

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 JULY 14, 2005

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4 The Owensboro Metropolitan Planning
5 Commission met in regular session at 6:00 p.m. on
6 Thursday, July 14, 2005, 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 Dave Appleby
12 Jimmy Gilles
13 Irvin Rogers
14 Sister Vivian Bowles
15 Judy Dixon
16 Dr. Bothwell
17 Stewart Elliott,
18 Attorney

14 * * * * *

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

19 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

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

23 (NO RESPONSE)

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

1 MS. DIXON: Move to approve.

2 CHAIRMAN: Motion for approval by Ms.

3 Dixon.

4 SISTER VIVIAN: Second.

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

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously.

9 Mr. Noffsinger.

10 -----

11 ZONING CHANGES - CITY

12 ITEM 2

13 2820 Brooks Parkway, 0.699 acres
14 Consider zoning change: From I-2 Heavy Industrial
15 to R-1C Single-Family Residential
Applicant: Owensboro Master Builder, Inc.

16 MR. ELLIOTT: State your name, please.

17 MR. HOWARD: Brian Howard.

18 (MR. BRIAN HOWARD SWORN BY ATTORNEY.)

19 PLANNING STAFF RECOMMENDATIONS

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

1 that support this recommendation include the
2 following:

3 Conditions:

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

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

12 Findings of Fact:

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

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

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

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

25 CHAIRMAN: Is anybody here representing

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1 the applicant?

2 APPLICANT REP: Yes.

3 CHAIRMAN: Does anybody have any questions
4 of the applicant?

5 (NO RESPONSE)

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

8 (NO RESPONSE)

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

11 MS. DIXON: Move to approved based upon
12 Findings of Fact 1, 2, and 3 and subject to Conditions
13 1 and 2.

14 CHAIRMAN: Motion for approval by Ms.
15 Dixon.

16 DR. BOTHWELL: Second.

17 CHAIRMAN: Second by Dr. Bothwell. 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 Related Item:

23 ITEM 2A

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

1 Applicant: Owensboro Master Builder, Inc.

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

7 CHAIRMAN: Does anybody have any
8 questions?

9 (NO RESPONSE)

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

12 DR. BOTHWELL: Motion to approve.

13 CHAIRMAN: Motion for approval by Dr.
14 Bothwell.

15 MS. DIXON: Second.

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

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries unanimously.

20 Next item, please.

21 ITEM 3

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

25 PLANNING STAFF RECOMMENDATIONS

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1 Staff recommends approval because the
2 proposal is in substantial compliance with the
3 community's adopted Comprehensive Plan. The condition
4 and findings of fact that support this recommendation
5 include the following:

6 Condition:

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

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

16 Findings of Fact:

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

20 2. Sanitary sewers currently exist to
21 serve the site;

22 3. The proposal is immediately adjacent
23 to a tract of land to the north that has an approved
24 82 unit residential development for an elderly and
25 memory care facility;

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

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

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

9 CHAIRMAN: Is there anybody here
10 representing the applicant?

11 APPLICANT REP: Yes.

12 CHAIRMAN: Does anybody have any questions
13 of the applicant?

14 (NO RESPONSE)

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

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

19 CHAIRMAN: Motion for approval by Sister
20 Vivian.

21 MR. GILLES: Second.

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

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: Motion carries unanimously.

1 Next item, please.

2 Related Items:

3 ITEM 3A

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

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

13 CHAIRMAN: Are there any questions?

14 (NO RESPONSE)

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

17 MS. DIXON: Move to approve.

18 CHAIRMAN: Motion for approval by Ms.
19 Dixon.

20 SISTER VIVIAN: Second.

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

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries unanimously.

25 Next item, please.

1 ITEM 3B

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

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

11 CHAIRMAN: Is anybody here representing
12 the applicant?

13 APPLICANT REP: Yes.

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

16 (NO RESPONSE)

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

19 MS. DIXON: Move to approve.

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

22 DR. BOTHWELL: Second.

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

26 CHAIRMAN: Motion carries unanimously.

1 Next item, please.

2 ITEM 3C

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

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

13 CHAIRMAN: Is anybody here representing
14 the applicant?

15 APPLICANT REP: Yes.

16 CHAIRMAN: Does anybody have any questions
17 of the applicant?

18 (NO RESPONSE)

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

21 SISTER VIVIAN: Move for approval.

22 CHAIRMAN: Motion for approval by Sister
23 Vivian.

24 MR. ROGERS: Second.

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

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries unanimously.

3 Next item, please.

4 ITEM 4

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

10 PLANNING STAFF RECOMMENDATIONS

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

16 Conditions:

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

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

24 Findings of Fact:

25 1. The subject property is partially
located in a Professional/Service Plan area where
Professional/Services uses are appropriate in general

1 locations and partially located in a Central
2 Residential Plan area, where Professional/Service uses
3 are appropriate in limited locations;

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

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

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

15 CHAIRMAN: Is there anybody here
16 representing the applicant?

17 (NO RESPONSE)

18 CHAIRMAN: Does anybody have any
19 questions?

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

22 MR. ELLIOTT: State your name, please.

23 MR. PAYNE: Alan Payne.

24 (MR. ALAN PAYNE SWORN BY ATTORNEY.)

25 MR. PAYNE: I would just like to know what

1 the professional service is going to be. It's from
2 general business to professional service. I live
3 right across the street from the church.

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

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

10 MR. NOFFSINGER: That be a picnic shelter?

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

14 MR. PAYNE: Thank you.

15 CHAIRMAN: Does that answer your question?

16 MR. PAYNE: Yes.

17 CHAIRMAN: Are there any further
18 questions?

19 (NO RESPONSE)

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

22 MR. ROGERS: Motion for approval based on
23 Planning Staff Recommendations and Findings of Facts
24 1, 2 and 3 with Conditions 1 and 2.

25 CHAIRMAN: We've got a motion for approval

1 by Mr. Rogers.

2 MS. DIXON: Second.

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

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries unanimously.

