambert under direct questioning from the Judge Executive about how far back he was going to go back into that property, and he said, I want to go back 200 feet. Judge Mattingly pressed him on it about going in and digging down because they knew they were going to drop the property down. He referenced saving the trees. He said, I would never go back there and sheer face the back of that property because I didn't want to put up a retaining wall.

These are the pictures. I brought you a few. I'm not much of a picture taker, but I have been in the last two months.

The cover picture, this was the Grimes home. This is what it looked like not too long ago.

The second page is the aerial view of the property, the Grimes property and my home. You'll see the Owens' home, the Myer's home, and the O'Bryan's home in the cul-de-sac. You can get a flavor of where everything situates. Again you can tell by looking at this, this is all part of the old Grimes farm when
they carved out the front part two acres to the son
John Grimes.

The third picture, and on the back I've got
the dates on these pictures just for your all's
information. This is the picture on October 20th.
They got the cut permit, Excavation Permit, which I'm
not going to argue that here. It was done illegally.
In violation of your Ordinance 16-2. We'll have to
argue about that in different forum, which I'm going
to do, but not here. They shouldn't have got it, but
he did. He got it before the development plan. They
were cutting the trees down back there. They had
these big cranes and shovels and stuff. It was pretty
humongous equipment.

I called Mr. Lambert from my home on October
20th and told him, I said, you're knocking the trees
down. You're getting fairly close to my buffer. He
told me for the first time, well, I'm taking all the
trees out, and just blew me off. He said he's taking
them all out. Now, that's what it looked like.
Again, the land you can see. The land is the flat
land with a slope down to the trees. That's close to
the 20 foot buffer. It's a little more than 20 foot
there, but that's the picture I took.

Then if you start looking, basically these
other pictures in December. By that time all the
trees were gone and they started taking out the bank
that was within about three feet of my property. You
can see one picture of my dog there. He's in shock,
as you can see. You'll see the crane over there in
one of the pictures. It's up against one of my sugar
maples.

The pictures, there were two or three that
were taken around December 9th. I'll show you the
ones that shows the cuts up close to my property line.
I've got kind of a strip of tape there kind of showing
where I think my line is. You can see, actually
you'll see where they cut, you'll see roots from my
existing trees on my side that are coming out the
other side over there. That's how close they are to
everything that was done up on my property. You can
go through and get a pretty good handle of that.

Again, it varies. It's anywhere from 20 to 30
foot deep. It's not safe.

Toward the back of the pictures, of course,
the county engineer issued an excavation permit under
the agreement, the premise of soil conservation or
something is what he told me because I kept calling
him wanting to know why he was letting them violate
the Ordinance 16-2, which, of course, he told me over
the phone, the county engineer, I didn't know that ordinance existed. You can see how good the soil erosion is done. This was actually taken, this picture was taken on January 1st. As you recall, we had 6 inches of rain between Christmas and New Year's. You can see the bank on the two pictures there of the washout and soil erosion. You know, I'm facing other issues there of substantial damage to my fence and my trees and other property.

Of course, the back page was taken yesterday. That's what it looks like.

Not withstanding that he was going to save all these trees. He would maintain the buffers on this property. I want you to see that. I want to tell you, go back now to why to deny this tonight.

I have some extra plans. You have to forgive me because I'm going to sound like Charlie Kamuf. Charlie Kamuf argued this early on.

About our goals and objective of the Comprehensive Plan, this is the controlling document for the Ordinance, for the Zoning Ordinance that's been passed by both Fiscal Court and the City of Owensboro.

Again, the goals they are to avoid the introduction of urban activity that will have a
detrimental effect on residential activity. I submit to you that this is a deep intrusion into a residence that I've never seen in my -- I've lived here most of my life. Since the late '50s. I've never seen any intrusion into a residential neighborhood by a commercial development, existing residential neighborhood in Owensboro, Kentucky until this.

Those same goals about establishing residential, compatible residential activity and properly buffer nonresidential uses. Properly buffer. That buffer means something that is more than dropping something down 30 feet that can't buffer anything. I'll be about 85 before those trees grow up down there that might block that bank he's going to put up in my backyard and front yard. That's the Comprehensive Plan.

More importantly what's really controlling tonight -- the Rezoning Ordinance I've already argued that in the Clark case. I think that gives you enough reasons and grounds right there to deny this development plan, on its face, because it doesn't comply. The Clark case is a mandate that says you cannot, this body cannot alter that ordinance, which you would be doing if you approve this.

When you look at Article 16, this is what
governs our development plan. This is really your standards for your review. If you go to Page -- Ordinance 16-4, but it's 16-3 at the top of the page. That's part of 16-4. You'll get into what is really relevant, what really is relevant for you to review tonight. If you come down on that top of that 16-3 it says, "The OMPC may modify or disapprove the development plan if it finds that the plan does not comply with the requirements of the Zoning Ordinance," and we'll come back to that section in just a second, "and when applicable, the Subdivision Regulations;" - they don't have an issue - "or it finds there are existing or potential substantial flood, drainage, sewage, traffic." Chief, that's exactly what you found the first time around, was the traffic problems. That hasn't gone away. And "topographic," and then land-use buffering is a condition for approving this development plan. Did they retain adequate land use buffering? They didn't.

Now, you remember the first sentence I read about does the development comply with the requirements of the Zoning Ordinance. On the back page of that I've attached Section 1.3 of the Zoning Ordinance. This is the objectives of our whole, our whole plan, this is what it's premised on. This is
the opening paragraph, the opening section of the Zoning Ordinance. It says, "The objectives of this Zoning Ordinance are to promote the public health, safety and general welfare of Daviess County." It doesn't say we're promoting economic development. Doesn't say we're promoting some developer from Florida to come up here and make a bunch of money. It doesn't say. It says, promoting our safety. That's the people of Daviess County. The citizens who live here.

Go on down a few more lines after, where it says "abutting public right-of-way" you'll see a semicolon. Then "Objective: To require buffering between non-compatible land uses," and most importantly for your consideration of this 16-4 and whether or not you have a violation of the Ordinance. Most importantly to "protect, preserve and promote the aesthetic appeal, character, and value of the surrounding neighborhoods."

I will submit to you what you see in those pictures and what you see in this development plan will do none of that. It will literally destroy.

The definition and value of my home today is probably six figures at least, if not more. There's three other folks, they're all here tonight, that live
across the street and they're staring down at this
mess.

Again, through this whole process Fiscal
Court, this body, the whole process they were promised
by the developer that it would not interfere with
their neighborhood because he's going to be a good
neighbor.

Now, I told you about more precedence. Again,
out of this body that you guys did, none of you were
on this commission back in 1996. None of you were on
it. This is what I call the Burger King case. Some
of you may remember it. It's about 125 yards across
the road from where we are tonight, this plan right
here, if you look back west about 125 yards where the
little cake place is now. This is the Burger King
case.

Now, there were was two things involved in
this case that this commission had to address that
night. One was bait and switch. What I talked about
earlier. Where the developer told you one thing early
on, what he was going to do, and then he did something
different. This commission wasn't real excited about
that.

In 1976 a developer went out to Thoroughbred
East, it was one of the first neighborhoods on the 54
corridor. Thoroughbred East Subdivision. When that subdivision was approved, it was rezoned, the Zoning Ordinance, the developer up at the front, as you know there's some commercial lots in the front. He put a restriction, in 1976 he put a restriction on those lots low density commercial traffic lots. They were going to be retail or commercial, but they had to be low density traffic. Okay.

Like I think there's a day care center in one of those lots and has been for years. There's never any problem getting that thing rezoned or having a development plan approved.

In 1996, the developer and another gentleman comes back to this body of what we're doing exactly tonight on a development plan. They walked in here with a development plan to put a Burger King in one of those lots, toward the entrance of Thoroughbred East Subdivision. The neighbors came down like the neighbors are here and they protested. The Planning and Zoning Commission, you know, they had the transcript, and that's why I entered all these transcripts. That's why it's relevant. They had the transcript from 1976, and they found what the developer said he was going to do and he didn't do it. Then the other reason that they found that it was a
Chief, going back to what you had talked about, traffic and safety.

This was 1996 and they knew there was a traffic problem on 54. This commission in an 8 to 1 vote denied that development plan. They then appealed to Circuit Court. Now, I'm not going tell you all anything, perhaps for the new members. When we have Zoning Map Amendments obviously, at the end of the day when you make a ruling like you did against this project, it gets to go to the politicians you can't control that. It's out of your control. Perhaps it's out of all of our control. But these proceedings when we have a development plan, whichever party has agreed tonight, the politician are out of it. You go to the courts. You go directly to appeal. Fiscal Court has no more say in this, unless they want to go back and have the Ordinance, try to amend the Ordinance. This case goes directly to Circuit Court, and that's what they did here. The developers appealed to Circuit Court. Judge Howard, excellent opinion, affirmed Planning and Zoning's 8 to 1 denial of this. He didn't jump much on beating on the developer. He kind of just discounted it in open sessions. But he goes to the
back and, Chief, you go back to Page 6. You go to Article 16-4 that I just read to you. He read the exact same stuff that I just read to you and he focused on the traffic problems. You don't have to be a traffic consultant to understand the traffic problems out there. I can speak to that. I was a transportation planner so I'm qualified to speak. I did that five years. I understand transportation planning concepts. Jiten Shah, who is not here, and I worked together at GRADD. He was a transportation planning engineer. Those of us who have worked in this know we've got problems out there. I don't care what these consults over here tell you. They can't tell what you the numbers are going to be by expanding this building. I don't see how we can rely on what they're doing. The people who experience, and all these people that are in this room will tell you how dangerous it is.

David Conkright, and this before any of the development in the last five years. David Conkright who lives in our neighborhood, his son going to high school one morning was t-boned out there, because I was the first one on the scene because I heard it as I was going to work. By the grace of God he wasn't killed because the t-bone hit in the back of his car
instead of on the door.

Those are the kind of things that all of these neighborhoods out there are experiencing along the 54 corridor.

Now, we've got multiple reasons that I've told you tonight as to why you should do this. I think you can go back, look at the Rezoning Ordinance itself. It doesn't fit. Square pegs and round holes. You can look at problems under 16-4, and going back to 1.3 of the Planning Ordinance. It just doesn't conform.

With all due respect to your Staff, it just doesn't work.

I do want to show you the information. You're going to see it on all the maps, but again show you about of this into the neighborhood. This is one of their maps. This is one of their maps that they filed in this case early on. All I did was show where that 6600 square foot building, how it's going to stand in proximity to the four homes that are within less than 100, well, of course, I'm 20 feet from it, but the others are 100 yards or less from it.

This is unconscionable and outrageous what's being proposed here in light of everything that's happened in this case. I guess something changed, whatever. You know, I'm a bad guy. I trusted this
person based on integrity and honesty. That's the way I do things. I didn't lawyer this thing up and make them sign everything when he was begging me to give that -- e-mail that you'll see. Was given 30 minutes to him before this commission hearing, if you look at the time on it.

This is what he's going to do out there. This is what he's going to propose. You don't see any buffers on this proposal. You don't see anything written. This is just a schematic. It's online he's going to open in October of 2016 this three building project.

