OWENSBORO METROPOLITAN PLANNING COMMISSION

JUNE 8, 2017

The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, June 8, 2017, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  Larry Boswell, Chairman
Steve Frey, Vice Chairman
Larry Moore, Secretary
Brian Howard, Director
Terra Knight, Attorney
Irvin Rogers
Beverly McEnroe
Manuel Ball
Fred Reeves
Lewis Jean
Angela Hardaway

* * * * * * * * * * * * * * * * * *

CHAIRMAN:  I would like to call the June 8, 2017 Planning Commission meeting to order. We start our meetings off with a prayer and the pledge. Commissioner Jean does both tonight. Would you pray with us, please.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  Before we get started tonight, we have our minutes from our May 11th meeting to review and discuss. Assuming all the commissioners have received the minutes of the last meeting, are there any questions or discussion about the minutes?

(NO RESPONSE)
CHAIRMAN: There being none the Chair is ready for a motion.

Commissioner Frey.

MR. FREY: Motion to approve.

CHAIRMAN: Motion to approve has been rendered by Commissioner Frey. Do we have a second?

MS. McENROE: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: The minutes are approved.

MR. HOWARD: I will note that all the zoning changes heard tonight will become final 21 days after the meeting unless an appeal is filed. If an appeal is filed, we will forward the record of the meeting along with all other applicable materials to the appropriate legislative body for them to take final action.

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

GENERAL BUSINESS

ZONING CHANGES

ITEM 3

110 & 234 Carlton Drive, 7.46 acres
Consider zoning change: From B-4 General Business to B-5 Business/Industrial
Applicant: Mary Roby SPOA Trust c/o Mary Sky Fortune

Ohio Valley Reporting
(270) 683-7383
MS. KNIGHT: Would you please state your name for the record.

MR. HILL: Mike Hill.

(MIKE HILL SWORN BY ATTORNEY.)

PLANNING STAFF RECOMMENDATIONS

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

CONDITIONS

1. Approval of a site plan or final development plan.

2. No access to JR Miller Boulevard shall be allowed. Access to Carlton Drive and Best Way shall comply with the zoning ordinance.

FINDINGS OF FACT

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

2. The subject properties are located within a Business/Industrial Plan Area, where general business and light industrial uses are appropriate in general locations;

3. The subject properties lie within an existing area of mixed general business and light industrial uses;

4. The Comprehensive Plan provides for the
continuance of mixed use areas; and

5. The proposed land use for the subject properties is in compliance with the criteria for a Business/Industrial Plan Area and a B-5 Business/Industrial zoning classification.

MR. HILL: Staff request that the Staff Report be entered into the record as Exhibit A.

CHAIRMAN: Thank you, Mr. Hill.

Is there anyone here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Is there anyone in the audience that would like to speak on the application?

Step forward and state your name to be sworn in.

MS. KNIGHT: Please state your name for the record.

MR. EBELHAR: My name is Jeff Ebelhar.

(JEFF EBELHAR SWORN BY ATTORNEY.)

MR. EBELHAR: I'm Jeff Ebelhar, as I've already stated. I'm trustee for the James C. Roby SPOA Trust. We own property just across Carlton Drive, across the street from this location. We're unsure exactly what this zoning change means, how it's going to impact us. When we looked through the list
of different uses that are available, some were very
attractive to us and some not so attractive to us.
For example, one of the uses could be a jail. That
would not be attractive to us. Would have a
detrimental affect to our real estate, to our
ownership. Is there any indication of what their
planned use of this property is?

CHAIRMAN: Is there anyone here representing
the applicant that could address that question?

(NO RESPONSE)

CHAIRMAN: Apparently not.

MR. EBELHAR: That being the case, I'll just
state that's my concern.

CHAIRMAN: So noted. Thank you.

MR. HOWARD: In their application, they have
as their proposed land use business buildings. That's
all the information they provided in that regard.

CHAIRMAN: Thank you, Mr. Howard.

Yes, please step forward.

MS. KNIGHT: Please state your name for the
record.

MR. ALLGOOD: David Allgood.

(DAVID ALLGOOD SWORN BY ATTORNEY.)

MR. ALLGOOD: I'm David Allgood, owner of
Diamond Lane South that joins 234 Carlton Drive up
there. I'm basically like Mr. Ebelhar; I have great concerns over what will be there because some things could be very detrimental to my property. Looking through this from B-4 to B-5 I see some, a little difference. Like jail or truck terminals. There was another one, a quarry, I don't think they'll put a quarry there, that are permitted. I'm just concerned what's going to be there. The reason that I am, I already own a piece of property in a place that went to the dogs. Not necessarily from the Planning Commission. It just happens over time. Things get worse and they get worse. Once it starts, it snowballs and the thing has been all right out there and we already have a parking problem from a place that's been built that doesn't have near the parking they take up on the street parking. So I probably may not be against some things that are there. I just would like to have an idea. Seems like the cart before the horse to me.

CHAIRMAN: Thank you for your concerns. Do any of the commissioners have questions concerning this application?

Commissioner Reeves.

MR. REEVES: Given that these two gentlemen have shown up tonight to express concern and the
applicant is not here to address their concerns or
even to answer questions from the commission, I would
make a suggestion that we postpone this item until the
next meeting and relay to the applicant that there was
concerns expressed and the commissioners probably have
some questions of the applicant.

CHAIRMAN: Is that in the form of a motion?

MR. REEVES: No. I wondered what the other
commissioners think, I suppose.

MR. BALL: I guess my concern is, does that
resolve anything if the applicant still doesn't know
what he's going to place on the property? That would
be my concern. Do we have any indication at all,
Brian?

MR. HOWARD: No, I don't believe so.

MR. MOORE: I believe if we were to table
this, then we would have the opportunity to ask
whoever what the plans would be. If he says, I'm not
sure, then these gentlemen would know he's not sure
what's going to go there, or if he says I'm going to
put X, Y, Z, they would know what X, Y, Z would be.
We would have an opportunity to ask him. I guess I
agree with Mr. Reeves.

CHAIRMAN: Is it necessary that we
specifically know what goes in there for this
particular rezoning, in the form of a question? If it's going to B-5, which gives him a lot of latitude for different things to go in there, then the concerns that the audience has would certainly be something that they would want to know about.

MS. KNIGHT: Essentially anything that fits under the B-5 category ordinance could go there. So whether he knows what that is now or not, as long as it's one of those varying uses, I would think it would be subject to approval regardless.

MR. HOWARD: The B-5 zone allows you to basically anything you can do with a B-4 general business zone, but it expands and allows you to do the uses in the I-1 Light Industrial zone. So it does broaden the range of things that could take place. There's nothing there now. If I were to guess, I would think that they're trying to have the zoning that's the most marketable in the long-term, but who knows. I mean we don't know.

CHAIRMAN: Go ahead, Mr. Reeves.

MR. REEVES: I still have concerns. He doesn't have to tell us and he has every right to change his mind and whatever. As long as it's allowed under that zoning, then his presence may or may not have any impact on what finally happens on this
CHAIRMAN: Would it be a fair assumption that he doesn't really know right now what he's going to be doing?

MR. HOWARD: I can't speak.

CHAIRMAN: Even if he were here, he may not have any idea.

Any of the commissioners like to make a motion concerning a direction on this one?

MR. ROGERS: Mr. Chairman, I would like to make a motion for postponement until next month so we can have him here so these people can address questions and him answer them.

CHAIRMAN: Commissioner Rogers has made a motion to postpone so more information can be found out. Is there a second?

MR. FREY: I'll second the motion.

CHAIRMAN: Second by Commissioner Frey. Any discussions about the motion?

(NO RESPONSE)

CHAIRMAN: The chair is ready for a vote. All those in favor raise your right hand.

(BOARD MEMBERS IRVIN ROGERS, BEVERLY McENROE, LARRY BOSWELL, FRED REEVES, STEVE FREY, ANGELA HARDAWAY, LEWIS JEAN AND LARRY MOORE RESPONDED AYE.)
CHAIRMAN: All opposed.

(MANUEL BALL RESPONDED NAY.)

CHAIRMAN: The vote carries.

ITEM 4

901, 933, 1001, 1003, 1005, 1007 & 1015 Leitchfield Road; 1619-1625 & 1642 East 10th Street; 1621, 1631 & 1661 East 11th Street, 4.798 acres
Consider zoning change: From I-1 Light Industrial & I-2 Heavy Industrial to I-1 Light Industrial
Applicant: Clark Properties, LLC

CHAIRMAN: I before we get into this I think Commissioner Frey is to recuse himself on this one.

PLANNING STAFF RECOMMENDATIONS

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

CONDITION

1. No access to Leitchfield Road shall be allowed. Access to East 10th Street and East 11th Street shall comply with the zoning ordinance.

FINDINGS OF FACT

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

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

3. The proposed light industrial use conforms
to the criteria for nonresidential development;

4. The proposal is an expansion of existing I-1 Light Industrial zoning to the southeast; and

5. At 4.798 acres, the proposal should not overburden the capacity of roadways and other necessary urban services that are available in the affected area.

MR. HILL: Staff request that the Staff Report be entered into the record as Exhibit B.

CHAIRMAN: Is there anyone representing the applicant?

MR. WEIKEL: Yes.

CHAIRMAN: Would you like to say something concerning this application?

MS. KNIGHT: Please state your name for the record.

MR. WEIKEL: Bill Weikel.

(BILL WEIKEL SWORN BY ATTORNEY.)

MR. WEIKEL: Just a clarification on the condition, that no access to Leitchfield Road be allowed. East 10th Street there's been a possibility that it will be closed. In the case that it is, the owner has asked that be used for a drive. Would there be any problem with that?

MR. HOWARD: No. I think the intent was that
the only place you could get on Leitchfield Road was through the East 10th Street right-of-way. If it's closed, then as a driveway we would not have an intent in closing that. I guess in theory the city engineer's office could. We would defer to them, if they chose to, but from our perspective access there will be fine.

CHAIRMEN: Any other questions from the commission?

(NO RESPONSE)

CHAIRMEN: Thank you.

Is there anyone else in the audience that would like to speak on this application?

(NO RESPONSE)

CHAIRMEN: Any commissioners have any questions concerning this application?

Commissioner Moore.

MR. MOORE: In the Staff Report, it mentions the possibility of groundwater protection plan. Who is responsible to see that it's done? Is it ours or OMU's?

MR. HOWARD: That's the issue that we've discussed in the past. We have notified all of the applicable agencies. It's OMU's responsibility to follow up on those and require them. They have been
notified that this is in the groundwater protection area.

MR. MOORE: Thank you.

CHAIRMAN: Any other commissioners have any questions concerning this application?

(NO RESPONSE)

CHAIRMAN: There being none the Chair is ready for a motion.

Commissioner Jean.

MR. JEAN: I make a motion we approve this application based on the Staff Report with Condition 1 and Findings of Facts 1 through 5.

CHAIRMAN: Commissioner Jean has made a motion to approve based on Condition 1 and Findings of Fact 1 through 5. Is there a second?

MR. BALL: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE - WITH COMMISSIONER FREY RECUSING HIMSELF.)

CHAIRMAN: Motion carries.

ITEM 5

Portion of 10031 Walnut Street, Whitesville, 0.498 acres

Consider zoning change: From R-1C Single-Family Residential to R-3MF Multi-Family Residential

Applicant: Roger Coomes and Michael Coomes

Ohio Valley Reporting
(270) 683-7383
MR. ROGERS: Mr. Chairman, I need to recuse myself on this one.

MR. HILL: This is a recommendation for denial so I will read a portion of the Staff Report into the record.