7 Next item.

8 -----

9 ZONING CHANGES - COUNTY

10 ITEM 5

11 10091 KY 405, 0.28 acres
12 Consider zoning change: From B-4 General Busienss
13 to R-1A Single-Family Residential
Applicant: Nancy Keeton

14 PLANNING STAFF RECOMMENDATIONS

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

19 Findings of Fact:

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

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

25 3. The site has an existing septic system

1 that is functioning properly.

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

4 CHAIRMAN: Is there anyone here
5 representing the applicant?

6 APPLICANT REP: Yes.

7 CHAIRMAN: Does anybody have any questions
8 of the applicant?

9 (NO RESPONSE)

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

12 APPLICANT REP: No.

13 CHAIRMAN: We're ready for a motion then.

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

16 CHAIRMAN: Motion for approval by Dr.
17 Bothwell.

18 MS. DIXON: Second.

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

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 Next item, please.

24 ITEM 6

25 8753 Mulligan Road, 38.5 acres

1 Consider zoning change: From EX-1 Coal Mining to
2 A-R Rural Agriculture
3 Applicant: Michael W. Timbrook

3 PLANNING STAFF RECOMMENDATIONS

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

8 Findings of Fact:

9 1. The subject property is located in a
10 Rural Maintenance Plan Area, where Rural Farm
11 Residential Uses are appropriate in general locations;

12 2. The subject property is currently
13 being used for agricultural purposes as cropland;

14 3. A portion of the subject property is
15 designated as prime agricultural land according to the
16 "Important Farmlands" map created by the US Department
17 of Agriculture Soil Conservation Service dated March
18 1980;

19 4. Mining activities never took place on
20 the subject property; and,

21 5. The Owensboro Metropolitan Zoning
22 Ordinance Article 12a.31 requires that property shall
23 revert to its original zoning classification after
24 mining.

25 MR. HOWARD: We would like to enter the

1 Staff Report as Exhibit E.

2 CHAIRMAN: Is anybody representing the
3 applicant?

4 (NO RESPONSE)

5 CHAIRMAN: Does anybody have any
6 questions?

7 (NO RESPONSE)

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

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

12 CHAIRMAN: Motion for approval by Mr.
13 Gilles.

14 SISTER VIVIAN: Second.

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

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: Motion carries unanimously.

19 Next item, please.

20 ITEM 7

21 3738 Ralph Avenue, 1.445 acres
22 Consider zoning change: From R-1A Single-Family
23 Residentil and A-U Urban Agriculture to B-4
24 General Business
25 Applicant: Woodlands Investment, LLC, Frank and
Linda Hayden

PLANNING STAFF RECOMMENDATIONS

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

6 Conditions:

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

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

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

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

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

4 Findings of Fact:

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

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

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

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

20 CHAIRMAN: Somebody here representing the
21 applicant?

22 APPLICANT REP: Yes.

23 CHAIRMAN: Does anybody have any questions
24 of the applicant?

25 MR. ELLIOTT: State your name, please.

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1 MR. BRYANT: Don Bryant.

2 (MR. DON BRYANT SWORN BY ATTORNEY.)

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

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

1 would have on them until they probably in the future
2 rezone to commercial as well.

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

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

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

24 We just want to reserve that right. If we
25 can get that worked out and we do improve the street.

1 MR. HOWARD: And once that is resolved,
2 you would have the right to come back and amend the
3 previous or amend the zonings of those properties and
4 remove the stipulation that access would be from Villa
5 Point - -

6 MR. BRYANT: On the previous one.

7 MR. HOWARD: Right.

8 MR. BRYANT: Yes.

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

17 MR. BRYANT: Okay.

18 Second item just for point of
19 clarification under Item 2. We're talking about a
20 10-foot buffer where we're joining residential
21 properties. I believe with this zoning that we're
22 actually not adjoining residential properties unless
23 we're considering property across on the opposite side
24 of Ralph Avenue. Just point of clarification that we
25 would propose a 3-foot parameter landscaping along

1 Ralph Avenue. Not a 10-foot buffer with 6-foot
2 screen. Would that be correct?

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

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

13 CHAIRMAN: Thank you, Mr. Bryant.

14 Are there any other questions or comments?

15 (NO RESPONSE)

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

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

21 CHAIRMAN: Motion for approval by Dr.
22 Bothwell.

23 SISTER VIVIAN: Second.

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

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries unanimously.

3 Next item, please.

4 -----

5 DEVELOPMENT PLANS

6 ITEM 8

7 3020, 3030, 3040, 3050, 3060, 3070, 3080 Fairview
Drive, 6.553 acres

8 Consider approval of final development plan
Applicant: Gulfstream Development, LLC

9

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

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

1 parking face for every 400 square feet of use.

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

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

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

20 While the applicant plan has limited
21 parking in a generally 1 to 200 category to 28,000
22 square feet they have not indicated the location of
23 the square footage in each building. With 7 buildings
24 approximately 84,000 square feet of total space and
25 multiple owners since these units will be sold as

1 future condos, it would be almost impossible for the
2 building department to track each use as it comes in
3 and keep a running tally of how much square footage is
4 occupied for the 1 to 200 or 1 to 400.

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

11 One option would be that they submit a
12 preliminary development plan so this plan could be
13 used as a preliminary development plan that shows the
14 overall design where the building could be located.
15 They could use that for earmarking purposes. Then
16 once they have interested clients to purchase the
17 individual squeeze, then they could come back when a
18 building or two is full or approaching full and then
19 do a final development plan for those two buildings
20 and use the preliminary still to market the site.
21 They could still do the infrastructure improvements
22 and such with the preliminary plan. That way we would
23 know as the final plans come in what's going on. We
24 could keep better track of what's happening with the
25 usage.

1 Another option would be at this point on
2 the final plan just indicate what specific uses and
3 assign square footage on the buildings to be used.

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

17 As far as similar examples to what is
18 being proposed at this development, one that come to
19 mind is the Springs Development which is off Parrish
20 Avenue. That site was zoned partially B-1 and partial
21 P-1. It has a mix of overall uses. In order to meet
22 the parking requirement, they did a 1 to 200 overall.
23 The Planning Commission also approved the development
24 plan in 2001 at Southtown Boulevard. That is what
25 we're anticipating seeing on this plan. They actually

1 went through and divided the building up into sections
2 and said, this much square footage is going to be used
3 for whatever. That's what we need to see as far as
4 this plan goes. How much square footage you're
5 proposing for two different parking requirements. So
6 when they come in for permits in the building
7 commission that they can track what uses are going on.