The big building is in the back. You can't really tell by looking the schematic. The big building is in the back. That's what he's going to inject into our neighborhood.

The last exhibit and we're done. I know you folks know all of this stuff, but I want to get it in the record. I just want to show you. I mean you folks are good people. You are not politicians. You're honest. I've known most of you for many years. I've known of you. You're folks of integrity, and I'll respect your decision whatever you want to do tonight, but you all have one of the most important jobs in this community and one of the most thankless
jobs in this community.

When you look at this document I just showed you, this is the impact Highway 54, this is a three mile stretch of Highway 54. This is the impact. These are the people that it's affecting.

The Woodlands, for example, has a $14 million value of the homes back there.

If you allow this gentleman, of course, when he came before us the first time it's, in the excerpts, I'm just a poor little one man developer show. He called himself a fly in the tornado. He said, I'm not like Mr. Hayden and all this stuff. I'm just trying to do this for my family. You know, he's got a $450,000 project across the street. It's a similar project that he's going to put up here. That's what he told everybody.

This project that you see in your hands on Avenue 54 is probably a $3 million project, if a penny. That's fine, if you allow him to do it. We'll 3 million on the tax roll, but you're probably going to take that or more off the tax roll of the people who live like in those two subdivisions, which is over $20 million of property appraisal right now. You're going to take that down. You're going to take their properties down. We're the people that live here.
These are the people, this is the backbone. This is why Owensboro is such a good community to live in. These are people that lived through that corridor and all the other subdivisions in town. These are the people that work hard, pay taxes. There's 2300 homes on a three mile stretch between the Heartlands and Stonegate. There's almost 1600 homes east of, and there's several subdivisions I didn't count like Brookhill and some of the others that are off, a little further off 54, but they're related to 54 and they contribute to all of 54 problems and traffic. These are the people what makes Owensboro a great place to live.

I hope that you all take that into consideration when you look at these conditions under our Zoning Ordinance for purposes of this development plan.

I'll say one last thing. I know they're going to talk about economic development. How this is great. I don't think it's going to be anything new. It's not going to be anything new to Owensboro. You know, emphasis in this town about bringing our kids back home and about we've got such a great place and we're patting ourselves on the back. I've lived in this town almost all my life, and it is the best place
I've ever lived, but I'll be candid. I was one of those young people 33 years ago. I rode back into town with a wife, a kid, two dogs, two junk cars and 200 bucks in the bank. That's all I had. Nothing else. I'm like Mr. Lambert. I had no inheritance. I never inherited a penny, and I won't. My parents died young. I came back and I busted my butt and I worked my butt off. That's what we do in this community and this country. To achieve what we call the American dream. Twenty-one years ago my wife and I go out and buy a piece property that was probably over our heads, but we made it. That was our American dream.

If they get away with doing this after what was presented to you, you to begin with and Fiscal Court, then my American dream goes down the tubes so a guy from Florida can make some money and take the profits back to Florida.

Thank you again for your consideration. I appreciate your service. Thank you.

CHAIRMAN: Thank you, Judge.

I think we'll hear from Mr. Overstreet before we open up for questions. That way I think our questions might be a little better.

Mr. Overstreet, would you like to --

MR. STEVENSON: Excuse me, Mr. Chairman. I
would like to eventually speak.

CHAIRMAN: You'll get to eventually speak.

I'm going to let Mr. Overstreet speak.

MR. OVERSTREET: Mr. Chairman, if you want to
go ahead and let Mr. Stevenson speak, that's fine.

CHAIRMAN: It's your preference.

MR. OVERSTREET: I'll go ahead and let Mr.

Stevenson speak.

CHAIRMAN: Mr. Stevenson, please.

MS. KNIGHT: Your sworn as an attorney, Mr.

Stevenson.

MR. STEVENSON: Jeff Taylor actually went one
full hours. That's all he went. Now, my comments
really less than that.

As Mr. Overstreet pointed out, this property
is already rezoned. It's a done deal, at least for
tonight is concerned. It's already B-4. Fiscal Court
and Circuit Court has made it's ruling on that. So
what you're talking about is the developmental plan.

Jeff touched on it before, but I want to
reiterate, and I don't want to keep you. I know Kent
Overstreet is going to spend another hour.

The Comprehensive Plan list Objectives.

Section 4.7.1 - Surround established
residential areas with compatible residential activity
or properly buffered nonresidential uses.

4.7.2 - Situate nonresidential uses within residential neighborhoods in a manner that enhances its convenience, safety, and neighborhood character.

What we have got here is a plan that I submit is contrary to those objectives. First of all, you can't properly buffer this property. No matter what he puts on here it won't work. If you've been out there, you'll see that, because he decided to cut the back property down 20 to 30 feet. You know, if he had left about the last 20 feet continuous with Jeff Taylor's property, we wouldn't have a gripe, but he didn't.

Now, he says that he did that because Fiscal Court required him to put in these pine trees. He could put the pine trees in anyway, but he did want to.

Now, it's funny this developmental plan, I don't know how he's going to put pine trees, I don't see a fence back there, but I don't see how he's going to put pine trees on a bank that's almost straight up and down. Actually one of these -- you've got a pack there of pictures. This picture here was taken January 4th. It doesn't do that bank justice. That bank is a lot steeper than that and a lot deeper than
that now. You can't put pine trees on that and make any sense.

Plus the building is 27.6 feet from Jeff Taylor's property, and there's a public utility easement in there, and there's a 15 foot walkway.

Now, all of that is crammed into that little space and you can't buffer that property or the property in the subdivision can't be buffered by this bank that he's created.

Plus I noted that he's only got one line of trees. The Ordinance requires duel 5 foot trees on 20 foot center. This doesn't have that. I don't see that anyplace on here. Plus, Fiscal Court required him to show access to the Hennesy property as I refer to it, and to the Hayden-Thompson property. I don't see that on there.

If you notice, and it may not make any difference, but it has all this curly stuff. I guess that's trees or bushes, but they don't exist. Now, if that's not pertinent to your all's decision, then fine. He just floured it up for no reason, but that kind of gets back to what he did before, doesn't he. What Jeff Taylor has been talking about. First time it was one building 4,000 square feet up here, which you all denied.
Now he comes back with three building and in Jeff Taylor faces, I guess it's because he fought him, right next to his house, and in view of the Owens, the O'Bryans and the Myers. Right in front of them. Not only that, he even adds insult to injury if you notice on this plan, he's got a big dumpster right down here facing on this edge of the building so that it's right closest to the Woodlands property. Commercial dumpster. Practically in his front yard.

The plan that he submitted doesn't fit with what Fiscal Court required. He hasn't done it all yet.

I submit that this needs to be denied. He can come back. He can appeal, whatever, but he hasn't fulfilled the obligations as set forth by Fiscal Court. Not in this plan he hasn't.

Judge Mattingly, I know we're not supposed to get into this, but I'm going to because it's a done deal. It's B-4.

Judge Mattingly, and if you read the transcript, said he wouldn't vote for this if it was more than one building, but he voted for it. Guess what? Now it's three buildings. Mattingly said that himself.

I'm not going to talk about the tree
situation. Jeff Taylor has already referred to that. So my seven minutes are up.

I ask you to deny this because this plan he submitted doesn't conform to Fiscal Court's requirement and the Ordinance. Thank you.

CHAIRMAN: Thank you, Mr. Stevenson.

Mr. Overstreet.

MR. OVERSTREET: Just as a request, I think I actually will be using that power point. So I'm not sure -- I was instructed to bring a flash drive.

CHAIRMAN: We've had a request for a bathroom break. While we get that set up, we're going to recess for five more minutes.

- - - - (OFF THE RECORD) - - - -

CHAIRMAN: Thank you for your patience. You want our full attention.

I'm going to do one thing real quick, and I don't think any party will mind. We have an item on the agenda. We may be here a while longer.

Read the item, please, Brian.

MR. HOWARD: It's 7468 Texas Gas Road. Is anybody here representing the applicant?

CHAIRMAN: Is there anybody here representing that? If there are, we're going to hear that real quick and get that out of the way. If there's no one
here, we'll just go on.

(NO RESPONSE)

CHAIRMAN: All our commissioners are back in place and counsel, and Staff is in place.

Mr. Overstreet.

MR. OVERSTREET: First of all, I would like to start, I would like to state my objection on the record to a number of the exhibits that have been presented. I think that they're outside of the scope of a development plan consideration of approval. I would ask that those be stricken from the record. They're being presented obviously for a deficiency that they perceive were present in the record below that they were unsuccessful on. I don't think that they have any bearing on these proceedings. I think that they're irrelevant. That would include the Osborne and Thompson court decision from the Daviess Circuit Court; the unpublished Court of Appeal's Opinion of Clark and Clark versus Drew Kirkland, et al; the OMPC excerpts of April 11, 2013; the three pages of a deposition transcript; and the Highway 54 subdivision analysis. We would ask those be stricken. We just simply don't think that they have any place in the record. They have no bearing on the actual development plan. I've already read the definition
for the development plan. I don't think any of those things were included or mentioned or even inferred in any of the definition. Just for the record we would like to state that.

CHAIRMAN: I defer to counsel.

MS. KNIGHT: Thank you, Mr. Chairman.

I don't think it's the practice of ours to make decisions of striking exhibits, what comes in and what doesn't. We just, as a commission, collections all the information, give it's appropriate weight and then make their decision. We understand your objection. It's on the record. Thank you.

MR. OVERSTREET: Thank you.

First of all, I do appreciate the opportunity to address you all again. I will just start by way of some clarification.

The e-mail that's been submitted by Judge Taylor, as I indicate earlier, that was found not to have been part of the record in the Judge's opinion. She even referenced a conversation between Commissioner Allen where he specifically asked my client whether he would be willing to designate the 20 foot buffer as undeveloped portion and keep that as a wooded barrier. My client responded, "Well, 20 foot is a pretty good barrier. Twice what the requirement
buffer is. I don't currently have any plans for that. I could see where if Mr. Hayden developed his property into apartments and a road; for instance, was wanting to put across there, you know. Mr. Taylor by the wording that I had got his buffer to 20 feet. Again, I was trying to do right by Mr. Taylor and his concerns."

So there was no agreement before the commission. There was no agreement before Fiscal Court. That's what was ultimately found by the court system. Any other representation is simply false.

Next, when we're talking about proceedings before Fiscal Court, in the Judge's Opinion on Page 10, she also noted that Judge Mattingly pointed out, "as the property is developed, some of the trees will have to come out. Some of those trees will lose their leaves, and the pines are required. Then the neighbors have screening all year long."

We'll have the development plans up here. The actual plans are going to require additional plantings. That was at the request of the Taylors and the Woodland's Homeowners Association. The additional more expensive fence was also requested and imposed by the homeowners and Mr. Taylor. As a result of that, when you put in a fence and you have to put in
additional plantings two rows ten feet apart, you have
to make room for those. That's what we've argued. I
don't think that anyone at Planning & Zoning or
anywhere else has said that the actions that have
taken place are contrary to the ordinance. They are
not. The assertions that they've made are absolutely
incorrect.