DEVELOPMENT PATTERNS

The subject property is a 0.498 acre portion of a larger R-1C zoned parcel located at 10031 Walnut Street within the City of Whitesville. The applicant proposes to rezone a 0.498 acre portion of the property to R-3MF Multi-Family Residential, which would leave two small portions of the property as R-1C Single-Family Residential. The area proposed for rezoning includes a detached garage, which would likely be removed if the property is ever redeveloped.

A single-family residence is located on a portion of the property that will remain R-1C.

The applicant's desired lot configuration, as shown on the property notification map, will not meet the zoning ordinance requirements for road frontage. Each of the R-1C lots requires 50 feet of road frontage while the proposed R-3MF portion requires 70 feet of road frontage. 170 feet of road frontage is needed to be compliant, while the applicant’s property only has 161.36 feet of road frontage.
This area includes a mixture of residential and commercial properties. To the north is the rear of a bank property, zoned B-2. To the west are single-family residential properties, zoned R-1C. To the east are single-family residential properties, zoned R-1C. To the south across Walnut Street are single-family residential properties, zoned R-1B.

Walnut Street in this location is classified as a local street which has a 25 foot building setback requirement. Access to the site must be compliant with applicable sections of the zoning ordinance. The Access Management Manual does not apply to this site since it is located outside the urban service area.

If the rezoning is approved, the applicant will be required to provide vehicular use area screening compliant with Article 17 of the zoning ordinance around the perimeter of any proposed parking area that faces any residential property or Walnut Street right-of-way.

If approved, prior to occupancy of the property, the applicant must obtain approval of a final development plan to demonstrate compliance with zoning ordinance requirements including, but not limited to, parking, landscaping, building setbacks,
access management and signage.

SPECIFIC LAND USE CRITERIA

The applicant’s proposal is not in compliance with the Comprehensive Plan. The proposed use as multi-family residential conforms to the criteria for urban residential development and the subject properties are in an area served by sanitary sewers. However, the proposal is not a logical expansion of existing R-3MF zoning in the area. The proposal is not major-street-oriented. Furthermore, the proposed lot configuration will not be compliant with the zoning ordinance road frontage requirements.

PLANNING STAFF RECOMMENDATION

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

FINDINGS OF FACT

1. Staff recommends denial because the proposal is not in compliance with the community’s adopted Comprehensive Plan;

2. The subject property is located in an Urban Residential Plan Area where urban mid-density residential uses are appropriate in limited locations;

3. The proposed use as multi-family residential conforms to the criteria for urban
residential development;

4. The proposal is not a logical expansion of existing R-3MF Multi-Family Residential zoning in the area;

5. The proposal is not major street oriented;

and

6. Furthermore, the proposed lot configuration will not be compliant with the zoning ordinance road frontage requirements.

MR. HILL: Staff request that the Staff Report be entered into the records as Exhibit C.

CHAIRMAN: Thank you, Mr. Mill. Is anyone here representing the applicant?

Please step forward.

MS. KNIGHT: Please state your name for the record.

MR. COOMES: Roger Coomes.

(ROGER COOMES SWORN BY ATTORNEY.)

CHAIRMAN: Is there anything that you would like to say in support of your application yourself?

MR. COOMES: Yes, if I may. Thank you for allowing me.

Depending on how you want to count the block, because there's really two Walnut Streets. To the east of the property there is residential, rental
residential, and there's a small street that runs
between there and coming out on 54, but in the whole
picture that's one great big block. There's already
two multi-family dwellings in that block. To the
south of there one of the listings on B-2 is really a
St. Vincent dePaul store. It takes up probably about
a third of the block there, about fourth of it anyway.
That property overlaps mine across the street so many
feet. Thank you.

CHAIRMAN: Is there any commissioners that
have any questions for Mr. Coomes?

(NO RESPONSE)

CHAIRMAN: Mr. Coomes, I do have myself a
couple of questions.

I noticed in your findings that you have a
statement that there's a need for multi-family
residence in the City of Whitesville due to the
changes in economic conditions. Can you elaborate on
what support documents you have that would drive those
economic conditions that would allow you to make that
statement?

MR. COOMES: Yes, but I've got to go back a
little bit.

There was apartment complex built a little bit
to the east of Whitesville. It's still in the city
limits. I forget what the name of that street is. Almost across from our park. That was rented before it was even built. My nephew owns the two in the same block that I was talking about. He just completed one a year, year and half ago. They were all rented before they were built. So apparently there's several people looking for other than single-family dwelling.

CHAIRMAN: The other question that I have is one of the other statements, that it would serve as a buffer between B-2 to the north and existing residential. Could it not be argued that what is already there would be considered a buffer without having a rezoning?

MR. COOMES: The only thing that adjoins the back of the bank and the back of that service station is yard, yes, sir.

CHAIRMAN: Thank you.

MR. HOWARD: That language is often used, and I believe the reason he did it is there's a hierarchy of land uses and single-family residential would be at the low end as far as intensity goes. Commercial would be towards the higher end. Not to the industrial, but to the higher end. Then R-3MF Multi-Family zoning would kind of fall in the middle. So that language is in the top plan and other places
to provide that a buffer could take place between single-family residential and a more intense commercial use and that R-3MF would kind of be the buffering in-between.

CHAIRMAN: Thank you, Mr. Howard.

Any commissioners have any questions?

(NO RESPONSE)

CHAIRMAN: Is there anyone in the audience that would like to speak on this application either for or against?

(NO RESPONSE)

CHAIRMAN: Then the Chair is ready for a motion.

Commissioner Moore.

MR. MOORE: Mr. Chairman, I would like to make a motion for denial based on the Staff Report and Findings of Fact 1 through 6.

CHAIRMAN: Commissioner Moore has made a recommendation for denial based on the Staff Recommendations and Findings of Fact 1 through 6. Is there a second?

MR. REEVES: Second.

CHAIRMAN: Second by Commissioner Reeves. Any discussion on the motion and the second?

(NO RESPONSE)
CHAIRMAN: There being none the Chair is ready for a vote. All those in favor raise your right hand. (ALL BOARD MEMBERS PRESENT RESPONDED AYE - WITH IRVIN ROGERS RECUSING HIMSELF.)

CHAIRMAN: Motion carries for denial.

ITEM 6

1308 West Ninth Street, 0.488 acres
Consider zoning change: From B-4 General Business to B-5 Business/Industrial
Applicant: Douglas B. Webster, II

PLANNING STAFF RECOMMENDATIONS

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

CONDITIONS

1. Approval of a site plan or final development plan.

FINDINGS OF FACT

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

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

3. The subject property lies within an existing area of mixed general business and light
industrial uses;

4. The Comprehensive Plan provides for the continuance of mixed use areas; and

5. The proposed land use for the subject property is in compliance with the criteria for a Business/Industrial Plan Area and a B-5 Business/Industrial zoning classification.

MR. HILL: Staff request that the Staff Report be entered into the record as Exhibit D.

CHAIRMAN: Thank you, Mr. Hill.

Is anyone here representing the applicant that would like to speak?

Yes, sir.

MS. KNIGHT: Please state your name.

MR. WEBSTER: Doug Webster, II.

(DOUG WEBSTER, II SWORN BY ATTORNEY.)

MR. WEBSTER: I have nothing, I can't say any better than the Staff did. Unless you have any questions, I have no further comments unless you have questions.

CHAIRMAN: Thank you.

Any commissioners have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Anyone in the audience that may
have questions?

(NO RESPONSE)

CHAIRMEN: Thank you.

Anyone in the audience would like to speak in opposition of this application?

(NO RESPONSE)

CHAIRMEN: There being none the Chair is ready for a motion.

Commissioner Reeves.

MR. REEVES: Motion to approve this application based on Staff Findings of Fact 1 through 5 with Condition 1.

CHAIRMEN: A motion has been made by Commissioner Reeves for approval based on Condition 1 and Findings of Fact 1 through 5. Do we have a second?

MR. MOORE: Second.

CHAIRMEN: Second by Commissioners Moore. Any discussion about the motion and the second?

(NO RESPONSE)

CHAIRMEN: There being none all those in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMEN: Motion carries.

ITEM 7
7101 & A Portion of 7071 Highway 81, 1.17 acres
Consider zoning change: From R-1A Single-Family Residential & A-U Urban Agricultural to B-4 General Business
Applicant: Susan Cox Development, LLC; Kuegel & Kamuf Land Company, LLC

MR. HILL: This is a recommendation for denial so I will read a portion of the Staff Report into the record.

DEVELOPMENT PATTERNS

The subject property is a 0.649 acre parcel known as 7101 Highway 81 and a 0.521 acre portion of a large parcel known as 7071 Highway 81. Once consolidated these parcels, located near the Mosleyville area, total 1.17 acres. While both parcels are currently vacant, 7101 Highway 81 was previously used residentially and 7071 Highway 81 has been used agriculturally. The applicant wishes to rezone the properties to B-4 General Business to allow the construction of a retail business.

This area includes a mixture of residential, commercial, industrial and agricultural properties. Property to the north is a large agricultural parcel, zoned A-U and R-1A. Property to the east is a large agricultural parcel, zoned A-U. Property to the south is a single-family residence, zoned R-1A & A-U. A salvage yard, zoned I-2 is located across Highway 81.
from the subject property. A single family residential parcel, zoned R1A, is also located directly across Highway 81 from the site. The nearest B-4 zoned property is located approximately 325 feet to the south on the opposite side of Highway 81. The nearest B-4 zoning on the same side of Highway 81 is located approximately 475 feet to the south.

If the rezoning is approved, the applicant will be required to provide landscape buffer screening in compliance with Article 17 of the zoning ordinance along the southern property boundary where adjacent to residential property. Vehicular use area screening will also be required where adjacent to residential properties or public street rights-of-way.

Highway 81 in this location is classified as a major collector street with a 60 foot building setback line and a 30 foot roadway buffer. Access to the site must be compliant with applicable sections of the zoning ordinance and will require Kentucky Transportation Cabinet approval. The Access Management Manual does not apply to this site since it is located outside the urban service area.

Due to the proximity to existing residential zones, all lighting for the subject property shall be directed away from the residential property to reduce
the glare and impact of the lighting on the
residential uses.

If approved, prior to occupancy of the
property the applicant must obtain approval of a site
plan to demonstrate compliance with zoning ordinance
requirements including, but not limited to, parking,
landscaping, building setbacks, access management and
signage.

SPECIFIC LAND USE CRITERIA

The applicant’s proposal is not in compliance
with the Comprehensive Plan. The proposed use as
general business conforms to the criteria for
nonresidential development. However, the proposed B-4
General Business zoning is not a logical expansion of
B-4 General Business zoning in the vicinity.

Furthermore, at 1.17 acres, the proposal may be
considered a significant increase in general business
zoning in the vicinity and the traffic generated by
the proposed retail use has the potential to
overburden the capacity of roadways and other
necessary urban services that are available in the
affected area. Finally, while the property is
considered major-street-oriented, it is not sited at
the corners of intersecting streets, which are the
main criteria required to create a new location of
general business zoning in a Rural Community Plan Area.

PLANNING STAFF RECOMMENDATIONS

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

FINDINGS OF FACT

1. Staff recommends denial because the proposal is not in compliance with the community’s adopted Comprehensive Plan;

2. The subject property is located in a Rural Community Plan Area where general business uses are appropriate in limited locations;

3. The proposed use as general business conforms to the criteria for nonresidential development;

4. The proposal is not a logical expansion of existing B-4 General Business zoning in the vicinity;

5. At 1.17 acres, the proposal may be considered a significant increase in general business zoning in the vicinity and the traffic generated by the proposed retail use has the potential to overburden the capacity of roadways and other necessary urban services that are available in the affected area; and

6. While the property is considered
major-street-oriented, it is not sited at the corners of intersecting streets, which are the main criteria required to create a new location of general business zoning in a Rural Community Plan Area.

