

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 NOVEMBER 8, 2001

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4 The Owensboro Metropolitan Planning  
5 Commission met in regular session at 6:00 p.m. on  
6 Thursday, November 8, 2001, at City Hall, Commission  
7 Chambers, Owensboro, Kentucky, and the proceedings  
8 were as follows:

9 MEMBERS PRESENT: Drew Kirkland, Chairman  
10 Gary Noffsinger  
11 Nick Cambron  
12 Dave Appleby  
13 Jimmy Gilles  
14 Scott Jagoe  
15 Irvin Rogers  
16 Judy Dixon  
17 Martin Hayden  
18 Stewart Elliott,  
19 Attorney

20 \* \* \* \* \*

21 CHAIRMAN: Want to welcome everybody to  
22 our November 8th Owensboro Metropolitan Planning  
23 Commission meeting. Please stand. Our invocation and  
24 pledge of allegiance will be given by Dave Appleby.

25 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Our first act of business would  
be to consider the minutes of the October 11, 2001,  
meeting. Are there are any questions, corrections or  
additions to the minutes?

(NO RESPONSE)

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

3                   MS. DIXON:  Move to approve.

4                   CHAIRMAN:  Ms. Dixon move for approval.

5                   MR. HAYDEN:  Second.

6                   CHAIRMAN:  Mr. Hayden second.  All in  
7 favor raise your right hand.

8                   (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9                   CHAIRMAN:  Motion carries unanimously.

10                  Mr. Noffsinger

11                  MR. NOFFSINGER:  Second item on the agenda  
12 is view presentation of the updated website iOMPC.org.

13                  We have been working on improving and  
14 expanding our website that went on line in September  
15 or October of last year.  Since that time we've been  
16 working with the Messenger-Inquirer.  At this time I'd  
17 like to give some credit where credit is due before  
18 Mr. Adams makes a presentation.

19                  We had Mr. Gordon Wilkerson and Eric Kyle  
20 working on the project.  With Messenger-Inquirer new  
21 media we had Kathleen Hensley and Ben Woods.  The City  
22 of Owensboro information services contributed to this  
23 site.  Mr. Wes Crabtree as well as Matt Royalty and  
24 the OMPC Staff Mr. Gary Adams has carried the ball on  
25 this project in working with many of the different

1 organizations as well as Jim Mischel and Becky Watson.

2 I'm certainly very excited about our new  
3 website. I think you will find it's very  
4 informational. The website that we had prior to this  
5 one was only just an opening page that told you what  
6 the Planning Commission was and what they do. This  
7 puts out all of our forms, documents and information  
8 that we use on a daily basis and try to communicate to  
9 the public. It puts it out on-line so that you have  
10 easy access to it if you have access to the internet.

11 So with that turn it over to Mr. Gary  
12 Adams. The Planning Commission will probably want to  
13 scoot around and go out into the audience.

14 (MR. GARY ADAMS GIVES PRESENTATION OF THE  
15 UPDATED WEBSITE iOMPC.org.)

16 CHAIRMAN: Mr. Adams, I want to thank you  
17 for a nice presentation. I think that will be very  
18 informative to the public and I hope the public uses  
19 it and it will answer a lot of their questions and  
20 save them a lot of time. Thank you very much. Well  
21 done.

22 Mr. Noffsinger, next item.

23 -----

24 PUBLIC FACILITIES PLANS  
25 REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

1 ITEM 3

2 2200 Airport Road (Map N-66, 67)  
3 Building Construction

4 Consider comments regarding the construction of a snow  
5 and ice control materials building.

6 Referred by: Owensboro-Daviess County Regional  
7 Airport Board

8

9 MR. NOFFSINGER: Mr. Chairman, the  
10 Planning Staff has reviewed this application. We find  
11 that there is no conflict with the Comprehensive Plan.  
12 We recommend you forward a letter to that effect to  
13 the Daviess County Regional Airport Board.

14 CHAIRMAN: Is there anybody here  
15 representing the airport board?

16 (NO RESPONSE)

17 CHAIRMAN: Are there any questions from  
18 any of the commissioners?

19 (NO RESPONSE)

20 CHAIRMAN: Chair is ready for a motion.

21 MR. CAMBRON: Motion for approval.

22 CHAIRMAN: Motion for approval by Mr.  
23 Cambron.

24 MR. APPLEBY: Second.

25 CHAIRMAN: Second by Mr. Appleby. All in  
26 favor raise your right hand.

27 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

28 CHAIRMAN: Motion carries unanimously.

1 Next item, please.

2 ITEM 4

3 2200 Airport Road (Map N-66, 67)  
4 Facility Construction

5 Consider comments regarding the relocation of a  
6 drainage ditch and the construction of the east  
7 Airport perimeter road.

8 Referred by: Owensboro-Daviess County Regional  
9 Airport Board

10 MR. NOFFSINGER: Mr. Chairman, the  
11 Planning Staff has reviewed this application. We find  
12 there are no conflicts with the Comprehensive Plan and  
13 recommend you forward a letter to the  
14 Owensboro-Daviess County Regional Airport Board to  
15 that affect.

16 CHAIRMAN: Any questions by any of the  
17 boards members?

18 (NO RESPONSE)

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

21 MR. HAYDEN: Motion for approval.

22 CHAIRMAN: Motion for approval by Mr.  
23 Hayden.

24 MR. APPLEBY: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

1 Next item, please.

2

3

ZONING CHANGE - CITY

4

ITEM 5

5

4100, 4200 Blocks Airpark Drive, 7.607 acres

6

Consider zoning change: From I-1 Light Industrial to  
I-2 Heavy Industrial

7

Applicant: Owensboro-Daviess County Industry, Inc.,  
Owensboro Municipal Improvements Corp., C.J. Turner

8

MR. NOFFSINGER: Mr. Chairman, I have a

9

letter in the file asking that this particular item be

10

postponed until the December meeting of the Planning

11

Commission. The reason for that is they would be

12

adding additional acreage to this petition and they'll

13

need to re-advertise and notify adjoining land owners.

14

We recommend you grant the applicant's request to

15

postpone.

16

CHAIRMAN: The chair is ready for a motion

17

to that effect.

18

MS. DIXON: Move to postpone.

19

MR. CAMBRON: Second.

20

CHAIRMAN: Move to postpone by Ms. Dixon.

21

Second by Mr. Cambron. All in favor raise your right

22

hand.

23

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24

CHAIRMAN: Motion carries unanimously.

25

Next item, please.

1 MR. NOFFSINGER: Mr. Chairman, in the  
2 related items, these two items are located on the  
3 portion of the same property that was proposed to be  
4 rezoned in the previous item. However, that zoning  
5 change does not affect what the Planning Commission  
6 can approve on these plats so we can move forward with  
7 them.

8 Related Items:

9 ITEM 5A

10 Mid America Airpark, Unit 7, Phase 1, 8.040 acres  
11 Consider approval of major subdivision preliminary  
12 plat.  
13 Applicant: Owensboro-Daviess County Industry, Inc.,  
14 Owensboro Municipal Improvement Corp.

15 MR. NOFFSINGER: Mr. Chairman, this plat  
16 has been reviewed by the Planning Staff. It's found  
17 to be in order and ready for your consideration.

18 CHAIRMAN: Is anybody here representing  
19 the Improvement Corp?

20 (NO RESPONSE)

21 CHAIRMAN: Does any of the board members  
22 have any questions?

23 (NO RESPONSE)

24 MR. CAMBRON: Motion for approval.

25 CHAIRMAN: Motion for approval by Mr.  
Cambron.

MR. ROGERS: Second.

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

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: Motion carries unanimously.

5 Next item, please.

6 ITEM 5B

7 4200 Airpark Drive, 8.04 acres  
8 Mid-America Airpark, Unit #7, Phase I, Lot #9  
9 Consider approval of major subdivision final plat.  
10 Applicant: Owensboro-Daviess County Industry, Inc.,  
11 Owensboro Municipal Improvement Corp.

12 MR. NOFFSINGER: Mr. Chairman, this plat  
13 has been reviewed by the Planning Staff, Engineering  
14 Staff, found to be in order and is ready for your  
15 consideration.

16 CHAIRMAN: Any questions from any of the  
17 board members?

18 (NO RESPONSE)

19 CHAIRMAN: Chair is ready for a motion.

20 MS. DIXON: Move to approve.

21 CHAIRMAN: Motion for approval by Ms.

22 Dixon.

23 MR. HAYDEN: Second.

24 CHAIRMAN: Second by Mr. Hayden. All in  
25 favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

1 Next item, please.

2 -----

3 ZONING CHANGES - COUNTY

4 ITEM 6

5 2401 Block Fairview Drive, 35.310+ acres  
6 Consider zoning change: From A-U Urban Agriculture  
7 and R-1C Single-Family Residential to R-1C  
8 Single-Family Residential.  
9 Applicant: Steve Baker Building, LLC

8 MR. ELLIOTT: State your name, please.

9 MS. WATSON: Becky Watson.

10 (MS. BECKY WATSON SWORN BY ATTORNEY.)

11 PLANNING STAFF RECOMMENDATIONS

12 Staff recommends approval because the proposal is  
13 in compliance with the adopted Comprehensive Plan.  
14 This recommendation is made subject to the conditions  
15 and findings of fact that follow:

16 Conditions:

- 17 1. Driveway access points to the subject
- 18 property shall not be allowed on Fairview Drive.
- 19 2. The access point to the proposed subdivision
- 20 on Fairview Drive shall be limited to a public street
- 21 aligned with Fairview Spur as shown on the proposed
- 22 preliminary plat submitted in conjunction with this
- 23 rezoning request.

24 Findings of Fact:

- 25 1. The subject property is located within an

1 Urban Residential Plan Area, where urban low-density  
2 uses are appropriate in limited locations;

3 2. The subject property adjoins R-1C  
4 Single-Family Residential zoning and uses; and,

5 3. A preliminary subdivision plat has been  
6 submitted for approval indicating all necessary urban  
7 services, including sanitary sewers, are available to  
8 the subject property.