Mr. Howard already said that plan should be
approved. That we were in conformity. That would
include buffering requirements. That would include
compliance with Fiscal Court, which also includes the
tree planting, the fencing, etcetera.

Nowhere were the trees to be left in place
made part of the conditions. Furthermore, there was
never ever any representation that the one building
conceptual drawing was a development plan. It was
repeatedly stated by Mr. Lambert throughout the
proceeding that the ultimate size, placement, number
of buildings would be determined by the number of
tenants, the tenants' needs, etcetera. That's also
what the Court found.

The Court also found that the conceptual
drawing was not binding because it was not a
requirement that he produce a development plan at that
point. In fact, if you all recall, Mr. Charlie Kamuf
came to one of the meetings early on representing the
Haydens and he made reference to a development plan.
Saying, hey, I think we need a development plan. We
don't know what's going to go in here. We don't know
what the plan is. We don't know what the deal is.
You all didn't order that either. The development
plan proceed according to all regulations, statutes,
ordinances. He did what he was supposed to do.

Now, with that being said, if I could direct
your attention, I assume you all are watching on your
screens.

On the first slide, what you have, just as
Mr. Taylor presented, is just simply an aerial view of
the property. You can see where it's situated. There
is a shopping center across the street. There is a
church across the street. Just up the street you also
have the new gym that's taken over the old hardware
store. The Cheetah Clean is just to the left of the
property. I say "just," it's a little bit down the
road. Maybe an eighth of a mile or so. That's the
subject property that we're talking about.

Next, this is just a scanned image of the
actual ordinance that was entered by Fiscal Court. I
only put that in there so there would be no question
as to what the actual conditions and requirements that
were imposed.

You had Mr. Taylor's interpretation telling you what the intent of Fiscal Court was. The intent of Fiscal Court is exactly what's written in that document. Nothing more. Nothing less. It's not what he wants it to say. It's not what it says, but what it says is what my client is required to do. He has met each and every one of those requirements to date to the extent that he can.

JUDGE TAYLOR: Kent, is this the 2015 Ordinance? That's 2013. If it is, it's the wrong ordinance.

CHAIRMAN: Judge, one moment, please. Let's let Mr. Overstreet make his presentation and then we will let you rebut within reason.

JUDGE TAYLOR: Sorry.

CHAIRMAN: Mr. Overstreet.

MR. OVERSTREET: Next, this just simply points out the conditions that are set forth in the ordinance. As you all are aware, there were additional requirements that were imposed upon Mr. Lambert. Many of those were imposed because of requests, demands by the Homeowner's Association, Mr. and Mrs. Taylor. Those were -- I hesitate to do this, but I know they engaged in it quite frequently.
Our opinion is that this was an attempt to drive the cost of the project up considerably by including provisions for double plantings. By requiring the stockade fence that had to be wood or vinyl.

Now, as for the 20 foot buffer, what Judge Taylor didn't tell you is that in Mr. Lambert's deposition when he was asked about it, the original ordinance they did omit the 20 foot buffer in Fiscal Court. That's all it said. A 20 foot buffer.

When Mr. Taylor took his deposition, he asked about the 20 foot buffer. My client acknowledged the 20 foot buffer, which he also did before the Circuit Court. He said, yes, I agree to a 20 foot buffer. No mention of trees. No mention of leaving existing trees, nor was the question posed by Mr. Taylor inclusive of leaving the original trees.

Again, this just further explains the requirements.

Here is the definition of the development plan and the plat. I just included the definition of a subdivision since the Woodlands sits behind this property. With a totally separate entrance. Their entrance is down the road.

Speaking of entrances, while Mr. Taylor indicated that he thinks there's traffic issues and
they referenced the problems that they perceive, at
the end of the day, the people who are charged with
making those decisions said that it was in compliance.
It was okay. The ingress and egress has been approved
by the State. The traffic study has been performed.
Yes, at the time the initial traffic study was done,
it was based upon conceptual drawing. Once the
development plan was completed, we completed an
updated traffic study. He's not try to pull the wool
over anybody's eyes. He's trying to be as transparent
as he can possibly be in going forward with the
process.

    Now, I know they want you to believe that it's
this veiled attempt to get you all to approve things
because he didn't say this is exactly what the
buildings are going to look like. This is the exact
number. This is the exact location when he came
before you, and then ultimately before Fiscal Court.
Let's keep in mind. He was never required to do that.
There was absolutely no obligation on him to have the
development plan at that point. No one required him
until Fiscal Court said that he had to come back
before this body, present the development plan, and
give notice to all of the homeowners and additional
condition, which obviously we are here.
This is the actual drawing. If you will read on there, you can probably see it a whole lot better than I can. It will indicate down there the number of trees and plantings that are proposed and also the number that are required. He's actually putting in more trees than are required. He's adding nine additional trees over and above what is actually required by the ordinance.

You also have placement of the building. Obviously, they're complaining about the trash container. It has to go somewhere, but he's also required to have that shielded with an 8 foot barrier on all four sides. So it has to have a gated opening into it so that the trash truck can get into it. That's provided for in this drawing as well. That requirement has been met.

You can look through and you can see the detail that is available on the development plan. Obviously, you all have looked at it. Have a number of these. So I will not go through all of those.

What you do know, the one thing that you can have confidence in is that the local body charge with reviewing the development plan and confirming whether or not it is in compliance has said that it is.

You can also have confidence in knowing that
all the required permissions, permits from the State
have been obtained in order to get that approval from
planning and zoning.

To our knowledge there is absolutely nothing
that has not been done at this point or has not been
produced that has been required. You all can
obviously talk to Mr. Howard about that as well.

This is another view showing the ingress and
egress. Again, approved by the Kentucky
Transportation Cabinet showing the layout.

As far as the coverings that Mr. Stevenson
mentioned, yes, when you're at the point of excavation
and the only side that ultimately had trees that were
of consequence to them that I understand were the ones
at the back. Those were removed. The property was
rezoned. It was rezoned with certain conditions.
Those conditions did not include in any way, shape or
form any agreement to leave existing trees; nor was it
requested of Fiscal Court to leave existing trees; nor
was it ordered by Fiscal Court to leave existing
trees. It was required to leave a 20 foot buffer. As
you heard Mr. Kamuf talk about earlier, there are
instances of just open air buffers. The fact that
Mr. Taylor didn't get what he thought was the buffer,
that's not your all's problem. That's not
Mr. Lambert's problem. If he actually thought that he
had that, he would have made that part of the record.
He obviously hasn't been short on words for any other
issue before this body, before Fiscal Court or before
the Circuit Court. We've spent an extraordinary
amount of time briefing issues. All of which he's
lost so far.

Again, another one of the drawings that had to
be submitted to Planning and Zoning with the
explanation. That's the ingress and egress map that
was submitted as well.

That is the e-mail from the Kentucky
Transportation Cabinet verifying that no right turn
lane is required. That the permits have been issued,
and that everything is in order.

Again, another e-mail. That just confirms
that the notices were sent out and that contact was
made with Ms. Evans. So we would include those.

This is the Traffic Impact Study. Mr. Taylor
submitted a portion of that as well. I'm not going to
question it. I'm not an engineer. I'm not the person
who is supposed to interpret those. I'm not the
person who is supposed to count traffic. I'm not the
person who is supposed to stand out there and meet
whatever criteria and federal recording requirements
or whatever they have to do in order to do those.

This engineering firm is. This is what they do, as you stated earlier. They perform Traffic Impact Studies. They are authorized to perform Traffic Impact Studies. They were approved by the State and that Traffic Impact Study has been provided to Mr. Howard.

This, again, is another drawing. You all are obviously capable of reading. We're just trying to show the level of detail and the specificity that went into this in getting this development plan submitted, and to show that what we did was follow methodically along the path and do what was required. It's not that he was trying to cut any corners. It's not that he was trying to do anything to harm anyone. It simply developing property.

I understand, as Mr. Taylor and Mr. Stevenson were alluding to, yes, we want our kids to come back here. Part of getting young people to come back to their community when they get out of college is having thing to do, places to go. That's what this center is. It's going to be additional shopping opportunities. It will be additional opportunities for people to have retail opportunity and to be able to just go out and have a good time.
It's not in their subdivision. It's not part of their subdivision. In fact, the property next-door to it is zoned multi-family. The alternative would be, I guess, if they prefer maybe we should come back and just ask you all to rezone this as multi-family and we could have an apartment complex. Maybe that would be preferable. That's not our preference. We would ask this body to approve the development plan.

Again, that's simply the conclusions we've highlighted. We've highlighted the appropriate sections for your all's review. Again, they presented no Traffic Impact Study that I'm aware of that indicates that any of these conclusions are wrong. That the data is wrong or that any of this has been pulled. Mr. Howard I suppose would know if the State had pulled their approval for any reason.

That's the e-mail between the engineer, Paula Wahl, and Kenny Potts with the State indicating that it's been accepted and it's been approved.

Again, another portion of the site development. I can't say enough how many signatures they've had to get. The engineers involved, the county engineer, all the various folks to sign off.

I know that Mr. Taylor believes that Section 16-2 has been violated; however, it's common practice
that they will issue those permits prior to the final development plan. That's been stated. I think Mr. Howard can confirm that. I know that Mr. Weaver from Bryant Engineering can also confirm that that's a local practice. It's not an except that they've made. It's not something that's been pulled over anybody's eyes.

Again, just more of an explanation as to the actual drawings that are being submitted.

Here you also have, I apologize. I can't read my copy. My vision is pretty bad.

That's actually a blown up portion of the map so it's not a new one. It's actually a section that we took and blew up to show the additional detail that would make it easier for you all to see.

Again, you have the requirements. We're not here to reinvent the wheel. We're not asking you all to reinvent the wheel. We're not here to try and create legal issues for the politicians, as Mr. Taylor put it. I'm not sure that the judges would like that designation because I happen to think the decisions that have been rendered have been very fair, very impartial, and exceptionally thorough in reviewing the record.

This is an actual computer-simulation. It
does not show -- this will be like a drive-thru of the
proposed center. It does not show the fencing, and
the fencing is not going to be put in -- he can't get
the permits without having the fencing and the trees
being put in, but this particular simulation does not
show the trees. It's not that they're not going to be
put in. We understand that they absolutely have to
be.

So this will just take you through the center.
This is coming in off of Highway 54.
That's just a visual art depiction of it.
Just some proposed, pictures of the proposed layout,
proposed buildings.

Again, which we stressed before, it's not that
he's proposing a down-trodden beaten up little center.
This isn't Dollar General in the middle of the
Woodlands like we have with Dollar General in the
middle of Lake Forest. I mean I think we can all
agree this is quite a bit nicer than what you might
expect.

Those are just layouts, proposed dimensions
and sizes of the buildings.

Then the statement disregarding the additional
requirements. Again, everything that has been done
has been approved every step of the way. Every
challenge that has been raised and every allegation
and contention that has been raised by the Taylors and
Woodlands have been defeated. I'd just ask that you
keep that in mind. You've heard a lot of allegations
tonight. There have been a lot of swords thrown this
way and there probably will be a lot more. Every one
of those has fallen short subject to judicial
scrutiny.