MR. HILL: Staff request that the Staff Report be entered into the record as Exhibit E.

CHAIRMAN: Any and all here representing the applicant?

MR. KAMUF: Mr. Chairman, Charles Kamuf.

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

MR. KAMUF: I represent Susan Cox Development, LLC, which has built numerous Dollar General stores in the Owensboro area. She is here. She owns approximately 200 of these stores. She's a preferred developer for Dollar General and she'll tell you, one of the things, very little traffic will be generated from this area.

I also represent Rod Kuegel and Bill Kuegel and myself who own Kuegel & Kamuf Land Company.

As you can see, the plat that you have in front you, Kuegel & Kamuf Land Company own all the property surrounding this area except two spots. They own the property to the north and the property to the east. There's a 53 acre tract in that particular
area. Kuegel and Kamuf purchased the property approximately 25 years ago. The one acre tract that you see, we purchased it about three years ago, and we purchase it specifically for the purpose of selling the property to Dollar General.

I'll have a plat for you in just a second.

All of the surrounding property owners agree to this rezoning.

To the west of the property is owned by Byron Lane. Byron Lane owns four or five acres there that's a salvage yard.

Next to the property and to the west of the property is owned by Peter Crowe. I would like to, if I could, give you a handout.

The first exhibit is this letter to the Planning and Zoning Board by Peter Crowe. He state, and this is the property directly west of the property. We'll have a plat in just a second.

"My name is Peter Crowe. I live at 7115 Highway 81 in Mosleyville. I have lived at this address since 1958.

"I live next to the property 7101 Highway 81 which is where they're going to build a Dollar General store.

"Since Kuegel & Kamuf have purchased the
property at 7101 Highway 81, they have tore down the
old house and have improved the property.

"I fully support the rezoning of the property
at 7101 Highway 81 to build a Dollar General store. I
support the rezoning from agriculture to commercial.

"I think the Dollar General store is needed in
the Mosleyville area.

"I have talked with all my neighbors and
everybody wants the Dollar General store so they will
not have to go to Owensboro to get their every day
supplies.

"If you have any questions, here is my phone
number, (270) 485-6592."

Let's turn over to the next exhibit, if we
can. The next exhibit you have is this one right
here. This is the large aerial that we have, but it's
identical.

So if you look at the exhibit you have in
front of you, it shows where the subject property is.
That's in red. Directly south of that was the
property that we just talked about, Mr. Crowe.
Directly across from this property is a four or five
acre salvage yard which is zoned heavy industrial.
Down from that you will see a B-4 rezoning which is a
Dairy Cream or something like a Big Dipper. Then
directly across from that you'll find, this is a
convenient store that's been there for years. Now the
other area that you see is B-4, and that property is a
beer joint.

The first photograph that you have behind that
one is a picture of the dilapidated house that we tore
down that Mr. Crowe referred to that he was happy that
it was torn down and we improved the property.

The next exhibit that you see is a photograph
of the salvage yard across the street. This is this
one that we see. It's probably the third one. It's a
salvage yard that's been there for years. We have
talked to Mr. Byron Lane. He wants the Dollar General
store in the area. This property has been there for
years, this salvage yard. It's the heaviest
industrial type of property that you can get in
Daviess County.

Next you see the Dairy Cream that I talked to
you about. This property is zoned B-4. It's been
there for years.

If you notice two points; the Dollar General
store that we have will have one access point to
Highway 81. If you look here, there are two or three
access points which is not necessarily a safe
entrance.
The next exhibit that you see is the Roam Inn.

It also has a large entrance off onto Highway 81.

The last one I show you is a convenient store that is located directly south. It's about let's say 350, 400 feet directly south as you see right here on the big plat. This is where the convenience store is located.

If you look at this convenience store, we don't think we have a traffic issue. We have engineers from Bowling Green that will testify. We have Susan Cox that will testify there's no traffic. We're also going to have the former owner of a piece of property at Utica that was zoned where the same issues were raised, and he'll tell you that he drives by it everyday. It's twice as big as this rezoning and that there's never been a traffic problem.

If you look at this exhibit that we show here, at the rear of it you have storage trucks. If you see at the far end of it, it has storage buildings, storage trucks, and I would say that a distance half of a football field you can get in and out. We will not have that situation in the Dollar General store.

Now, the property is located in the rural service area. That is important. It's important to Dollar General to be in a rural service area. If it
was not in a rural service area, we couldn't be here
because the Planning Staff wouldn't even let us file
an application.

The whole purpose of a rural service area is
to concentrate in a rural area all the commercial
activity so they can supply the infrastructure
necessary from the government.

There's one under construction right now in
Sorgho. Last month I represented Ms. Cox in a zoning
that was up here on Highway 54 at the intersection of
Wing Avenue. So she's not new here in Daviess County,
as far as -- you can inquire about her uses and why
she's involved and want in the county.

The purpose of a rural service area is to
provide in the county in a rural area in a
concentrated area the every day needs of rural
citizens. This will indicate to you why the Dollar
General store is so poplar in all of the United
States; because they take care of these needs.

Presently, I think I'm telling you right,
there are maybe 12 or 13 Dollar General stores in
Daviess County. There's one at Masonville. There's
one at Thruston. There's one at Whitesville and one
Utica that's she's involved in.

The success of the Dollar General store in
other areas of Daviess County prove that the
commercial businesses are needed in the area.

Now, the real need, I didn't point to you, but
if you look at this particular area where you see the
pink, that pink area that you see is called Friendly
Park. Right next to it is one in just a little
lighter color, and that's a mobile home park. The
reason that's important is there are 72 houses in
Friendly Park. There are 22 mobile homes.

The real issue, Fred, you've been on that RWRA
board.

If you've been reading in the paper lately, at
the present time they're extending to this exact
subdivision a sewer line from the Air Park to
Mosleyville to take care of this particular area in
Friendly Park where you have those 72 houses and
mobile homes. So that is a big issue in this case, to
have right in that particular area right across the
street a subdivision of that nature.

Let me just say this: You can tell by the way
that the Staff Report is written that they do not
strongly object to this. But here are the three
issues that they raise, and I might say this: The
Board has approved, and I'll get into each one of
those. The Board in the past has approved identical
situations where the Staff have raised the same issues and have approved the rezoning. Here is what the staff says.

There are three issues basically. They say, there's no logical expansion. What we have here, right across the street we have I-2, we have B-4. They say that 1.17 acres may be a significant increase in the business zoning and may, what, cause a potential to overburden the roadways.

In my opinion, the Staff findings were a very strict interpretation of the zoning law. In the past, this Board on numerous occasions have been more liberal in their interpretation of the zoning law. In the past this Board has disagreed with the Staff on several occasions.

In compliance we're saying that the proposed rezoning is in compliance. The first issue that they raised we'll talk about, is that 1) the new locations should be located at corners of intersecting streets if located in close proximity to existing dwellings. There's no question we meet the first one. What we do meet, we're in a rural area and we're major-street-oriented because, what, right there is Highway 81.

First of all let's talk about the intersecting
street issue that the Staff has raised.

According to the rural community criteria, new location should be located at corners of intersecting streets, if the new location is in close proximity to existing dwellings. The criteria clearly states that what? That new location should be sited. It does not state that it shall be sited. Each case would have different circumstances and would stand on its own. All new location are not required to be sited at intersecting streets. You have previously ruled that all new locations are not required to be an intersecting street.

Let's go over this: The criteria concerning proximity to existing buildings. Let's point this out.

As we have here, if you look at the plat that's in front of you, there's really just three existing buildings on here.

One is Mr. Crowe's. Mr. Crowe's property, it really needs some repair. I'll leave it that way. In other words, when you get down to the issues, nobody is going to build a new house across from a salvage yard or down from a beer joint.

The applicant submits that the intersecting street requirement for a new location should not be a
concern here tonight. In this case, there's no intersecting street. So how could it apply?

There's only one street. If you look, according to the plat, your plat is a better than this big blow up. There is only one street that you see anywhere in Mosleyville. I would say the next intersecting street that you would have would be six miles down the road at Highway 140 and 81. So if you use the Planning Staff Requirement, there's no way that you could build a Dollar General store in Mosleyville. You see, it's called Park Drive. Park Drive goes back into the back. It goes to the mobile home park that we talked about, and it goes to the family park subdivision.

The traffic issue. Directly across from the entrance is this salvage yard, and the salvage yard would not, in other words, very little traffic in and out of the salvage yard. So that would not create a problem.

Another one. There will be only one entrance to the Dollar General store, and contrary to the ones that you see at the convenient store, that you see at the beer joint, and that you see at the Dairy Cream there.

Let's talk just a little bit about the next
issue. I think I tried to clear that first one up on the intersecting street.

The land use states that existing general businesses may be expanded onto contiguous land that generally abuts the same street. What's the definition of contiguous? I looked it up in the statute at the Comprehensive Plan at Page 56. Here is what it says: "That an expansion of a use occurs when a particular category of land use is established on land that is contiguous." What does it say after the word "contiguous?" In close proximity. In close proximity to an existing site or the same category of use. The keyword is what? Close proximity. The board has previously ruled that contiguous does not mean next to or across the street directly from another rezoning.

On the south side you can see what my argument is. On the south side, go down to the convenient store B-4. Across the street B-4. The beer joint B-4. So I'm saying as far as that issue, I think I qualify for close proximity. Close proximity, that's what the statute says.

When it says, what does contiguous means? My argument is this: I'll attack those two issues that intersecting streets and also on the issue of logical
expansion.

On April 10, 2008, in the exact situation, same people, Ms. Cox was here and also Mr. Grimsley was here. You had the same situation. The Staff raised these three issues, and I'll review each one of them for you. They raised the same three issues and this Board voted 10 to 0 and disagreed with the Staff.

Mr. Grimsley is here. Why is Mr. Grimsley important? Because they raised the same issue as far as a potential. I'm not getting on the Staff. I'm just saying I disagree with their interpretation.

Mr. Grimsley's here for two reasons. One, that was him involved in the Utica case, and we'll go over that in just a second. He drive by that property every day. He lives right down the road from it. He owned the property. The Utica case was the same case that we have here.

There's another case. At 144, as you recall, you all approved the rezoning, some of you were on the board, at Thruston, and I handled the case several years ago. You approved one at Thruston. Right before that there was a zoning case there and the same issue was raised. What is a logical expansion? This board voted 9 to 0 and disagreed with the staff.

Let's look at Utica.
Rod, would you come up here for just a second.

This exhibit that I show you. The Utica case is a 2.24 acre tract of ground. What we have is a smaller area, 1.17 acre tract of ground.

The Staff Report in this case -- look at them. If you look at what you have in front of you, these are close enough to be sisters. You understand? It's as close as you'll ever get to a precedence in this case.

If you look at that, you see the highway there at Utica. There's 140 and then to the north of that is the building site. If you notice in that particular case, there is an intervening street, but it's not anywhere near this property. 400 feet to the south.

Here is what the Staff said, and this is in the Utica case. As you know, Utica case, the new zoning was not located at intersecting street. 140 was approximately 400 feet away. It was not next to a commercial zoning. The issue that the Staff raised were: 1) the subject is not contiguous to existing zone. That's the one Rod has up here. It's not contiguous to existing B-4 zone or use and therefore is not a logical expansion. The subject property is situated in close proximity to existing dwelling. The
existing dwelling that we have in our situation, that
issue goes away with the letter from Mr. Peter Crowe.
It has no affect on the existing because he is the
only house next to the proposed rezoning.

The other issue that we have here is that the
subject property is close proximity to the existing
dwelling with residence to the north, south and west
of the property. The subject property is not located
at intersecting streets. This is what the Staff says.