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

11 CHAIRMAN: Is there somebody here  
12 representing the applicant?

13 MR. BAKER: Yes.

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

16 (NO RESPONSE)

17 CHAIRMAN: Does anybody from the board  
18 have any questions of the applicant?

19 (NO RESPONSE)

20 MR. CAMBRON: Is Chair ready for a motion?

21 CHAIRMAN: The Chair is ready for a  
22 motion.

23 MR. CAMBRON: Motion for approval based  
24 upon the Staff's Finding of Facts 1 through 3 and the  
25 Conditions 1 and 2, Mr. Chairman.

1                   CHAIRMAN: Motion for approval. Do we  
2 have a second?

3                   MR. JAGOE: Second.

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

6                   (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7                   CHAIRMAN: Motion carries unanimously.

8                   Next item, please.

9 Related Item:

10 ITEM 6A

11 Plantation Pointe, 35.310+ acres  
12 Consider approval of major subdivision preliminary  
13 plat.  
14 Applicant: Steve Baker Building, LLC

15                   MR. NOFFSINGER: Mr. Chairman, this  
16 application has been reviewed by the Planning Staff,  
17 the Engineering Staff. It's found to be in order. It  
18 creates 62 lots for single-family residential  
19 construction and it is ready for your consideration.

20                   CHAIRMAN: Is there any questions from the  
21 audience?

22                   (NO RESPONSE)

23                   CHAIRMAN: Any questions from the  
24 commissioners?

25                   MS. REYNOLDS: I have a question.

CHAIRMAN: Would you step to the podium

1       there and be sworn in.

2                   MR. ELLIOTT:    State your name, please.

3                   MRS. REYNOLDS:  Alice Reynolds.

4                   (MRS. ALICE REYNOLDS SWORN BY ATTORNEY.)

5                   MRS. REYNOLDS:  We live at 2537 Hillbrooke  
6       Parkway.  Our house borders on the lake.  We have not  
7       been able to find out if Mr. Baker is going to intend  
8       to fill the lake, is he going to go and maintain the  
9       lake, or what he's planning to do.

10                  CHAIRMAN:  Yes, ma'am.  We'll get that  
11       question answered right now.

12                  Mr. Baker.

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

15                  MR. BAKER:  My name is Steve Baker.

16                  (MR. STEVE BAKER SWORN BY ATTORNEY.)

17                  MR. BAKER:  I'm sorry.  Was your name  
18       Mrs. Reynolds?

19                  MRS. REYNOLDS:  It's Alice Reynolds.

20                  MR. BAKER:  As to the lake, yes, we are  
21       going to control the lake.  Yes, we will maintain it.  
22       We are not going to fill it.

23                  MRS. REYNOLDS:  Because we were concerned  
24       about mosquitoes.

25                  MR. BAKER:  It's going to be left.  As

1 long I'm alive, it'll be left.

2 MRS. REYNOLDS: That was our question  
3 about it. Thank you.

4 MR. BAKER: Thank you.

5 CHAIRMAN: Are there any others questions  
6 from the audience?

7 (NO RESPONSE)

8 CHAIRMAN: Any questions from the  
9 commission?

10 (NO RESPONSE)

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

13 MR. APPLEBY: Motion for approval.

14 CHAIRMAN: Motion for approval by Mr.  
15 Appleby.

16 MR. CAMBRON: Second.

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

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries unanimously.

21 Next item, please.

22 ITEM 7

23 8171 Jack Hinton Rd, 8234 Short Station Rd, 142 acres  
24 Consider zoning change: From A-R Rural Agriculture to  
EX-1 Coal Mining  
Applicant: Rust Mining, LLC, Dorothy Barnett, Monnie  
25 Dawson Rev. Living Trust

## 1 PLANNING STAFF RECOMMENDATIONS

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

4 Findings in support of this recommendation include:

5 1. The subject property is located in a Rural  
6 Maintenance Plan Area, where coal mining use is  
7 appropriate in general locations;

8 2. The subject property is located in the Rural  
9 Service Area and outside of a Rural Community Plan  
10 Area;

11 3. The subject property adjoins property to the  
12 north that is currently zoned EX-1 Coal Mining;

13 4. The Philpot Quadrangle map indicates the  
14 presence of coal deposits on the site;

15 5. Although the subject property contains some  
16 areas of prime farmland as indicated by the Map of  
17 Important Farmlands prepared by the U.S. Department of  
18 Agriculture Soil Conservation Service, a review of the  
19 soils indicates as best a fair potential for row crop  
20 production and pasture; and,

21 6. A transportation plan has been approved by  
22 the Transportation Cabinet and the County Engineer.

23 CHAIRMAN: Is there anybody representing  
24 the applicant?

25 MR. BRANCATO: Yes.

1                   CHAIRMAN: Are there any questions from  
2 anybody in the audience?

3                   Okay. We have two people. We'll  
4 recognize you first. Step to the podium.

5                   MR. ELLIOTT: State your name, please.

6                   MRS. GRAY: My name is Teresa Gray.

7                   (MRS. TERESA GRAY SWORN BY ATTORNEY.)

8                   MRS. GRAY: I have several questions.  
9 Where we adjoin Mr. Dawson or Monnie Dawson I would  
10 like to know when the start date; how long this  
11 project is going to last; what the blasting regulation  
12 schedule and dates and times are; how I will be  
13 notified of the blasting.

14                   Then I have some property concern. I  
15 would like a preblast survey done of my house and my  
16 buildings. My concern also is I have a driveway  
17 leading out between Mr. Dawson and Mr. Lampkin. Our  
18 access out there we have our phone service through  
19 that service. My safety going in and out while  
20 they're mining. I have a granddaughter that plays in  
21 our yard. Is that going to be fenced off to where she  
22 can't wander over there.

23                   I also have a concern of where they're  
24 going to haul it out. The road that I think they're  
25 proposing is Short Station. It's very narrow. A lot

1 of people live on that road.

2 Also if there is damages to my property,  
3 who am I to go and complain to. Who's going to take  
4 care of that? Also I would like to know the Rust  
5 Mining, I would like to know if there's any complaints  
6 against the mine right now and how the company has  
7 resolved them, the length and the time of the  
8 investigation for any of the complaints against them.  
9 That about takes care of it.

10 CHAIRMAN: Let's bring somebody from the  
11 applicant. Who is going to represent the applicant in  
12 answering the questions?

13 MR. ELLIOTT: State your name, please.

14 MR. BRANCATO: My name is Frank Brancato.

15 (MR. FRANK BRANCATO SWORN BY ATTORNEY.)

16 MR. BRANCATO: I wrote the questions down.  
17 If I miss answering one, would you all let me know  
18 when I've missed a question, please.

19 The start date is depending, of course, on  
20 obtaining surface mining permit. As Staff has  
21 acknowledged, the area that is proposed for zoning  
22 tonight is in the middle of a field of area that is  
23 already zoned for mining. We are currently in the  
24 process of permitting two properties. That is the  
25 Payne property and the Lampkin property which were

1 rezoned several years ago. The earliest I could see  
2 us starting would be seven months; assuming that  
3 everything clicked along in Frankfort on obtaining the  
4 permit, and it could be longer than that. The  
5 earliest it could possibly be would be seven months.

6 How long it will be there is a function of  
7 other areas that we are attempting to lease at this  
8 time. Based on what we have leased right now and what  
9 we have proposed rezoning tonight, something in the  
10 area of 12 to 18 months would be the time period in  
11 that area.

12 The blasting plan has not been designed,  
13 but typically blasting has limited to daylight hours.  
14 Typically occurs at noon and at 4:00 if there's more  
15 than one shot per day. If there's one shot, it's  
16 typically at noon. Part of the reason for that is  
17 safety. We move all of the operations and men out of  
18 the area so they can do that. They can have their  
19 dinner. We have separate crew that would detonate the  
20 shot.

21 In terms of preblasting survey, Rust is  
22 required to provide a 30 day written notice published  
23 in the paper and to send a notice to everyone within a  
24 half mile of any area of the permit. That means  
25 people who are more than a mile from the blasting will

1 get a notice. It's half mile from the edge of the  
2 permit. What our policy has been is to do three times  
3 notice requirement. So we'll publish it three times  
4 more than 30 days in advance. On our current permit  
5 we sent a notice to everyone within one mile of the  
6 permit. So we doubled the state requirement.

7 The Grays do have a driveway. They have a  
8 right-of-way across the Lampkin property. They do  
9 have water service that runs down that line, phone  
10 service runs down that line and power service runs  
11 down that line. All of that will have to be addressed  
12 as a part of the mining permit application.

13 Our preliminary plan is to provide a  
14 temporary driveway about 100 feet north of the current  
15 driveway which would give the Grays access while we're  
16 mining in that area. Then we would jump across that  
17 driveway and replace their existing driveway in the  
18 approximate same location.

19 The Grays are entitled to a preblast  
20 survey as is everybody within a half mile of the  
21 permit. Again, it maybe a mile or more from the  
22 actual blasting, but everybody within one-half mile of  
23 the permit will be offered the opportunity for a  
24 preblast survey.

25 We've had two complaints from our current

1 operation. One landowner called and said that he  
2 thought our blasting had broken his water line. When  
3 the water line was dug up it was determined the line  
4 was 55 years old and an iron pipe and it simply rusted  
5 through.

6 The other complaint that we've had was a  
7 coal truck that had left our property and had failed  
8 to close the tarp. We addressed that with the driver.  
9 I called the complainant back that day and I've called  
10 him twice since then. They have no further  
11 complaints.