   Again, this is study conducted of the
lighting. This will give you a visual depiction of
how the lighting is proposed, the angling of the
lighting, the dissemination of the light over the
center. This will allow you to see how to the extent
possible it's being encapsulated as much as possible
so-to-speak within the property.

   These are pictures of the actual excavation as
well as a picture of the permit that was obtained in
order to do that. This is the violation that he's
alleging of 16-2. That's the confirmation that it was
issued by the county and it was in conformity.

   Again, we're not here trying to create a
record for subsequent litigation. That's not our
purpose. Our purpose is to ask this body to treat us
like anyone else who comes before you with a final
development plan and limit it to that review. You've
been hit with a lot of information. You've been on a big fishing trip.

When all of us went through law school, they always talked about red-herring. Those were things that were put in tests to take your attention off the real issue.

You all went on a long fishing trip for about an hour chasing those red-herrings, but the issues that are of importance are the ones that are required by the plan and whether or not it meets the development plan requirements. You've already heard that it does. It's met the State's requirements. It's met the County's requirements. It's met Planning and Zoning's requirements. The fact that that Mr. Lambert may live in Florida is irrelevant. He's from Owensboro. He's brought his money back here to be able to invest in his community. They want you to believe that he's taking it out like Wal-Mart, like Corporate America. That's not case.

The shopping center across the street he owns. He developed. He built. So he continues to development properties in this area. He continues to invest in this area. He continues to stay in contact with this area. This is not a personal matter.

As Judge Taylor is aware, and most people in
this room, there's been zoning decisions that have
affected all of us. They just approved the mine out
by my own house. I don't want it obviously, but I
don't have much choice at this point. They don't have
a strip mine next-door. They have a small retail
center which, as you saw, is going to be very
dramatic, very nice. It's not an penny-ante store.
This is something that I would think that they would
be proud of. They've got the Cheetah Clean next-door,
and apparently nobody has an issue with that. They
have a multi-family zoned property. I suppose nobody
has an issue with that. But the fact that the
proposed zoning has been approved, that issue is
behind us, despite an hour's worth of argument. The
zoning is over. That issue has been decided as you
well know. You all may have voted 10/0, as Mr. Taylor
alluded to. Fiscal Court did not agree. The Circuit
Court agreed with Fiscal Court. Mr. Taylor
subsequently filed his emergency Motion and his Motion
to set that order aside, and he was unsuccessful on
all counts. Every argument. Every single one. Now,
as you heard earlier, we have another notice of
appeal.

So when you hear that I'll respect the
decision of this body, I don't know that I can take
that. I fully expect that we're going to be
litigating no matter which way this is decided, just
like Mr. Stevenson said.

The fact remains the property has been
rezoned. They live on Highway 54 for heaven sake.
You have to know that it's going to be developed. I
don't think anybody is complaining about shopping at
Kohl's or shopping at Menard's or any of that.
Apparently it's okay if shopping centers are next to
other people's homes. Just don't bring it into our
neighborhood. We'll present you with the values and
we'll show you why we shouldn't have it in our
neighborhood. It's too good to have a shopping center
is basically what they want you to believe. All we're
asking is to be treated fairly. We just simply want
you to look at the plan, consider whether it meets all
the requirements, and then vote yes. We have met
every obligation. There is nothing that we have not
done.

With that I would turn and say if you have any
questions regarding the engineering, Mr. Weaver is
here from Bryant Engineering. He'll be more than
happy to answer those question, and we also have the
traffic engineer who can be available by phone.

CHAIRMAN: Thank you, Mr. Overstreet.
I'm going to let the commissioners ask some questions in just a moment before we have any rebuttal.

I want to clarify a couple of things first of all.

Counsel, I assume I'm correct that the Ordinance that has been submitted to us and we are looking at from the county, is once this is publically read and approved on the second reading on the 14th day of June 2015, that includes Conditions A through I?

MS. KNIGHT: Yes.

CHAIRMAN: That is the correct one?

MS. KNIGHT: Yes. I think one that Judge Taylor referred to was the original one in 2013. This is the one that came back and was amended after Judge Crocker issued her opinion.

CHAIRMAN: This is the Ordinance that should guide our decision?

MS. KNIGHT: Yes.

CHAIRMAN: Then secondly, just for the benefit and knowledge of the audience, Mr. Howard, I think I'm correct that we have no authority whatsoever with regard to the issuing of the cut and fill permit. That's routinely done without us being able to say yeh
or nay to it; is that correct?

MR. HOWARD: That's right. The cut and fill permit is either approved by the city or county engineer, depending on the jurisdiction that the property is in.

CHAIRMAN: Want you to know that any work that has gone there, it's fairly routine the way business is done in this community, whether you like what's been done or not. We have no jurisdiction in that being issued or not issued.

At this time I would like for any of our commissioners that have questions, I think if you let us ask our questions of the two parties or Staff, then any redirect that you want to have will be more focused than if you did the redirect right now. I hope you agree with that. If you don't, that's what we're going to do anyway.

Mr. Kazlauskas.

MR. KAZLAUSKAS: Thank you, Mr. Chairman. I had one of my questions answered already.

This ordinance is enforced so my question is to Mr. Howard.

In this final development plan, Mr. Howard, does this plan meet all of the criteria that is listed in this ordinance?
MR. HOWARD: It is our opinion that, yes, it does.

MR. KAŻLAUSKAS: That's the only question I had. Thank you.

CHAIRMAN: Mr. Frey.

MR. FREY: My question would be: We did not approve it. It goes out. It's approved. Comes back to us. We now hold jurisdiction over making sure things are done as stated. It's back under --

MS. KNIGHT: That's correct. What we're here on tonight, as has been said already and Fred pointed out at the very beginning of the meeting, the rezoning was taken out of our jurisdiction.

So what is back for tonight is to review the final development plan. Make sure it's in compliance with the Zoning Ordinance, with the conditions placed on it by Fiscal Court as written, and take action on the final development plan based on that. Does that answer your question?

MR. FREY: Then to make sure that all buffers are done and all specs are hit?

MS. KNIGHT: Yes. Once the development part of it actually starts, you know, they'll have to post bond for landscaping and all of that.

MR. FREY: Normal.
MS. KNIGHT: Yes.

MR. FREY: I do just want to state, I've got to get this off. I was just stunned when I saw what happened there. After what we were told, and I don't care if it is in the record, it's legal, if it's not, I was stunned when I drove out there and saw what happened. Unfortunately, I have to vote by what is on here, but I just want to throw that out there. I was stunned when I saw what had occurred out there.

CHAIRMAN: Mr. Ball.

MR. BALL: I've got a question for Staff. Brian, am I correct in stating that even though it was originally a conceptual plan, that conceptual plan can be changed, as Mr. Frey was just kind of alluding to; then furthermore, if it were a final development plan, could that final development plan have been amended and we still end up, even if it was a final development plan, if it was one building and now it comes before us as three buildings, that can still be done by this board; is that correct?

MR. HOWARD: Sure. I would say, yes. If a final development plan is approved, there's nothing that says that it can't be amended at some point. It's pretty routine. You have a development plan approved. Something changes. They add more parking.
They add another building. They want to change the landscaping. They want to add a new sign. They amend the development plan and those changes are reflected on that amended document.

MS. KNIGHT: Just to add to that. In this particular situation, in the final development plan or even a preliminary development plan, nothing was required at the beginning. Probably in this particular situation, since that was a condition of Fiscal Court to give notice if there was an amended development plan say after this one is adopted, I think they probably have to give notice again and go through all the same process.

Judge Taylor mentioned a case, the Clark case. Often times you have rezonings that have conditions placed on them as part of the rezoning. Since this case has been active, the practice now is that rezoning has to be reapplied for and the condition amended has to be requested as part of the new rezoning. Along with this that's how that is done now.

They applied for rezoning. We approved it. Then they had a condition on here about access. So then they would have to come back and ask for another rezoning, amend the condition on the final development
plan. Does that help?

MR. BALL: It does. Thank you.

CHAIRMAN: Anyone else have a question?

Mr. Moore.

MR. MOORE: So this development plan meets all the requirements of Fiscal Court?

MR. HOWARD: Yes, we believe it does.

MS. KNIGHT: You all are tasked, I think we talked about this. Applying the Ordinance as written and the Zoning Ordinance as written, Fiscal Court's condition written, you've been presented with evidence as to why they one side feels it doesn't comply even with what is written, and the other side has the opinion that they agree as written.

You all still have to give weight to all of that evidence and apply it to make your decision. I just wanted to put that out there.

CHAIRMAN: Thank you.

Any other commissioners have any other questions?

MR. MOORE: Mr. Chairman, one more. As I look at F, it talks about, which I think was mentioned. At the edge of the applicant's rear parking lot, install a dual road 5 foot pine trees, a fence and so forth. There is no parking lot there. So that's behind that
last building?

MR. HOWARD: Right. That's the way the plan shows. That there is a parking lot there in the rear, and then a building, and to the rear of the building would be the fence. It would be our opinion that that meets the intent of what was established. Instead of being a parking lot, there's a fence. The plan, you know, it's one of those things the plan could potentially be amended to shift the building forward and have parking to the rear of the building and potentially address that. There's several ways that that might be looked at.

CHAIRMAN: Any other questions from the Commissioners right now?

MR. BALL: I've got a question of the Engineering Staff here. It's been said multiple times that it's a dangerous situation.

David, can you speak a little bit to the slope coming off of Mr. Taylor's property? What slope that truly is.

MS. KNIGHT: State your name for the record.

MR. WEAVER: David Weaver.

(DAVID WEAVER SWORN BY ATTORNEY.)

MR. WEAVER: We've got a 2 to 1 slope in the back, in the very back corner where it's the steepest.
MR. BALL: That's typical of a lot of subdivisions throughout Daviess County; is that correct?

MR. WEAVER: It's a typical slope. It's not a mowable slope, but it's a maintainable slope.

MR. BALL: Thank you.

CHAIRMAN: Any other questions?

(NO RESPONSE)

CHAIRMAN: Then I will entertain if either party wants to make any additional comments or rebuttal. I would ask you to please do not repeat what you've already told us. We try to listen carefully.

MR. REYNOLDS: I haven't spoken tonight.

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

He represents one of the parties.

CHAIRMAN: That's fine.

MR. REYNOLDS: I represent Mrs. Taylor.

With all due respect, I think Ms. Knight kind of covered the issue here. Ms. Knight said you folks have heard two different sides. You get to decide if it meets the conditions. Mr. Frey and Mr. Moore asked questions. What does it say? Not what did it mean to say? What did it say? It says that they will put a
fence at the rear of the parking lot. Not they've
amended. Not to move a building. If they don't have
it, they haven't complied.