What the Board said in the Utica case, the
Utica case this Board ruled that the OMPC zoning
regulation, which required certain rezoning to be
sited at intersecting corners, is not applicable in
every case. It's a question for this Board. The
intersecting street requirement that's pointed out
that new locations should be sited at intersecting
corners. It does not say shall. The word is not
mandatory and it's not mandatory that it be there.

It also stated that all new locations are
required to be sited at intersecting streets. In this
case that Rod shows up here, you can see, from this
particular area down to 140 is approximately 400 feet.

The key in this case is that the OMPC Board
stated that the Board should use discretion and do
what? The keyword, as it will be in this 144 case
that I'll talk about, is what? The keyword is the --
excuse me. I lost my train of thought. Is that you
look at the entire area. You don't look at just one
area and say -- it's not of like going to the bank.
You've got a loan officer there and he's supposed to
do A, B, C and D. If you don't have any part of D,
well, you don't get the loan. That's not the way this
works because this board has discretion to do this in
this case.

The logical expansion issue in that case was
raised and the Board ruled that you do not have to be
adjacent to or directly across the road to allow for a
contiguous rezoning. Here is what it said, and I
cited this before. That an expansion of use occurs
when a category of land use is established on the land
that is situated contiguous (in close proximity to an
existing site or area of the same category.)

So what happened in this case? The Board
interpreted in a very flexible and reasonable way. On
April 10, 2008 at a public hearing, the Board
disagreed with the staff and voted 10 to nothing to
approve the rezoning.

There is one other case, and this is known as
the Highway 144 case. That was a rezoning for Martin
Hayden who used to be on this board for 20 years.
That's at Thruston. That's in the same area that you just got through. I think it was three years ago where you approved a Dollar General store at Thruston. There was no commercial zone across the street or adjacent to or contiguous.

The Staff Report set out the following findings. Here is what they say: The same issues that we had in the Utica case and the same issues that we have in the case at hand. 1) The subject property does not adjoin existing general business zone and therefore cannot be considered a logical expansion. 2) Because across the street of 144 is not zoned general business, the applicant's proposal does not qualify as an expansion of a general business. Then the applicant's proposal would create a new location, like we're talking about here, of general business of properties presently zoned and developed for residential purposes. What happened? I'm going to submit to you in just a few minute a finding of fact that disagrees with the Staff. Here is where I base my findings on.

The 144 case, that's up in Thruston. It says this: Remember what you we said the issue were. The staff for the three reasons did not want to approve it, but here is what this Board said in a vote nine to
nothing. The area involved is an older residential area that is ready for an expansion into a general business. The property across the highway to the northwest and the east is presently zoned general business. By that I mean it didn't touch. It wasn't contiguous. The rezoning of the subject property to general business is compatible to the uses in the area and a commercial use more specifically. The subject property is ready for a change.

The next issue they said: The land use recognizes the need for existing sites to be able to expand their current operations which have existed for many years. Since the land surrounding the subject property is of a mixed use and is shown on the land use plan even though they have some residential use continuing.

In one of these cases tonight we talked -- I don't remember which one it was, but they talked about mixed uses. The comprehensive plan that you all have encourages expansion of mixed uses.

I think Brian will agree to that. That came out in one of the cases tonight about mixed uses.

Here is your key. Considering the use of the entire property, the requested rezoning would be a logical expansion of the business areas adjacent to
the property. This was a nine to zip vote with this
board.

So basically I'm pointing out, look, these are
only two cases that I've handled. I didn't go through
all the other cases, but basically this: On two
occasions you disagreed with the Staff. The Board
ruled in that one case that we talked about at Utica
that -- you understand, the rule that you all have on
intersecting street says it should. It doesn't say it
has to. So it's not applicable. That rule is not
applicable to every situation. That's why we have
you.

If this was this easy, and you had A, B, C, D,
we just have a zoning administrator. We wouldn't need
your Board.

So what the Staff, they come up with that.
They do their job. Then it's your responsibility to
look at the entire area and come up with your opinion.

The logical expansion issue. The rezoning in
this case is just like the Utica case. In a court of
law, if I have a case and it's identical to another
case, and I asked the judge to rule, I say, Judge,
rule on the precedence. I'm asking you to rule on the
Utica case and 144 case and say that this zone is in
accord with the comprehensive plan.
Now, if we look at this, on this issue that we have. There's an issue always -- we opened a subdivision up that we had 40 years ago. The issue that they raised at every zoning case that you have, if you want to defend it, is traffic. So we called it the traffic and drainage subdivision, but the traffic will always be an issue.

Let's look at what happened at Utica. At Utica we had, what, 2.4 acres on a major highway, 431. In this case, we've got half that amount on a county road. It's our position, and I think if you hear Grimsley talking in just a few minutes, you'll come to the conclusion that, hey, we're right.

What happens if you don't approve this rezoning? The county has spent $2 million. It's in construction right now. I do the work for RWRA and at the present time the design has been done. I think its contract has gone out. For the last four months you've read in the paper about building this sewer line from the airport directly to this subdivision.

What happens there is they're upgrading the subdivision, in other words, they've got new sewer lines, but they have no place to go for their immediate needs.

Another key point is that the traffic, and
Ms. Cox is going to tell you. These new Dollar General stores don't generate new traffic. They catch traffic that's coming around. The traffic that you see here, a lot of it will be coming from this Friendly Park subdivision and from those mobile home parks. That is an area of the lower income people and they have as right as much as anybody else to have a Dollar General store just like they do at Sorgho, Masonville. The one at Sorgho is under construction at the present time.

I just saw one other gentleman in the hall. I asked him why he was here. He said, we want the Dollar General store. If anybody is going to object to this rezoning, it will be the convenience store because you can buy a candy bar at the Dollar General for 90 cents and if you go to the convenience store you pay $1.37. That just answers why they're so poplar.

Let me just say this: I hope I have made a case and I would now give you a Findings of Fact that I would like for you all to see.

Here is my proposed finding of fact, here is what I will ask you to do:

Finding of Fact in support of 7101 Highway 81 and a portion of 7071 Highway 81 zone change:
1. We agree with Staff on this one. The subject property is located in a rural community plan area where general business uses are appropriate in limited locations.

2. The proposed use as a general business conforms to the criteria for nonresidential development. We agree with that.

   We agree with Number 3.

3. The area involved includes a mixture of residential, commercial, industrial and agricultural properties.

   I forgot to tell you. There is another, when we're talking about mixed uses, Billy Joe Miles has a farm that adjoins us, over 100 acres, adjoins us right to the north here that's zoned I-1 industrial. So you're talking about all kinds of zoning out there. Heavy industrial, light industrial, B-4, residential.

4. The area involved is an older residential area that is ready for an expansion into a General Business zone. The property south of the highway, south of the subject property is zoned B-4 General Business and the property across the highway is zoned B-4 General Business.

   The rezoning of the subject property to General Business is compatible to the uses in the area
and a commercial use more specifically, the subject
property, is ready for a change.

Now, all of that, it came out of another case
that you all made a specific finding. I took some of
that wording out of a case that was at 144 at
Thruston. Right verbatim.

5. The Land Use Plan recognizes the need for
existing sites to be able to expand their current
operations where they have existed for many years.

6. Considering the use of the entire area,
the requested rezoning would satisfy the specific land
use criteria for logical expansion and new locations
in the rural communities.

7. The proposed rezoning would not
significantly increase in general business zoning in
the vicinity and the traffic generated by the proposed
retail use would not overburdens the capacity of
roadways and other necessary urban services that are
available in the area.

I think that beats what we've talked about.

We have a couple of witnesses.

The first witness will be Susan Cox. She owns
the development company. She's a preferred developer
for Dollar General and she will have some words.

Then the next one we have an engineer here
from Arnold Engineering over in Bowling Green. She
will be here to answer any questions. There's been
traffic studies out there. They never build one of
these until they make a complete traffic study.

Then we also have Mr. Grimsley here. He will
tell you about the highway, the Utica issue.

I can understand the Staff. The easy way to
do that is just say, it doesn't meet these
requirements; intersecting streets, logical expansion
and overburden street. It's up to us. So we're
presenting that evidence.

The first witness will be Susan Cox.

MS. KNIGHT: Please state your name for the
record.

MS. COX: Susan Cox.

(SUSAN COX SWORN BY ATTORNEY.)

MS. COX: Do you have any questions for me to
start? It's hard to follow Mr. Kamuf.

CHAIRMAN: Commissioners, have any questions
for Ms. Cox?

(NO RESPONSE)

CHAIRMAN: Is there any particular statement
that you would like to make at this time?

MS. COX: I will say, as far as the community,
this is more of a convenience for the community and
retail for them there. As far as generating traffic
and that kind of thing, basically going there because
of the traffic count that is already there and the
households. I can't really go into how Dollar General
basis, where they want to go, but it's not a traffic
generator. They pick their sites on existing traffic
and households that are there.

CHAIRMAN: Yes, commissioner Reeves.

MR. REEVES: I'm going to make an assumption
that the store you would build would be similar to
others that we have in the area with the same kind of
park layout and access to the highway?

MS. COX: Yes, sir. It will be the standard
9,100 square foot with 31 parking spaces.

MR. KAMUF: Forty-three.

MR. REEVES: Thank you.

MR. KAMUF: I have a proposed development
plan. You know, we have to file pursuant to the
statutory development plan. I have one. It's very
similar to all of them, but I could show you one if
you request it.

MR. REEVES: Not requested.

MR. KAMUF: I can understand.

CHAIRMAN: Any other commissioners have any
questions for Ms. Cox?
CHAIRMAN: Anyone in the audience have any questions for Ms. Cox?

CHAIRMAN: Thank you.

MS. COX: Thank you.

MR. KAMUF: Mr. Grimsley, wake up.

MS. KNIGHT: Please state your name for the record.

MR. GRIMSLEY: Bob Grimsley.

MR. GRIMSLEY: I wanted to take exception with the beer joint and the junk yard. That sounds like fun.

A lot of the issues that have been raised on this particular case are just identical to what we had going on in Utica when we tried to get the store through, and we finally prevailed with that, with the Board's incite in recommending against the Staff on the Staff denial.

I drive by the store at least twice a day. There are no traffic issues. It is not at an intersecting intersection. There was residential properties on both side. Like Mr. Kamuf said, there are a lot of particulars in this case that mirror...
exactly what our store was in Utica.

With that I'll take any questions you might have.

CHAIRMAN: Commissioners have any questions?
(NO RESPONSE)

CHAIRMAN: Anyone in the audience have any questions?
(NO RESPONSE)

CHAIRMAN: I just have one, and I'm not sure if, Ms. Cox, you're able to answer the question.

Orientation of the store as it's being proposed, how would the traffic means of egress and ingress be, as far as getting in and out of there? Is the store going to be situated so that the parking would be on the north side or would be the parking be on essentially the west side?

MR. GRIMSLEY: I'm going to refer that to the engineer.

MR. KAMUF: If it's okay, let me refer it to Brandy Zackery. She's handled at least five or six we've handled together of Dollar General stores in the area. She's with an engineering firm and she can tell you everything about it. We do have a development plan that shows it, but she's here to answer any questions along that line.
CHAIRMAN: Thank you.

MS. KNIGHT: Please state your name for the record.

MS. ZACKERY: Brandy Zackery.

(BRANDY ZACKERY SWORN BY ATTORNEY.)

MS. ZACKERY: Just to answer your question, it's a general layout. So there's one entrance onto the main road. It's a 36 foot wide entrance that has an entrance lane and then a left turn lane out and a right turn lane out of the entrance. The entrance is more on the north end of the property. The reason we do that is so that the general parking is kind of in front of the store, but the loading area where a truck would maybe come in and be parked as they unloaded weekly deliveries to the store would be on the side opposite of the one residential home. That just provides a little bit of buffering between the store and where any of the actual activity may go on.