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

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

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

22 DR. BOTHWELL: But I guess my question is:
23 Overall what is the ratio for the square footage that
24 they're showing that they're going to build
25 eventually? Do you have that number?

1 MR. HOWARD: I do not.

2 MR. APPLEBY: If I'm understanding you
3 correctly, they have enough parking to accommodate
4 28,000 feet of 1 to 200 ratio and the rest is at 1 to
5 400 feet.

6 MR. HOWARD: correct.

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

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

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

21 MR. HOWARD: When they come back in, they
22 revise the development plan. The same would hold
23 true, you know, new businesses come in and out of the
24 mall all the time, but they do a 1 to 200 parking
25 overall requirement. So that pretty much permits

1 anything other than a fast food restaurant.

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

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

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

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

1 indicating.

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

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

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

22 MR. APPLEBY: That's why I'm going back to
23 what you do having existing property today. How in
24 the world do you track it on the existing development
25 out there today? If, for example, the Springs didn't

1 meet the 1 to 200 and their use changes out there, how
2 would you know? How would you track it?

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

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

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

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

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

23 DR. BOTHWELL: What was their response?

24 MR. HOWARD: They felt that it was, and
25 maybe they would be better to address it than me.

1 They felt that it's something that could be handled
2 when it comes down as far as the building office. We
3 feel that the building office is busy enough as it is
4 issuing hundreds of permits per months. For them to
5 keep files tracking how much square footage comes in
6 for each type of use is a burden on them that we
7 shouldn't place when this doesn't happen with other
8 developments that come through our office and before
9 this commission.

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

12 MR. BRYANT: We were asked early on when
13 the plan was submitted to designate which buildings
14 would be used for medical or uses that require 1 and
15 200. We don't know. We just know that we meet the
16 parking requirements required by the ordinance for up
17 to 28,000 square feet. That will change over time.
18 At some point the developer will be completely out of
19 the picture. He'll sell out the property and go have
20 an Owners Association out there with several owners.
21 What we've been asked to do is that every time there's
22 a change in use that we would have to resubmit an
23 amended final development plan, have it brought before
24 this board or in-house possibly, and have it approved
25 every time there's a change of use, which all we would

1 be doing is updating sites statistics for purposes of
2 keeping records. To designate certain buildings, we
3 have 7 buildings, 28,000 square feet which you could
4 designate two buildings for 1 and 200 parking and
5 4,000 square feet in a third building. It's a
6 marketing issue really because if someone wants to buy
7 the building in the back that's not designated for 1
8 to 200 parking, but that's the building they want,
9 then we have to come back and resubmit the development
10 plan each time. We do that develop plan we have to
11 circulate that development plan to all utilities for
12 review and approval. It has to go to the city
13 engineer. We've got to go through that whole process,
14 you know, several hundred dollars in cost plus the
15 time involved. This will go on and on. The bottom
16 line is we see it as the purpose of this just so that
17 we can monitor compliance with the parking
18 requirements. There's got to be a better way to do
19 that. Through occupancy permits. We feel like that
20 you start out from scratch and keep a master file in
21 Jim's office and update that each time an occupancy
22 permit is issued. As uses change, then through the
23 business license that's issued by the city, I think
24 those are all sent to, Jim, to your office. There's a
25 method of monitoring that without redoing a final

1 development plan every time we have a change of use.

2 CHAIRMAN: Mr. Bryant, what would you do,
3 it looks like it's about one-third/two-thirds as far
4 as breakdown to office space. What if it went to
5 70/30? Say it went the other way. Say you had more 1
6 to 200. What would be your options?

7 MR. BRYANT: Well, we don't propose to
8 ever exceed 28,000 square feet. In fact, we may never
9 approach 28,000. I suspect that will be the case, but
10 we would - - in terms of a performance standard, we
11 could go up to 28,000 square feet that require 1 and
12 200 parking and be in total compliance with the
13 ordinance.

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

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

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

20 MR. BRYANT: No, but we could have a
21 medical use, let's use medical for example. We could
22 have a medical use in every one of those seven
23 buildings, but not fill up that building. It could be
24 one unit or two units and still they're not associated
25 with each other. A dentist might be in Building 3, a

1 doctor in Building 1. This is all shared parking. We
2 don't have designated parking for each building. We
3 don't have lot lines. This is a condominium
4 concept. So we have one track and shared parking,
5 shared maintenance of that parking. As long as we
6 meet that performance standard, we are in
7 compliance. The only issue here is how do we monitor
8 this to see that that project is in compliance at any
9 point in time. We've got to find a better way, a more
10 effective less costly way to do that than amending a
11 final development plan every time we have a change of
12 use.

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

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

25 Say, for example, medical use moves out of

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

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

20 MR. HOWARD: It does limit what you can do
21 with it, but that's the point of the development plan
22 is to dictate what uses are going to happen on the
23 property and what fashion. When the building permit
24 is issued, like I said what Jim will do is he'll pull
25 the plan and if the parking requirement is met then

1 there's no problem with it. It's not necessarily
2 going to be an issue that has to come back over and
3 over again provided that the medical doesn't
4 necessarily exceed the 28,000 square foot and that
5 those uses continue to turn over or remain the same
6 over time.

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

12 DR. BOTHWELL: Insufficient parking.

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

21 Jim, do you have a better idea about how -
22 -

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

25 CHAIRMAN: Wait a minute. Dr. Bothwell

1 has a question.

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

5 CHAIRMAN: There's no parking.

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

8 DR. BOTHWELL: I understand that.

9 MR. ELLIOTT: State your name, please.

10 MR. HUTCHINSON: Randy Hutchinson.

11 (MR. RANDY HUTCHINSON SWORN BY ATTORNEY.)