For whatever reason you feel about this
matter, either good or bad. "F" tells you the
ordinance said there must be the fence at the rear of
the parking lot. The best in their favor argument is
the last parking spot abut the front of the big
building. That would then at the best for them,
regardless of the first conceptual drawing, that has
to be the rear of the parking lot. I don't think they
want to put a fence in front of that large building.
"F" says they have to. I don't see any other way than
to interpret that. With all due respect to
Mr. Howard, it doesn't comply. This isn't, it almost
complies. This isn't, well, I think the intent. At
the time of the conceptual drawing, let's go back to
that for a second because you brought it up.

You put up the conceptual drawing the parking
lot ended about halfway back and the Ordinance was to
put a fence there. Okay. We don't want to look at
the conceptual drawing because that can change. You
what it doesn't change? The Ordinance doesn't change.
A fence across at the back of the parking lot.
They're not offering that folks. It's not in there.
Also what doesn't change, 16-2. They can argue all they want to. It says in black and white, no grading, stripping, excavation, filling or any other disturbance of the natural ground cover before you approve the development plan. It says it. Permit absolute. County engineer approves it. Well, it doesn't mean, this doesn't still hold water though, right? This still works. This body still enforces this.

The buffer. 1.3 requires the buffer between non-compatible uses is required. It's not optional. It's not subject to interpretation. "To protect, preserve, promote the aesthetic appeal, character and value of the surrounding neighborhoods." If any one of you believes that what's in front of you tonight does not meet that, you're justifying denial. Thank you.

CHAIRMAN: Mr. Hayden, do you want to make some comments?

MS. KNIGHT: State your name.

MR. HAYDEN: Matt Hayden.

(MATT HAYDEN SWORN BY ATTORNEY.)

MR. HAYDEN: I guess back to the bonding question, so maybe if this does proceed at your all's discretion.
One thing, I think, typical bonding in the development side of things is a landscaping bond. I think conditions that have been put on by Fiscal Court and others regardless of the dates. I mean you guys have the right ones in front of you. I don't think I do so I won't go through my list. My bigger fear is that something is going to happen here, whether it's today or in the future. What I would like to hopefully see is that a bond could be put up that ensures that the conditions are met and possibly implemented and constructed properly before the certificate of occupancy. What I mean by that is how do we know the dumpster is going to sit there and not get the screening around it. Three of the buildings are open. The tenants are open. We haven't got the fence or the trees. The landscaping gets taken care of, but it's the other conditions that where do we go if that doesn't happen? Whether it takes an extra year or two days? I think he has good intentions, but this isn't a normal condition that you all normally govern on. So I'm just curious as to what protocol could be put in place to ensure the neighbors that this can get done and everybody gets at least what Fiscal Court intended to be delivered.

CHAIRMAN: Thank you, Mr. Hayden.
MR. HOWARD: Sure. On the Ordinance that Fiscal Court pass it says, "The applicant shall comply with all other perimeter buffers requirements of the Zoning Ordinance. Applicant shall complete all perimeter fencing before Planning Commission may issue a Certificate of Occupancy. Applicant shall complete all other screening and buffers within six months of occupancy."

So they did address in some capacity. Before Jim could issue the CO, they would have to have fencing in place. They could post surety. If the rest of the screening is not in place, they could post surety, but it would be required to be in place within six months. That's something we would have to monitor and follow up on.

CHAIRMAN: Mr. Hayden.

MR. HAYDEN: The typical landscape bond, I'm not sure if it catches the dumpster enclosure, etcetera. I guess what I'm saying is, so we're not back in here or sitting in your office saying, that's not out there. Do you have money escrowed to go do it? I'm just simply asking, could that language be expanded to have bond posted to ensure that we maybe keep from having additional heartburn and litigation
on what we're hoping at least happens to the surround
property. Again, I think some of it the intent is
there, but the safeguard to ensure that it gets done
could be handled through a bond or elaborating the
words to cover that.

MS. KNIGHT: I don't know that we have the
authority to add additional bonding requirements other
than what's already required in the Zoning Ordinance.
I think with any issue like this, if it wasn't
complied with, I think the Zoning Administrator
probably has the authority to issue a Notice of
Violation and go through that process. That would
take complaints from the neighbors and whatever to
alert Jim to that. That's one possibility that is out
there for protection.

CHAIRMAN: Yes, Mr. Kazlauskas.

MR. KAZLAUSKAS: Going back to 16-2, this cut
and fill permit. We've listened to an awful lot
tonight so refresh me.

The permit was issued, but the work wasn't
supposed to begin until when? Was there a date?
I mean once a permit issued is there a date when
they're supposed to start? Is that on the cut and
fill permit?

MS. KNIGHT: That itself is --
MR. KAZLAUSKAS: I believe you mentioned that.

JUDGE TAYLOR: Yes. I'll speak to that.

CHAIRMAN: Let us let the Staff respond first, please.

MR. HOWARD: Basically what they're arguing is in 16-2 it says that if a development plan is required, the cut and fill permit should not be issued ahead of time. The cut and fill permit was issued and they did work based upon that, and the development plan hasn't been approved yet. That's their argument.

MS. KNIGHT: We've dealt with this issue in litigation. We responded in the litigation to that issue. It was raised in the Motion that was recently heard.

That is, I mean that is common practice now. The cut fill permit was amended in the Ordinance in 2013. To give that to the county and city engineer to take out of Planning Commission at that level.

16-2 was not amended at that time. We don't know if that was just an unintentional omission. Maybe. Maybe not. If you read all of 16-2, it talks about that the risk is on the developer to proceed without getting a final development plan. I think that's for some reason we're talking about now. If you guys look at the final development plan, the
access, the ingress/egress access, does it work where
it is, you're going to have to put it somewhere else
and they've already built up 15 foot of dirt or
whatever and they have to come back and remove it so
that it would comply with the final development plan.

The county engineer and city engineer are
concerned with soil erosion that's mentioned in 16-2.
Once that is approved, the final development plan, the
actual development location of the building, all of
that, that's where it says the developer proceeds at
their own risk.

Even though that is common practice, and it
still is, compliant with the intent of the Zoning
Ordinance, and that's how we've addressed that.

CHAIRMAN: Yes, Judge Taylor.

JUDGE TAYLOR: Mr. Chairman, in response to
16-2 I have one last exhibit. This is an affidavit
because I was concerned. I'm the one who made the
issue.

I went to Brian's office and Brian didn't
really know what I was talking about. I was pointing
out the Ordinance and he indicated that it was out of
his hands. He said it had to be done, it was done by
engineer because of the amendment to Article 3 in
2013.
Well, this Commission recommended the amendment of Article 3 to the Fiscal Court and that was to basically to take the burden off of the executive director of signing these excavation permits. It was part of, that was the whole purpose for it.

As you'll read in Mr. Noffsinger's affidavit, there was never any intent to amend 16-2. It's never been a common practice to approve that. If you look at the other parts of Section 16, they require one of the conditions and it's own -- if you look at the notes on this particular plan, I don't have a big plan.

If you look at the notes, and this is on the development plan, and this is Number 32. "A cut and fill permit is required when cutting or filling is proposed to be perform in the proposed development."

That's a condition in 16 that has to go on there.

I done an open record check over there last week and most of everything I saw, it wasn't common practice of what happened in this development. All of the checklist and everything done by the county engineer always occurred before the development plan was ever entered, but he would not ever sign off on anything until after the development plan was
approved. I looked at numerous files over there and
he had checked off and then the excavation permit came
last. That's common sense. Just look at these
documents that you have. It's common sense. You
don't excavate until you have a development plan.

Now, I confronted the engineer on December 9th
with this problem when he finally would talk to me.
His explanation to me was at that time, didn't say
common practice. Didn't say anything. He told me
explicitly, he told me he didn't know that Ordinance
existed. That's what he told me.

Now the county came back later and said in a
Pleading over in Court and with all due regard to Ms.
Knight, that issue was not resolved by the judge when
I raised an emergency Motion. I threw that in there.
She didn't address that. She addressed the 60.02
Motion, which was to set aside the proceeding because
of irregularity that occurred that we didn't find
about until after the judgment came down.

In any event, as far as what this excavation
permit does, I guess it was October 16th he issued it.
October 19th they started, and they were done by
October 20th something. He didn't raise this
development plan in to anybody's attention until
November 19th. 16-2 is a law. It's an Ordinance.
Courts recognize these Ordinances as law.

Section 5.5 of your Ordinances have penalties for violating these Ordinances that you can be convicted of. If you look at the maximum penalty for violating Ordinances today, from the date that was issued if it's a violation it'd be about 58, $57,000 in penalties maximum that could be assessed for violating.

I was looking through the laws and what the county attorney was saying is that it became common practice in Daviess County to violate the law. I submit to you that's not common practice in Daviess County.

That's going to have to be addressed in another form frankly. They excavated when they shouldn't have. I don't know why he signed off on it. The engineer may have persuaded him to do it. I don't know. I'm going to find out probably down the road, but I don't know right now.

He kept saying I lost every time. I didn't say a word other than acknowledge that I had an agreement before Planning and Zoning. Didn't lose that. You all voted down against nothing.

With Fiscal Court, all they did was talk about the trees and the buffering for both meetings. That's
all they talked about. I didn't say anything because
they knew there had to be trees and buffers. They
knew about the agreement. It was part of the record.
It was Exhibit B that came over.

We went to Court. The only reason I went to
Court the first time was because Fiscal Court left the
buffer out and the Judge put it back in. So I was
proceeding along until October, assuming this
gentleman was going to honor his agreement and leave
the trees and buffer. Put his fence up like he said
he was going to do, we wouldn't be here tonight. You
would already have everything done. But no, he didn't
do that. Just want to clarify that.

I do want to point out, they argued to a Judge
on 60.02, and that is a different issue than what's
before any of us tonight. It looks top the
undermining of the whole system, of the court system,
and this system of misinformation. That would have to
be addressed on the appeal.

They argued and what they said to you tonight,
they had to take the trees out to give me my buffer.
How silly, I mean just common sense, they had to take
the trees out so they could give me my 20 foot buffer.
Go in and cut the land down 30 feet. The judge said,
commenting on that, they keep wanting to bring that
up. She said, that was disingenuous at best to say
that that's the reason that buffer disappeared and
insinuated that there's a civil recourse there that
I'm going to have to pursue, judgment, which we'll
just have to address. I just wanted to clarify that
for the record.

CHAIRMAN: Thank you, Judge.

Mr. Stevenson.

MR. STEVENSON: I would like to ask questions
of Brian.

Brian, did I understand to you say that Fiscal
Court Ordinance says that a fence is to be at the back
parking lot, but you now say you all can move it to
the back of the third building; is that correct?

MR. HOWARD: I stated that we feel that the
requirements that were established by Fiscal Court had
been met on this plan, yes.

MR. STEVENSON: Fiscal Court says it's the
back of the parking lot. The parking lot isn't behind
of that third building so how is Planning and Zoning
going to change that? We're talking about the law and
Mr. Overstreet is talking about they've complied.

Well, Fiscal Court issued an Ordinance. It's still in
place. It hasn't been amended. How are you going to
amend it without going to ask Fiscal Court to amend
it? The fence has to be at the back of the parking
lot in front of the third building. I don't know how
you all have the authority to change that. Do you?

MS. KNIGHT: I might address that.