12 CHAIRMAN: Thank you. Did that clear up  
13 your complete list of questions?

14 MRS. GRAY: Everything except if we do  
15 have a problem, who am I to contact?

16 CHAIRMAN: Let's let him address that.

17 Mr. Brancato.

18 MR. BRANCATO: You can contact me. I'll  
19 be glad to give you my home phone number, my cell  
20 phone number, and my office number. Of course, you  
21 have the phone numbers of the engineering firm that  
22 does your preblast survey. So you'll have five or six  
23 contacts if you have an issue.

24 MRS. GRAY: One more concern and this is  
25 it. As far as is there going to be any kind of fence

1 up to where, you know, they're re going to have these  
2 holes opened up.

3 CHAIRMAN: Let him address that.

4 MR. BRANCATO: We will agree to put up  
5 some sort of orange fencing around her property if  
6 that would give her comfort level of where the mining  
7 will stop. Typical or similar to the orange silt  
8 fencing or safety fencing you see around construction  
9 sites.

10 CHAIRMAN: Thank you.

11 Mr. Cambron, I think you said you had a  
12 question.

13 MR. CAMBRON: Mr. Brancato, can you come  
14 back up to the podium. My question was, and one that  
15 you didn't touch upon and she had asked also about the  
16 haul road and taking your loads down Short Station  
17 Road. Is this the only alternative you all have at  
18 this point in time?

19 MR. BRANCATO: As I stand in front of you  
20 today under oath in front of all of these people,  
21 that's the only route we have out today. That's not  
22 to say I'm not negotiating with other people to try  
23 and find an alternative route to get to Aull Road  
24 which is less densely populated and which has had coal  
25 hauled on it before, but our application tonight is

1 limited to the rezoning of these properties. We have  
2 surveyed Short Station Road. There are no substandard  
3 bridges or structures which would preclude a petition  
4 to add extended weight on Short Station Road. We  
5 would provide a bond in the amount of about 60 or  
6 \$75,000. It will be in that range, if we use Short  
7 Station Road. In order to even consider using Short  
8 Station Road under the county regulations, we first  
9 must have a rezoning and secondly must have a surface  
10 mining permit and then approach the county for  
11 potential use of Short Station Road.

12 MR. CAMBRON: How many trucks are you  
13 planning on bringing out there daily; do you know?

14 MR. BRANCATO: It would be a little over  
15 four loaded trucks per hour during 6:00 in the morning  
16 until about 4:00 in the afternoon.

17 MR. CAMBRON: These truck will be hauling  
18 about 80,000 plus?

19 MR. BRANCATO: Yes, sir. What we're doing  
20 right now and what we would plan to continue to do is  
21 I contact the Daviess County Transportation group  
22 every day and tell them whether we're going to haul  
23 coal the next day. We send our first round of trucks  
24 out before the school buses come into the area. By  
25 the time they come back for a load, most of the school

1 buses are done, but if we get our schedules mixed up  
2 and we fail to do that, there would be approximately  
3 one coal truck for every five school buses out there.

4 MR. CAMBRON: Okay. Thank you.

5 MR. HAYDEN: What kind of maintenance did  
6 you all have on that Short Station Road if you use it  
7 as a haul road? Like especially in the wintertime  
8 that road goes all to pieces.

9 MR. BRANCATO: Unfortunately Short Station  
10 Road is a lot like other county roads which actually  
11 grew up over time. So it does not have a good base.  
12 Just has a couple of inches of asphalt. We would  
13 grade and maintain the road with gravel. There are a  
14 couple of roller-coaster hills that if we use that  
15 road we would like to take out, but we would have to  
16 work that out with the county engineer.

17 MR. CAMBRON: If you have alternative haul  
18 road, do you have any idea where it would be? Where  
19 it would lie other than Short Station Road? The only  
20 reason I say that is that there are some bad curving  
21 in that road and a truck with 80,000 pounds plus will  
22 have a hard time negotiating that. I'm sure on a  
23 daily basis they'll eventually get themselves  
24 acclimated to it, but this is a bad road to be hauling  
25 coal out.

1 MR. BRANCATO: There is one route that  
2 involve four or five landowners and would take us to  
3 144. Then there's a second route that would involve  
4 two landowners that will take us to Aull Road.

5 MR. CAMBRON: And you are negotiating with  
6 these people?

7 MR. BRANCATO: With the latter right now,  
8 with the two people.

9 MR. HAYDEN: You haven't talked to me.

10 MR. BRANCATO: No, we're not talking to  
11 you because somebody in front of you we ran into some  
12 price restrictions. Can't get to you until we get to  
13 somebody in front of you.

14 CHAIRMAN: Are there any more questions  
15 from anybody in the audience or any more commissioners  
16 have any questions?

17 MR. ELLIOTT: State your name, please.

18 MR. GRAY: Jeff Gray.

19 (MR. JEFF GRAY SWORN BY ATTORNEY.)

20 MR. GRAY: I'm concerned about our  
21 driveway going out. Kids play on that. They ride  
22 four-wheelers and this little orange fence, would you  
23 put your kids out there? As a board member would you  
24 let your kids get around that? You know they're going  
25 to be looking over the side. They're going to be

1       blasting and they're proposing to go across our  
2       driveway. They ride four-wheelers. They walk up and  
3       down the lane. They're going to move our driveway and  
4       have this going across it. I think you're  
5       jeopardizing people if you let them move this driveway  
6       and go across the driveway. If they want to go  
7       around, that's fine. Go out Short Station if that's  
8       what they've got to do or whatever, but that is our  
9       access in and out. You're going to whatever going  
10      across this road. How far are they going to stay off  
11      this road? Are they going to go right up to it?  
12      Somebody has an accident, what's going to happen?  
13      That's my concern.

14                   CHAIRMAN: Do you want me to phrase that  
15      or have that done as a question?

16                   MR. GRAY: I'm just concerned the safety  
17      issue has not been addressed. An orange rubber,  
18      whatever fence it is, it's not going to stop nothing,  
19      kids especially. We have family reunions and there's  
20      kids out there all the time. You going to put this  
21      coal mine in my front door.

22                   CHAIRMAN: Let's have them address - -

23                   MR. CAMBRON: Let me ask a question. Are  
24      you talking about the whole perimeter of your property  
25      or just where the lane is going to be moved?

1                   MR. GRAY: The lane and the front of my  
2 property is where it's going to be.

3                   MR. CAMBRON: Right, but you're talking  
4 about the whole perimeter of your property where  
5 they're going to be mining. Not just your lane.

6                   MR. GRAY: Well, the lane too because  
7 that's where they like to ride the four-wheeler up and  
8 down there. Are you going to stop them because if  
9 you're going to let these heavy equipment go across  
10 it, it's going to be dangerous. That's my question.  
11 I don't think it's right.

12                   CHAIRMAN: Can you show me on here where  
13 you live exactly, Mr. Gray, on this map?

14                   MR. BRANCATO: I'll help you locate it, if  
15 you would like. Right here.

16                   MR. GRAY: Right here. This is already  
17 zoned. Now they're proposing to take this driveway  
18 and move it over on somebody else. They're going to  
19 do this -- they're proposing this haul road across  
20 this driveway. Them kids, they like to walk up and  
21 down the drive. To me just take the driveway out.

22                   MR. CAMBRON: If you'll step back up to  
23 the podium. She'll need to hear this too.

24                   MR. GRAY: If they do that, that kind of  
25 hinkers us.

1                   MR. APPLEBY: Your driveway is across - -  
2                   I take it this is not your property where your  
3                   driveway is. It's going across the Lampkin property?

4                   MR. GRAY: That's a little bit of gray  
5                   area. He says it's Lampkins and I don't know. When  
6                   we moved back there, we had to sign a piece of paper.  
7                   The county didn't have to maintain it if we could move  
8                   it back there.

9                   MR. APPLEBY: I mean it's your  
10                  understanding that it doesn't really, it doesn't  
11                  belong to you, that part out there in the front?  
12                  You've got easement I take it across that?

13                  MR. GRAY: I guess that's what it is.  
14                  We've maintained it since I've been there for 20  
15                  years.

16                  MR. CAMBRON: Do you own it; do you know?

17                  MR. GRAY: Nobody really told me.

18                  MR. HAYDEN: You're not the only one using  
19                  that driveway?

20                  MR. GRAY: Tom Cecil, my brother-in-law  
21                  uses it.

22                  MR. HAYDEN: Cecils use that driveway too.

23                  MR. GRAY: And there's several. Kids and  
24                  a lot of people go in and out of that driveway.  
25                  That's one of my concerns.

1 MRS. GRAY: There's easements through  
2 there.

3 MR. GRAY: Easement she said. I don't  
4 know how we stand on that.

5 CHAIRMAN: Let's have them address that.

6 MR. BRANCATO: The driveway is a  
7 right-of-way easement that was carved out of the  
8 Lampkin property and they have non-exclusive rights to  
9 use that lane to access. Their property, which is  
10 approximately one acre at the bottom of that lane.  
11 Then the lane takes a 90 degree turn and also serves  
12 another farmhouse in this area.

13 What our plan is is to - - we're going to  
14 stay behind this lake and behind the improvements that  
15 front Short Station Road. Our plan is for the Grays  
16 to share the Lampkins driveway for a couple of weeks  
17 while we mine through this area. Then we would put  
18 their driveway back. Their lane right now is about  
19 between six and eight feet below Short Station Road.

20 One of the reasons they have to maintain  
21 it so much is there's a lot of water that sheds off  
22 the road. Their lane almost acts as a ditch as  
23 opposed to a driveway. So we're proposing to raise  
24 that elevation about seven feet which would bring it  
25 into the same elevation as Short Station Road and then

1 maybe be able to have ditches and be easier to  
2 maintain the road.

3                   Somehow we have to get the coal out of  
4 Dawson and Barnett's property and without having the  
5 Cecil property leased, and we don't have that lease,  
6 the only way is to go up the middle of the Dawson  
7 property which would cross their lane.