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

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

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

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

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

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

25 CHAIRMAN: Wait just a minute, Mr.

1 Hutchinson. He needs to be sworn in. Can we hold you
2 for just a minute and let Mr. Mischel respond to a
3 previous situation before you were sworn. Let me hold
4 you for a minute.

5 Counsel, would you swear in Mr. Mischel.

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

8 MR. MISCHEL: Jim Mischel.

9 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

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

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

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

24 MR. HUTCHINSON: Absolutely.

25 CHAIRMAN: We absolutely want the tax

1 rolls. We want buildings to go up. We definitely
2 want to work with any developer. I think this
3 commission has shown that throughout our tenure.

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

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

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

1 your document where this person could be reimbursed?

2 MR. HUTCHINSON: Excuse me.

3 (MR. HUTCHINSON CONFERS WITH CLIENT.)

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

25 MR. APPLEBY: As I see it, the issue

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

24 CHAIRMAN: Mr. Mischel.

25 MR. MISCHEL: Essentially when anyone

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

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

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

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

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

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

23 Mr. Noffsinger.

24 MR. NOFFSINGER: If I just might add.
25 These are spec buildings. The applicant has stated

1 that here tonight. They're purely spec buildings.
2 This is the first that I've ever dealt with such as
3 this where you come in and you're splitting the
4 parking and you're saying so much square footage is
5 allocated toward the 1 per 200 so much. General
6 office they require different parking arrangements.

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

16 Let's just say I buy one of these condos
17 and I buy it initially I'm going to run a general
18 office out of it. Well, my neighbor is going to run a
19 medical office out of theirs. Different parking
20 standards. We're both okay at the initial onset of
21 it. But then it's when uses start changing and we go
22 to selling those properties. How do you track it and
23 how do you say, well, this person can have medical
24 offices but you can't because someone else wants to do
25 medical offices. Which comes first? Who do you let

1 do the medical offices? Which one? This is first of
2 its kind to where the developer did not come in and
3 provide parking at the highest, for the highest use.
4 If we provide parking in this development at 1 per
5 200, we're not having this discussion.

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

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

25 DR. BOTHWELL: I guess my point is

1 avoiding the future headache. I see this as future
2 headache. Big headache. We're the ones that are
3 going to have to face it.

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

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

15 MR. BRYANT: Another 140.

16 CHAIRMAN: Another 140 parking spaces.

17 MR. BRYANT: The question was asked what
18 if someone sells an office at some point, five, ten
19 years from now, a non-medical use to a doctor that
20 wants to put an office in there that requires 1 and
21 200. That building, that unit is not designated on
22 the current final development plan for that parking
23 ratio. There's not anything to keep that transaction
24 from taking place just because it's shown on the
25 development plan. The public is not aware of the

1 development plans on file at the Planning Commission.
2 There's no protection to the general public there.
3 They're going to find out after that unit is sold it's
4 no different than what we're proposing. There's no
5 protection there. They'll never see that development
6 plan. I don't believe a develop plan shows up on a
7 title opinion.

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

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

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

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

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

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

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

1 reference to a development plan on file.

2 I do have a question, Mr. Hutchinson.

3 Will this complex be annexed into the City of
4 Owensboro?

5 MR. HUTCHINSON: We intend for it to be.

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

8 MR. HUTCHINSON: It's been approved.

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

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

1 Make a requirement that they not be exceeded.

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

4 MR. MISCHEL: No, not at this time.

5 CHAIRMAN: Mr. Howard.

6 MR. HOWARD: No.

7 CHAIRMAN: Mr. Appleby.

8 MR. APPLEBY: No

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

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

16 CHAIRMAN: Yes.

17 MR. BRYANT: This is a development plan.
18 As these buildings are constructed, we'll have to come
19 back with final plats. Since it is a condominium
20 concept, there will be division lines that we'll be
21 doing for record as-built plats of each of these
22 buildings for recording. If we're going to try to
23 address it through a document that be submitted for
24 review, let's at least get away from the development
25 plan and go to the plat because we don't want to have

1 to go back to the sewer agency, the water district,
2 the utility companies. They're going to want to
3 additional easements that they forgot to get before.
4 You know, the sewer agency is going to decide, well,
5 we want another sewer run and they're not going to
6 sign off on it until you do that. This happens to us
7 all the time. They use that for leverage to get what
8 they want without paying for it. If we're going to
9 tie it to something, let's not tie it to a revised
10 development plan. Let's amend the plat for that
11 individual building at least.

12 CHAIRMAN: Mr. Noffsinger.

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

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

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

24 MR. BRYANT: I'm stating that there will
25 be up to seven final plats submitted for this

1 development. One for each building, unless they do
2 multiple buildings on one plat. Most likely it will
3 be one plat per building.

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

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

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

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

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

25 CHAIRMAN: Wait just a minute. Let Mr.

1 Noffsinger complete and then you may speak.

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

12 CHAIRMAN: Mr. Bryant.

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

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

25 MR. BRYANT: Well, we use the term

1 medical. I think there are some uses that are
2 non-medical that require 1 and 200, but for the most
3 part it will be a medical use. Any use, any use that
4 requires 1 and 200 parking.

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

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

22 CHAIRMAN: Wait just a minute. I'm not
23 going to interrupt you. I just want to correct you.
24 We have made no all or nothing proposal. We've asked
25 for solutions, suggestions and compromises from your

1 side, from the Commission, from the Staff. We're
2 open-minded about this. Nobody is giving you an
3 ultimatum either all or nothing.

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

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

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

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

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

24 CHAIRMAN: You would make that as an
25 addition?

1 MR. HUTCHINSON: Yes. We would say yes.

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

6 CHAIRMAN: Well, there is a suggestion
7 then.

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

13 MR. BRYANT: I've got the answer.

14 CHAIRMAN: Mr. Bryant.

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

23 CHAIRMAN: That protect the public.

24 MR. BRYANT: And we're submitting letters
25 and not getting development plans signed by all

1 utility companies and paying fees, paying submittal
2 fee each time we change it.

3 CHAIRMAN: That's saves you all.

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

8 CHAIRMAN: And puts the responsibility - -

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

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

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

17 CHAIRMAN: Yes.

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

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

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

25 MR. HUTCHINSON: It would be the

1 developer's responsibility, Jim. If they want to
2 assign that to the lawyer to do or to the engineer to
3 do.