Parking lots just like the buffer including
the trees is not defined in here. I think in the rear
of the parking lot it doesn't say it has to be the
very last parking space like Mr. Reynolds --

MR. STEVENSON: It says the edge of the
parking lot.

MS. KNIGHT: Sure. I'm saying the last
parking space.

MR. STEVENSON: Well, the edge of the parking
lot though is not behind the building. Let's lose
some common sense.

MS. KNIGHT: I'm just saying those are the
issues. Our hands are tied as to interpreting --

MR. STEVENSON: I don't think your hands are
tied. Not on that issue.

MS. KNIGHT: What the Court said, and what
Fiscal Court said, and what Judge Crocker has said.

MR. STEVENSON: Well, I don't think the hands
are tied on that issue. He hasn't complied on the
developmental plan showing that particular fence.
It's not there. Now you all say you can change it.
MS. KNIGHT: I don't know that he said it can be changed. I think he was saying hypothetically if this were moved, it would be here. I don't think he --

MR. STEVENSON: You're saying you can move the -- Fiscal Court saying the edge of the back parking lot. Now, you all are saying, well, since they put in a third building, we can say it's at the back of that third building.

MS. KNIGHT: Rear of the parking lot behind the third building is what he said.

MR. STEVENSON: If we're going to follow the rules and the words, that's not what the Ordinance says, and that's now what they meant.

MS. KNIGHT: That's what this Commission is to do tonight. That's what the Commission has to do tonight. Figuring all that out and making a ruling on it.

MR. STEVENSON: My objection is it's not on there. The words say what they say in the ordinance and it's a glitch that hasn't been met and wasn't thought of because of none of that development was thought of up until recently. Nobody. Everybody thought it was going to be one building.

How do you plant trees -- I'm going to ask
this of the engineer --

    CHAIRMAN: Mr. Stevenson, you ask that of me. The engineer may or may not decide to answer. It's his right.

    MR. STEVENSON: I understood that the engineer said that's the back, the slope next to the Taylors is a 2 to 1 slope?

    CHAIRMAN: Mr. Weaver, would you like to respond?

    MR. WEAVER: Yes, that's what I stated.

    MR. STEVENSON: In other words, what do you mean by 2 to 1 slope?

    CHAIRMAN: Back up here to me.

    MR. STEVENSON: What does he mean by a two to one slope?

    CHAIRMAN: We have an orderly meeting. We don't get into issues back and forth. That's not in the interest of this public or the interest of this board. I appreciate it, and I know what you're saying.

    MR. STEVENSON: I would like to know what a two to one slope means.

    CHAIRMAN: Mr. Weaver.

    MR. WEAVER: A two to one slope is two horizontal and one vertical.
CHAIRMAN: Could you maybe kind of show that with your hands or something?

MR. WEAVER: Two foot horizontal and one foot vertical. So that would be a two to three slope.

CHAIRMAN: Which would be 30 degree angle, 45 degree angle?

MR. WEAVER: I'm not sure of the angle right now. It's not a 45 degree. It's not quite -- it's 30 something. If I had to guess, I'd say probably 37. That's common. Two to one slopes are common practices.

I can also speak to the parking plot.

MR. STEVENSON: I didn't ask him that question, Mr. Chairman.

CHAIRMAN: Mr. Overstreet may ask you that question, Mr. Weaver.

Do you have any further questions, Mr. Stevenson?

MR. STEVENSON: Yes. Ask Mr. Weaver, has he ever been out there and seen that 2 to 1 slope next to Mr. Taylor?

CHAIRMAN: Mr. Weaver, have you seen the site?

MR. WEAVER: Yes, I've seen the site.

MR. STEVENSON: I question that to be a two to one slope.
Ask Mr. Weaver this: How do you plant trees, a dual row of trees on a 2 to 1 slope along with a stockade fence?

CHAIRMAN: Mr. Weaver, I don't know if that's your area of expertise or not. Can you respond to that?

MR. WEAVER: Well, I can respond by saying that trees clearly grow on two to one slopes. I assume they can be planted on two to one slopes.

MR. STEVENSON: I'm sorry, I didn't quite hear all of that.

CHAIRMAN: He said the trees grow on two to one slopes. That he assumes that you can plant them on two to one slopes with no problem.

MR. STEVENSON: I would like to also know when the final developmental plan was prepared by his engineering firm. Was it July of last year?

CHAIRMAN: Mr. Weaver, do you recall the date when the final development plan was completed?

MR. WEAVER: Seems like we've been working on it for a year so I'm not sure exactly when the date was. I can tell you the date when -- we were getting signed off by the utility company in November of 2015. So that would be towards the end. That's typically the last process.
CHAIRMAN: Mr. Stevenson, do you have any further questions?

MR. STEVENSON: Yes, sir.

MR. FREY: Just a quick point of clarification. The 2 to 1 slope is 26.6 degrees.

CHAIRMAN: Thank you.

MR. FREY: Everything is on Google.

MR. STEVENSON: Mr. Chairman, in front of Fiscal Court Mr. Overstreet commented that the final developmental plan had been ready since July 13, 2013. That's what he stated in court. So I would like --
the final developmental plan had already been prepared. Now I think this gentleman said it's just recently.

CHAIRMAN: Mr. Overstreet, would you like to respond to that?

MR. OVERSTREET: First of all, I may have mistaken. I don't have any control over the final developmental plan. I'm not an engineer. Neither is John. Obviously he's asking about two feet, one feet.
If I said that, obviously I was mistaken, but I don't have any part in final development plan. I get e-mails about progress and that sort of thing, but that's only been recently as we got closer to this point. If he can tell me exactly where it's at or
show it to me.

MR. STEVENSON: Yes. It's from Fiscal Court meeting of July 16th, 2013. You want me to quote it?

CHAIRMAN: Yes.

MR. OVERSTREET: Again, I may have misstated something.

MR. STEVENSON: Mr. Overstreet stated, "There is a lot of allegations about traffic studies and developmental plans. He was not required to submit those. One of the conditions of approval was that he submit a development plan. He has that ready and is prepared to submit that assuming that the zoning is permitted by this Court. A traffic study has been complete."

MR. OVERSTREET: Actually Mr. Lambert said he can address that.

CHAIRMAN: I would rather you do it.

MR. OVERSTREET: By way of explanation, what I was referring to, because I was obviously listening to my client at that time as well, that was when the site development plan was in the works. It was still conceptual, which they omitted that work throughout these proceedings with the one building thing. If you notice that all says conceptual. This is the final development plan. Until it's approved here, it's not
a final development plan period. I may have left the
word "site" out. Maybe it was omitted. I don't know.
That is the explanation.

CHAIRMAN: Mr. Stevenson.

MR. STEVENSON: The transcript speaks for
itself and it doesn't include site. It says final.
It's my understanding that the cut and fill
permit was issued by the county engineer contrary to
16-2, and 16-2 has never been amended; is that right?

CHAIRMAN: Mr. Howard.

MR. HOWARD: It is what it states right now.

MR. STEVENSON: But it's common practice yet
it's not common practice. We wouldn't be here if the
rules were followed, but the rules haven't been
followed. I actually agree with Mr. Overstreet. Yes,
a lot of this wouldn't have happened had the rules
been followed.

Mr. Overstreet made the comment, I take
exception to it and my neighbors should too. He said
we're just trying to double up the cost with fencing
and double pine trees just to cause Mr. Lambert more
money. Well, these people aren't out, this hasn't
been free for them either. They're been fighting this
tooth and nail since day one. They've expended money
and time and energy. Not just to double up or cost
him more money.

You know, I go back to objectives of Planning and Zoning. It refers to a properly buffered property. There is no way in hell that you can properly buffer this because it sits down in a hole and these house are up on a hill. You can't do it unless you make him bring back the dirt like Mr. Peabody hauled off the coal. He can bring back the dirt. He took it away. Bring back 20 foot of dirt. Build it up continuous on the same elevation. That would help a heck of a lot. Then let him plant his five foot pine trees double rows, but make him bring back the dirt. He took it under a cut and fill that was in contrary to 16-2 under common practice.

You know folks, somebody is not following the rules here. Somebody needs to. If not this time, maybe next time, but the rules haven't been followed precisely. They're lax and it's time to tighten it. I would say, first of all, make him bring back the dirt. He hasn't followed the developmental plan. The developmental plan is skewed. I don't care if you talk about moving that fence back to the back behind that third building all you want to, but the words of the Ordinance are specific. Let him go amend the ordinance; otherwise, deny this developmental plan.
Thank you.

CHAIRMAN: Thank you, Mr. Stevenson.

Mr. Overstreet, do you wish to say anything else before we entertain a motion?

MR. OVERSTREET: Yes, if I may. I would like to call Mr. Weaver back up and ask him a couple of questions.

CHAIRMAN: Mr. Weaver.

MR. OVERSTREET: If I can figure out this contraption. I'm going to try to get back to the original site development plan.

Mr. Weaver, if would you, could you explain for the members where the parking lot ends, from an engineering standpoint, on this particular diagram and maybe describe to them, I know you have the paper version and maybe we can take it up and even show it to them.

MR. WEAVER: We've always considered the parking lot as Planning and Zoning does, what is called the vehicle use area which would be anywhere that's intended for vehicles to drive. In our particular development plan, we have drives along both sides of the rear building. Actually effectively from a technical standpoint the southernmost part of the parking lot extends beyond the building on the
southeast side. That drive goes back behind the
building. Technically the fence is behind the limits
of the packing lot.

Now, the definition that we typically use, not
places to park cars, but vehicle use area is parking
lot.

CHAIRMAN: Mr. Weaver, is the purpose of that
driveway to service the building, the shop in the
building where it can take the product rather than run
it through the front door?

MR. WEAVER: Yes.

CHAIRMAN: Thank you for the help.

Mr. Kazlauskas.

MR. KAZLAUSKAS: I don't know how much room is
back there, if you park cars back there. Will you be
able to drive through that?

MR. WEAVER: That strip is wide enough to park
a car back there if you wanted to, but that's not the
intended use.

MR. KAZLAUSKAS: If a car was parked there,
could you drive around the back of the building?

MR. WEAVER: No. You cannot drive around the
back of the building.

MR. KAZLAUSKAS: So it's a drive. Not parking
lot?
MR. WEAVER: That's correct. The definition that we use on a regular basis, that area of pavement is considered part of the vehicular use area which part of the parking lot, in my opinion.

CHAIRMAN: Do you have anything else, Mr. Overstreet?

MR. OVERSTREET: Mr. Weaver, if you could, there has been a lot of discussion about Section 16-2 of the Ordinance and the issuance of the cut and fill permit. Would you explain your experience with regard to the issuance of the cut/fill permits in a situation such as this?

MR. WEAVER: It's quite common practice to obtain cut/fill permit in advance of obtaining an approval of a final development plan. A lot of times final development plans are very timely to get. The utility sign-offs can log down the process. Developers are willing to take the risk of moving dirt knowing that something might change during the development plan process. We have obtained cut/fill permits on a regular basis for longer before the final development plan is approved.

CHAIRMAN: Thank you.