8                   MR. APPLEBY: Where is their lane in  
9 relation to your proposed haul road?

10                   MR. BRANCATO: We don't actually have a  
11 location for a haul road, but we got one possibility  
12 in here, but it would have to be someplace between  
13 this line and this line. It would have to be  
14 someplace in here because our lease with Dawson  
15 permits us to stay approximately 50 feet behind the  
16 facilities and business that they operate and fronts  
17 that Short Station Road.

18                   MR. CAMBRON: Any alternative to going  
19 through their driveway?

20                   MR. BRANCATO: Well, the only alternative  
21 I know of is if we can lease Cecil's property. We  
22 don't have that lease. Then we can come across the  
23 back side which would leave their driveway open, but  
24 we don't have that lease today.

25                   CHAIRMAN: Are there any other questions

1 or comments from the audience?

2 Yes, sir.

3 MR. ELLIOTT: State your name, please.

4 MR. HAZELWOOD: Mike Hazelwood.

5 (MR. MIKE HAZELWOOD SWORN BY ATTORNEY.)

6 MR. HAZELWOOD: I live at 8067 Short  
7 Station Road and by looking at that map I'm not sure  
8 exactly where I'm at even though I know I'm close.  
9 I've lived out there about ten years. I was real  
10 familiar with Lanham and their mining business out  
11 there and I'm concerned, like the other lady was, if I  
12 get my home tore up and not be able to do anything  
13 about it. I've got it paid for and I don't want to  
14 buy another one. I'm too old.

15 CHAIRMAN: Why don't you come over here to  
16 the map and Mr. Brancato can probably help you locate  
17 your home. He did a pretty good job earlier.

18 (MR. HAZELWOOD APPROACHES MAP AND HAS  
19 DISCUSSION WITH MR. BRANCATO.)

20 MR. BRANCATO: We carry general liability  
21 insurance. We use Down Home Service. We have a  
22 contractor to do our explosion and detonation and they  
23 carry general liability insurance. Everybody along  
24 that road will have an opportunity to have a preblast  
25 survey. Now, preblast survey takes several hours. A

1 technical person or an engineer comes in and takes  
2 photographs, does sketch of the house, puts all the  
3 dimensions down, location of all the windows and  
4 identifies the current condition of the structure.  
5 Then if someone believes they've been adversely  
6 affected by it, we'll do a post-blast survey or an  
7 interim blast survey and document the condition of the  
8 house. It helps the landowner and it helps the  
9 insurance company both.

10 CHAIRMAN: Are there any other questions  
11 of anybody in the audience?

12 Yes, ma'am.

13 MR. ELLIOTT: Mr. Chairman, I think Mr.  
14 Hayden wants to make a statement.

15 CHAIRMAN: Yes, sir.

16 MR. HAYDEN: Being that I'm so close to  
17 this property, it's probably going to be talking to me  
18 about this, some of my property too, I think I should  
19 disqualify myself because it's only a conflict of  
20 interest I feel like.

21 CHAIRMAN: Mr. Hayden will disqualify  
22 himself from any further testimony.

23 (MR. HAYDEN EXCUSES HIMSELF AND LEAVES  
24 ROOM.)

25 CHAIRMAN: Yes, ma'am.

1 MRS. WADE: My name is Cheryl Wade.

2 (MRS. CHERYL WADE SWORN BY ATTORNEY.)

3 MRS. WADE: I have some of the same  
4 concerns as the other lady did. We live at 8065 Jack  
5 Hinton Road. One thing I want to know, he said they  
6 would quit at 4 p.m. Does that just mean the trucks  
7 or does that mean everything shuts down?

8 CHAIRMAN: Let's see if you have several  
9 list of questions and we'll run through those and then  
10 we'll try to cover it all at one time.

11 MRS. WADE: He said he would provide phone  
12 numbers, cell phone numbers. How do we get these  
13 phone numbers? I have environmental concerns; air,  
14 water, noise, dust. We have children too that play  
15 outside. We connect with the property. The clean up  
16 afterwards. What does all of that consist of? On  
17 these preblast surveys, is there any cost to us?

18 CHAIRMAN: Thank you.

19 MR. BRANCATO: I have six question. Is  
20 that the right number?

21 CHAIRMAN: We'll bring her back if there's  
22 any question.

23 MR. BRANCATO: The 4:00 time period I gave  
24 earlier was in response to the question about the coal  
25 hauling. Not the mining operation. Currently we're

1 operating a full compliment on day shift and running  
2 two dozers at night. We are uncertain at this point  
3 how much tonnage we would be producing so I can't say  
4 whether we actually run a full compliment at night in  
5 this other location, but at we would at least run a  
6 full day shift and two dozers at night.

7 We must obtain a permit from the Division  
8 of Air concerning air quality. We obtain permits  
9 concerning water quality from the Department of  
10 Surface Mining and Reclamation Enforcement, from the  
11 Division of Water, and from the Federal Office of  
12 Surface Mining and Reclamation Enforcement. All of  
13 these people come out at least monthly and inspect our  
14 operations.

15 To control drainage we'll build a basin,  
16 at least one basin on the Payne property and then,  
17 again, depending if we get these other properties  
18 we're negotiating for, we might have two more drainage  
19 control basins.

20 Water quality in the area in terms of flow  
21 should already be improved because a mile and a half  
22 up Joe's Creek we built a two acre basin that will  
23 remain as a permanent water impoundment. So that  
24 water flow from the upper part of the water shed,  
25 which has about 1,000 acres in it will flow through

1 this basin before it exits into what Joe is running.

2 Noise, the biggest problem with noise in  
3 the coal mining operations, the biggest complaint I've  
4 heard in my career in the industry is a back up alarm.  
5 Unfortunately that's a federal mandate. That back up  
6 alarm must be audible for a quarter of a mile. What  
7 happens is in cool weather that audible noise will  
8 carry up to half a mile. That's the realty of the  
9 situation. I really don't know what we can do about  
10 that. The back-up alarm, actually the hour back-up  
11 alarm ceases to operate we're obligated to repair that  
12 or park it. We cannot operate equipment without  
13 back-up alarms.

14 Dust is a problem just like it is for  
15 farmers, but we do water our roads and put dust  
16 control suppressants on it. We use water or water  
17 treated with tree sap or the tailings from crude oil.  
18 Typically you can't use oil on the road particularly  
19 if it's used unless you sample it and have a copy of  
20 the sample with the truck, but there's no impediment  
21 to be using crude oil or trailings from crude oil.

22 Clean up, I'm interpreting that to be  
23 reclamation; although I'm not certain that was your  
24 question. Most of this area is characterized as hay  
25 and pasture land. There are some areas which are

1 prime farmland. Hay and pasture land we are required  
2 to reseed and to grow three years of hay on it and  
3 obtain - - cuttings from that hay we typically use  
4 that as part of our reclamation.

5 Prime farmland we are required to  
6 segregate the upper two horizons of soil which are  
7 split into the A horizon or the B horizon. The A  
8 horizon is defined as that soil that has nutrients in  
9 it what we typically call top soil. The B horizon is  
10 that soil that is without nutrients, but can become  
11 nutritional if it's fertilized and below.

12 We segregate that into two separate piles  
13 and put it back in the order that it was removed.  
14 Typically you get a swell factor of about 15 percent  
15 when you handle the soils, but when you factor in the  
16 removal of the coal, the elevation is modestly  
17 changed.

18 CHAIRMAN: Are there any other questions  
19 from the audience?

20 Yes, sir.

21 MR. ELLIOTT: State your name, please.

22 MR. FLOYD: Terry Floyd.

23 (MR. TERRY FLOYD SWORN BY ATTORNEY.)

24 MR. FLOYD: I have two questions about the  
25 proposals. The property line that I have, we have a

1 small pond that is split by the property line and I  
2 want to know if there's assurance that they're not  
3 looking at draining that pond on me from the other  
4 side. The other was I'm not sure where they're  
5 talking hauling out coal on Short Station. Where is  
6 that? Could you point out to where that is on the  
7 map, where they're look to hauling? What direction  
8 they're going on Short Station?

9 CHAIRMAN: Mr. Brancato, will you step  
10 give - - give him your address, sir.

11 MR. BRANCATO: I think I know where his  
12 house is.

13 The way the law works on mining adjacent  
14 properties, in theory you can mine right up to the  
15 property, but if any of the adjacent property where  
16 the slough off onto your property, then you have a  
17 technical trespass. So where there would be a basin  
18 that is shared by two properties. Our choices are  
19 either to stay back 50 or 75 feet from the basin,  
20 unless we work something out with the adjoining  
21 landowner. I've had landowners who agree that we  
22 could mine right up to their property and not be  
23 concerned if 10 feet of it would slide in as long as  
24 we would put it back. Then I've had other landowners  
25 who say they don't want their property moved. That's

1 a landowner's right and choice.

2 The location, if we have to use Short  
3 Station Road and are not successful in obtaining  
4 either one of these alternate routes, would be up to  
5 the corner of Payne's property.

6 MR. FLOYD: Are you going north or south?

7 MR. BRANCATO: North to 144.

8 CHAIRMAN: Thank you.

9 MR. NOFFSINGER: Mr. Chairman, if I might.

10 CHAIRMAN: Yes, sir.

11 MR. NOFFSINGER: I think it's appropriate  
12 that I add this statement at this time to make the  
13 public aware of the buffer requirements that are set  
14 out not only as a state requirement, but also a local  
15 zoning ordinance.

16 The mining activity cannot occur within  
17 300 feet of a residential structure or within 100 feet  
18 of a public right-of-way unless they obtain a waiver  
19 from the resident and a variance from the Owensboro  
20 Metropolitan Board of Adjustment. Not just a waiver  
21 from the landowner, but also a variance from the Board  
22 of Adjustment. Same thing in terms of mining along  
23 Short Station Road.