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

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

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

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

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

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

21 DR. BOTHWELL: Mr. Chairman, can I go back
22 to my original question. Rather than vote tonight,
23 why don't we table this until next month, work these
24 issue out, give everyone the satisfaction and then
25 re-address it in a more positive fashion.

1 SISTER VIVIAN: Mr. Chairman, would there
2 not be a possibility of reducing the number of units?
3 Not reducing the number of buildings but the number of
4 units within a couple of the buildings to accommodate
5 that parking? I keep getting the feeling that you're
6 trying to put too much on too little property if you
7 cannot do that to accommodate the parking.

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

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

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

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

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

25 MR. HUTCHINSON: We're in full compliance

1 with the parking requirements. It's just how much
2 detail should we be required to put in at this point
3 as to which units will have which parking area
4 limitations.

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

7 CHAIRMAN: Dr. Bothwell.

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

11 CHAIRMAN: Let me ask Mr. Bryant.

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

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

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

22 CHAIRMAN: Mr. Huthinson.

23 MR. HUTCHINSON: Maybe, Mark, rather than
24 table, could we have it approved maybe subject to the
25 resolution be reached before we submit our first plat?

1 MR. APPLEBY: I've got a question.

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

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

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

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

1 to be able to keep track of it. I feel like that
2 that's something we should do.

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

5 MR. APPLEBY: Well, the doctor was - -

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

9 MR. APPLEBY: I would make motion for
10 approval.

11 CHAIRMAN: Will there be conditions?

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

15 CHAIRMAN: Mr. Hutchinson's suggestion
16 about making the property association responsible for
17 - -

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

22 MR. BRYANT: Would be prior to the
23 submission of even the first final plat, which would
24 be prior to the transfer of any properties, any unit.
25 That we would work something out that is agreeable

1 with the building office and the developer. That
2 would keep the building office updated prior to any
3 sales of what the actual site statistics are out
4 there. That's what you're going to get on the
5 development plan, is updated site statistics
6 indicating the building. That can be done with an
7 exhibit drawing attached to the revised actual site
8 statistics. Not proposed but actual. That way you
9 know if it's in compliance or not. If it's not signed
10 off on, they can't transfer the unit. That will be
11 addressed on the plats as well as in the master deed
12 which contains the restrictions for the property.
13 Everyone is protected. All we need to do is come up
14 with the proper format which I think that would be
15 very easily done.

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

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

24 MR. ROGERS: Second.

25 CHAIRMAN: Second by Mr. Rogers. All in

1 favor of the motion raise your right hand.

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

5 CHAIRMAN: All opposed.

6 (BOARD MEMBER DR. MARK BOTHWELL RESPONDED
7 NAY.)

8 CHAIRMAN: The motion carries six to one.

9 Next item, please.

10 -----

11 MAJOR SUBDIVISIONS

12 ITEM 9

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

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

21 CHAIRMAN: Anybody representing the
22 applicant?

23 APPLICANT REP: Yes.

24 CHAIRMAN: Do we have any questions of the
25 applicant?

1 (NO RESPONSE)

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

4 DR. BOTHWELL: Motion for approval.

5 CHAIRMAN: Motion for approval by Dr.
6 Bothwell.

7 SISTER VIVIAN: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 Next item, please.

13 ITEM 10

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

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

21 CHAIRMAN: Is anybody here representing
22 the applicant?

23 APPLICANT: Yes.

24 CHAIRMAN: If not does anybody have any
25 questions?

1 (NO RESPONSE)

2 CHAIRMAN: Chair is ready for a motion.

3 MR. GILLES: Motion for approval.

4 CHAIRMAN: Motion for approval by Mr.

5 Gilles.

6 SISTER VIVIAN: Second.

7 CHAIRMAN: Second by Sister Vivian. All

8 in favor raise your right hand.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries unanimously.

11 Next item.

12 ITEM 11

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

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

22 CHAIRMAN: Is anybody here representing
23 the applicant?

24 APPLICANT REP: Yes.

25 CHAIRMAN: Does anybody have any
questions?

1 (NO RESPONSE)

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

4 MS. DIXON: Move to approve.

5 CHAIRMAN: Motion for approval by Ms.
6 Dixon.

7 DR. BOTHWELL: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 Next item.

13 -----

14 MINOR SUBDIVISIONS

15 ITEM 12

16 6701, 6721 Sutherlin Lane, 18.206 acres
17 Consider approval of minor subdivision plat.
18 Applicant: Damon & Janice Park, Melissa W. Chapman

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

23 MR. HOWARD: Currently there is a large
24 tract of ground that is irregular in shape. It's
25 shaped in the form of a flag and it currently exceeds
the three to one depth to width ratio. What they're

1 doing is cutting off the back portion of the flag and
2 consolidating it to the adjoining lot creating one
3 regularly shaped triangle box that still exceeds the
4 length to width ratio and then attaching the flag to
5 another lot that actually brings that a little closer
6 in conformance as well; although, they both still
7 don't meet the three to one depth to width ratio
8 requirement, but they're not creating any new tract
9 with this division at this time. Just division of
10 consolidation.

11 CHAIRMAN: Is there anybody here
12 representing an applicant?

13 (NO RESPONSE)

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

17 MR. HOWARD: We would recommend approval,
18 yes.

19 CHAIRMAN: Are there any questions?

20 (NO RESPONSE)

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

23 MS. DIXON: Move for approval.

24 CHAIRMAN: Motion for approval by Ms.
25 Dixon.

1 DR. BOTHWELL: Second.

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

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: Motion carries unanimously.

6 Next item, please.

7 ITEM 13

8 2415, 2419 West 10th Street, 0.313 acres
9 Consider approval of minor subdivision plat.
Applicant: Kenneth L. & Penny S. Robb

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

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

22 CHAIRMAN: Are there any questions?

23 (NO RESPONSE)

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

1 MS. DIXON: Move for approval.

2 CHAIRMAN: Motion for by Ms. Dixon.

3 SISTER VIVIAN: Second.

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

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries unanimously.