CHAIRMAN: Thank you.

Any commissioners have any questions of Mr. Zackery?

(NO RESPONSE)

CHAIRMAN: Thank you.

MR. KAMUF: I have one more witness, but before I have him come up, the only new traffic that
will be generated in the area, according to the picture, you'll have some from Friendly Park subdivision and from the mobile home, but the only really basically additional traffic that you will have will be trucks such as Coca-Cola and chips and things and they generally just make one run a week. It should handle the traffic issue, I think.

We're here to answer any of those questions that you have about traffic because she has a detailed plan that they run according to all traffic engineers and traffic studies on these places, on new locations before they do it.

CHAIRMAN: Mr. Kamuf, you may want to stand there at the podium. I'm sure we may have some commissioners that may want to work you over on some questions.

MR. KAMUF: I have one more witness, and that's Rod Kuegel. He's one of the owners. Let him take the heat for a while.

MS. KNIGHT: Please state your name for the record.

MR. KUEGEL: Rod Kuegel.

(ROD KUEGEL SWORN BY ATTORNEY.)

MR. KUEGEL: You make a farmer swear and you let a lawyer talk.
I think the Staff has done their job. They have parameters to work within. Those parameters are not always concrete. Some of them are subjective or we wouldn't need a commission. It's your job to look at it subjectively. The property has three businesses within 500 feet of it and lighter, heavy industrial across the road.

The traffic issue is probably going to relieve some traffic from 81 to Owensboro rather than cause traffic problem because those people rather than having to go that far to get some substance or groceries or whatever they're looking for to drive across the street to the subdivision.

When we go into an area we like to improve, like to be part of the community. I tried for three years to buy this dilapidated house. It was an eye sore to the community. When we tore it down, there was drug paraphernalia in there and people had been staying in it some. Finally got the thing bought and cleaned up and we wanted to improve the area. I think this is another step in improving the area. It's an opportunity for the people that live in that area to have a store where they can get groceries and other items without having to drive to Owensboro. Gives you an opportunity to provide them with the service
without any cost to the government, and at the same
time enhance their quality of life. That's how we see
it. Thank you.

CHAIRMAN: Thank you, Mr. Kuegel.

Any commissioners have any questions of Mr. Kuegel?

(NO RESPONSE)

CHAIRMAN: Thank you.

Mr. Kamuf, would you like to call another witness?

MR. KAMUF: I'm done.

Seriously, we've got the people that can
answer the questions here, if you all have some.

CHAIRMAN: Do any of the commissioners have any questions for Mr. Kamuf?

MR. MOORE: Yes, sir.

CHAIRMAN: Commissioner Moore.

MR. MOORE: Mr. Kamuf, you mentioned several traffic studies to us. Can you explain how that works?

MS. ZACKERY: One clarification, what we have done is the trip generation studies, because there was concern of just the facility itself creating a lot more traffic. So not the full blown traffic study that you sometimes think of that's maybe 100 pages.
We did a trip generation study, which is based off of the Institute of Transportation Engineers. They go through and do studies across the country and their based on uses.

The use for the Dollar General store is based off of a freestanding discount store. They have charts that tell you for a weekday for the a.m. peak hours and the p.m. peak hours, what that additional traffic would be just in and out of that entrance. Like how many trips into the entrance and how many trips out of entrance.

For this type of facility it's usually 50/50. The p.m. peak hours actually was 50/50. Fifty percent of the trips were in, 50 percent of the trips were out.

It came down to about they're saying that the peak time of the morning or the peak time of the evening in one hour period approximately 20 cars. That's what would come. So 20 trips in and 20 trips out of the entrance. I have some reports if you all want to see. I did bring these. It's got the exhibits from the transportation book that was used.

So the first page of that report is just kind of a summary. It breaks down, it breaks down -- the book we used was the Eighth Edition of the Trip
Generation Manual. Then it's got a table there, the
density. The density number comes from the square
footage of the retail space.

Then you have, if you look at Exhibit 1 and
Exhibit 2, that gives you the freestanding discount
store page out of the book. Exhibit 1 is for the a.m.
peak hours. Exhibit 2 is for the p.m. peak hours.
Then if you look about mid-page on there it's going to
tell you that the average was 5.48 per 1,000 square
feet of the retail space. So you take basically the
7.4 and you multiply it by 5.48.

It ranged as low at some locations as 2.9. So
we're pretty good in the middle there with that
average.

Then it breaks down to the a.m. peak hours was
right at 21 trips into the store and 20 trips out of
the entrance. Then the p.m. peak hours was just under
21 trips in and 20 trips out.

I will point out, like they said previously,
that a lot of the traffic due to where Dollar General
usually locates the stores it's not necessarily
additional traffic. That is counting the traffic in
and out of that entrance, but a lot of that traffic
are just cars that are passing; either they're already
in that area going home. They're not going to drive
from across the county just to go to that store, which
is what you would really think of usually generating
additional traffic.

CHAIRMAN: Mr. Moore, does that answer your
question?

MR. MOORE: Thank you.

CHAIRMAN: Thank you.

MR. HOWARD: I just have a quick question.

Mr. Kamuf indicate that the store would be
9100 square feet, but you used a factor of 7.389,
which indicated a 7,400 square foot. Is that
discounting storage space in the building?

MS. ZACKERY: Yes. That's the full retail
space and doesn't include the storage space in the
back part of the building.

CHAIRMAN: Thank you.

Any other commissioners have any questions?

(NO RESPONSE)

CHAIRMAN: Mr. Kamuf, would you approach the
podium again in case there's any questions from the
commissioners.

Any commissioners have any questions for
Mr. Kamuf?

(NO RESPONSE)

CHAIRMAN: Anyone in the audience have any
questions?

Yes, step forward.

MS. KNIGHT: Please state your name for the record.

MR. WELBORN: Troy Welborn.

(TROY WELBORN SWORN BY ATTORNEY.)

MR. WELBORN: I would like to thank you all for informing the public of the meeting; otherwise, we wouldn't have known about it. I do live in Friendly Village. I recently taken up my community, because I care about my home and my community and the sewer project. I saw the notice and just was curious what it was going to. We're thrilled that we're going to get a Dollar General out there. We shop at Dollar General in town. It would be great for our community. I think it would help our economic and growth out there too. Thank you.

CHAIRMAN: Thank you.

Anyone else in the audience that would like to speak concerning this application?

(NO RESPONSE)

CHAIRMAN: The chair is ready for a motion.

Mr. Reeves.

MR. REEVES: Just one quick comment before I
make my motion.

I do want to acknowledge what Mr. Kamuf said awhile ago about the Staff makes their recommendation based on information that's submitted to them prior to this hearing. It is in accordance with the Comprehensive Plan and various regulations. But when the Board hears and the Staff hears testimony and facts are brought into consideration that help us make a decision. So therefore I want to make sure everybody knows that the Staff does their job and we try to do our job based on what they've done prior to this and then the testimony.

MR. KAMUF: I didn't intend to --

MR. REEVES: I know you didn't. I know you didn't.

MR. KAMUF: The Staff has got a job to do and you all have got a job to do and I've got a job to do.

MR. REEVES: You've said that, Charlie.

I'm going to move that this application be approved. I have my own findings.

1. The subject property is located in a rural community plan area where general business uses are appropriate in limited locations.

2. The proposed use as a general business conforms to the criteria for nonresidential

Ohio Valley Reporting
(270) 683-7383
development.

3. The area involves a mixture of residential, commercial, industrial and agricultural properties.

4. The road orientation will be consistent with other B-4 operations in the area except access will be much more restricted.

5. The adjacent neighbors agree to the rezoning.

6. The rural service area tries to concentrate the business activities that support the needs of the residents in a close geographic area.

MR. HOWARD: Fred, would you call it a rural community plan area instead of rural service?

MR. REEVES: Okay. Rural community plan area.

I'll restate number six.

6. The rural community plan area supports concentrating business activities that serve the needs of the residents in close geographic area.

7. Dollar General stores are in operation in at least two areas with conditions very similar to this one.

8. The subject property is in close proximity to three other B-4 properties and is a reasonable expansion of B-4 zoning.
Add Condition: The applicant must obtain approval of a site plan to demonstrate compliance with zoning ordinance requirements included but limited to parking, landscaping, building setback, access management and signage.

CHAIRMAN: A motion has been made by Commissioner Reeves for approval based on Findings of Fact 1 through 8, and I didn't write all of those down so there's no way to be able to repeat those. Hopefully you've got all of that written down, Mr. Reeves.

MR. REEVES: That's what we got Lynnette for.

CHAIRMAN: Is there a second?

MR. BALL: Second.

CHAIRMAN: Second by Commissioner Ball. Any discussion about the motion and the second?

(NO RESPONSE)

CHAIRMAN: Any questions concerning the Findings of Fact from Mr. Kamuf?

MR. KAMUF: No.

Fred, you can also include in that motion, if you want to, lighting. We'll take the lighting whichever way the adjoining neighbor wants it to. You don't have to put it in the motion. I'll state that for the record.

Ohio Valley Reporting (270) 683-7383
MR. REEVES: Thank you.

CHAIRMAN: Any further discussion concerning the motion and the second?

(NO RESPONSE)

CHAIRMAN: All those in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

ITEM 8

10631 Highway 764, Whitesville, 0.539 acres
Consider zoning change: From R-1B Single-Family Residential to I-1 Light Industrial
Applicant: Wisconsin Auto Supply, Inc.

MR. ROGERS: Mr. Chairman, I need to recuse myself on this item.

MR. HILL: This is a recommendation for denial so I will read a portion of the Staff Report.

DEVELOPMENT PATTERNS

The subject property is a 0.539 acre R-1B zoned parcel located at 10631 Highway 764 within the City of Whitesville. The property, which includes a primary structure and a parking lot, has previously been used as an office. The applicant proposes to rezone the property to I-1 Light Industrial in order to utilize the property as an auto parts wholesale supply business.
This area includes a mixture of residential, commercial, professional and agricultural properties. To the north is a residential property, zoned R-1A & R-1B. To the west is a residential property, zoned R-1A. To the south is a residential property, zoned R-1B, and a parking area for an office building, zoned P-1. To the east across Highway 764 is a residential property, zoned R-1A, and a commercial property, zoned B-2.

Highway 764 in this location is classified as a local street which has a 25’ building setback requirement. Access to the site must be compliant with applicable sections of the zoning ordinance. The Access Management Manual does not apply to this site since it is located outside the urban service area.

If the rezoning is approved, the applicant will be required to provide landscape buffer screening in compliance with Article 17 of the zoning ordinance along the perimeter of the property boundary where adjacent to residential zoning districts. Vehicular use area screening will also be required where adjacent to public street rights-of-way.

Due to the proximity to existing residential zones, all lighting for the subject property shall be directed away from the residential property to reduce
the glare and impact of the lighting on the residential uses.

If approved, prior to occupancy of the property the applicant must obtain approval of a site plan or final development plan to demonstrate compliance with zoning ordinance requirements including, but not limited to, parking, landscaping, building setbacks, access management and signage.

SPECIFIC LAND USE CRITERIA

The applicant’s proposal is not in compliance with the Comprehensive Plan. The proposed industrial use conforms to the criteria for nonresidential development. However, the proposal is not a logical expansion of existing I-1 zoning in the area. Since there is no existing industrial zoning in this area this proposal would significantly increase the extent of industrial uses in the vicinity. This proposal may overburden the capacity of roadways and other necessary urban services that are available in the affected area. This proposal is also not a logical expansion of light industrial zoning across an intervening street.