24 If you are to be able to mine within 100  
25 feet of Short Station Road right-of-way, you are to

1 obtain a waiver from that particular case from county,  
2 Daviess County Fiscal Court as well as a variance from  
3 the Owensboro Metropolitan Board of Adjustment. Just  
4 wanted to clarify that to anyone that might be within  
5 300 feet of the proposed mining activity and to remind  
6 the applicant of those requirements.

7 MR. BRANCATO: That's how our zoning has  
8 been submitted. So that the proposed area is 300 feet  
9 from an occupied dwelling and 100 feet from the right-  
10 of-way.

11 CHAIRMAN: Yes, ma'am.

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

14 MS. SCOTT: Pam Scott.

15 (MS. PAM SCOTT SWORN BY ATTORNEY.)

16 MS. SCOTT: My main concern is hauling the  
17 coal on Short Station Road. In that mile and half, we  
18 counted 21 homes. We have small children. We have  
19 teenagers that are just driving. The road is narrow.  
20 It's hilly and it's curvy.

21 CHAIRMAN: Mr. Brancato, would you address  
22 that concern, please.

23 MR. BRANCATO: Right now I'm not sure that  
24 I can. If there are 21 houses, the road is narrow.  
25 It's a typical county road, but that's not the

1 application that is before this body tonight. We're  
2 asking for a rezoning. We cannot use Short Station  
3 Road without first petitioning Fiscal Court for an  
4 extended way. Not do that until we have a rezoning of  
5 the property and have a surface mining permit. We did  
6 do a survey of the road. I have a letter from the  
7 county engineer affirming what I've just told you here  
8 tonight.

9 CHAIRMAN: If I understood you correctly,  
10 I believe you said you have four trucks an hour?

11 MR. BRANCATO: A little over four loaded  
12 trucks per hour based on the rate of production of  
13 30,000 tons a month.

14 MR. CHAIRMAN: And then these four trucks  
15 an hour you're going to try to miss the school  
16 traffic, i.e. school buses, kids coming back and forth  
17 going to school?

18 MR. BRANCATO: That's what we're doing  
19 right now. We're mining right off of 144 every day.  
20 We contact the Daviess County Transportation either by  
21 fax or by telephone and tell them that we're going to  
22 be hauling coal the next day. The buses arrive in the  
23 area around 7:00. We send our first round of trucks  
24 out around 6:30. They are coming back around 7:30, 20  
25 till 8 when most of the bus traffic is gone. So we're

1       trying to coordinate when the bulk of our traffic is  
2       gone.

3                   CHAIRMAN:  What about the tail end of it  
4       when you have 3:30 to 4:00?

5                   MR. BRANCATO:  We try to get our last load  
6       out by 3:00 when trucks start arriving.

7                   CHAIRMAN:  So the trucks will be out and  
8       clear.  So they're going to miss the school drive  
9       time?

10                  MR. BRANCATO:  They're going to pass them  
11       on 60 and 144, but in terms of congested area they're  
12       not going to be around.

13                  CHAIRMAN:  Out of the Short Station Road  
14       area?

15                  MR. BRANCATO:  Right.  As I said earlier,  
16       if we have a complete mess up, I mess up something or  
17       their schedule changes and we do wind up being timed  
18       in the same place at the same time, there would be one  
19       coal truck for every five school buses.

20                  CHAIRMAN:  Thank you.

21                  MR. NOFFSINGER:  Mr. Chairman, just a  
22       point of clarification.  The Lampkin property I  
23       believe is currently zoned EX-1 for mining.

24                  MR. BRANCATO:  Yes, sir.

25                  MR. NOFFSINGER:  The haul road is proposed

1 to continue from this site over to the Lampkin  
2 property. Looks like go to the Robert Payne property.  
3 Point of access would be the northern most corner of  
4 the Payne property. Those properties are already zone  
5 EX-1 coal mining. So there would be an opportunity to  
6 petition the Daviess County Fiscal Court for approval  
7 of that road prior to the approval of this zoning  
8 change.

9 MR. BRANCATO: Okay.

10 CHAIRMAN: Let's take a couple of more  
11 questions and try to get everybody a chance to speak  
12 and try not to be redundant in our questions. Are  
13 there questions that we have not covered?

14 Ma'am, you have been to the podium. Let  
15 me give somebody else a change.

16 MRS. GRAY: He still hasn't answered my  
17 question.

18 CHAIRMAN: Okay. We'll go back.

19 MRS. GRAY: One was the contact phone  
20 numbers and the other was the cost for the surveys.  
21 Is there going to be any cost to the landowners?

22 CHAIRMAN: That is correct.

23 MR. BRANCATO: I didn't hear the one about  
24 the phone numbers. I'll be glad to give you all those  
25 numbers tonight. They're also posted on the entrance

1 to the mine that we currently have. We are required  
2 to post those numbers at the entrance to every mine as  
3 it's established, but I'd be happy to give you numbers  
4 tonight, cell phone, fax number, whatever you need.  
5 There's no cost to the homeowners for a preblast  
6 survey.

7 CHAIRMAN: Thank you. Yes, sir, I believe  
8 you have a question.

9 MR. ELLIOTT: State your name, please.

10 MR. MESERVE: Patrick Meserve.

11 (MR. PATRICK MESERVE SWORN BY ATTORNEY.)

12 MR. MESERVE: Just wonder if they could  
13 elaborate on the hill he's talking about, taking down  
14 a hill on the road if he did have to use Short Station  
15 Road as access. If there is no alternative but Short  
16 Station, what hill was he talking about, meaning there  
17 was two hills? If he could elaborate on that.

18 CHAIRMAN: Okay. Thank you.

19 MR. BRANCATO: There are a number of  
20 roller-coaster areas on Short Station Road. What I  
21 said was we will get - - if we have to use Short  
22 Station Road and petition to do so with the county  
23 engineer, then we are willing to improve Short Station  
24 Road by changing the elevation of the roller-coasters  
25 and making them less dramatic than they are now.

1                   There are two areas when you're in a car  
2                   that it's almost impossible to see over the hill.  If  
3                   you're in a truck you can see over the hill, but in a  
4                   car or a little vehicle it's almost impossible to see  
5                   over the hill.

6                   CHAIRMAN:  Could you spot those areas on  
7                   the map or get close?

8                   MR. BRANCATO:  I'm not sure that I can do  
9                   so with accuracy, Mr. Chairman.  I'd be hesitant to do  
10                  so.  It's a little further north.  It's right in this  
11                  area and right in this area.

12                  MR. CAMBRON:  Mr. Brancato, you all are  
13                  running an operation out there now.  Where are you all  
14                  bringing your coal out now?  Where is your haul road  
15                  coming out?

16                  MR. BRANCATO:  Directly to 144.

17                  CHAIRMAN:  Can you point that out to me,  
18                  please?

19                  MR. BRANCATO:  It's actually off the map.  
20                  I have a separate map I can show you.

21                  MR. PENCE:  I added it to it.  It's on  
22                  there now.

23                  MR. BRANCATO:  Oh, yes, I see where you  
24                  added it.

25                  It's right here.

1 MR. CAMBRON: And as an alternative route,  
2 there again I understand you're in negotiations, but  
3 as an alternative route you would probably try to  
4 bring that coal to that facility; is that correct?

5 MR. BRANCATO: No. There would be no  
6 reason to bring the coal to this facility.

7 MR. CAMBRON: Where would you? You don't  
8 have to draw a line, but just where would you want to  
9 have that haul road come out at if you determined or  
10 if it was determined that you can't use Short Station  
11 Road; in other words, where does the end of the haul  
12 road suppose to come out at if you determine you're  
13 going to use a haul road? Not where it starts, but  
14 where would it end at?

15 MR. APPLEBY: Going out the Aull Road. I  
16 think that's what you're talking about, isn't it?

17 MR. BRANCATO: Oh, if we went out the  
18 Aull Road?

19 MR. CAMBRON: Yes.

20 MR. BRANCATO: Unfortunately Aull Road is  
21 over here off the map.

22 MR. CAMBRON: Right. Are you wanting to  
23 go that far?

24 MR. BRANCATO: I'm sorry. Here it is. We  
25 would come across this area and then down Aull Road at

1 this location here which is about 125 feet from our  
2 current entrance on 144. It might be 200 feet, 150,  
3 200 feet.

4 MR. CAMBRON: Thank you.

5 MR. BRANCATO: But we don't have, these  
6 areas that are striped in pink are zoned for surface  
7 mining, but we don't have them leased.

8 CHAIRMAN: Is there anybody that has not  
9 previously asked a question that has a question?

10 Yes, ma'am.

11 MR. ELLIOTT: State your name, please.

12 MS. KUYKENDALL: Janell Kuykendall.

13 (MS. KUYKENDALL SWORN BY ATTORNEY.)

14 MS. KUYKENDALL: My residence is 8271  
15 Short Station. It's actually straight across from the  
16 Grays. I know they said their lane they're not going  
17 to be able to use. How does that affect my driveway  
18 and me getting in and out of my residence? Like he  
19 was saying about the safety of the children. I have  
20 two children. Seven months from now it's going to be  
21 summer and they're going to be out and wanting to ride  
22 their bikes. I'm just worried about their concern. A  
23 yellow fence is not going to stop them if they're on a  
24 three-wheeler, on a bike, whatever they're on. I  
25 think everything else I had down has been answered

1 earlier.

2 CHAIRMAN: Thank you.

3 MR. BRANCATO: Can I show you a map maybe,  
4 if that will help?

5 MS. KUYKENDALL: Yes.

6 MR. BRANCATO: The Gray's house is here.  
7 Your residence is here. The exit to Short Station  
8 Road has to be used up here. None of this part of  
9 Short Station Road will be affected. Under the  
10 current lease we have will be behind this line here  
11 which is about 500 feet from Short Station, between 5  
12 and 700 feet.

13 CHAIRMAN: I believe we've covered  
14 everybody in the audience that had questions. Does  
15 anybody - - yes, ma'am.