MR. OVERSTREET: Relative to the cut/fill
permit that was issued in this particular case, when
can you start moving dirt once that is issued?

MR. WEAVER: Once a cut/fill permit is issued,
you can start moving dirt immediately. Part of the
cut/fill permit process is obtaining the State erosion
control permit. So all of that is in place in advance
of the cut/fill permit.

MR. OVERSTREET: Let me switch gears for a
moment. As far as plants and things of that nature
are required, are there already in place any bond
requirements that Lamco would have to meet?

MR. WEAVER: The typical process is when
Mr. Lambert applies for a building permit he'll have
to post the landscape bonds, which typical practice
and he understands that.

MR. OVERSTREET: Let me ask you: Throughout
the process of developing and coming to this point the
with final development plan, the proposed final
development plan, would you explain for the members
what you coordinated with or what issues you tried to
handle along the way with planning and zoning or other
members or entities that are required to sign off on
the final development plan?

MR. WEAVER: Yes. During the process of
preparing the plan in advance of putting together all
the grading and drainage, I did go in and meet with Planning Staff and delivered a draft plan that they could review to ensure that we were interpreting the requirements for the screening and the buffering. That we were addressing all of that. We felt that important that we talk about that issue up front.

I might also add to clarify another statement on the cut/fill permit. After we obtain a cut/fill permit, as a courtesy we did make Planning and Zoning aware of that.

MR. OVERSTREET: Let me ask you with regard to the cut/fill permit, once that is issued are there any follow-up inspections that are performed?

MR. WEAVER: Yes. It's not the cut/fill permit that requires it, but it's the State level permit. The NOI requires an erosion control inspection take place on a weekly basis. Those have been performed by the contractor and the county inspector has been monitoring those.

MR. OVERSTREET: To the best of your knowledge have there been any issues that have arisen?

MR. WEAVER: I believe what they -- this is probably hearsay. My understanding from Mr. Lambert is that he spoke with the county engineer after they had rainfall we recently had and he was actually
impressed that the erosion was kept in check with as

hard as it rained.

MR. OVERSTREET: As far as the parking lot is

concerned, I noticed that the line of trees is

straight. Could you explain how the actual layout of

the fence and the trees was obtained and diagrammed?

Across the back of the building, because if

you take their argument, the parking lot is going to

vary all the way across the property; and therefore

the fence should go like this and the trees should

jaggedly go across the back of the property as well.

I notice on your site diagram you have the

spot marked as you go down the southernmost corner and

then there's a dotted line. Is that just a natural

extension for purposes of determining the parking area

or parking lot so-to-speak and then for purposes of

placement of the fence?

MR. WEAVER: Well, on the southern side the

trees aren't in a straight line. There are two rows

of trees. So effectively they kind, it almost

meanders the effect that you get there.

I'm sorry, I'm still not understanding your

question.

MR. OVERSTREET: Across the back of the

property facing the Taylors, that fence is straight.
1 I know the trees are offset.
2 
3 MR. WEAVER: Yes.
4 
5 MR. OVERSTREET: So what line is utilized and why in order to get a placement of that fence?
6 
7 MR. WEAVER: Oh, the 20 foot buffer. We complied with our interpretation of what was meant by the 20 foot buffer.
8 
9 MR. OVERSTREET: Let me just ask you: Based on the information that you've been provided and your experience as an engineer, did you find anywhere in any of the Fiscal Court's Ordinance subject to the amendments made were required that the existing trees be left in place?
10 
11 MR. WEAVER: No, we did not. I guess our interpretation was the way the language spoke about planting trees with the clarification that there would be new trees. The new trees to me means that the old trees were going to go away. We had to remove the trees to get the site graded.
12 
13 MR. OVERSTREET: As proposed, and I mentioned this earlier. Can you tell me how many trees are actually required under the ordinance and under the requirements of Fiscal Court?
14 
15 MR. WEAVER: The ordinance from Fiscal Court doesn't actually address what we call interior trees.
It only addresses perimeter trees, which we have both requirements. So from a zoning ordinance standpoint, we have to address the interior trees, which they require interior trees based on the vehicle use area is five and we are proposing five.

That does not account for additional trees that Mr. Lambert is going to be planting along his sidewalk in front of the front two buildings.

As far as the perimeter trees, our required number of perimeter trees on our site it says 9. I'm sorry, is 19. And the proposed number of perimeter trees is 28.

MR. OVERSTREET: Nineteen is what would have been required by strict compliance with Fiscal Court's Ordinance as issued?

MR. WEAVER: Yes, I believe so.

MR. OVERSTREET: So in addition to that, you and Mr. Lambert, according to this development plan, has proposed an additional nine plantings, in addition to those shrubs and trees that you said may be planted along the sidewalks in front of the front two buildings?

MR. WEAVER: That's correct.

MR. OVERSTREET: Just in closing, we would just simply ask that you rule on the development plan.
Does the final development plan meet the requirements?

We're not here to rezone. We're not here to rehash.

I know there's been a multitude of exhibits thrown in here. I would submit to you they have nothing to do with this at this point, other than I'm sure proposed future litigation.

Mr. Taylor wants you to believe that this property is just completely ruined, but what he hasn't told you is that he's actually trying to obtain this property through adverse possession at the moment. We've recently been served with a new lawsuit on that. So apparently this property must not be all that bad if he wants the side of it going down by his house.

We just simply want to be treated like everyone else. We want to be able to come before this body, show you that we've have complied. Show you in some instances that we've actually gone over and above what was required. Planning and Zoning concurred that we have come employed. The State concurred that we've complied with all the requirements. We're just simply asking that at this point that you all vote and that you approve the final development plan. Any subsequent issues that they may want to raise I feel certain will be raised, but that's not for this body.

The decision of this body should not be based upon the
vail threats that have been lobbied around inside the
room. They're going to do what they're going to do.
We're simply asking you to do what you are required to
do, which is consider the final development plan in
and of itself on the merits without all the extraneous
information, without all extraneous emotion. That's
not what zoning is about. Obviously any time
decisions are made, somebody doesn't like it. We all
have to deal with that in an adult way.

If they want to talk about the money they've
expended, two of the three lawyers live in the
neighborhood. I would hope that they're not charging
their neighbors if that's the fact. Mr. Lambert and
his wife, they're definitely paying for their fair.
Unfortunately, they just continually get hit time
after time after time. We're simply asking for this
body to do what's fair, to do what's right, to do
what's compelled, to do what is required under the
Ordinance. We have met the obligations. There's no
question whatsoever about that.

Their interpretation of the Ordinance, they're
not engineers. They're not on Planning and Zoning.
They've submitted affidavits from friends who were
formally with Planning and Zoning. He hasn't been
part of the process. He hasn't been part of the total
review. Now to bring this in, it's just another red-herring.

I would simply ask that you end the fishing trip now and you go ahead and approve the final development plan. Thank you very much for your attention.

CHAIRMAN: Thank you, Mr. Overstreet.

MR. REYNOLDS: Very briefly I want to point out. Mr. Noffsinger, I believe, still holds a lot of respect as a long time person involved in this body. His Affidavit clearly states, and I want to also point out, the engineer when he said that he normally gets these permits didn't say anything about over an acre. Just that, I get them sometimes.

Mr. Noffsinger, who has I hope a lot more weight in this body than the engineer hired by the applicant, was never his intention to allow it to happen. It's right there in his affidavit.

Now, if one were to believe it is common practice, you've read 16-2 it says what it says. Not supposed to be doing it. It's an Ordinance. It's a law. If we had some of Owensboro's finest here right high they would probably say, people think they can do certain things and it's common practice. The third car in line runs a red light in Owensboro. Everybody
knows that. It's common practice. Doesn't make it right. Is it against the law to run a red light? Can you get a ticket for running a red light? Well, everybody else does it. Doesn't make it right.

What we know here is they violated 16-2. They have a permit. They violated it. You can see the picture.

What they want you to also do is say, we all need to act in an adult way.

We're going to call the parking lot the service area. Now, I am not an engineer, but I know that when the people who put that together and Al Mattingly's signature says, the edge of the applicant's rear parking lot. I know what a parking lot is because it's got the word "park" in it. It's not a driveway. It's not an access road. It's a parking lot. His engineer says, no, but you can park a car there and still get through there. The intent is the service is in the back so they're clearly going to park cars there.

I just say if you're going to recognize common practice on this and violation of obvious Ordinance, where does it end? This body has an Ordinance in front of it that says they have to put the fence at the rear of the parking lot. Not somewhere in the
next county at the rear of it. Edge of the parking lot. Specific. They call it a parking lot. Not anywhere on the asphalt, but parking lot.

I think you make the motion of your finding based upon that law and ask you to deny the permit, deny the development plan.

CHAIRMAN: Thank you.

MR. HENDRIX: May I speak?

CHAIRMAN: You may, sir. Go to the microphone.

MR. HENDRIX: My name is David Hendrix. I'm a resident of Woodlands. I'm having a little trouble speaking because of throat problems so bear with me. (DAVID HENDRIX SWORN BY ATTORNEY.)

MR. HENDRIX: Been a lot of discussion tonight. To me this whole issue centers around buffering. Now, how many people here have actually been to the site and looked at it? Please raise your hand.

Has anyone from the Planning Commission been?

Mr. Howard, have you been to the site?

MR. HOWARD: Yes.

MS. KNIGHT: Sir, we're not witnesses up here.

I understand your point.

MR. HENDRIX: I need to know that too because
if anyone has been to that site you would recognize
that it is not buffered.

Now, the whole purpose of this Planning
Commission as we talked about included buffering
neighborhoods from commercial. A doer is one who
does. A buffer is one who buffs. There is not
buffering there. Buffering would include the original
land with the original trees. If you think there is
buffering there, then Mr. Taylor should not be able to
see the property, commercial property infringing. The
commercial property people shouldn't be able to see
Mr. Taylor's property. To me that's buffering. So
one member was shocked when he went out and looked at
the site. What is adequate buffering? What is
buffer? It's a matter of opinion is what we've been
told. No one really knows the definition of
buffering. I think we do. I think they know it
because when they walk out and they see it's not
there, then they know it's not buffered. I think that
most of you, if this property is backing up to your
property, would know it's not buffered.

Now, there was some mention about Kohl's, some
mention about Menard's. If you look at Kohl's, Kohl's
does not back up to a residential single-family
neighborhood. Throw it out.
You want to talk about Menard's, you go look at that 15 or 20 foot fence around it and look at acreage between it and the surrounding neighborhood. That's buffered.

In my mind, the wording is fair. To be buffered. To be protected. I can go home at night once I get past this development and I'll be in my residential neighborhood. Mr. Taylor can't do that. He can't get away from this property. Developed on 54, but the problem is it's right in Mr. Taylor's face and that's what is happening right here. I think when you vote you should go look at that property to say, you want it abutting up against your residence just like Mr. Taylor and just like the neighborhood people.

I apologize for my speaking. I have a sore throat. It's dry. I hope you get the gist of it.

Thank you.

CHAIRMAN: Thank you, sir.

At this point in time the chair will entertain a motion.

Mr. Kazlauskas.