PLANNING STAFF RECOMMENDATIONS

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

Ohio Valley Reporting
(270) 683-7383
FINDINGS OF FACT

1. Staff recommends denial because the proposal is not in compliance with the community’s adopted Comprehensive Plan;

2. The subject property is located in an Urban Residential Plan Area where light industrial uses are appropriate in very limited locations;

3. The proposed use as light industrial conforms to the criteria for nonresidential development;

4. The proposal is not a logical expansion of existing I-1 Light Industrial zoning in the area;

5. Since there is no existing industrial zoning in this area this proposal would significantly increase the extent of industrial uses in the vicinity;

6. This proposal may overburden the capacity of roadways and other necessary urban services that are available in the affected area; and

7. This proposal is also not a logical expansion of light industrial zoning across an intervening street.

MR. HILL: Staff request that this report be entered into the record as Exhibit F.

CHAIRMAN: Thank you, Mr. Hill.
Is anyone here representing the applicant?

MR. LEHECKA: Yes.

CHAIRMAN: Would you like to speak on behalf of the application?

MR. LEHECKA: Not at this moment.

CHAIRMAN: Anyone else in the audience have a question concerning this application?

(NO RESPONSE)

CHAIRMAN: Do any of the commissioners have any questions concerning this application?

Yes, Commissioner Jean.

MR. JEAN: I have a question for the applicant and I have a question for Mr. Howard also.

CHAIRMAN: Please step forward.

MR. JEAN: What would be your hours of operation?

MS. KNIGHT: Please state your name for the record.

MR. LEHECKA: Paul Lehecka.

The question was hours of operation?

MR. JEAN: Correct.

MR. LEHECKA: We normally work eight to four. It's strictly, we're never open to the public. Everything is strictly online. The employees, it's just to print label and package and ship things to the

Ohio Valley Reporting
(270) 683-7383
post office, and UPS, and different things like that.
No public access to what we do. It's all on website, eBay, Amazon, things like that. There's very little traffic, if any, right now. We have on average three cars of employees a day there.

MR. JEAN: Thank you.

The other question I have is for Mr. Howard.

What are allowed uses for I-1?

MR. HOWARD: Uses in an I-1 Light Industrial zone, there's a variety. That would include your general warehouse manufacturing assembly type industrial uses. It would not allow a junk yard, salvage yard, things like that, the heavier industrial type uses, but it would be your packaging, assembly, light manufacturing. You could have auto repair. Things like that would be permitted in an I-1 zone.

MR. JEAN: Thank you.

CHAIRMAN: Any other commissioners have any questions concerning the application?

(NO RESPONSE)

CHAIRMAN: If you wouldn't mind, please approach. I do have a general question.

You mentioned maybe three employees. What would you envision, as far as your inventory? Is that going to be by truckload?
MR. LEHECKA: It is. Right now we receive I would say three or four, 20 to 40 foot containers a year from overseas. We have a one-hour limit on those. We've never gone over one hour. Being we're catty-corner from IGA, there's shipments and trucks coming in and out, up and down that road of Chestnut, which is directly to the north of the back of IGA. The amount of traffic for deliveries and things like that we're going to be next to nothing in comparison to like what's right across the street from us. Three or four a year. What I order is usually very large quantities that last a long time just because of cost savings for having things shipped by freight. So it's a lot cheaper to order usually a years worth of inventory at a time. So it reduces the amount of shipment back and forth. That's very minimal on that. Did I answer your question on that one?

CHAIRMAN: Yes, it does. Thank you.

Any commissioners have any further questions?

(NO RESPONSE)

CHAIRMAN: Anyone in the audience that would have a question?

MR. MOORE: I have one.

CHAIRMAN: Yes, Commissioner Moore.

MR. MOORE: Where were you operating this
particular business? The same site or someplace else?

MR. LEHECKA: I actually, it actually started from my home, just like people do when they're selling on eBay and Amazon.

Me and my brother actually began a company. Was actually currently employed at the time with the Owensboro Fire Department when we started that and I left the fire department in 2008 and moved up to Wisconsin in 2009 and started the company with my brother, which we brought, me and a couple of people, with 40 employees when I left there three years ago. So I just took some of the products that I started and came back to Kentucky. My wife is from here. We're currently operating across from the Philpot Post Office. I rent from Joe and Linda Boarman. They have a truck and trailer building there. Nobody even knows we're in there. There's no foot traffic. Nobody even knows we're in there. There's literally three cars parked in front of it at any given time. We actually load a pickup truck and drive it across to the post office and dump the stuff off. We're like a pretty good portion of what that post office brings in revenue. I'd say we're probably 70 percent if not more of their revenue.

As far as being an eyesore of traffic or
crowded, we can lay pretty low. As long as we have internet and cable, we're up and running. We don't need to have much exposure at all.

Does that answer your question?

MR. MOORE: Yes. Thank you.

CHAIRMAN: Any other commissioners have any questions concerning the application?

(NO RESPONSE)

CHAIRMAN: One question that did pop in my mind.

You're outbound, that you would ship to your internet customers. Is that going to be primarily UPS type shipment?

MR. LEHECKA: It changes regularly. Our shipment are with the post office. It used to be all USPS. With Amazon expanding the way they are, their fulfillment centers, we're doing a lot more. We're actually shipping it UPS to Amazon's fulfillment centers and they actually ship it to the customers individually. Right now a lot of it -- how often do we do UPS?

UNKNOWN INDIVIDUAL: We bring it to them. They don't pick up from us.

MR. LEHECKA: Every couple of weeks maybe a UPS truck may do a pick up from us, but we actually
usually bring it to, actually deliver it. You know, a pickup truck full of boxes.

The post office is always going to get a portion of it. They're never going to be eliminated completely from it. I know the Whitesville's post office, they're familiar with what we do in Philpot. Already asking us, when are you guys going to be here because they're going to have to -- we're going to make them busy. They're anticipating that, which is a good thing for them because I know they talk about closing or shutting locations down and things like that. I know what I spend a month alone at the post office. It's probably going to be a bonus if that does happen.

As we're actually doing more things with Amazon, the market changes, is shipping a lot more stuff directly to Amazon's fulfillment center. So individual shipping out of my location through the local post office is probably going to decline over time, depending on what happens with the market and different products that I get into. If it's cheap stuff like first class items and things, the post office will get all of that. Even then it's sometimes beneficial to do it from Amazon. That is their fulfillment center. I'm sure everybody in here has
bought something and it says, by the next hour and 15
minutes you receive it tomorrow. That's why. Because
we have to ship it to six or seven different
warehouses all over the country. It's close to
whoever orders it. So that does decrease the amount
of stuff we're actually shipping on a daily basis, but
we do ship larger amounts out in one shot to fulfill
our inventory.

    CHAIRMAN: Thank you.

    Any other questions?

    Commissioner Frey.

    MR. FREY: I have a question for Mr. Howard, I
    guess.

    I certainly don't have a problem with this
particular project, but once we rezone it, they grow
too large and move out, then it stays I-1?

    MR. HOWARD: That's correct.

    MR. FREY: Then something different could
occur?

    MR. HOWARD: That is correct. Once it's
rezoned, it's I-1. This commission cannot do a
rezoning stipulated on one specific use. So yes, once
it's rezoned it will be I-1. If they do well, there
may be land around them that they can acquire and
expand. Who knows. It does offer the possibility for
adjoining properties to then meet logical expansion

criteria for expansions and that type of thing.

Yes, your statement is correct. If they got
bigger and moved out and went somewhere else, the
zoning wouldn't revert back to the current residential
zoning.

MR. FREY: Thank you.

CHAIRMAN: Any other commissioners have any
questions?

Yes, Commissioner Reeves.

MR. REEVES: I'm looking at this overhead
shot. Is that a building in the upper right-hand
corner that I'm seeing there? It's kind of faded out
on mine.

MR. LEHECKA: Yes, if you want me do discuss
every property surrounding it.

MR. REEVES: No. No. I'm just talking about
the property you're asking to be rezoned.

MR. LEHECKA: Oh, just the one?

MR. REEVES: Yes. Is that a building?

MR. LEHECKA: There is a current building
there. There has been, actually that building, the
current one that's there was built I believe in 1954.
It was used as the local doctor's office.

MR. REEVES: Would you be operating out of
MR. LEHECKA: I would be. So that current building actually, it works perfect for me having desks with computers and people answering phone calls and e-mails and printing labels. It's actually a perfect building for what I needed. I would be putting an addition on the back for the warehouse.

MR. REEVES: That was my next question.

MR. LEHECKA: We would be adding on to it.

That current building there was a doctor's office since it was built in the '50s. Most of those -- it's zoned residential. It's never been a residence. The lady I bought it from, a Peggy Devall, she did a speech therapy business out of it, but she couldn't do that anymore due to some rules at the hospital and their regulations and stipulations.

The building doesn't even have a shower or a tub in it. Actually the walls are all either two inch plaster or solid concrete walls. So if anybody ever wanted to turn that into a residence or actually use it for a residence, that building would have to be torn down. It's just not plausible to turn that into a residence and it's never been a residence. There's never been a family dwelling in that home or that building.
CHAIRMAN: Does that answer your question, Mr. Reeves?

MR. REEVES: Yes. I have one for Mr. Howard. If this were to be rezoned, Mr. Howard, what would be the screening restrictions around the property?

MR. HOWARD: If the property were rezoned, on all three sides, it wouldn't include the frontage, there would be a 10 foot landscape buffer with a 6 foot tall element and one tree every 40 linear feet around the perimeter. It looks like on the front side there's a driveway that exits onto 764, but there might be a little bit of the 3 foot bush element in the front, but very well would not be required there. It's hard to tell by looking at the aerial photo.

MR. REEVES: Thank you.

CHAIRMAN: Yes, Mr. Ball.

MR. BALL: If this were to be rezoned, it sounds like the occupancy of the building is going to change. I assume that all of that would go, does that go through the Whitesville building department?

MR. HOWARD: Yes. Whitesville has their own building process and zoning enforcement. It would be routed through them.

CHAIRMAN: Any other commissioners have a
question?

MR. HOWARD: As was mentioned on, I guess, two rezonings ago, if this were to be approved, we would certainly recommend that you discuss lighting as well with residential properties in the vicinity. You certainly -- you know, I don't know what kind of lighting they'll have, but you certainly don't want to create a situation where they would have floodlights on the building that would be shining on the adjoining residential properties or anything like that.

MR. LEHECKA: I've also already submitted this or presented this to -- this is in city limits of Whitesville. What I understand they have final say in everything. I do have a letter from the Board of Commissioners and the mayor all saying they will approve the rezoning of it, since they're very familiar with surrounding property and what the use is going to be for. I don't know if anybody has ever actually visited that location, but calling that residential is very deceptive. I've actually got photographs of the surrounding properties if anybody would be interested in seeing any of them.

The property directly to the southeast of that you've got the blue, and then directly to the south you can see that's a rental house right there that's
probably, you know, a couple of icicles away from
being torn down.

Then on the corner there are 764 and 54, that
is a really nice building there from Diane. I don't
know her last name. They built a doctor's office
right there. All of the gravel area that you see in
the parking area surrounding that rental property
between my building and Diane's, that's a lot of
traffic right there regularly. I was just there this
morning actually and between all the patients and the
employees that work at that facility, there's cars in
and out right there on that corner. Then you've got
IGA on the corner that has trucks in and out
constantly.

In the bottom, will be the southwest corner,
you see it's kind of shaped like a mailbox flag right
there. That's actually the City of Whitesville's pump
station for their sewer. It's not airtight. So if
there is actually a southeast wind, you do not want to
have your window down if it was a residence.

Then the property directly to the east, I'm
sorry, to the west that's behind it, that is actually
used for storage. It's pretty much a scrap yard.
That's like old mining equipment from the '60s. I've
got a photograph if anybody wants to see it of every
Then the building that is due north, that is a residence. It's a house, but that was actually used as a hair salon, a residence with a hair salon in it for a long time up. It was usually Irvin Rogers' parents place and they ran a business out of that. Then on the other side of that residence or that property there's another, there's a barbershop there that's a business, he runs a barbershop out of his home there.

So the two properties to the north has always been kind of residential/commercial use. The one has never been commercial use, I'm sorry, residential use. It's really it's been mis-zoned. I don't know what they would had to zone it for a doctor's office. It just never got rezoned, for whatever it should have been zoned at for that use.

Does anyone have any questions?

CHAIRMAN: Any other commissioners have any questions?

MR. LEHECKA: Anybody interested in seeing any of the photographs of what's directly around that?

CHAIRMAN: No.

Anyone in the audience have any questions?

(NO RESPONSE)
CHAIRMAN: Chair is ready for a motion.

Yes, Commissioner Ball.

MR. BALL: Mr. Chairman, I would like to make a motion for denial based on the Planning Staff Recommendations and Findings of Fact 1 through 7.

CHAIRMAN: A motion has been made by Commissioner Ball to deny based on Findings of Fact 1 through 7. Is there a second?

MR. REEVES: Second.

CHAIRMAN: Commissioner Reeves has a second. Is there any discussion on the motion and the second?

(NO RESPONSE)

CHAIRMAN: There being none, the Chair is ready for a vote. All those in favor raise your right hand.

(BOARD MEMBERS BEVERLY McENROE, MANUEL BALL, LARRY BOSWELL, FRED REEVES, LEWIS JEAN RESPONDED AYE - WITH IRVIN ROGERS RECUSING HIMSELF.)

CHAIRMAN: All opposed.

(BOARD MEMBERS STEVE FREY AND ANGELA HARDAWAY RESPONDED NAY.)

CHAIRMAN: Motion carries.

ITEM 9

11316 Highway 951, 105.6 acres
Consider zoning change: From EX-1 Coal Mining to A-R Rural Agricultural
Applicant: TKB Investments, LLC

Ohio Valley Reporting
(270) 683-7383
PLANNING STAFF RECOMMENDATIONS

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

FINDINGS OF FACT

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

2. The subject property is located in a Rural Maintenance Plan Area where rural farm residential land uses are appropriate in general locations;

3. The subject property is a single tract of 105.6 acres;

4. The subject property has access to Highway 951;

5. Mining activity has ceased on the property and it is ready to revert back to its original zoning classification; and

6. The Owensboro Metropolitan Zoning Ordinance Article 12a.31 requires that property shall revert to its original zoning classification after mining.

MR. HILL: Staff request that this report be entered into the record as Exhibit G.

CHAIRMAN: Thank you, Mr. Hill.

Ohio Valley Reporting
(270) 683-7383
Is there anyone representing the applicant in the audience?

APPLICANT REP: Yes.

CHAIRMAN: Would you like to speak on its behalf?

APPLICANT REP: No.

CHAIRMAN: Thank you.

Any commissioners have any questions concerning this application?

(NO RESPONSE)

CHAIRMAN: Anyone else in the audience like to speak on this application?

(NO RESPONSE)

CHAIRMAN: There being none the Chair is ready for a motion.

Mr. Moore.

MR. MOORE: Mr. Chairman, I would like to make a motion for approval based on Staff's Recommendation and Findings of Fact 1 through 6.

CHAIRMAN: A motion been made by Mr. Moore for approval based on Findings of Fact 1 through 6. Is there a second?

MR. JEAN: Second.

CHAIRMAN: Second by Mr. Jean. Any discussion concerning the motion and second?
CHAIRMAN: There being none all those in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

FINAL DEVELOPMENT PLANS

ITEM 10

4342 Springhill Drive, 1.074 acres
Consider approval of a final development plan.
Applicant: TKB Investments, LLC

MR. HOWARD: This plan has been reviewed by the Planning Staff and Engineering Staff. It's found to be in order. It's found to be consistent with the requirements of the zoning ordinance and a rezoning that was approved on.

It comes before you all because when the rezoning was approved for this property two or three, a couple of years ago, there were conditions placed upon the rezoning that said at time of final development plan submission that the adjoining property owners would be notified. We posted an ad in the paper, as you would with a rezoning. It required that the development plan come before this commission for approval. So that's why it's on your agenda tonight, but typically these are approved in-house when they meet all the requirements, but it's here for
your all's consideration tonight.

CHAIRMAN: Anyone representing the applicant here?

MR. STARNES: Yes, sir.

CHAIRMAN: Would you like to speak?

MR. STARNES: I'm Mark Starnes. I'm the attorney for the applicant, TKB Investments.

As Mr. Howard said, this property was previously approved for rezoning by the Fiscal Court to be B-4 General Business with five conditions having been satisfied, including the filing of this final development plan. The final development plan demonstrates that those conditions have been satisfied, including one tree per 10 feet on the boundaries of the property. Deed restrictions regarding maintenance of the landscaping going forward and notice to adjoining landowners.

I believe, my understanding Planning Staff has approved with regards to the southern end of the property and it's listed on the development plat. The use of an existing fence as the 6 foot common element for that side. I came today prepared to say that the owner would install a fence within the buffer zone on the west end of the property to satisfy that 6 foot element, but I understand that the adjoining property
owner, Amy Wilcox, may be agreeable to the utilization of her existing fence for that purpose. I'll, of course, let her speak to that. Irrespective to the final development plan meets the conditions imposed by Fiscal Court, we would ask it be approved.

CHAIRMAN: Any questions from the commissioners for Mr. Starnes?

(NO RESPONSE)

CHAIRMAN: Thank you.

Is there anyone else in the audience that would like to speak on this application?

Yes, come forward.

MS. KNIGHT: Please state your name for the record.

MS. WILCOX: Amy Wilcox. I live at the west side of the property.

(AMY WILCOX SWORN BY ATTORNEY.)

MS. WILCOX: Thanks again for letting me speak. I know we had a rough go of it three years ago.

I just had some questions in reviewing that and then the restrictions from three years ago. I only speak for myself and my family. I can't speak for anybody else in Lake Forest or anything.

My primary goal is just to maintain our
property value and the quality of life in our backyard
and everything.

I have some questions. I with Mark just
before the meeting to confirm that it's a one-story
building, which makes us happy, of course. It being a
security company also is not one of the worst things
that could be there.

I just had some questions about that though.
With it being a security building, what are the
operational days and hours going to be?

MR. STARNES: I cannot speak to what those
hours are. They're operating right now on
Commonwealth Court. I don't know. I can't speak to
the exact hours. It's not like a grocery store or a
video store. It's nothing that the public comes to.
It's the headquarters of this security business. So I
don't know. It's not your typical retail store that
would be open from 8 to 8. I can't speak to that.

MS. WILCOX: The only reason I bring it up was
in the restrictions in the rezoning before we had
mentioned, you know, traffic and 24 hour lighting and
traffic as being a concern. With it being a security
company I understand the only have I'm sure a small
limited staff that's actually there because they have
people patrolling various areas in town. I was just
wondering what kind of load, if there's any kind of
way to find out what kind of traffic load or lights
and noise burden that might be for that area. If
they're going to have people coming in at midnight and
2 a.m. or do they come in and get a car at 10 and
they're out until 7 a.m. That's something we were
concerned with.

CHAIRMAN: Are you referring to the lighting,
on how the lighting would be directed on the lot?

MS. WILCOX: Yes. That's a separate thing I
was going to bring up. In general with the days and
hours of operation, is it something that's going to be
a 24/7, you know, people coming and going, getting
cars or what have you, or is it pretty much going to
be very little traffic because it's kind of a dispatch
center and a few people coming and going. I don't
know what the burden is.

CHAIRMAN: Mr. Starnes, is that something
you're able to address?

MR. STARNES: No, it's not. That was not one
of the conditions so I didn't see why that would -- I
didn't take the effort to find out that kind of
information.

CHAIRMAN: Thank you.

MS. WILCOX: The other thing was about the
lighting. They said that it would downward.

Previously before the meeting when I spoke with him
they said it would be downward facing. My other main
concern with that would be downward facing. Before we
couldn't put any limits on brightness or anything like
that, but I imagine they're going to want to
illuminate the parking between the building and the
garage. I would just ask to, I guess, put it on
record that I'm asking you to keep our backyard in
that mind when lighting that space. To not let it say
be as bright as the Dollar General that's down the
street and the other strip malls down the street
because they're all pretty bright from our backyard.

That kind brings me to, I have a question
about proposed usage of the garage. Is it supposed to
be to maintain the fleet, like there's going to be
air-wrenches and a lot of noise or is it just kind of
for washing and storing? Can you speak to that?

MR. STARNES: Again, I don't know exactly. I
know they are Night Hawk Security vehicles that
employees will use to go to factories and so forth,
which this company provides security guards at a lot
of larger type of industrial businesses. I don't see
that they do any real mechanical work or anything like
that. It's more of a storage and cleaning, that type
MS. WILCOX: Just being that uses for vehicles and trucks was prohibited. So I know that wouldn't be the primary usage of that land, but sneaking that in there might be a little sneaky. If it's just going to be storage, that's not a problem.

Speaking to the buffer. We have -- on that picture that you guys have there, it's a little better to see than the development plan in a map form that we have in black and white, where my fence is and where my backyard is. It's the one to the top left of that blue plot. I didn't know where the property lines were when you bought the place. Apparently there's like a wedge of property behind their lot that kind of doesn't follow the fence line. So it kind of created an irregularity for them to put up a fence on their property line to create their required buffer. My husband and I don't have a problem using -- there's a berm on my back line. We don't have a problem using that berm and fence as the common divider, just so long as there's definitely the trees. However they plant the trees, whether it be on the berm or if they make a retaining wall on their side and kind of get rid of their half of the berm or however that works, that it doesn't damage our berm or fence.
CHAIRMAN: Is there someone here that might be able to address?

MS. KNIGHT: Please state your name for the record.

MR. WEAVER: David Weaver.

(DAVID WEAVER SWORN BY ATTORNEY.)

MR. WEAVER: What we would like to propose, based off of Ms. Wilcox's statement, we would like to pose a note similar to what we put on the existing fence line on the south side of the property. Basically it states that the developer has the responsibility for installing a new fence if the existing fence went away. Basically her fence would serve as the buffer to prevent two fences from being close together. Then, of course, our developer would have to build a fence where her fence line stops extending towards Spring Hill. Is that clear enough? So we would add an additional not to our plan, if that would work.

MR. HOWARD: Part of that note on the south line was that if that fence were to go away at some point that the developer would be responsible for replacing that. So if Ms. Wilcox's, her fence went away, Mr. Starnes and your applicant would be then required to put the fence up, correct?
MR. WEAVER: Yes. So the language would be virtually identical to what we have on the south side to the west side.

CHAIRMAN: Does that address your question, Ms. Wilcox?

MS. WILCOX: Yes. I guess I didn't really have a question about that one since we've kind of discussed this before the meeting. I just want to let you know that. I'm fine using that fence, as long as it doesn't damage the property by erosion or what have you. I don't know.

I was just going to say I guess the main thing is the trees are going to be very optimal and necessary for any kind of light barrier. So I was just wondering when those might go in. And if we could find out some kind of traffic or hours of operation information, that would be helpful. That's it.

CHAIRMAN: Commissioner Reeves.

MR. REEVES: My question, Mr. Howard, is I think we're simply looking to approve this plan, right? Any conversations that she's had with Mr. Starnes, who is representing, that's not our responsibility nor should we be held accountable if they choose not to honor those with regard to how the
lights are oriented, what's going to take place in
that garage?

MR. HOWARD: I would say, yes and no. You all
as the commission do -- on the rezoning earlier, you
know, I made a point to ask that lighting be
addressed. We do need to be cognizant of the fact
that there are residential properties in vicinity. I
think it's well within your purview to say that all
lighting shall be downcast and shall not project onto
the adjoining property. I think there's a note
addressing that on the development plan.

In regard to what might happen in the garage,
things like that, when Fiscal Court approved the
rezoning at their meeting, they limited the types of
uses. Although this property was zoned B-4, they
limited the uses that could potentially go in there.
An office would meet that criteria.

So to answer the second part of your question,
I do think that in some capacity what they have
submitted does meet the requirement of it being an
office. In general, the zoning ordinance does not
allow for regulation of hours of operation and that
type of thing.

I would note, you know, the question was
brought up if there would be air-wrenches and that
type of thing. A mechanic's garage doing automobile work, things like that, would not be a permitted zone in a B-4 zone. I don't have the list of what Fiscal Court allows either. So I don't think that would meet the intent. If it's storage and that type if thing, I think it would. We would have an issue from a zoning enforcement perspective if they're out there putting on, you know, turning rotors and putting in, dropping engines in vehicles and, you know, any type of heavy auto. If they're washing cars, detailing, changing oil, fine. I do want to give her that assurance. That even from a zoning perspective, some of those things, that type of heavier use wouldn't be allowed from an automobile perspective in that garage.

MS. WILCOX: And that's why I brought that up, to clarify.

CHAIRMAN: This is essentially going to be an office complex?

MR. STARNES: Yes, that's correct.

My understanding was that we were here to approve of the final development plan and confirmation that the five conditions imposed by Fiscal Court are addressed in that plan and they are, we're certainly going to be cognizant of the neighborhood and Ms. Wilcox. I believe that addresses everything that is
in the Fiscal Court requirement of the ordinance.

The one reason I do think that it was important with regards to Ms. Wilcox speaking was to confirm the agreement to the use of her existing fence on the western line at the common element.

CHAIRMAN: Thank you.

Any commissioners have any questions?

(NO RESPONSE)

CHAIRMAN: Anyone else in the audience have any question or statement they would like to make?

(NO RESPONSE)

CHAIRMAN: There being none the Chair is ready for a motion.

MR. MOORE: Move for approval.

CHAIRMAN: Move for approval by Mr. Moore.

MR. BALL: Second.

CHAIRMAN: Second by Mr. Ball.

MR. HOWARD: If I could. Would you add the condition that they stated where they're going to have to take the plan and add another note regarding the fence along the west property line? Would you approve it subject to them adding that language to the plan that we can then distribute and have signed by the Chairman and Secretary as typical, please?

MR. MOORE: Yes.
MR. BALL: Still good.

CHAIRMAN: Any further discussion about the motion and the second and the added note?

(NO RESPONSE)

CHAIRMAN: The Chair is ready for a vote. All those in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

COMBINED DEVELOPMENT PLANS/MAJOR SUBDIVISIONS

ITEM 11

Deer Valley, Section 4, 43.81 acres  
Consider approval of a combined final development plan/major subdivision preliminary plat.  
Applicant: Deer Valley Subdivision, LLC

MR. BALL: I need to recuse myself, please.

MR. HOWARD: This plat has been reviewed by the Planning Staff and Engineering Staff. It's found to be in order. It's in compliance with the requirements of the rezoning that was done several years ago. It's in compliance with the subdivision regulations and zoning ordinance requirements and it is ready for your consideration for approval.

CHAIRMAN: Anyone here representing applicant?

APPLICANT REP: Yes.

CHAIRMAN: Would you like to speak on behalf of the applicant?
APPLICANT REP: No.

CHAIRMAN: Any commissioners have any questions concerning this application?

(NO RESPONSE)

CHAIRMAN: Anyone else in the audience have any comment concerning this application?

(NO RESPONSE)

CHAIRMAN: The Chair is ready for a motion.

Commissioner Rogers.

MR. ROGERS: Mr. Chairman, I make a motion for approval of the plat.

CHAIRMAN: A motion been made by Mr. Roger for approval. Do we have a second?

MR. FREY: Second.

CHAIRMAN: Second by Mr. Frey. Any discussion on the motion and the second?

(NO RESPONSE)

CHAIRMAN: There being none the Chair is ready for the vote. All those in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE - WITH MANUEL BALL RECUSING HIMSELF.)

CHAIRMAN: Motion carries.

MINOR SUBDIVISION PLATS

ITEM 12
9670 & 9700 Highway 662, 5.998 acres
Consider approval of a minor subdivision plat.
Applicant: Halley E. & Sharon K. Baize

MR. HOWARD: This plat comes before you as an exception to the three to one requirement of the subdivision regulations. There's an existing six acre parcel that was approved back 25, 30 years ago that created this six acre parcel. At that time there was no note on the plat that dictated that it couldn't be further subdivided, event though at that point it was a flag lot. That note has been added, that the property will not be further subdivided without meeting the requirements of the subdivision regulations. It is a rather large parcel. It's six acres. They're going to end up with two sites where a residence could be built, unless they meet the subdivision regulations like putting in a public street, this is really what they're going to have. So we would recommend that you consider it for approval.

CHAIRMAN: Thank you, Mr. Howard.

Is there anyone representing the applicant?

(NO RESPONSE)

CHAIRMAN: Anyone from the audience that would have any comments?

(NO RESPONSE)

CHAIRMAN: Any commissioners have any
questions or comments?

(NO RESPONSE)

CHAIRMAN: There being none the Chair is ready for a motion.

Commissioner Frey.

MR. FREY: I make a motion to approve.

CHAIRMAN: Motion to approve.

MS. McENROE: Second.

CHAIRMAN: Second by Commissioners McEnroe.

Any questions from the discussion about the motion and the second?

(NO RESPONSE)

CHAIRMAN: There being none the Chair is ready for a vote. All those in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

ITEM 13

3560 & 3580 New Hartford Road, 7.018 acres
Consider approval of a minor subdivision plat.

Applicant: OCRC, Inc.

MR. HOWARD: This plat comes before you requesting an exception on the access spacing standard. The division itself is fine. It meets all the requirements, but Byers Avenue is a roadway that's classified as an access spacing standard. They're proposing a full access to east Byers Avenue, before
you go around the curve and then a full access point after you go around the curve.

They're also requesting a right-in only access point on Byers Avenue that does not then meet the spacing standard. They had a traffic engineer prepare an analysis for the traffic operation. The City engineer's office reviewed that and our office has reviewed it. Based on that review, the City engineer's office is fine moving forward with a notation that can have a potential right-in only access along with the two full access points. There was some language in that, that information we received from the traffic engineer that requested that it be reviewed and they review it. The engineer's office and our office, we'll all look at it to make sure that it's channelized in a way that it will allow right-in only and heavily discourage anybody from trying to turn in the opposite direction to go out the wrong way, that type of a thing, which is the concern that pops up when you have traffic going through an access point that's designated for right-in only or we see the right-in and right-out type things. If they're not channelized properly, they don't function properly. So that will be certainly reviewed at the time of final development plan when that is submitted.
both by Engineering Staff and our staff.

So with that we believe that what is on here is in order. It's in agreement with the traffic analysis that was done and been reviewed by the Engineering Staff and found to be okay, as a concept waiting for the final drawings to actually make the final approve.

So it's ready for your consideration for approval this evening.

CHAIRMAN: Thank you, Mr. Howard.

Mr. Riney, would you like to make any comments concerning this?

MR. RINEY: I'm good.

CHAIRMAN: Any commissioners have any question or comment concerning this application?

(NO RESPONSE)

CHAIRMAN: There being none the Chair is ready for a motion.

Mr. Jean.

MR. JEAN: Motion to approve.

CHAIRMAN: Motion to approve by Mr. Jean. Is there a second?

MR. REEVES: Second.

CHAIRMAN: Second by Mr. Reeves. All those in favor raise your right hand.
ITEM 14
Consider approval of April 2017 Financial statements

CHAIRMAN: Hopefully the commissioners have all had a chance to review it. Is there any questions, discussion concerning this financial statement?

(NO RESPONSE)

CHAIRMAN: There being none the Chair is ready for a motion.

MR. MOORE: Make a motion for approval.

CHAIRMAN: Motion for approval. Is there a second?

MS. McENROE: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

ITEM 15
Consider approval of the FY 2018 OMPC Budget and salary chart.

CHAIRMAN: Hopefully everyone has had a chance
to read the informative letter and review all the
information. Is there any questions concerning that
budget?

(NO RESPONSE)

MR. HOWARD: I would just like to make a quick
statement.

You all have had an opportunity to review it.
It's very similar to what was reviewed at our work
session earlier this year. Both the City of
Owensboro, Daviess County Fiscal Court and the City of
Whitesville have approved the funding request that we
submitted. So we're very thankful to all three of our
legislative bodies for that. We plan to do good work
in the coming fiscal year.

Be glad to answer any questions that you might
have pertaining to the budget.

CHAIRMAN: Thank you, Mr. Howard.

Any further questions from the commissioners?

(NO RESPONSE)

CHAIRMAN: There being none the Chair is ready
for a motion.

Mr. Rogers.

MR. ROGERS: Motion for approval.

CHAIRMAN: Motion for approval by Commissioner
Rogers. Do we have a second?
MS. McENROE: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

ITEM 16

Comments by the Chairman

CHAIRMAN: I just have a couple. Wanted to give a shout out and congratulations to the APA 2017 President Brian Howard. I received the booklet recently. Didn't realize this thumbing through it. Saw that Brian Howard was elected President and Mike Hill is our Region III representative. So I would like to congratulate you both on doing a fine job in representing our community very well I'm sure. Thank you for your work. That's all the chair has.

ITEM 17

Comments by the Planning Commissioners

MR. REEVES: I know the hour is late. I would be remiss if I didn't say this. I served on RWRA's Board, and Riverport Board, and now OMPC. This is an extremely challenging board to serve on. If not for the Staff we have, it would be more than extremely challenging. So I want to thank them for what they do. We went through a training session tonight. It
takes you about a year to learn how to make a motion
on this board by the way. If were not for the Staff
helping us do that, we would not be functional at all.

I want to particularly thank Melissa Evans for
the training she did this evening, Melissa. You did a
super job on that. I just want to thank all of you
for what you do and to let you know you're very, very,
much appreciated.

CHAIRMAN: Thank you, Commissioners Reeves.

Any other commissioners have any comments?

MR. FREY: I do.

CHAIRMAN: Commissioner Frey.

MR. FREY: I want to put on the record I never
disagree with Staff; I agree with the applicant.

ITEM 18

Comments by the Director

CHAIRMAN: Any comments by the director?

MR. HOWARD: No.

CHAIRMAN: There being none Chair is ready for
an important motion.

MS. HARDAWAY: Motion to adjourn.

CHAIRMAN: Do we have a second.

MR. FREY: Second.

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

CHAIRMAN: Motion carries. We are adjourned.

----------------------------------------------
I, LYNETTE KOLLER FUCHS, Notary Public in and
for the State of Kentucky at Large, do hereby certify
that the foregoing Owensboro Metropolitan Planning
Commission meeting was held at the time and place as
stated in the caption to the foregoing proceedings;
that each person commenting on issues under discussion
were duly sworn before testifying; that the Board
members present were as stated in the caption; that
said proceedings were taken by me in stenotype and
electronically recorded and was thereafter, by me,
accurately and correctly transcribed into the
foregoing 107 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the
2nd day of JULY, 2017.

LYNETTE KOLLER FUCHS
NOTARY ID 524564
OHIO VALLEY REPORTING SERVICES
2200 E. PARRISH AVE, SUITE 106E
OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES: DECEMBER 16, 2018
COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

Ohio Valley Reporting
(270) 683-7383