8 Next item, please.

9 -----

10 AGRICULTURAL DIVISIONS

11 ITEM 14

12 4400-4500 Blocks Medley Road, 10.015 acres
13 Consider approval of agricultural division.
14 Applicant: Robert Wimsatt

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

22 MR. HOWARD: This tract is ten acres in
23 size which is the minimum for an agricultural
24 division. The lot is currently zoned urban
25 agricultural, but the proposed use is not to be for
agricultural purposes. According to the applicant,

1 it's going to be used for a single-family residence.
2 As Mr. Noffsinger said, this is ten acres of a parent
3 tract that is currently under development by Mr.
4 Wimsatt. It's also under an annexation agreement with
5 the city, which I have a copy of that that I'm going
6 to entered into the record at this point as well.

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

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

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

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

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

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

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

23 I think Mr. Noffsinger just passed out as
24 well a concept plan of the overall development. We
25 did request the change that the cul-de-sac that abuts

1 this property be extended to the property line so that
2 in the future if this ten acre tract was subdivided
3 there would be a logical tie-in point for that road.
4 Then we also ask the same be done to an adjoining
5 tract that's currently around 13 acres. That the
6 cul-de-sac be extended to that property line as well.

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

10 CHAIRMAN: Thank you.

11 Anybody representing the applicant?

12 MR. ELLIOTT: State your name, please.

13 MR. WIMSATT: Bob Wimsatt.

14 (MR. BOB WIMSATT SWORN BY ATTORNEY.)

15 MR. WIMSATT: Mr. Chairman, fellow
16 commissioners, I'm kind of a little bit caught off
17 guard here tonight because there were some issues
18 brought up that have not been mentioned to me prior to
19 this discussion right now.

20 When I spoke with Mr. Howard as early as
21 this afternoon, it was my understanding that the Staff
22 really didn't expect the challenge of the fact that
23 this was an agricultural division. This plat was
24 turned in as an agricultural division. The fees were
25 paid as an agricultural division. It was accepted as

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

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

25 Also there's no requirement as far as what

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

9 Again, our only concern is that I found
10 out yesterday from the engineer that the Staff was
11 requesting two notes be added to the agricultural
12 plat. One note, you all have the plat, but one note
13 was that this tract shall not be further subdivided to
14 create additional irregular shape lots not meeting the
15 requirement of the subdivision regulations. I spoke
16 with the buyer for this property, and his attorney is
17 here tonight to represent him as well. He has no
18 problem with that. He has made it clear to the staff
19 for several weeks now that he has no intention of
20 doing any development on this property as far as the
21 high density type development or anything of that
22 nature other than possibly he wanted some kind of
23 protection that if something happens to him in several
24 years, whenever, that he might have the option of
25 being able to break off one or two lots to be able to

1 - - he doesn't want his wife to necessarily - - he
2 wanted a ten acre agricultural, wooded agricultural
3 tract. This tract meets all the definitions of an
4 agricultural tract. An agricultural tract does not
5 necessarily have to be row cropped. This is a ten
6 acre wooded agricultural tract that meets all those
7 definitions. As late as this afternoon, I haven't
8 heard any challenges to that affect. It was my
9 understanding that the reason that we were going to
10 have this discussion tonight was to talk about the
11 additional note that the Staff had requested that
12 neither myself nor the buyer felt comfortable
13 committing to. That note says, future subdivision of
14 this ten acre tract will require the extension of the
15 road to the south property line..

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

1 potentially be developed. That concept plan has been
2 revised several times over the years. Some initiated
3 by me and some initiated by the staff.

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

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

21 The ten acres that we've submitted as an
22 agricultural division, that ten acres sits right here.
23 Some good portion of this property has been developed.
24 There's another development occurring right down here.
25 A lot of this property hasn't been developed. There's

1 no formal or final plan at all as to when or if or how
2 that would be developed. That's been understanding
3 all along. When I got ready to do it, I requested
4 approval and go forward with the formal plan.

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

14 He's going to put a personal residence on
15 that ridge. Prior to this concept plan, there was a
16 concept that showed that this street, which is not
17 built and has not been finalized, there was a concept
18 that this street might come this way. It would go
19 this way across this ridge and it come out this ridge
20 and potentially have an entrance on Medley Road. That
21 was on the previous concept. What we're doing now is
22 we're breaking off this ten acre wooded agricultural
23 tract. He's going to put a personal residence on this
24 ridge. He asked me to allow him the opportunity to at
25 least be able to do one or two lots at some point in

1 the future, which I was agreeable to. I'm not
2 agreeable to him necessarily going in here and doing
3 any kind of high density development right in the
4 middle of the high density development that I may be
5 doing. It kind of cuts my own throat, create my own
6 competition.

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

16 The note, the second note, the first note
17 which we all agreed to and is on the plat. The second
18 note that was requested by the Staff yesterday
19 requires that if the buyer who going is build a
20 personal residence right here on this ridge, right in
21 the center of that property, if that buyer some day
22 decides to develop that property, period. One lot,
23 two lots, ten lots, thirty lots, if that buyer some
24 day decides to develop that property, then he'll have
25 to run that street all the way to the back of his ten

1 acres. That street would run right through his living
2 room. From a practical standpoint, that street, as
3 was in my prior concept, that street has to come
4 across that ridge. Once you come off that ridge, it
5 drops off pretty severely on both sides. From an
6 engineering standpoint, a practical standpoint, it
7 would be very difficult to put a street anywhere but
8 on that ridge. Exactly where he intends to put his
9 personal residence.

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

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

15 MR. HOWARD: Certainly.

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

21 I expressed to him what we are trying to
22 do to accomplish what this note that we're talking
23 about is for future development plan accordingly for
24 this ten tract that is part of a parent that is
25 currently under development. Again, we understand

1 that this portion on the west side of the property has
2 not been final plated. We understand that, but we're
3 taking ten acres out of what was a developing parent
4 tract of ground. We want to address the future need
5 of what could happen on that site. I told Mr. Wimsatt
6 with the other note that we put on there, if this note
7 was placed on the plat we wouldn't have any problem
8 going forward with this tonight as an agricultural
9 division, but we want to address what could happen on
10 this site in the future instead of having the
11 potential to isolate a ten acre subdivision.