MR. KAZLAUSKAS: Mr. Chairman, it's been a long night everybody so bear with me for just a few minutes.

I want to regress for a little before I make a
motion because I want everybody to understand why I'm
making this motion.

I have a concept drawing here. This is what
was presented to us I believe at the first hearing. I
believe this is what was presented at Fiscal Court. I
would I believe, common sense tells me to believe,
that with Fiscal Court looked at this conceptual
drawing, and we all know what conceptual drawings are.
They're not in concrete. I would believe where it
says, no conceptual use at this time, and a decision
was made. Then an Ordinance came out. This is the
law. This is what we've got to go by. It's gone
through the courts. Been appealed. Come full circle
now and it comes back to us. So the decisions we make
has to be based on this.

We have a development plan that was presented
and the Staff tells us that in the Staff's opinion
that it meets the criteria in this ordinance of Fiscal
Court. I've sat here and I've listened to a lot	onight and I've got some questions.

I tell you what, our Staff does one heck of a
job. I was a policeman for a number of years and was
faced with some problems, but I don't think I face the
problems that Planning and Zoning Staff face. So I
commend them for the work they do and for the work
they do for us. They're fine people and they do great work, but I've got some concerns.

It says that the fence is going to be at the back of the parking lot. According to this the drive is around that building and that fence is going to have to be in front of that building, if that building is constructed. I don't how you can put a fence at the back of it. If they put a fence on the parking lot, it's going to be in front of this building, of this proposed final development plan. So I have questions about that.

I also have questions about 16-2 cut and fill permit. Being in law enforcement for most of my life that concerned me. Where is the police officer that backs us up? I think I heard somebody say there's a fine or penalty involved. Is that civil? Is that criminal? I don't know. I don't want to go into that right now.

Then the third thing that really concerns me after looking at the photos is the encroachment on the neighborhood. Going back to what was originally submitted, I think most people thought they were facing this. Not facing this. Also common sense tells me after that wooded area that's been cut down, if you put an 8 foot fence, continuous fence in there,
what's that going to do? What purpose is that going
to serve? Why have a fence now all of that is cut
down. Doesn't make sense to me. It just doesn't make
sense to me.

Based on those three things, the parking lot,
you're going to put the fence in front of the building
there, which doesn't make sense, a Violation of 16-2,
I don't know who dropped the ball on that, an
encroachment on the neighborhood, I make a motion that
the final development plan be denied.

CHAIRMAN: Motion by Mr. Kazlauskas. Do we
have a second?

MR. MOORE: Second.

CHAIRMAN: Second by Mr. Moore. Questions or
concerns from the board?

MR. BALL: I guess I have some questions or
concerns here, Fred.

CHAIRMAN: Certainly.

MR. BALL: The cut and fill permit continues
to come up. I guess from my perspective, and I guess
I look to counsel to see if I'm correct or not. I
don't really understand what bearing that plays on the
zoning itself. It continues to come up, and it may
very well be an issue, but I don't see that it has any
bearing on us at this particular point in time. Can
you help me with that?

CHAIRMAN: I'll let counsel address that.

MS. KNIGHT: I think those penalties are listed in the statute for violation of the zoning statute. In our Ordinance there is not, 16-2 does not say, if you do not follow this your final development plan will be denied. There's nothing in 16-2 that says that.

There are other sections in here when variances and things are brought before the Board of Adjustment there are specific. Says, what are the actions of the landowner willful. If so, that is one fact for denial specifically. We don't have anything like that here tonight.

Mr. Reeves, you mentioned at the very beginning cut/fill permits, that is not our office. That is not our office. I don't know if that helps answer your questions.

MR. BALL: I think so. I have another question too, Fred.

CHAIRMAN: Certainly.

MR. BALL: I guess another question of mine is we've gone back and forth between buffering and what's buffering and what's not. Maybe I have a different perspective from being the Zoning Administrator in the
past. A buffer in my opinion, and I guess maybe we
can ask Staff as well. I don't know. A landscape
buffer does not necessarily mean that it's full of
existing trees. In fact, in more cases than not, it
is actually an empty area where landscaping is
required. Can you help me with that? Am I looking at
that correctly, Fred or Staff?

CHAIRMAN: I have an opinion on that, Mr.
Ball, but I would refer for Staff because their
opinion would be professional.

MR. HOWARD: When you look at the Zoning
Ordinance, Article 17 list where buffer are required.
Mr. Kamuf was making the case earlier today that
between an R-1A and an A-U Zone there's no buffer
required. Between an R-1A or 1-C, whatever,
single-family residential is classification, B-4
zoning classification. The Zoning Ordinance requires
a 10 foot buffer with a 6 foot tall element and a tree
every 40 feet. That's a buffer. That's a buffer.

They can come in different varieties. They
can look different ways. Instead of putting a fence
in the Zoning Ordinance, you can actually put a double
row of staggered pine as an alternative. You can
count the wall of a building potentially as that
buffer, depending on proximity.
There are different things you can look at.

You can count existing trees. You can count new trees.

MR. BALL: Is there anything that says inside the Zoning Ordinance that if topography, if you have a site that's 20 feet below another site or a site that's 20 feet above another site, that that zoning or that landscape buffer is not adequate?

MR. HOWARD: No.

MR. BALL: We have a lot of topography throughout Daviess County. This can't be the first time we've been faced with something like this.

MR. HOWARD: No. Really often when you see a grade change like that, often a variance will be applied for to say that that change in elevation actually counts as our buffer instead of putting up a fence or whatever. No, there's nothing that says if there is a grade change you have do it, you have to do more, you have to do less. The requirement is the requirement.

MR. BALL: Thank you.

CHAIRMAN: Any other Commissioners have any questions that they would like to have answered before they vote? Because I think this helps to get these questions asked before you vote.
(NO RESPONSE)

CHAIRMAN: If not all those in favor of the motion raise your right hand.

(BOARD MEMBERS JOHN KAZLAUSKAS AND LARRY MOORE VOTED AYE.)

CHAIRMAN: All opposed.

(BOARD MEMBERS BEVERLY McENROE, MANUEL BALL, FRED REEVES, STEVE FREY RESPONDED NAY.)

CHAIRMAN: The motion fails.

Do we need a motion to approve the development plan?

MS. KNIGHT: Well, at this time you would entertain another motion, whatever it might be.

CHAIRMAN: I'll entertain another motion.

MR. BALL: I'd like to make a motion, if possible.

I guess kind of like Chief K said, from my perspective I'm sympathetic to the neighbors. I lived in Lake Forest when the Dollar General store came in. I understand those concerns. However, from my perspective, I feel like this does meet the requirements of the ordinance set forth by Fiscal Court. In addition, I feel like it meets the Owensboro Metropolitan Planning Commission Ordinance as well. I would like to make a motion to approve
this.

CHAIRMAN: We have a motion by Mr. Ball. Do we have a second?

MS. McENROE: Second.

CHAIRMAN: Second by Ms. McEnroe. Any questions about the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(BOARD MEMBERS BEVERLY McENROE, MANUEL BALL, FRED REEVES AND STEVE FREY RESPONDED AYE.)

CHAIRMAN: All opposed.

(BOARD MEMBERS JOHN KAZLAUSKAS AND LARRY MOORE RESPONDED NAY.)

CHAIRMAN: It passes four to two.

Thank all of you for coming this evening. I know everybody doesn't leave happy, but we hope we've treated you fairly. I know we feel like you have.

Next related item.

RELATED ITEM

ITEM 7A

3830 Highway 54, 1.886 acres (Postponed from the January 14, 2016 meeting)

Consider approval of a minor subdivision plat.

Applicant: Lamco Properties

MR. HOWARD: Mr. Chairman, Commissioners, this plat comes before you. It's been reviewed by the
Planning Staff and Engineering Staff. It's found to be in order. It meets the ideas laid out on the final development plan, as far as access easements and those type of things. So it's ready for your consideration.

CHAIRMAN: Anybody here representing the applicant?

MR. OVERSTREET: Yes.

CHAIRMAN: Mr. Overstreet, I assume you don't want to comment on this?

MR. OVERSTREET: No, sir.

CHAIRMAN: Any Commissioners have any questions or anyone in the audience have any questions?

(NO RESPONSE)

CHAIRMAN: If not the Chair will entertain a motion.

MR. FREY: Motion to approve.

CHAIRMAN: Motion by Mr. Frey.

MR. BALL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion is approved.

MINOR SUBDIVISION PLATS

ITEM 8
7486 Texas Gas Road, 7.269 acres
Consider approval of a minor subdivision plat.
Applicant: Lawrence Eugene Wink Estate & Hines Properties, LLC

MR. HOWARD: This plat comes before you as an exception. It's a parcel that's under 10 acres in size that exceeds the three to one requirement. They're actually adding some additional property on the back side. They're not really changing anything. Not maximizing another lot. Just adding property to the rear so we would request that you consider it for approval.

CHAIRMAN: Anybody representing the applicant?
(NO RESPONSE)

CHAIRMAN: Any questions by any of the Commissioners?
(NO RESPONSE)

CHAIRMAN: If not I'll entertain a motion.
MR. FREY: Motion to approve.
CHAIRMAN: Motion to approve by Mr. Frey.
MR. MOORE: Second.
CHAIRMAN: Second by Mr. Moore. All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion passes.

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Ohio Valley Reporting
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NEW BUSINESS

ITEM 9

Consider approval of December 2015 financial statements

CHAIRMAN: All of you have received a copy of the financial statements in the mail before the meeting this evening. I assume you've had a chance to review them. Do you have any questions or concerns about anything in the financial statement?

(NO RESPONSE)

CHAIRMAN: If not I'll entertain a motion to approve them.

MR. KAZLAUSKAS: So move.

CHAIRMAN: Motion by Mr. Kazlauskas.

MS. McENROE: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

ITEM 10

Comments by the Chairman.

CHAIRMAN: I want to say this: We didn't have an unanimous motion this evening, but I'm not sure that's not healthy. I think we had good healthy discussion. I think everybody up here had beneficial views and perspective on what we were voting on and
voted accordingly. I think you're to be congratulated on that because this is one of those real difficult ones. We had a lot of people leave upset with us this evening. I'm sorry that they did, but I hope at least we heard them out fully and we considered everything presented to us. We might not have voted how we wanted to vote, but we voted the way we thought we should vote. That's what is important to me.

I also want to thank, as Mr. Kazlauskas did, the Staff for all the hard work they put in on this. Your insight, your advice were valuable to us. Again, while some may disagree, I don't think anybody felt like you hadn't done a very credible job and done the very best you could on this. I want to thank you for that.

ITEM 11

Comments by the Planning Commissioners

CHAIRMAN: Any comments by any of the Planning Commissioners?

(NO RESPONSE)

ITEM 12

Comments by the Director

CHAIRMAN: Director, do you have any comments?

MR. HOWARD: I have no comments.

CHAIRMAN: Think then we're ready to entertain
a motion to adjourn.

MR. BALL:  Motion to adjourn.

CHAIRMAN:  Motion by Mr. Ball.  Do we have a second?

MR. MOORE:  Second.

CHAIRMAN:  All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN:  We are adjourned.

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