16 MRS. GRAY: My concerns that he still  
17 hasn't answer the question on safety just like she  
18 just asked. Like the orange fence that he's proposing  
19 wouldn't stop kids from crossing over to the coal  
20 mine.

21 CHAIRMAN: Mr. Brancato, you want to  
22 address the orange fence concern.

23 MR. BRANCATO: Well, the orange fence came  
24 up because Mrs. Gray asked for a fence tonight or her  
25 husband did and I said we'd be willing to put that up.

1 I frankly don't know how to address it more than  
2 provide reasonable fencing and reasonable notice and  
3 reasonable berms around the property which we will do,  
4 which we're required to do as part of obtaining a  
5 permit.

6 CHAIRMAN: Thank you.

7 Yes, sir.

8 MR. ELLIOTT: State your name, please.

9 MR. WADE: My name is Eric Wade.

10 (MR. ERIC WADE SWORN BY ATTORNEY.)

11 MR. WADE: My concern is the berms too you  
12 were speaking of.

13 CHAIRMAN: Either address your questions  
14 from back there so we can get it on the record and  
15 then move to the map.

16 MR. WADE: I live at 8065 Jack Hinton  
17 Road. Concerning the berms along the ditch between  
18 Barnett and I. I'd have to point and he could answer.

19 CHAIRMAN: We needed to get your question  
20 on the record.

21 MR. BRANCATO: We're going to permit up to  
22 the ditch. Whether we mine up to the ditch or not I  
23 don't know, but if we permit up to the ditch we'll  
24 have to put a berm up to the ditch.

25 MR. WADE: What kind of footage from our

1 ditch here?

2 MR. BRANCATO: The toe of the berm is the  
3 location to the ditch. I'm not certain off the top of  
4 my head whether that's 25 feet or 50 feet. I don't  
5 want to mislead you, but something in that range.

6 MR. WADE: What's the height of the berm?

7 MR. BRANCATO: It'd be about eight feet  
8 high.

9 MR. WADE: Another question too. I have a  
10 pool. That doesn't pay for my chemicals, your dust  
11 control.

12 MR. BRANCATO: Again, if there's an  
13 adverse affect from the mining operation, we'll  
14 address that, but we've also checked the weather for  
15 the last 50 years as maintained by the U.S. Weather  
16 Bureau. Prevailing winds here are southwest to east.  
17 So that would be this location. It would be from this  
18 area across the plains where there are no houses.  
19 That's the prevailing wind. That means 85 percent of  
20 the time that's the direction of the wind.

21 CHAIRMAN: If we have no further questions  
22 from anybody from the audience, does the commission  
23 have any questions?

24 (NO RESPONSE)

25 CHAIRMAN: If the commission has no

1 further questions, then the Chair is ready for a  
2 motion.

3 MR. CAMBRON: Mr. Chairman, let me just  
4 ask a quick question or make this comment. The  
5 biggest problem that I have - I understand they're  
6 going to mine coal. That's fine. I understand that -  
7 is the alternative route that they have to take this  
8 coal out. I'm concerned for these citizens out there,  
9 of course, and the kids, as well as Mr. Brancato is  
10 too for his operation. I guess my only thought would  
11 be, you know, possibly looking for another alternative  
12 route. I'm not saying that we would approve or deny  
13 what they have now, but my thought would be to  
14 postpone it for 30 days and see if they can come up  
15 with a different route if it's possible.

16 CHAIRMAN: Mr. Cambron, you realize that  
17 obviously this body is just to zone or not zone the  
18 property application.

19 MR. CAMBRON: Right.

20 CHAIRMAN: The property owners and the  
21 county commission would be dealing with the roads  
22 which we really have no control over one way or the  
23 other. If they meet our requirements or don't meet  
24 our requirements, that's our responsibility.  
25 Unfortunately, the roads come under heading of the

1 county commission and the planning engineer.

2 MR. CAMBRON: But also our main concern  
3 here a lot of times, especially with coal mining, is  
4 concern of the citizens and their safety. We're not  
5 talking about just adult's safety. We're talking about  
6 children's safety. These coal trucks at 80,000 pounds  
7 on that road have a hard time stopping. That's in the  
8 best of weather. Whether or not that is a viable  
9 option, I don't know, but I want to make that as a  
10 recommendation or a proposal.

11 CHAIRMAN: What you want to do is make a  
12 proposal for a postponement?

13 MR. CAMBRON: Correct.

14 CHAIRMAN: Let's do that because we really  
15 shouldn't use the road situation, but that really  
16 doesn't come under our jurisdiction.

17 MR. CAMBRON: Then my proposal would be to  
18 postpone this for 30 days and to give these people  
19 some time to work something out if possible, but my  
20 concern is the public's safety. There again, not just  
21 for the adults, but as much as for the children on  
22 these school buses. There are a lot of people that  
23 live out in that area. A lot of people. That is my  
24 proposal. I'm looking for a second.

25 MS. DIXON: Second.

1                   CHAIRMAN: We have a motion for  
2                   postponement and a second.

3                   MR. APPLEBY: Does Mr. Brancato want to  
4                   address this before we vote?

5                   CHAIRMAN: We have a motion and a second.  
6                   Stewart, where do we stand on voting? Don't we have  
7                   to go ahead and call for the vote?

8                   MR. ELLIOTT: Yes.

9                   CHAIRMAN: Reference from our attorney,  
10                  that we've got a motion and a second. Motion on the  
11                  floor is a motion for a postponement by Mr. Cambron.  
12                  We've got a second by Ms. Dixon. So the vote would  
13                  be, the motion would be for postponement for 30 days.

14                  All in favor of the motion raise your  
15                  right hand.

16                  (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17                  CHAIRMAN: Seven in favor and we've got  
18                  one disqualified. So motion is postponed for 30 days.

19                  Next item, please.

20                  -----

21   MAJOR SUBDIVISIONS

22                   ITEM 8

23                   4550 Lucky Strike Loop, 1.0 acre  
24                   Salem Drive Development, Unit #2, Lot #18  
25                   Consider approval of major subdivision final plat.  
                  Applicant: John D. & Iona Miller Jones

1 MR. NOFFSINGER: Mr. Chairman, this plat  
2 has been reviewed by the Planning Staff and City  
3 Engineering Staff. It's found to be in order. It is  
4 a nondevelopment lot. It is a lot for a retention  
5 basin to be conveyed to the City of Owensboro for  
6 maintenance. With that it's ready for your  
7 consideration.

8 CHAIRMAN: Is there anybody representing  
9 the Jones here?

10 (NO RESPONSE)

11 CHAIRMAN: Anybody from the commission  
12 have a question?

13 (NO RESPONSE)

14 MR. APPLEBY: Is Chair ready for a motion?

15 CHAIRMAN: Chair is ready for a motion.

16 MR. APPLEBY: Motion for approval.

17 MR. GILLES: Second.

18 CHAIRMAN: We have a motion for approval  
19 by Mr. Appleby and a second. All in favor raise your  
20 right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 Next item, please.

24 ITEM 9

25 Heartland (located at Rush Trail and Meadow Grass

1 Creek) 135.873 acres  
2 Consider approval of major subdivision final plat.  
3 Applicant: National City Bank, Kentucky, Jagoe  
4 Development Corporation

5 MR. NOFFSINGER: Mr. Chairman, this  
6 application has been reviewed by the Planning Staff,  
7 City Engineering Staff. It's found to be in order.  
8 This plat is for property transfer. With that it's  
9 ready for your consideration.

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

12 CHAIRMAN: Mr. Jagoe will be disqualified.

13 (MR. JAGOE EXCUSES HIM AND LEAVES ROOM.)

14 CHAIRMAN: Is there anybody representing  
15 the applicant?

16 (NO RESPONSE)

17 CHAIRMAN: Any questions from the  
18 commission?

19 (NO RESPONSE)

20 MR. ROGERS: Motion for approval.

21 MR. CAMBRON: Second.

22 CHAIRMAN: Motion for approval by Mr.  
23 Rogers. Second by Mr. Cambron. All in favor raise  
24 your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

1 Next item, please.

2 -----

3 MINOR SUBDIVISION

4 ITEM 10

5 5616, 5626 Pleasant Point Road, 3.972+ acres  
6 Consider approval of minor subdivision plat.  
7 Applicant: Clifton R. Sumner

8 MR. NOFFSINGER: Mr. Chairman, this  
9 application has been reviewed by the Planning Staff  
10 and the County Engineering Staff. It's found to be in  
11 order. It creates a lot that will slightly exceed the  
12 three to one depth to width ratio; however, it does  
13 meet the frontage as required at the building setback  
14 line. If this property is going to be divided, this  
15 is about the only way you could do it and be somewhat  
16 in line with the subdivision regulation. One of the  
17 lots that they are creating will continue or will  
18 maintain all applicable regulations. The remaining  
19 track will be slightly over. The applicant has agreed  
20 that the property cannot be further subdivided because  
21 of this. With that it's ready for your consideration.

22 CHAIRMAN: Is anybody representing the  
23 applicant?

24 MR. SUMNER: Yes.

25 CHAIRMAN: Do you have some comments you  
would like to make?

1 MR. SUMNER: Only if there is a problem  
2 subdividing.

3 CHAIRMAN: I'm sorry, step to the mike.

4 MR. ELLIOTT: State your name, please.

5 MR. SUMNER: Clifton Sumner.

6 (MR. CLIFTON SUMNER SWORN BY ATTORNEY.)

7 MR. SUMNER: All I want to say is the only  
8 reason for dividing is to get my youngest son three  
9 acres of ground to get started in life. That's all.

10 CHAIRMAN: Any questions from any of the  
11 commissioners?

12 MR. JAGOE: I have a question. On the no  
13 further division, does that include the properties  
14 that are adjacent, that are owned as well or just the  
15 one two plus acre tracks?