12 CHAIRMAN: Mr. Wimsatt.

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

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

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

1 practical to put that note on there.

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

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

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

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

21 MR. WIMSATT: That's right. No. He'll
22 access on Medley Road. He can build a public street
23 on Medley Road, and he can make that decision. He has
24 an approved access point on Medley Road. At some
25 point in the future if he decides that he wants to do

1 one or two lots for a family, he can build that road.
2 He absolutely can build that road. He can put his
3 personal residence on the ridge in the middle of this
4 property right here where this road was previously - -
5 there was a concept that this road would come out here
6 on this ridge. There's an access point being shown
7 and being approved on this agricultural plat. That
8 access point is there. He can still come in off that
9 access point, if he chooses. At that time he'll have
10 to meet the subdivision regs. He could build a short
11 little cul-de-sac or whatever. Something that meets
12 the regs. It would come to this commission for
13 approval and Staff have to review just like anybody
14 else that wanted to subdivide lots off a tract of
15 ground that they have. At that time he could come in
16 here and he could potentially do a couple of lots up
17 front. That would be subject to full review of the
18 Staff and the Commission. He could still put personal
19 residence in the center of this property.

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

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

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

4 CHAIRMAN: Dr. Bothwell.

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

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

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

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

20 MR. WIMSATT: Absolutely.

21 DR. BOTHWELL: No more?

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

25 DR. BOTHWELL: He could add two more on

1 top of the two?

2 MR. WIMSATT: No.

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

6 MR. WIMSATT: Three, that's right.

7 DR. BOTHWELL: Period.

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

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

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

1 applicant at this time.

2 CHAIRMAN: Mr. Elliott.

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

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

9 CHAIRMAN: Mr. Noffsinger.

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

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

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

24 CHAIRMAN: Let me ask a question.

25 The house has not been built. This is a

1 standard, Mr. Howard, standard requirement, the
2 through street?

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

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

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

11 CHAIRMAN: That's what I'm getting to, Mr.
12 Howard. I'm asking him that question specifically.

13 The through street.

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

21 CHAIRMAN: Mr. Appleby.

22 MR. WIMSATT: And the reason for doing
23 that, Mr. Chairman, is that you assume that there may
24 be some high density development some time and you
25 protect for that. If there is a requirement that

1 there will not be any high density development, that
2 clearly says that there's no need for a through
3 street, then there's no need to put that requirement
4 on there. That's what I've suggested. If the Staff
5 is actually concerned about whether or not this
6 property may be developed at some time in some kind of
7 high density fashion, that we just put that note on
8 our agreement. I've sat here and listened - -

9 CHAIRMAN: Wait a minute.

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

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

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

21 MR. WIMSATT: I think what Mr. Elliott
22 said was that my personal agreement would not
23 necessarily be enforceable. I sat here and listened
24 to the dialogue about the discussion about putting
25 restrictions on this commercial development just a few

1 moments ago and there was discussion about putting
2 notes on the plats and all that. The reason you do
3 that is you put it on record. If you put it on
4 record, then it is enforceable. Everybody knows.
5 That's exactly what the Staff is requesting. That we
6 put a note on there requiring - -

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

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

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

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

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

17 Mr. Howard, through street connecting,
18 stubbed.

19 MR. HOWARD: Correct. It is something
20 that we would like to see. We don't have a concern
21 for this tract if it does develop as a higher density
22 residential use. It's within the urban service area.
23 It has sewer service. I mean we don't have any
24 concern if it does in the future develop as a higher
25 density residential use. It's appropriate based upon

1 everything else that's going on around it as far as
2 the parent tract. We don't have a concern, we don't
3 have an issue with that. We would support that that
4 be done at some point in the future if it needs to be.
5 If that does happen though, we want to make sure that
6 the road does connect between the ten acre tract and
7 we don't isolate it from the parent tract that is
8 currently under development.

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

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

14 Yes, sir.

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

17 MR. CASLIN: Dan Caslin.

18 (MR. DAN CASLIN SWORN BY ATTORNEY.)

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

22 His only concern is this: If that note is
23 placed on there, his desire is primarily just to put
24 his house on there and probably always remain that
25 way, but he wanted the opportunity to maybe have two

1 more lots of one acre in size. Only two as the
2 maximum. Maybe family members have a house nearby
3 his. An extremely low density development. If this
4 note is put on there, he will essentially be
5 restricted from doing that he feels because it will be
6 cost prohibited. All he wants to be able to do is put
7 his house, maybe two others, he won't be able to put
8 those two if that street is required.

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

11 Mr. Howard.

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

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

18 MR. ELLIOTT: State your name, please.

19 MS. STONE: Becky Stone.

20 (MS. BECKY STONE SWORN BY ATTORNEY.)

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

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

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

10 CHAIRMAN: Thank you.

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

15 MR. WIMSATT: And that's perfectly
16 reasonable, if there's a requirement that you can only
17 do two more houses. If it's open where you could do
18 30 houses, I could see where that might be a concern.
19 We don't mind putting that note on record on the plat
20 or put it in the restrictions on record at the
21 courthouse that there only be two additional homes at
22 any time in the future on that ten acres.

23 CHAIRMAN: Thank you, Mr. Wimsatt.

24 Mr. Noffsinger.

25 MR. NOFFSINGER: I have a question of Mr.

1 Wimsatt.

2 This property is under an annexation
3 agreement. Once you sell the ten acre tract, will
4 that tract be annexed?

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

18 MR. NOFFSINGER: Mr. Chairman, Planning
19 Staff would take issue that this is clearly not an
20 agricultural tract in that it is for development
21 purposes. The property is part of a parent tract that
22 has ongoing development. This is a ten acre division
23 of that parent tract. Just because they plan to build
24 a home on this property does not make it an
25 agricultural tract. Just because it's wooded does not

1 make it an agricultural tract. Yes, it is over ten
2 acres in size, but they have clearly stated to you
3 here tonight that they intend to develop this property
4 in the future.