16 MR. NOFFSINGER: It would only pertain to  
17 the 2.9 acre track.

18 MR. JAGOE: Thank you.

19 MR. APPLEBY: Is Chair ready for a motion?

20 CHAIRMAN: Chair is ready for a motion.

21 MR. APPLEBY: Motion for approval.

22 CHAIRMAN: Motion for approval by Mr.

23 Appleby.

24 MR. HAYDEN: Second.

25 MR. CHAIRMAN: Second by Mr. Hayden. All

1 in favor raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries unanimously.

4 Next item, please.

5 -----

6 SURETY RELEASES

7 ITEM 11

8 Eagle Crest Estates, Unit #1, \$5,000.00  
9 Consider partial release of surety (Certificate of  
10 Deposit) for fire hydrants.  
11 Surety retained (Certificate of Deposit) \$5,000.00  
12 Surety posted by: Hayden Park Developers

11 ITEM 12

12 Evansville Teachers Federal Credit Unit, \$33,479.06  
13 Consider release of surety (Performance Bond) for  
14 landscaping.  
15 Surety posted by: Peters Contracting, Inc.

14 ITEM 13

15 Falloway Auto Sales, \$1,987.00  
16 Consider release of surety (Certified Check) for  
17 landscaping.  
18 Surety posted by: Falloway Auto Sales

18 ITEM 14

19 Fulkerson Property Division, \$2,500.00  
20 Consider release of surety (Certified Check) for fire  
21 hydrants.  
22 Surety posted by: Bill Kurtz/Kurtz Auction & Realty

21 ITEM 15

22 First Security Bank & Trust, McLean, \$1,470  
23 Consider release of surety (Irrevocable Letter of  
24 Credit) for landscaping.  
25 Surety posted by: First Security Bank & Trust, McLean

1 ITEM 16

2 Grace Tabernacle, \$1,245.00  
3 Consider release of surety (Certificate of Deposit)  
4 for landscaping.  
5 Surety posted by: Grace Tabernacle

6 ITEM 17

7 Hunters Ridge, Unit #7, \$500.00  
8 Consider release of surety (Certified Check) for water  
9 mains.  
10 Surety posted by: Hunters Ridge Development, Inc.

11 ITEM 18

12 Kentucky Wesleyan College Parking Lot, \$2,817.00  
13 Consider release of surety (Performance Bond) for  
14 landscaping.  
15 Surety posted by: Peters Contracting, Inc.

16 ITEM 19

17 Lewis Lane Baptist Church Parking Lot, \$2,512.00  
18 Consider release of surety (Certified Check) for  
19 landscaping.  
20 Surety posted by: Lewis Lane Baptist Church

21 MR. NOFFSINGER: Under Surety Releases,  
22 Items 11 through 19 are in order and may be released  
23 in toto.

24 MR. APPLEBY: Motion for approval.

25 CHAIRMAN: Motion for approval by Mr.  
Appleby.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

1 Next item, please.

2 SURETY TRANSFERS

3 ITEM 20

4 Brookhill Estates, Unit #11, \$2,520.00  
5 Transfer of surety (Certificate of Deposit) for 1"  
6 bitum conc. surface to the City of Owensboro.  
7 Surety posted by: Brookhill Estates, Inc.

8 ITEM 21

9 Brookhill Estates, Unit #11, \$6,660.00  
10 Transfer of surety (Certificate of Deposit) for  
11 sidewalks to the City of Owensboro.  
12 Surety posted by: Brookhill Estates, Inc.

13 ITEM 22

14 Brookhill Estates, Unit #11, \$600.00  
15 Transfer of surety (Certified Check) for storm sewers  
16 to the City of Owensboro.  
17 Surety posted by: Brookhill Estates, Inc.

18 ITEM 23

19 Lake Forest, Unit #11, \$2,158.80  
20 Transfer of surety (Certificate of Deposit) for 1"  
21 bitum conc. surface to the Daviess County Fiscal  
22 Court.  
23 Surety posted by: Lake Forest Community, LLC

24 ITEM 24

25 Lake Forest, Unit #11, \$4,317.60  
26 Transfer of surety (Certificate of Deposit) for 2"  
27 bitum conc. base to the Daviess County Fiscal Court.  
28 Surety posted by: Lake Forest Community, LLC

29 ITEM 25

30 Lake Forest, Unit #11, \$5,508.00  
31 Transfer of surety (Certificate of Deposit) for  
32 sidewalks to the Daviess County Fiscal Court.  
33 Surety posted by: Lake Forest Community, LLC

34

35

1       ITEM 26

2       Lake Forest, Unit #11, \$200.00  
3       Transfer of surety (Certified Check) for storm sewers  
4       and drainage to the Daviess County Fiscal Court  
5       Surety posted by: Lake Forest Community, LLC

6       ITEM 27

7       Lake Forest, Unit #11, \$1,000.00  
8       Transfer of surety (Certificate of Deposit) for valley  
9       curb and gutter to the Daviess County Fiscal court.  
10      Surety posted by: Lake Forest Community, LLC

11      ITEM 28

12      Salem Drive Development, \$10,170.00  
13      Transfer of surety (Irrevocable Letter of Credit) for  
14      water mains and fire hydrants to the City of  
15      Owensboro.  
16      Surety posted by: Mr. & Mrs. John D. Jones

17      ITEM 29

18      Starlite Development, \$9,471.00  
19      Transfer of surety (Irrevocable Letter of Credit) for  
20      sidewalks to the City of Owensboro.  
21      Surety posted by: Robert H. Steele

22                   MR. NOFFSINGER: Under Surety Transfers,  
23      Items 20 through 29 are in order and may be  
24      transferred in toto.

25                   MR. APPLEBY: Mr. Chairman, I need to  
26      disqualify myself on Item 29.

27                   CHAIRMAN: Disqualification by Mr.  
28      Appleby. The Chair is now ready for a motion.

29                   MR. CAMBRON: Motion for Items 20 through  
30      28.

31                   CHAIRMAN: Mr. Cambron has a motion for

1 Items 20 through 28.

2 MS. DIXON: Second.

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

5 (ALL BOARD MEMBERS PRESENT WITH THE  
6 EXCEPTION OF MR. APPLEBY'S DISQUALIFICATION RESPONDED  
7 AYE.)

8 CHAIRMAN: Motion carries unanimously.

9 Mr. Cambron, do you have another motion?

10 MR. CAMBRON: Motion for approval on Item  
11 29.

12 MS. DIXON: Second.

13 CHAIRMAN: Motion by Mr. Cambron for  
14 approval. Second by Ms. Dixon. All in favor raise  
15 your right hand.

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries unanimously.

18 -----

19 NEW BUSINESS

20 ITEM 30

21 Ratify the Chairman's signature regarding a Collateral  
22 Security Agreement between Area Bank and the Owensboro  
Metropolitan Planning Commission.

23 MR. NOFFSINGER: Mr. Chairman, this is on  
24 the agenda. It's an item or document that we need to  
25 guarantee that the OMPC deposits, which are public

1 moneys, will be insured by the FDIC. We would  
2 recommend you approve this document.

3 CHAIRMAN: Any questions from any of the  
4 commission?

5 (NO RESPONSE)

6 CHAIRMAN: Chair is ready for a motion.

7 MR. HAYDEN: Make a motion for approval.

8 CHAIRMAN: Motion for approval by Mr.  
9 Hayden.

10 MS. DIXON: Second.

11 CHAIRMAN: Second by Ms. Dixon.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimously.

14 Next item.

15 ITEM 31

16 Consider Resolution No. 11-2001 approving the  
17 execution of the Interlocal Cooperation Agreement to  
18 establish the Kentucky Municipal Risk Management  
19 Association.

19 MR. NOFFSINGER: Mr. Chairman, this item  
20 is on the agenda for the Planning Commission to  
21 participate in the insurance programs that are offered  
22 by the Kentucky Legal Cities. It does require the  
23 signature of the Planning Commission Chairman and  
24 other officers. I would recommend that this  
25 resolution be approved and signed.

1 MR. CAMBRON: Motion for approval.

2 MS. DIXON: Second.

3 CHAIRMAN: Motion for approval by Mr.  
4 Cambron. Second by Ms. Dixon. All in favor raise  
5 your right hand.

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries unanimously.

8 Next item.

9 ITEM 32

10 Eagle Crest Estates, Unit #1, \$12,100.00  
11 Consider partial release of surety (Certificate of  
12 Deposit) for storm sewers and sanitary sewers.  
13 Surety retained (Certificate of Deposit) \$39,590  
14 Surety posted by: Hayden Park Developers

15 MR. NOFFSINGER: Mr. Chairman, this item  
16 is in order and ready for release.

17 CHAIRMAN: I'd say the Chair would be  
18 ready for a motion on this.

19 MS. DIXON: Move to approve.

20 CHAIRMAN: Motion for approval by Ms.  
21 Dixon.

22 MR. HAYDEN: Second.

23 CHAIRMAN: Second by Mr. Hayden. All in  
24 favor raise your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Chair is ready for one more motion.

1 MR. CAMBRON: Wait, there's somebody in  
2 the audience.

3 CHAIRMAN: I'm sorry. Did I not recognize  
4 somebody? Is there anybody in the audience that  
5 wanted to be recognized?

6 MR. KELLY: Yes, I would.

7 CHAIRMAN: Okay. This would be under New  
8 Business then.

9 MR. ELLIOTT: State your name, please.

10 MR. KELLY: Darnell Kelly.

11 (MR. DARNELL KELLY SWORN BY ATTORNEY.)

12 MR. KELLY: I live at 2763 Wayside Drive  
13 East. Next door there's a vacant lot which the  
14 address is 1203. The city owned this lot at one time  
15 and they originally auctioned it off. It was zoned,  
16 it's my understanding from the plat that when this  
17 subdivision was put in here back in '69 that this was  
18 suppose to be a recreational lot for the kids in the  
19 neighborhood.

20 When the city sold this lot through Kurtz  
21 Auction & Realty, and that's what they said when they  
22 sold it. That it was zoned recreation. Well, they  
23 sold it to an individual who has since tried to put a  
24 house on this lot. When I questioned how did it go  
25 from recreation to residential I was told that it had

1 always been like that.

2 My complaint was that the Planning &  
3 Zoning Commission back in 1969 seen this lot as  
4 recreational and not residential. So how can we now  
5 without it being changed to my knowledge go in and put  
6 a house on a lot that's been zoned recreational?

7 CHAIRMAN: Let me address it this way:  
8 Let us have the address and we'll have one of the  
9 staff members get back with you on the zoning because  
10 we really don't have access to that information with  
11 this being new business. You know, it's not on the  
12 agenda so we cannot accurately address this matter  
13 unless does somebody have - -

14 MR. NOFFSINGER: I am.

15 CHAIRMAN: You're aware of the situation?

16 MR. NOFFSINGER: Yes.

17 CHAIRMAN: We'll have Mr. Noffsinger  
18 address it.

19 MR. NOFFSINGER: The property that you're  
20 speaking of I believe is zoned single-family  
21 residential, which that zoning classification allows  
22 for a home to be constructed on the property. The  
23 property is properly zoned; however, back when the  
24 subdivision was laid out, I believe there might have  
25 been some type of private restriction or some type of

1 dedication of some sort for the property to be used as  
2 a recreation facility.

3 The City of Owensboro did sell the  
4 property at auction. Looking into it the Planning  
5 Commission reviewed the actual disposition of the  
6 property by the city and recommended that it move  
7 forward. If there are any private restrictions that  
8 are in affect for that property, I'm certainly not  
9 aware of them. That's not to say that there aren't  
10 any private restrictions, but that would be something  
11 that we would not enforce. That would be enforced  
12 through a civil matter. Mr. Jim Mischel may have  
13 something additional he would want to add to that.

14 MR. APPLEBY: Is there a Deed of  
15 Dedication for that subdivision?

16 MR. NOFFSINGER: Yes.

17 MR. ELLIOTT: State your name, please.

18 MR. MISCHEL: Jim Mischel.

19 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

20 MR. MISCHEL: It does seem like at one  
21 time the city did own this lot. RWRA at some point  
22 had some interest in it for sewer lines, whatever. At  
23 some point they decided they did not need them and  
24 they increased utilities for themselves before it was  
25 sold.

1                   It is zoned for a single-family. We did  
2                   permit a house on there. This gentleman here did  
3                   bring in the private deed restrictions for that  
4                   subdivision. In there it says recreation area up in  
5                   that corner. In looking at that private deed  
6                   restriction, we did not find where it talked about it,  
7                   be it dedicated for recreation even though it does say  
8                   it on there.

9                   At the same time I told him we really  
10                  don't enforce private restrictions. We just enforce  
11                  public restrictions. If anybody wants to look into  
12                  that and challenge that though, it would be more of a  
13                  civil matter. Anybody in that subdivision has a right  
14                  to enforce this private deed restriction. Like I told  
15                  them I really cannot tell them that that is a private  
16                  restriction or not. That would be for an attorney to  
17                  make that assumption and anyone in that subdivision  
18                  could challenge that, but they would need to do it  
19                  through an attorney I would think in a civil court,  
20                  but we did permit it and it does fit the public  
21                  restrictions as far as setbacks and everything.  
22                  Anyway that's where we stand on it, unless you have  
23                  any questions.

24                  CHAIRMAN: Thank you.

25                  MR. ELLIOTT: State your name, please.

1 MR. WALKER: It's Rick Walker.

2 (MR. RICK WALKER SWORN BY ATTORNEY.)

3 MR. WALKER: I live on the opposite side  
4 of this same lot that Mr. Kelly is referring to. My  
5 concern is that there is a utility easement on that  
6 particular property. For the two neighborhoods,  
7 actually 2763 is Mr. Kelly's address and my address is  
8 1205. The lot in question is 1203 Wayside Drive East.

9 My concern is is that that particular lot  
10 has for a number of years been the catch basin for  
11 flood waters for those areas. In building a house in  
12 there, you are raising the elevation. My concern is  
13 that when you go in and you excavate that particular  
14 land, the dirt that comes out of there goes somewhere.

15 Now, at this particular time it's been  
16 moved back into the lower land area, into that basin.  
17 Whether there's a house built there or not, it is the  
18 natural drainage. There is a ditch that is on that  
19 particular property and it's on the map and it shows  
20 that there is a one foot ditch. Now, I'm not the  
21 greatest mathematician in the world, but if you have a  
22 one foot ditch and you fill the dirt in to that one  
23 foot ditch and then cut it back out, the elevation has  
24 been changed.

25 My concern is that once that house goes in

1       there and all of that dirt that has been excavated out  
2       and the house has been put in place, the elevation has  
3       been changed and all of the flood waters that comes in  
4       to the apartment complex and to my property and to Mr.  
5       Kelly's property, all that flood water is going to go  
6       somewhere. My concern is I don't want it. No one  
7       would want their property to be flooded. With putting  
8       that house in there and someone authorized it.

9                     My concern is that we keep in mind that  
10       that water has to go somewhere and it has always gone  
11       to that property and to a sewer. There is a sewer  
12       that runs east and west on that particular property.  
13       To my knowledge it's caving in. It's one of the  
14       oldest sewers in the City of Owensboro. There has  
15       been a liner put inside that sewer to help with the  
16       leaking of it. You know, they're going in and out of  
17       there, bringing sand and whatever for that house in  
18       there and the sewer is starting to collapse. The  
19       sidewalk there has already started to give way. I  
20       have a lot of concerns. I don't want to bore your  
21       patience, but my concern with all of this is you're  
22       putting a house in and I don't think all of the things  
23       have been addressed.

24                     CHAIRMAN: Mr. Walker and Mr. Kelly, I  
25       appreciate both of your concerns and that you have

1       been given by Mr. Mischel avenues which you can  
2       pursue. This board right here we would have zoned the  
3       property either residential or recreational or  
4       whatever. Whereby this piece of property has the  
5       correct zoning by virtue of this board.

6                   We really are in a situation where, you  
7       know, as Mr. Mischel pointed out, you know, we cannot  
8       enforce private covenants or things that are outside  
9       of the parameters of the jurisdiction of this board.  
10      There's other areas and places you can take your  
11      concerns, but unfortunately it's zoned correctly. It  
12      is residential.

13                   At this point in time other than going  
14      through the court system, unless Mr. Mischel has some  
15      other input, you know, I think we're just at a point  
16      where it's zoned residential and that's sort of the  
17      end of our jurisdiction, but I'll ask Mr. Mischel if  
18      he's got any comments or anything in any way we can  
19      help.

20                   MR. MISCHEL: The only thing I might add  
21      that if you would like to come down in the morning or  
22      I'll do it myself, the person building this house  
23      should not create a drainage problem for the neighbors  
24      or whatever. If you would come down, it's on the  
25      second floor of this building, I'll take you over to

1 the city engineer's office or in the morning I'll go  
2 over there myself and see if they can't monitor this  
3 and make sure that they do not - -

4 MR. WALKER: That's all I'm asking.

5 MR. MISCHEL: I think they'd be glad to  
6 send somebody out to look at it and make sure that's  
7 taken care of.

8 MR. KELLY: The ditch that we're talking  
9 about filling in, I think on the paper it's called - -  
10 you know, any more dirt or sand is brought in there,  
11 and Mr. Walker is right in what he's saying. Like he  
12 said that water has got to go somewhere. If you've  
13 ever been in that neighborhood whether it be on Holly  
14 or whatever when it rains, you can't get through  
15 there. It comes in our area. All we're asking is, is  
16 he is doing it right.

17 MR. MISCHEL: I think last few years the  
18 city has been pretty proactive as far as drainage  
19 ditches and keeping them open and cleaned out. I  
20 think they would be interested that this is not filled  
21 in and that it's cleared out and everything. I'll  
22 bring it to their attention. If you'd like to come  
23 down in morning, we can go over it.

24 CHAIRMAN: Mr. Walker, are you satisfied  
25 with what we're going to try to do to help you?

1 MR. WALKER: I'll work on it.

2 CHAIRMAN: Mr. Kelly?

3 MR. KELLY: Yes.

4 CHAIRMAN: Mr. Mischel, does he  
5 technically have to physically come down or can he  
6 just phone in and see how things are developing?

7 MR. MISCHEL: You can just phone me if you  
8 want to.

9 MR. WALKER: That's fine.

10 CHAIRMAN: All right. Thank you all.  
11 Now the Chair is ready for one final  
12 motion.

13 MS. DIXON: Move to adjourn.

14 CHAIRMAN: Motion to adjourn by Ms. Dixon.

15 MR. APPLEBY: Second.

16 CHAIRMAN: Second by Mr. Appleby. All in  
17 favor raise your right hand.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Meeting is adjourned.

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

3 I, LYNNETTE KOLLER, Notary Public in and for  
4 the State of Kentucky at Large, do hereby certify that  
5 the foregoing Owensboro Metropolitan Planning & Zoning  
6 meeting was held at the time and place as stated in  
7 the caption to the foregoing proceedings; that each  
8 person commenting on issues under discussion were duly  
9 sworn before testifying; that the Board members  
10 present were as stated in the caption; that said  
11 proceedings were taken by me in stenotype and  
12 electronically recorded and was thereafter, by me,  
13 accurately and correctly transcribed into the  
14 foregoing 70 typewritten pages; and that no signature  
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this  
17 the 26th day of November, 2001.

18

19

\_\_\_\_\_  
LYNNETTE KOLLER, NOTARY PUBLIC  
OHIO VALLEY REPORTING SERVICE  
202 WEST THIRD STREET, SUITE 2  
21 OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES:  
DECEMBER 19, 2002

23

COUNTY OF RESIDENCE:  
24 DAVIESS COUNTY, KENTUCKY

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