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

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

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

15 CHAIRMAN: Hold on, Mr. Wimsatt, please.

16 Does anybody else have any other comments?

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

1 higher density where services are already existing.

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

3 CHAIRMAN: Just a moment, please.

4 Dr. Bothwell.

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

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

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

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

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

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

25 MR. WIMSATT: Absolutely. What we've come

1 with is no plan for development and a restriction that
2 if there ever is any attempt to develop it, that it be
3 very limited. At that time the issue would be
4 addressed, but it can be very clearly put on record.

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

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

23 MR. WIMSATT: All I ask for is what's
24 reasonable and what's customary. It's not customary
25 to put this note on an agricultural division and it's

1 not reasonable to expect that a piece of property that
2 has a restriction of only three house, that a street
3 have to be built 1,000 foot or whatever all the way
4 through that property when we don't know whether or
5 not they would even at some point in the future even
6 try to do that. That's all I ask.

7 CHAIRMAN: Thank you.

8 The Chair is now ready for a motion.

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

17 CHAIRMAN: Ms. Stone.

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

23 DR. BOTHWELL: Well, I think we've heard
24 the applicant is unwilling to place the note on the
25 property. So I would say that I make a motion that we

1 - -

2 MR. WIMSATT: Mr. Bothwell, I can't make
3 the commitment without talking to the buyer. I've
4 stated that I don't think it's appropriate to put the
5 note on there.

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

8 MR. NOFFSINGER: One of two things should
9 occur.

10 Steward, see if you agree with me.

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

23 MR. ELLIOTT: That's correct.

24 MR. WIMSATT: Mr. Chairman, just one
25 comment.

1 Absolutely have not said there are any
2 plans to develop that property. We serve the option
3 to maybe do two lots at the most. There is no plan,
4 no intention at this time of doing that. We
5 absolutely have not said that tonight. There is no
6 plans for development on that property other than a
7 personal resident. The buyer's attorney is here to
8 reiterate that.

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

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

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

17 CHAIRMAN: You're headed in the right
18 direction.

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

25 MR. WIMSATT: Let me just say that I can't

1 say exclusively that the buyer will not commit to
2 that.

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

7 CHAIRMAN: Could I - -

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

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

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

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

21 CHAIRMAN: Let them resubmit it.

22 MR. WIMSATT: Mr. Chairman, if we want
23 some time to see whether or not the buyer would be
24 willing to make that commitment, I can go back to the
25 buyer and see if he'll make that commitment. If

1 that's where we're at, we'll table it. Agricultural
2 divisions are customarily agreed at the Staff level
3 from what I understand. I think the Staff has said
4 that they don't have any problem with the agricultural
5 division. They just were requesting this note. I
6 don't have any problem with the Staff if that's where
7 we're - -

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

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

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

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

21 DR. BOTHWELL: I don't think it's any
22 clearer now than it was when I made or tried to make a
23 motion. They're not willing to accept that as the
24 plat what I'm hearing. Now I'm hearing maybe they
25 are.

1 CHAIRMAN: If you give them a
2 postponement, they can come back. If we give them
3 denial, what's time frame on that?

4 MR. NOFFSINGER: They resubmit.

5 CHAIRMAN: Immediately.

6 MR. APPLEBY: They have to pay again.

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

10 CHAIRMAN: Dr. Bothwell, take it.

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

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

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

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

24 DR. BOTHWELL: Now I'm completely -

25 MR. NOFFSINGER: The answer is yes.

1 DR. BOTHWELL: The answer is yes to what?

2 CHAIRMAN: Postponement.

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

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

12 DR. BOTHWELL: Mr. Chairman, we have spent
13 45 minutes on this and we've offered this as a
14 compromise and now we're getting back around to it
15 again to postpone it and come back. I'm just a little
16 - -

17 CHAIRMAN: You've got the floor.

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

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

22 MS. DIXON: Second.

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Postponement carries
2 unanimously.

3 Next item.

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

6 CHAIRMAN: Do we have any comments from
7 the floor?

8 MR. ELLIOTT: State your name, please.

9 MR. STALLINGS: I'm Richard Stallings.

10 (MR. RICHARD STALLINGS SWORN BY ATTORNEY.)

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

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

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

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

4 CHAIRMAN: Go ahead.

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

12 A large percentage of the actions of the
13 planning commission, planning director and his staff
14 are controlled be the actions of the city and county
15 governments. The Planning Commission, as an agency of
16 the city and county governments, must follow the
17 adopted Comprehensive Plan and related Zoning
18 Ordinances.

19 1. The Comprehensive Plan

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

1 designed to establish the best use of our land,
2 infrastructure and the direction of growth within the
3 county.

4 2. Zoning Ordinances

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

21 3. Public Improvement Specifications

22 The Public Improvement Specifications were
23 updated in 2003 and approved by the City and County
24 Engineers and the governments of Owensboro,
25 Whitesville, and Daviess County. The specifications

1 were adopted by the Owensboro Metropolitan Planning
2 Commission. The Public Improvement Specifications are
3 designed to guide the proper installation of our
4 sanitary sewers, storm sewers, detention basins, storm
5 water run-off, flood plain regulations, street
6 construction, sidewalk construction, and handicap
7 accessibility.

8 4. Green River Area Development
9 District and Highway Access Manual

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

15 5. Kentucky Building Codes and
16 National Electrical Codes

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

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

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

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

23 It has been the experience of our members
24 that Mr. Noffsinger, Mr. Mischel, Becky Stone and
25 their staff have always been willing to meet with

1 Builders and Developers to address problems and
2 concerns and to work to find a solution, if possible.
3 Ultimately, some things are beyond their control and
4 cannot be changed, except by elected officials and
5 their respective governments.

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

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

24 The Home Builders Association of Owensboro
25 and its membership is mindful of the requirements of

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

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

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

18 Now we're ready for one final motion.

19 MS. DIXON: Move to adjourn.

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

22 DR. BOTHWELL: Second.

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: We are adjourned.

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

22 COMMISSION EXPIRES:
23 DECEMBER 19, 2006

24 COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY