

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

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

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

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

23 The only thing we're going to be looking at is
24 does this meet the development plan requirements. I'm
25 going to ask Mr. Howard in a moment his opinion on

1 that, but certainly others may have opinions as to
2 whether or not it meets those requirements.

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

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

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

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

21 MR. HOWARD: That's right. We've reviewed it.
22 The property is zoned B-4. We reviewed it looking at
23 the parking, the landscaping, the buffers, the
24 conditions that Fiscal Court established for it. In
25 looking at that and everything that's been provided to

1 us, it's been reviewed by the county engineer to
2 address drainage. It's had a Traffic Impact Study
3 that was submitted and approved by the State that we
4 also reviewed, along with the county engineer.

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

7 CHAIRMAN: Is anyone here representing the
8 applicant?

9 Mr. Overstreet, do you wish to make a
10 statement?

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

13 MR. OVERSTREET: Thank you.

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

20 As Mr. Howard just stated, those have been
21 met. All of the requirements have been set forth.
22 The development plan is exceptionally detailed. All
23 of the additional requirements that other developments
24 have not been required to meet that were imposed on
25 this particular project have also been met, including

1 all the fencing, the additional plantings. Everything
2 that was set forth has been provided for in the
3 development plan.

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

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

15 As the time elapsed and the issues rose, my
16 client went ahead got that additional informing just
17 to make sure that nothing had changed. That there
18 were no additional requirements. As Mr. Howard also
19 stated, he has worked along with the engineering firm
20 employed to assure that all of the requirements have
21 been met, all of the required signatures have been
22 obtained. There's been absolutely every attempt to
23 comply with every requirement that was sought, every
24 requirement that's been imposed, and to assure that
25 they've been met to the letter.

1 So at this point we are simply asking
2 consistent with what Mr. Howard indicated, that the
3 development plan be approved. We are prepared to
4 provide a presentation, but to expedite us, we would
5 just reserve that right for later. If you all believe
6 that it's necessary, we do have a power point
7 available. We also have the professional engineers
8 available for any questions that you all may have.
9 One would be available by telephone, which I let
10 Ms. Knight know about that. We would just have to
11 text that person to have him available because they're
12 actually testifying in another county.

13 CHAIRMAN: Thank you, Mr. Overstreet.
14 Appreciate you standing by.

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

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

24 Judge Taylor.

25 MS. KNIGHT: Judge Taylor, you're sworn.

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

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

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

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

21 I would point out my wife and I, let me
22 emphasize I am pro se. I am representing myself
23 individually. I don't speak for any homeowners. I'm
24 required by law to say that. I am representing myself
25 as an individual. My wife has an attorney here, David

1 Reynolds, and then the Homeowners Association has an
2 attorney here, John Stevenson.

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

22 So all of that property was contiguous, was
23 part of the same tract. So it's all wooded. It's
24 unusual. If you've ever been out, if you ever go out
25 54 there's a lot of farmland, and then you have this

1 wooded area. In that wooded area is where Woodlands
2 became. In fact, I think the homestead was actually
3 moved down 54 when they developed the subdivision.

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

18 I have already tendered some exhibits to the
19 court reporter.

20 Mr. Chairman, if I may, I'll just go ahead and
21 ask that all of them be introduced as part of the
22 record. That this is a substantial record that needs
23 to -- I don't want to dwell on some of the things of
24 the rezoning, but I do think this stuff needs to be in
25 the record.

1 For example, the transcripts of what happened
2 for purposes of what -- if either party takes it up,
3 is relevant to the arguments for the development plan.
4 Historically it's been permitted in the past.

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

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

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

15 David, if you'll go ahead and hand out.

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

25 What is really important, I think, for those

1 members, especially the members who were not present
2 before -- this was identified as Exhibit 9, David, if
3 you will.

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

19 One thing from the excerpt that I pointed out
20 to you, that I brought out, there was never ever, ever
21 a question or a discussion or a comment by any of the
22 parties promoting this project about buildings,
23 plural. Buildings, plural. If you view the excerpts,
24 again, had there been buildings, plural, brought
25 before Fiscal Court, in my opinion, it probably would

1 not have been approved. Those are political decisions
2 that have to be made by the politicians so be it.
3 It's been made. Whether or not the courts take care
4 of that, I don't know. This development plan is a
5 completely different issue.

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

21 I know Mr. Frey, that was your first meeting,
22 if you recall. You, and I've got it referenced in the
23 transcript, but you had concern about the trees. You
24 asked questions about the trees. I've got it marked
25 in there on Page 7 of the May 9th meeting. They told

1 you, there's lots of trees back there. And that's the
2 consistent testimony, we're leaving the trees. We've
3 got 40, 50 foot trees back there. They weren't trees
4 on my property. I have a few trees, but these were
5 the trees that were providing the buffer. I
6 referenced the agreement. It was introduced before to
7 you, but I think it needs to be in this record. We've
8 got it premarked as Exhibit 10. This was the
9 agreement. This is the only written discussion ever
10 about the buffer between my property, which is 3952
11 Wood Trace on the south side of the Grimes tract.
12 This is only writing that you'll see. There's no
13 writing anywhere else. Mr. Lambert begged me, I mean
14 he was calling and calling because he had to have
15 something to present to you. Again, the importance of
16 this is because of the buffer.

17 If you look at paragraph 3, I don't know how
18 it's more explicit because we went back and forth on
19 it. He's going to maintain the trees, the shrubbery,
20 etcetera. There were tons of brush, saplings. Most
21 of you know what saplings are. This is kind of a
22 forested area. The saplings is how wooded areas
23 regenerate themselves. I mean there was tons, dozens
24 of saplings. I've watched over the last 21 years of
25 these saplings develop into trees. That's how wooded

1 areas, you know, Mother Nature does things kind of
2 strange sometimes. It's unique and hard to
3 understand, but that's how Mother Nature rebuilds
4 these forest. So there were a lot of saplings.

5 I thought 20 foot would give me enough buffer,
6 along with the fence up on the same level, that that
7 would protect my property. He said that, in these
8 excepts you will see he says he said it. If he said
9 it once, he said it 20 times, I'm going to be a good
10 neighbor. I want to protect the Taylors. He said
11 that dozens of times. Again, this law looks back to
12 the buffer, and I'm going to tie the relevance of it
13 back shortly.

14 One of the most relevant part of this now is
15 you've seen the discussion about the trees. You've
16 seen the discussion about the buffers. Single
17 building. Want to be a good neighbor, this whole
18 thing. We come down and we get into the actual
19 ordinance, and when it's finalized it reflects these
20 conditions. I'm going to respectfully disagree and
21 I'm going to point out several reasons why with your
22 Staff. I know you don't always agree with your Staff,
23 but there's several problems with this recommendation
24 or with this agreement as trying to match these
25 conditions into what you have.

1 You've got to remember these conditions, this
2 ordinance came about from a presentation of a one
3 building plan, that plan that you have in front of
4 you. That's what this ordinance represents. Those
5 excerpts I've given you is a discussion by the Fiscal
6 Court members concerning the relevance of this
7 building.

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

24 Now today, you've got a three building
25 development plan over the entire property. At no time

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

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

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

1 Every tree on that lot is gone. Every tree.

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

20 So we've got what's going on what I call bait
21 and switch by analogy to commercial litigation which
22 don't permit, in fact, there's some criminal laws
23 about that in advertising, about coming in and feeding
24 one can of worms and then switching to something else
25 later. That's what you're experiencing here tonight.

1 The develop plan is a complete switch from what was
2 presented and what was approved. This rezoning was
3 conditioned on a one building plan.

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

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

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

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

20 So I have a problem because he is now
21 attempting to correct an error that was made before by
22 doing it now through this proceeding, and he is
23 attempting to relitigate the rezoning, but he's also
24 attempting to include evidence that he failed to
25 include that was not found to be in agreement, that

1 was not found to be part of the record. It was not
2 part of your record, nor was it part of Fiscal Court's
3 record. He was represented by another attorney at
4 Fiscal Court. The Judge specifically found that that
5 lawyer talked about something but never entered it in
6 the record either. That's part of the opinion.

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

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

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

24 He's now talking about an agreement that has
25 been found not to exist by a court of law. He's

1 talking about this agreement and referring to it
2 repeatedly as an agreement. Presenting it to you all
3 as if it's an agreement. It's an e-mail from him to
4 my client. Doesn't indicate there's any agreement to
5 it. It's just a dictate this is what it is.
6 Nonetheless, it was found not to be, he did not
7 question my client during his deposition about the
8 trees. They were never brought up before Fiscal
9 Court, and they were never brought up in the Circuit
10 Court action. The underlying judge specifically found
11 that. That the trees were never mentioned. Only the
12 20 foot buffer was mentioned, and that's what she
13 found existed and that's what she found the agreement
14 was. That's what my client acknowledged. She
15 specifically said that at no time did either
16 Mr. Lambert or myself ever reference a 20 foot buffer
17 leaving all trees intact.

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

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

23 I'm granting Judge Taylor a little bit of
24 leeway because some of the members were not here. So
25 some of that background information is important, but

1 I will tell you that we will be focused, does the
2 develop plan meet the requirements. That's what we're
3 going to be focused us. We'll let you make a
4 presentation, if you choose. I don't mean to be
5 harsh, but understand what we're doesn't mean we're
6 agreeing. Okay?

7 MR. OVERSTREET: Okay.

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

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

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

25 MS. KNIGHT: I just wanted to make sure, I

1 just want to make sure everybody for the same of due
2 process. Everybody gets their chance to speak.

3 JUDGE TAYLOR: This is a different proceeding.
4 It is what it is.

5 Let's go to, if you would, this Exhibit 11.
6 This is the Ordinance that was passed. What's
7 relevant in this Ordinance are the conditions that
8 were imposed in paragraph 6. He referenced about the
9 Judge not making a finding about the buffer, but the
10 buffer was left out of this Ordinance originally. The
11 Ordinance you have in front you is the amended
12 Ordinance that was entered June of 2015.

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

23 So when we took the appeal up, the Judge in
24 her ruling, which was not appealed, that was not
25 appealed, the other party appealed that the ruling

1 that came down affirming Fiscal Court ruling. In that
2 ruling, the Judge put the 20 foot buffer back. She
3 put it back in. That was the one thing that she did
4 change in the Ordinance.

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

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

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

23 MR. HOWARD: Yes.

24 JUDGE TAYLOR: If you look at that plan, look
25 at 6. Again, remember, this was dictated and written

1 as it came off of that meeting on July 30, 2013. The
2 only thing that Fiscal Court had addressed was that
3 building, and they were looking at that building, one
4 building, 200 feet back off, which Judge Mattingly
5 questioned them on, 200 feet back off of the property.

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

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

10 CHAIRMAN: I understand what you're saying.
11 My question is: Did they prohibit any additional
12 buildings on the final development plan in the
13 ordinance?

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

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

24 At top of this where it talks about continuous
25 element fence, 8 foot, it says, "at the edge of

1 Applicant's rear parking lot." That's a requirement.
2 It has to be -- you can't change that. It says, "at
3 the edge of the rear parking lot."
4 Look at that document and look where the rear
5 parking lot is. Do you see an 8 foot continuous fence
6 on that document across the rear parking lot? It's
7 not there, and that's a requirement. Excuse me.
8 That's a mandatory requirement in there. You had the
9 8 foot fence across the parking lot. You had two rows
10 of trees, five foot trees. Then you have the 20 foot
11 buffer. You don't see any of that because if they put
12 the fence up across the back of the parking lot, it's
13 going to be in front of that building. The back
14 building is 6600 square feet. It's the largest
15 building on the lot. So you cannot make Section F fit
16 the way it's written because they wrote it for the one
17 building plan to go behind the parking lot which was
18 280 feet from my property line. That's what that
19 means. If you're going to follow this Ordinance, you
20 have to mandate a fence across in front of that
21 building at the end of the parking lot because there
22 is no -- that building is 20 foot or so from my
23 property line. It's literally in my backside and
24 front yard. A 6600 square foot building is in my
25 front yard.

1 For the other folks that live in the
2 cul-de-sac, the O'Bryans, the Myers and Owens, they're
3 staring down literally up in our, which again is a
4 violation of the Ordinance, as it concerns the
5 development plan, which I will come to in a second.

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

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

24 Now, there was a case on point on this out of
25 this body in 2006. This is our Exhibit 12. I think a

1 couple of you were on the Commission at that time. It
2 was called Clark versus OMPC. Out there on Highway 54
3 just down the road from where we are. In this case,
4 there were conditions on the rezoning ordinance. This
5 is one of the conditions of the development plan. I
6 think the development plan is controlled really by
7 three things. You've got the rezoning ordinance, the
8 conditions of it. You've got the zoning ordinance
9 itself, which I'm going to go into in just a second.
10 Then you've got the Comprehensive Plan that still meet
11 all the objectives of the comprehensive plan.

12 This case involved in 2005, these folks I
13 think it was Independence Bank had come out there and
14 rezoned some property on 54. Fiscal Court put the
15 condition on the property that there would be one
16 access road over to Fairview Drive. One access road
17 only. Apparently, that property got divided up a
18 little bit somehow down the road. In that situation
19 in dividing the property up, they came back and put a
20 second access point, vis-a-vis coming to this
21 commission on a development plan to access Fairview
22 Road off this property. This commission approved it.
23 Effectively amending the zoning ordinance that had
24 been passed by Fiscal Court. The Clarks appealed this
25 to the Kentucky Court of Appeals. The opinion you

1 have was written by Judge Dan Guidugli. It's all
2 about a final development plan that altered a rezoning
3 ordinance like we have here tonight. The Court goes
4 into a long discussion about you can't do that. The
5 OMPC through a development plan has no authority to
6 amend or alter the exact wording of the zoning
7 ordinance. The rezoning ordinance in this instance.

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

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

24 If you read this case, it's exactly on point
25 with the situation that we have here tonight. That

1 you have a Zoning Ordinance that will not fit. A
2 Rezoning Ordinance that will not fit.

3 They also require the Fiscal Court -- excuse
4 me.

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

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

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

24 I went over to see Mr. Howard and asked him to
25 show me the plan, and he did. The plan he handed me,

1 I looked at it. It's this plan. That was the one
2 that was still of record. I had the highway traffic
3 engineer visit with me December 3rd. This is two
4 months ago. I showed him the new development plan.
5 That was the first time the DOT had seen it. He had
6 never seen it before.

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

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

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

24 The reason I attach the last page, the
25 conclusions, because you folks are reasonable people.

1 Sometimes in this business we have to use common sense
2 as much as we do anything. He's taken a look at the
3 traffic study. He's updated the traffic study of
4 18,200 square feet. The project only says 17,000. He
5 says this increase in square footage is going to
6 generate an additional 20 trips to the road network.
7 Twenty trips to the road network. I submit to you,
8 Ladies and Gentlemen, if he has 20 employees out
9 there, that's going to generate 20 trips. This
10 traffic study is not worth the paper it's written on.
11 How do you come up with 20 more trips for almost
12 11,000 square feet of building and two more buildings.
13 It's not fathomable. So much for the traffic study.

14 I took Mr. Lambert's deposition. I did
15 mention that. Just for the record, Mr. Chairman, I'm
16 not going to dwell on it. I've just got an excerpt,
17 again, where we talked about him taking care of the
18 Taylors and the 20 foot buffer, but he also introduced
19 at that deposition the traffic study that had the one
20 building traffic plan. There was never any reference
21 to a one building development plan. There were never
22 any reference to a three building development plan
23 during his sworn testimony. I'm sure he changed his
24 mind after that. At that point there was still never
25 any reference to it.

1 As you know you can tell I am opposed to the
2 development plan. I'm going to give you some more
3 detail reasons why.

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

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

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

20 The second page is the aerial view of the
21 property, the Grimes property and my home. You'll see
22 the Owens' home, the Myer's home, and the O'Bryan's
23 home in the cul-de-sac. You can get a flavor of where
24 everything situates. Again you can tell by looking at
25 this, this is all part of the old Grimes farm when

1 they carved out the front part two acres to the son
2 John Grimes.

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

15 I called Mr. Lambert from my home on October
16 20th and told him, I said, you're knocking the trees
17 down. You're getting fairly close to my buffer. He
18 told me for the first time, well, I'm taking all the
19 trees out, and just blew me off. He said he's taking
20 them all out. Now, that's what it looked like.
21 Again, the land you can see. The land is the flat
22 land with a slope down to the trees. That's close to
23 the 20 foot buffer. It's a little more than 20 foot
24 there, but that's the picture I took.

25 Then if you start looking, basically these

1 other pictures in December. By that time all the
2 trees were gone and they started taking out the bank
3 that was within about three feet of my property. You
4 can see one picture of my dog there. He's in shock,
5 as you can see. You'll see the crane over there in
6 one of the pictures. It's up against one of my sugar
7 maples.

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

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

20 Toward the back of the pictures, of course,
21 the county engineer issued an excavation permit under
22 the agreement, the premise of soil conservation or
23 something is what he told me because I kept calling
24 him wanting to know why he was letting them violate
25 the Ordinance 16-2, which, of course, he told me over

1 the phone, the county engineer, I didn't know that
2 ordinance existed. You can see how good the soil
3 erosion is done. This was actually taken, this
4 picture was taken on January 1st. As you recall, we
5 had 6 inches of rain between Christmas and New Year's.
6 You can see the bank on the two pictures there of the
7 washout and soil erosion. You know, I'm facing other
8 issues there of substantial damage to my fence and my
9 trees and other property.

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

12 Notwithstanding that he was going to save all
13 these trees. He would maintain the buffers on this
14 property. I want you to see that. I want to tell
15 you, go back now to why to deny this tonight.

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

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

24 Again, the goals they are to avoid the
25 introduction of urban activity that will have a

1 detrimental effect on residential activity. I submit
2 to you that this is a deep intrusion into a residence
3 that I've never seen in my -- I've lived here most of
4 my life. Since the late '50s. I've never seen any
5 intrusion into a residential neighborhood by a
6 commercial development, existing residential
7 neighborhood in Owensboro, Kentucky until this.

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

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

25 When you look at Article 16, this is what

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

20 Now, you remember the first sentence I read
21 about does the development comply with the
22 requirements of the Zoning Ordinance. On the back
23 page of that I've attached Section 1.3 of the Zoning
24 Ordinance. This is the objectives of our whole, our
25 whole plan, this is what it's premised on. This is

1 the opening paragraph, the opening section of the
2 Zoning Ordinance. It says, "The objectives of this
3 Zoning Ordinance are to promote the public health,
4 safety and general welfare of Daviess County." It
5 doesn't say we're promoting economic development.
6 Doesn't say we're promoting some developer from
7 Florida to come up here and make a bunch of money. It
8 doesn't say. It says, promoting our safety. That's
9 the people of Daviess County. The citizens who live
10 here.

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

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

23 The definition and value of my home today is
24 probably six figures at least, if not more. There's
25 three other folks, they're all here tonight, that live

1 across the street and they're staring down at this
2 mess.

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

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

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

24 In 1976 a developer went out to Thoroughbred
25 East, it was one of the first neighborhoods on the 54

1 corridor. Thoroughbred East Subdivision. When that
2 subdivision was approved, it was rezoned, the Zoning
3 Ordinance, the developer up at the front, as you know
4 there's some commercial lots in the front. He put a
5 restriction, in 1976 he put a restriction on those
6 lots low density commercial traffic lots. They were
7 going to be retail or commercial, but they had to be
8 low density traffic. Okay.

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

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

1 problem was traffic.

2 Chief, going back to what you had talked
3 about, traffic and safety.

4 This was 1996 and they knew there was a
5 traffic problem on 54. This commission. This
6 commission in an 8 to 1 vote denied that development
7 plan. They then appealed to Circuit Court. Now, I'm
8 not going tell you all anything, perhaps for the new
9 members . When we have Zoning Map Amendments
10 obviously, at the end of the day when you make a
11 ruling like you did against this project, it gets to
12 go to the politicians you can't control that. It's
13 out of your control. Perhaps it's out of all of our
14 control. But these proceedings when we have a
15 development plan, whichever party has agreed tonight,
16 the politician are out of it. You go to the courts.
17 You go directly to appeal. Fiscal Court has no more
18 say in this, unless they want to go back and have the
19 Ordinance, try to amend the Ordinance. This case goes
20 directly to Circuit Court, and that's what they did
21 here. The developers appealed to Circuit Court.
22 Judge Howard, excellent opinion, affirmed Planning and
23 Zoning's 8 to 1 denial of this. He didn't jump much
24 on beating on the developer. He kind of just
25 discounted it in open sessions. But he goes to the

1 back and, Chief, you go back to Page 6. You go to
2 Article 16-4 that I just read to you. He read the
3 exact same stuff that I just read to you and he
4 focused on the traffic problems. You don't have to be
5 a traffic consultant to understand the traffic
6 problems out there. I can speak to that. I was a
7 transportation planner so I'm qualified to speak. I
8 did that five years. I understand transportation
9 planning concepts. Jiten Shah, who is not here, and I
10 worked together at GRADD. He was a transportation
11 planning engineer. Those of us who have worked in
12 this know we've got problems out there. I don't care
13 what these consults over here tell you. They can't
14 tell what you the numbers are going to be by expanding
15 this building. I don't see how we can rely on what
16 they're doing. The people who experience, and all
17 these people that are in this room will tell you how
18 dangerous it is.

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

1 instead of on the door.

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

5 Now, we've got multiple reasons that I've told
6 you tonight as to why you should do this. I think you
7 can go back, look at the Rezoning Ordinance itself.
8 It doesn't fit. Square pegs and round holes. You can
9 look at problems under 16-4, and going back to 1.3 of
10 the Planning Ordinance. It just doesn't conform.
11 With all due respect to your Staff, it just doesn't
12 work.

13 I do want to show you the information. You're
14 going to see it on all the maps, but again show you
15 about of this into the neighborhood. This is one of
16 their maps. This is one of their maps that they filed
17 in this case early on. All I did was show where that
18 6600 square foot building, how it's going to stand in
19 proximity to the four homes that are within less than
20 100, well, of course, I'm 20 feet from it, but the
21 others are 100 yards or less from it.

22 This is unconscionable and outrageous what's
23 being proposed here in light of everything that's
24 happened in this case. I guess something changed,
25 whatever. You know, I'm a bad guy. I trusted this

1 person based on integrity and honesty. That's the way
2 I do things. I didn't lawyer this thing up and make
3 them sign everything when he was begging me to give
4 that -- e-mail that you'll see. Was given 30 minutes
5 to him before this commission hearing, if you look at
6 the time on it.

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

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

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

1 jobs in this community.

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

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

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

17 This project that you see in your hands on
18 Avenue 54 is probably a \$3 million project, if a
19 penny. That's fine, if you allow him to do it. We'll
20 3 million on the tax roll, but you're probably going
21 to take that or more off the tax roll of the people
22 who live like in those two subdivisions, which is over
23 \$20 million of property appraisal right now. You're
24 going to take that down. You're going to take their
25 properties down. We're the people that live here.

1 These are the people, this is the backbone. This is
2 why Owensboro is such a good community to live in.
3 These are people that lived through that corridor and
4 all the other subdivisions in town. These are the
5 people that work hard, pay taxes. There's 2300 homes
6 on a three mile stretch between the Heartlands and
7 Stonegate. There's almost 1600 homes east of, and
8 there's several subdivisions I didn't count like
9 Brookhill and some of the others that are off, a
10 little further off 54, but they're related to 54 and
11 they contribute to all of 54 problems and traffic.
12 These are the people what makes Owensboro a great
13 place to live.

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

18 I'll say one last thing. I know they're going
19 to talk about economic development. How this is
20 great. I don't think it's going to be anything new.
21 It's not going to be anything new to Owensboro. You
22 know, emphasis in this town about bringing our kids
23 back home and about we've got such a great place and
24 we're patting ourselves on the back. I've lived in
25 this town almost all my life, and it is the best place

1 I've ever lived, but I'll be candid. I was one of
2 those young people 33 years ago. I rode back into
3 town with a wife, a kid, two dogs, two junk cars and
4 200 bucks in the bank. That's all I had. Nothing
5 else. I'm like Mr. Lambert. I had no inheritance. I
6 never inherited a penny, and I won't. My parents died
7 young. I came back and I busted my butt and I worked
8 my butt off. That's what we do in this community and
9 this country. To achieve what we call the American
10 dream. Twenty-one years ago my wife and I go out and
11 buy a piece property that was probably over our heads,
12 but we made it. That was our American dream.

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

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

20 CHAIRMAN: Thank you, Judge.

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

24 Mr. Overstreet, would you like to --

25 MR. STEVENSON: Excuse me, Mr. Chairman. I

1 would like to eventually speak.

2 CHAIRMAN: You'll get to eventually speak.

3 I'm going to let Mr. Overstreet speak.

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

6 CHAIRMAN: It's your preference.

7 MR. OVERSTREET: I'll go ahead and let Mr.
8 Stevenson speak.

9 CHAIRMAN: Mr. Stevenson, please.

10 MS. KNIGHT: Your sworn as an attorney, Mr.
11 Stevenson.

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

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

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

23 The Comprehensive Plan list Objectives.

24 Section 4.7.1 - Surround established
25 residential areas with compatible residential activity

1 or properly buffered nonresidential uses.

2 4.7.2 - Situate nonresidential uses within
3 residential neighborhoods in a manner that enhances
4 its convenience, safety, and neighborhood character.

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

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

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

1 that now. You can't put pine trees on that and make
2 any sense.

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

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

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

17 If you notice, and it may not make any
18 difference, but it has all this curly stuff. I guess
19 that's trees or bushes, but they don't exist. Now, if
20 that's not pertinent to your all's decision, then
21 fine. He just floured it up for no reason, but that
22 kind of gets back to what he did before, doesn't he.
23 What Jeff Taylor has been talking about. First time
24 it was one building 4,000 square feet up here, which
25 you all denied.

1 Now he comes back with three building and in
2 Jeff Taylor faces, I guess it's because he fought him,
3 right next to his house, and in view of the Owens, the
4 O'Bryans and the Myers. Right in front of them. Not
5 only that, he even adds insult to injury if you notice
6 on this plan, he's got a big dumpster right down here
7 facing on this edge of the building so that it's right
8 closest to the Woodlands property. Commercial
9 dumpster. Practically in his front yard.

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

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

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

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

25 I'm not going to talk about the tree

1 situation. Jeff Taylor has already referred to that.
2 So my seven minutes are up.

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

6 CHAIRMAN: Thank you, Mr. Stevenson.

7 Mr. Overstreet.

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

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

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

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

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

20 Read the item, please, Brian.

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

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

1 here, we'll just go on.

2 (NO RESPONSE)

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

5 Mr. Overstreet.

6 MR. OVERSTREET: First of all, I would like to
7 start, I would like to state my objection on the
8 record to a number of the exhibits that have been
9 presented. I think that they're outside of the scope
10 of a development plan consideration of approval. I
11 would ask that those be stricken from the record.
12 They're being presented obviously for a deficiency
13 that they perceive were present in the record below
14 that they were unsuccessful on. I don't think that
15 they have any bearing on these proceedings. I think
16 that they're irrelevant. That would include the
17 Osborne and Thompson court decision from the Daviess
18 Circuit Court; the unpublished Court of Appeal's
19 Opinion of Clark and Clark versus Drew Kirkland, et
20 al; the OMPC excerpts of April 11, 2013; the three
21 pages of a deposition transcript; and the Highway 54
22 subdivision analysis. We would ask those be stricken.
23 We just simply don't think that they have any place in
24 the record. They have no bearing on the actual
25 development plan. I've already read the definition

1 for the development plan. I don't think any of those
2 things were included or mentioned or even inferred in
3 any of the definition. Just for the record we would
4 like to state that.

5 CHAIRMAN: I defer to counsel.

6 MS. KNIGHT: Thank you, Mr. Chairman.

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

13 MR. OVERSTREET: Thank you.

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

17 The e-mail that's been submitted by Judge
18 Taylor, as I indicate earlier, that was found not to
19 have been part of the record in the Judge's opinion.
20 She even referenced a conversation between
21 Commissioner Allen where he specifically asked my
22 client whether he would be willing to designate the 20
23 foot buffer as undeveloped portion and keep that as a
24 wooded barrier. My client responded, "Well, 20 foot
25 is a pretty good barrier. Twice what the requirement

1 buffer is. I don't currently have any plans for that.
2 I could see where if Mr. Hayden developed his property
3 into apartments and a road; for instance, was wanting
4 to put across there, you know. Mr. Taylor by the
5 wording that I had got his buffer to 20 feet. Again,
6 I was trying to do right by Mr. Taylor and his
7 concerns."

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

12 Next, when we're talking about proceedings
13 before Fiscal Court, in the Judge's Opinion on Page
14 10, she also noted that Judge Mattingly pointed out,
15 "as the property is developed, some of the trees will
16 have to come out. Some of those trees will lose their
17 leaves, and the pines are required. Then the
18 neighbors have screening all year long."

19 We'll have the development plans up here. The
20 actual plans are going to require additional
21 plantings. That was at the request of the Taylors and
22 the Woodland's Homeowners Association. The additional
23 more expensive fence was also requested and imposed by
24 the homeowners and Mr. Taylor. As a result of that,
25 when you put in a fence and you have to put in

1 additional plantings two rows ten feet apart, you have
2 to make room for those. That's what we've argued. I
3 don't think that anyone at Planning & Zoning or
4 anywhere else has said that the actions that have
5 taken place are contrary to the ordinance. They are
6 not. The assertions that they've made are absolutely
7 incorrect.

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

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

22 The Court also found that the conceptual
23 drawing was not binding because it was not a
24 requirement that he produce a development plan at that
25 point. In fact, if you all recall, Mr. Charlie Kamuf

1 came to one of the meetings early on representing the
2 Haydens and he made reference to a development plan.
3 Saying, hey, I think we need a development plan. We
4 don't know what's going to go in here. We don't know
5 what the plan is. We don't know what the deal is.
6 You all didn't order that either. The development
7 plan proceed according to all regulations, statutes,
8 ordinances. He did what he was supposed to do.

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

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

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

1 were imposed.

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

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

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

16 JUDGE TAYLOR: Sorry.

17 CHAIRMAN: Mr. Overstreet.

18 MR. OVERSTREET: Next, this just simply points
19 out the conditions that are set forth in the
20 ordinance. As you all are aware, there were
21 additional requirements that were imposed upon
22 Mr. Lambert. Many of those were imposed because of
23 requests, demands by the Homeowner's Association,
24 Mr. and Mrs. Taylor. Those were -- I hesitate to do
25 this, but I know they engaged in it quite frequently.

1 Our opinion is that this was an attempt to drive the
2 cost of the project up considerably by including
3 provisions for double plantings. By requiring the
4 stockade fence that had to be wood or vinyl.

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

10 When Mr. Taylor took his deposition, he asked
11 about the 20 foot buffer. My client acknowledged the
12 20 foot buffer, which he also did before the Circuit
13 Court. He said, yes, I agree to a 20 foot buffer. No
14 mention of trees. No mention of leaving existing
15 trees, nor was the question posed by Mr. Taylor
16 inclusive of leaving the original trees.

17 Again, this just further explains the
18 requirements.

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

24 Speaking of entrances, while Mr. Taylor
25 indicated that he thinks there's traffic issues and

1 they referenced the problems that they perceive, at
2 the end of the day, the people who are charged with
3 making those decisions said that it was in compliance.
4 It was okay. The ingress and egress has been approved
5 by the State. The traffic study has been performed.
6 Yes, at the time the initial traffic study was done,
7 it was based upon conceptual drawing. Once the
8 development plan was completed, we completed an
9 updated traffic study. He's not try to pull the wool
10 over anybody's eyes. He's trying to be as transparent
11 as he can possibly be in going forward with the
12 process.

13 Now, I know they want you to believe that it's
14 this veiled attempt to get you all to approve things
15 because he didn't say this is exactly what the
16 buildings are going to look like. This is the exact
17 number. This is the exact location when he came
18 before you, and then ultimately before Fiscal Court.
19 Let's keep in mind. He was never required to do that.
20 There was absolutely no obligation on him to have the
21 development plan at that point. No one required him
22 until Fiscal Court said that he had to come back
23 before this body, present the development plan, and
24 give notice to all of the homeowners and additional
25 condition, which obviously we are here.

1 This is the actual drawing. If you will read
2 on there, you can probably see it a whole lot better
3 than I can. It will indicate down there the number of
4 trees and plantings that are proposed and also the
5 number that are required. He's actually putting in
6 more trees than are required. He's adding nine
7 additional trees over and above what is actually
8 required by the ordinance.

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

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

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

25 You can also have confidence in knowing that

1 all the required permissions, permits from the State
2 have been obtained in order to get that approval from
3 planning and zoning.

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

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

11 As far as the coverings that Mr. Stevenson
12 mentioned, yes, when you're at the point of excavation
13 and the only side that ultimately had trees that were
14 of consequence to them that I understand were the ones
15 at the back. Those were removed. The property was
16 rezoned. It was rezoned with certain conditions.
17 Those conditions did not include in any way, shape or
18 form any agreement to leave existing trees; nor was it
19 requested of Fiscal Court to leave existing trees; nor
20 was it ordered by Fiscal Court to leave existing
21 trees. It was required to leave a 20 foot buffer. As
22 you heard Mr. Kamuf talk about earlier, there are
23 instances of just open air buffers. The fact that
24 Mr. Taylor didn't get what he thought was the buffer,
25 that's not your all's problem. That's not

1 Mr. Lambert's problem. If he actually thought that he
2 had that, he would have made that part of the record.
3 He obviously hasn't been short on words for any other
4 issue before this body, before Fiscal Court or before
5 the Circuit Court. We've spent an extraordinary
6 amount of time briefing issues. All of which he's
7 lost so far.

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

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

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

19 This is the Traffic Impact Study. Mr. Taylor
20 submitted a portion of that as well. I'm not going to
21 question it. I'm not an engineer. I'm not the person
22 who is supposed to interpret those. I'm not the
23 person who is supposed to count traffic. I'm not the
24 person who is supposed to stand out there and meet
25 whatever criteria and federal recording requirements

1 or whatever they have to do in order to do those.
2 This engineering firm is. This is what they do, as
3 you stated earlier. They perform Traffic Impact
4 Studies. They are authorized to perform Traffic
5 Impact Studies. They were approved by the State and
6 that Traffic Impact Study has been provided to
7 Mr. Howard.

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

17 I understand, as Mr. Taylor and Mr. Stevenson
18 were alluding to, yes, we want our kids to come back
19 here. Part of getting young people to come back to
20 their community when they get out of college is having
21 thing to do, places to go. That's what this center
22 is. It's going to be additional shopping
23 opportunities. It will be additional opportunities
24 for people to have retail opportunity and to be able
25 to just go out and have a good time.

1 It's not in their subdivision. It's not part
2 of their subdivision. In fact, the property next-door
3 to it is zoned multi-family. The alternative would
4 be, I guess, if they prefer maybe we should come back
5 and just ask you all to rezone this as multi-family
6 and we could have an apartment complex. Maybe that
7 would be preferable. That's not our preference. We
8 would ask this body to approve the development plan.

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

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

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

24 I know that Mr. Taylor believes that Section
25 16-2 has been violated; however, it's common practice

1 that they will issue those permits prior to the final
2 development plan. That's been stated. I think Mr.
3 Howard can confirm that. I know that Mr. Weaver from
4 Bryant Engineering can also confirm that that's a
5 local practice. It's not an except that they've made.
6 It's not something that's been pulled over anybody's
7 eyes.

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

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

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

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

25 This is an actual computer-simulation. It

1 does not show -- this will be like a drive-thru of the
2 proposed center. It does not show the fencing, and
3 the fencing is not going to be put in -- he can't get
4 the permits without having the fencing and the trees
5 being put in, but this particular simulation does not
6 show the trees. It's not that they're not going to be
7 put in. We understand that they absolutely have to
8 be.

9 So this will just take you through the center.
10 This is coming in off of Highway 54.

11 That's just a visual art depiction of it.
12 Just some proposed, pictures of the proposed layout,
13 proposed buildings.

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

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

23 Then the statement disregarding the additional
24 requirements. Again, everything that has been done
25 has been approved every step of the way. Every

1 challenge that has been raised and every allegation
2 and contention that has been raised by the Taylors and
3 Woodlands have been defeated. I'd just ask that you
4 keep that in mind. You've heard a lot of allegations
5 tonight. There have been a lot of swords thrown this
6 way and there probably will be a lot more. Every one
7 of those has fallen short subject to judicial
8 scrutiny.

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

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

21 Again, we're not here trying to create a
22 record for subsequent litigation. That's not our
23 purpose. Our purpose is to ask this body to treat us
24 like anyone else who comes before you with a final
25 development plan and limit it to that review. You've

1 been hit with a lot of information. You've been on a
2 big fishing trip.

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

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

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

25 As Judge Taylor is aware, and most people in

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

24 So when you hear that I'll respect the
25 decision of this body, I don't know that I can take

1 that. I fully expect that we're going to be
2 litigating no matter which way this is decided, just
3 like Mr. Stevenson said.

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

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

25 CHAIRMAN: Thank you, Mr. Overstreet.

1 I'm going to let the commissioners ask some
2 questions in just a moment before we have any
3 rebuttal.

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

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

12 MS. KNIGHT: Yes.

13 CHAIRMAN: That is the correct one?

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

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

20 MS. KNIGHT: Yes.

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

1 or nay to it; is that correct?

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

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

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

18 Mr. Kazlauskas.

19 MR. KAZLAUSKAS: Thank you, Mr. Chairman.

20 I had one of my questions answered already.
21 This ordinance is enforced so my question is to
22 Mr. Howard.

23 In this final development plan, Mr. Howard,
24 does this plan meet all of the criteria that is listed
25 in this ordinance?

1 MR. HOWARD: It is our opinion that, yes, it
2 does.

3 MR. KAZLAUSKAS: That's the only question I
4 had. Thank you.

5 CHAIRMAN: Mr. Frey.

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

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

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

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

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

25 MR. FREY: Normal.

1 MS. KNIGHT: Yes.

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

10 CHAIRMAN: Mr. Ball.

11 MR. BALL: I've got a question for Staff.

12 Brian, am I correct in stating that even
13 though it was originally a conceptual plan, that
14 conceptual plan can be changed, as Mr. Frey was just
15 kind of alluding to; then furthermore, if it were a
16 final development plan, could that final development
17 plan have been amended and we still end up, even if it
18 was a final development plan, if it was one building
19 and now it comes before us as three buildings, that
20 can still be done by this board; is that correct?

21 MR. HOWARD: Sure. I would say, yes. If a
22 final development plan is approved, there's nothing
23 that says that it can't be amended at some point.
24 It's pretty routine. You have a development plan
25 approved. Something changes. They add more parking.

1 They add another building. They want to change the
2 landscaping. They want to add a new sign. They amend
3 the development plan and those changes are reflected
4 on that amended document.

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

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

22 They applied for rezoning. We approved it.
23 Then they had a condition on here about access. So
24 then they would have to come back and ask for another
25 rezoning, amend the condition on the final development

1 plan. Does that help?

2 MR. BALL: It does. Thank you.

3 CHAIRMAN: Anyone else have a question?

4 Mr. Moore.

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

7 MR. HOWARD: Yes, we believe it does.

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

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

18 CHAIRMAN: Thank you.

19 Any other commissioners have any other
20 questions?

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

1 last building?

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

13 CHAIRMAN: Any other questions from the
14 Commissioners right now?

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

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

21 MS. KNIGHT: State your name for the record.

22 MR. WEAVER: David Weaver.

23 (DAVID WEAVER SWORN BY ATTORNEY.)

24 MR. WEAVER: We've got a 2 to 1 slope in the
25 back, in the very back corner where it's the steepest.

1 MR. BALL: That's typical of a lot of
2 subdivisions throughout Daviess County; is that
3 correct?

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

6 MR. BALL: Thank you.

7 CHAIRMAN: Any other questions?

8 (NO RESPONSE)

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

14 MR. REYNOLDS: I haven't spoken tonight.

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

17 He represents one of the parties.

18 CHAIRMAN: That's fine.

19 MR. REYNOLDS: I represent Mrs. Taylor.

20 With all due respect, I think Ms. Knight kind
21 of covered the issue here. Ms. Knight said you folks
22 have heard two different sides. You get to decide if
23 it meets the conditions. Mr. Frey and Mr. Moore asked
24 questions. What does it say? Not what did it mean to
25 say? What did it say? It says that they will put a

1 fence at the rear of the parking lot. Not they've
2 amended. Not to move a building. If they don't have
3 it, they haven't complied.

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

19 You put up the conceptual drawing the parking
20 lot ended about halfway back and the Ordinance was to
21 put a fence there. Okay. We don't want to look at
22 the conceptual drawing because that can change. You
23 what it doesn't change? The Ordinance doesn't change.
24 A fence across at the back of the parking lot.
25 They're not offering that folks. It's not in there.

1 Also what doesn't change, 16-2. They can
2 argue all they want to. It says in black and white,
3 no grading, stripping, excavation, filling or any
4 other disturbance of the natural ground cover before
5 you approve the development plan. It says it. Permit
6 absolute. County engineer approves it. Well, it
7 doesn't mean, this doesn't still hold water though,
8 right? This still works. This body still enforces
9 this.

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

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

20 MS. KNIGHT: State your name.

21 MR. HAYDEN: Matt Hayden.

22 (MATT HAYDEN SWORN BY ATTORNEY.)

23 MR. HAYDEN: I guess back to the bonding
24 question, so maybe if this does proceed at your all's
25 discretion.

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

25 CHAIRMAN: Thank you, Mr. Hayden.

1 Mr. Howard.

2 MR. HOWARD: Sure. On the Ordinance that
3 Fiscal Court pass it says, "The applicant shall comply
4 with all other perimeter buffers requirements of the
5 Zoning Ordinance. Applicant shall complete all
6 perimeter fencing before Planning Commission may issue
7 a Certificate of Occupancy. Applicant shall complete
8 all other screening and buffers within six months of
9 occupancy."

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

17 CHAIRMAN: Mr. Hayden.

18 MR. HAYDEN: The typical landscape bond, I'm
19 not sure if it catches the dumpster enclosure,
20 etcetera. I guess what I'm saying is, so we're not
21 back in here or sitting in your office saying, that's
22 not out there. Do you have money escrowed to go do
23 it? I'm just simply asking, could that language be
24 expanded to have bond posted to ensure that we maybe
25 keep from having additional heartburn and litigation

1 on what we're hoping at least happens to the surround
2 property. Again, I think some of it the intent is
3 there, but the safeguard to ensure that it gets done
4 could be handled through a bond or elaborating the
5 words to cover that.

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

16 CHAIRMAN: Yes, Mr. Kazlauskas.

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

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

25 MS. KNIGHT: That itself is --

1 MR. KAZLAUSKAS: I believe you mentioned that.

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

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

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

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

15 That is, I mean that is common practice now.
16 The cut fill permit was amended in the Ordinance in
17 2013. To give that to the county and city engineer to
18 take out of Planning Commission at that level.

19 16-2 was not amended at that time. We don't
20 know if that was just an unintentional omission.
21 Maybe. Maybe not. If you read all of 16-2, it talks
22 about that the risk is on the developer to proceed
23 without getting a final development plan. I think
24 that's for some reason we're talking about now. If
25 you guys look at the final development plan, the

1 access, the ingress/egress access, does it work where
2 it is, you're going to have to put it somewhere else
3 and they've already built up 15 foot of dirt or
4 whatever and they have to come back and remove it so
5 that it would comply with the final development plan.

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

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

15 CHAIRMAN: Yes, Judge Taylor.

16 JUDGE TAYLOR: Mr. Chairman, in response to
17 16-2 I have one last exhibit. This is an affidavit
18 because I was concerned. I'm the one who made the
19 issue.

20 I went to Brian's office and Brian didn't
21 really know what I was talking about. I was pointing
22 out the Ordinance and he indicated that it was out of
23 his hands. He said it had to be done, it was done by
24 engineer because of the amendment to Article 3 in
25 2013.

1 Well, this Commission recommended the
2 amendment of Article 3 to the Fiscal Court and that
3 was to basically to take the burden off of the
4 executive director of signing these excavation
5 permits. It was part of, that was the whole purpose
6 for it.

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

14 If you look at the notes, and this is on the
15 development plan, and this is Number 32. "A cut and
16 fill permit is required when cutting or filling is
17 proposed to be perform in the proposed development."
18 That's a condition in 16 that has to go on there.

19 I done an open record check over there last
20 week and most of everything I saw, it wasn't common
21 practice of what happened in this development. All of
22 the checklist and everything done by the county
23 engineer always occurred before the development plan
24 was ever entered, but he would not ever sign off on
25 anything until after the development plan was

1 approved. I looked at numerous files over there and
2 he had checked off and then the excavation permit came
3 last. That's common sense. Just look at these
4 documents that you have. It's common sense. You
5 don't excavate until you have a development plan.

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

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

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

1 Courts recognize these Ordinances as law.

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

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

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

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

24 With Fiscal Court, all they did was talk about
25 the trees and the buffering for both meetings. That's

1 all they talked about. I didn't say anything because
2 they knew there had to be trees and buffers. They
3 knew about the agreement. It was part of the record.
4 It was Exhibit B that came over.

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

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

20 They argued and what they said to you tonight,
21 they had to take the trees out to give me my buffer.
22 How silly, I mean just common sense, they had to take
23 the trees out so they could give me my 20 foot buffer.
24 Go in and cut the land down 30 feet. The judge said,
25 commenting on that, they keep wanting to bring that

1 up. She said, that was disingenuous at best to say
2 that that's the reason that buffer disappeared and
3 insinuated that there's a civil recourse there that
4 I'm going to have to pursue, judgment, which we'll
5 just have to address. I just wanted to clarify that
6 for the record.

7 CHAIRMAN: Thank you, Judge.

8 Mr. Stevenson.

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

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

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

18 MR. STEVENSON: Fiscal Court says it's the
19 back of the parking lot. The parking lot isn't behind
20 of that third building so how is Planning and Zoning
21 going to change that? We're talking about the law and
22 Mr. Overstreet is talking about they've complied.
23 Well, Fiscal Court issued an Ordinance. It's still in
24 place. It hasn't been amended. How are you going to
25 amend it without going to ask Fiscal Court to amend

1 it? The fence has to be at the back of the parking
2 lot in front of the third building. I don't know how
3 you all have the authority to change that. Do you?

4 MS. KNIGHT: I might address that.

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

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

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

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

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

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

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

22 MR. STEVENSON: Well, I don't think the hands
23 are tied on that issue. He hasn't complied on the
24 developmental plan showing that particular fence.
25 It's not there. Now you all say you can change it.

1 MS. KNIGHT: I don't know that he said it can
2 be changed. I think he was saying hypothetically if
3 this were moved, it would be here. I don't think he
4 --

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

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

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

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

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

25 How do you plant trees -- I'm going to ask

1 this of the engineer --

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

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

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

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

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

13 CHAIRMAN: Back up here to me.

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

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

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

23 CHAIRMAN: Mr. Weaver.

24 MR. WEAVER: A two to one slope is two
25 horizontal and one vertical.

1 CHAIRMAN: Could you maybe kind of show that
2 with your hands or something?

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

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

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

12 I can also speak to the parking plot.

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

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

17 Do you have any further questions, Mr.
18 Stevenson?

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

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

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

24 MR. STEVENSON: I question that to be a two to
25 one slope.

1 Ask Mr. Weaver this: How do you plant trees,
2 a dual row of trees on a 2 to 1 slope along with a
3 stockade fence?

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

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

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

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

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

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

20 MR. WEAVER: Seems like we've been working on
21 it for a year so I'm not sure exactly when the date
22 was. I can tell you the date when -- we were getting
23 signed off by the utility company in November of 2015.
24 So that would be towards the end. That's typically
25 the last process.

1 CHAIRMAN: Mr. Stevenson, do you have any
2 further questions?

3 MR. STEVENSON: Yes, sir.

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

6 CHAIRMAN: Thank you.

7 MR. FREY: Everything is on Google.

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

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

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

1 show it to me.

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

4 CHAIRMAN: Yes.

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

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

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

17 CHAIRMAN: I would rather you do it.

18 MR. OVERSTREET: By way of explanation, what I
19 was referring to, because I was obviously listening to
20 my client at that time as well, that was when the site
21 development plan was in the works. It was still
22 conceptual, which they omitted that work throughout
23 these proceedings with the one building thing. If you
24 notice that all says conceptual. This is the final
25 development plan. Until it's approved here, it's not

1 a final development plan period. I may have left the
2 word "site" out. Maybe it was omitted. I don't know.
3 That is the explanation.

4 CHAIRMAN: Mr. Stevenson.

5 MR. STEVENSON: The transcript speaks for
6 itself and it doesn't include site. It says final.

7 It's my understanding that the cut and fill
8 permit was issued by the county engineer contrary to
9 16-2, and 16-2 has never been amended; is that right?

10 CHAIRMAN: Mr. Howard.

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

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

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

1 him more money.

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

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

1 Thank you.

2 CHAIRMAN: Thank you, Mr. Stevenson.

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

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

8 CHAIRMAN: Mr. Weaver.

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

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

18 MR. WEAVER: We've always considered the
19 parking lot as Planning and Zoning does, what is
20 called the vehicle use area which would be anywhere
21 that's intended for vehicles to drive. In our
22 particular development plan, we have drives along both
23 sides of the rear building. Actually effectively from
24 a technical standpoint the southernmost part of the
25 parking lot extends beyond the building on the

1 southeast side. That drive goes back behind the
2 building. Technically the fence is behind the limits
3 of the packing lot.

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

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

11 MR. WEAVER: Yes.

12 CHAIRMAN: Thank you for the help.

13 Mr. Kazlauskas.

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

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

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

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

24 MR. KAZLAUSKAS: So it's a drive. Not parking
25 lot?

1 MR. WEAVER: That's correct. The definition
2 that we use on a regular basis, that area of pavement
3 is considered part of the vehicular use area which
4 part of the parking lot, in my opinion.

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

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

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

23 CHAIRMAN: Thank you.

24

25 MR. OVERSTREET: Relative to the cut/fill

1 permit that was issued in this particular case, when
2 can you start moving dirt once that is issued?

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

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

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

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

24 MR. WEAVER: Yes. During the process of
25 preparing the plan in advance of putting together all

1 the grading and drainage, I did go in and meet with
2 Planning Staff and delivered a draft plan that they
3 could review to ensure that we were interpreting the
4 requirements for the screening and the buffering.
5 That we were addressing all of that. We felt that
6 important that we talk about that issue up front.

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

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

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

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

22 MR. WEAVER: I believe what they -- this is
23 probably hearsay. My understanding from Mr. Lambert
24 is that he spoke with the county engineer after they
25 had rainfall we recently had and he was actually

1 impressed that the erosion was kept in check with as
2 hard as it rained.

3 MR. OVERSTREET: As far as the parking lot is
4 concerned, I noticed that the line of trees is
5 straight. Could you explain how the actual layout of
6 the fence and the trees was obtained and diagrammed?

7 Across the back of the building, because if
8 you take their argument, the parking lot is going to
9 vary all the way across the property; and therefore
10 the fence should go like this and the trees should
11 jaggedly go across the back of the property as well.

12 I notice on your site diagram you have the
13 spot marked as you go down the southernmost corner and
14 then there's a dotted line. Is that just a natural
15 extension for purposes of determining the parking area
16 or parking lot so-to-speak and then for purposes of
17 placement of the fence?

18 MR. WEAVER: Well, on the southern side the
19 trees aren't in a straight line. There are two rows
20 of trees. So effectively they kind, it almost
21 meanders the effect that you get there.

22 I'm sorry, I'm still not understanding your
23 question.

24 MR. OVERSTREET: Across the back of the
25 property facing the Taylors, that fence is straight.

1 I know the trees are offset.

2 MR. WEAVER: Yes.

3 MR. OVERSTREET: So what line is utilized and
4 why in order to get a placement of that fence?

5 MR. WEAVER: Oh, the 20 foot buffer. We
6 complied with our interpretation of what was meant by
7 the 20 foot buffer.

8 MR. OVERSTREET: Let me just ask you: Based
9 on the information that you've been provided and your
10 experience as an engineer, did you find anywhere in
11 any of the Fiscal Court's Ordinance subject to the
12 amendments made were required that the existing trees
13 be left in place?

14 MR. WEAVER: No, we did not. I guess our
15 interpretation was the way the language spoke about
16 planting trees with the clarification that there would
17 be new trees. The new trees to me means that the old
18 trees were going to go away. We had to remove the
19 trees to get the site graded.

20 MR. OVERSTREET: As proposed, and I mentioned
21 this earlier. Can you tell me how many trees are
22 actually required under the ordinance and under the
23 requirements of Fiscal Court?

24 MR. WEAVER: The ordinance from Fiscal Court
25 doesn't actually address what we call interior trees.

1 It only addresses perimeter trees, which we have both
2 requirements. So from a zoning ordinance standpoint,
3 we have to address the interior trees, which they
4 require interior trees based on the vehicle use area
5 is five and we are proposing five.

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

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

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

16 MR. WEAVER: Yes, I believe so.

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

23 MR. WEAVER: That's correct.

24 MR. OVERSTREET: Just in closing, we would
25 just simply ask that you rule on the development plan.

1 Does the final development plan meet the requirements?
2 We're not here to rezone. We're not here to rehash.
3 I know there's been a multitude of exhibits thrown in
4 here. I would submit to you they have nothing to do
5 with this at this point, other than I'm sure proposed
6 future litigation.

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

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

1 vail threats that have been lobbied around inside the
2 room. They're going to do what they're going to do.
3 We're simply asking you to do what you are required to
4 do, which is consider the final development plan in
5 and of itself on the merits without all the extraneous
6 information, without all extraneous emotion. That's
7 not what zoning is about. Obviously any time
8 decisions are made, somebody doesn't like it. We all
9 have to deal with that in an adult way.

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

21 Their interpretation of the Ordinance, they're
22 not engineers. They're not on Planning and Zoning.
23 They've submitted affidavits from friends who were
24 formally with Planning and Zoning. He hasn't been
25 part of the process. He hasn't been part of the total

1 review. Now to bring this in, it's just another
2 red-herring.

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

7 CHAIRMAN: Thank you, Mr. Overstreet.

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

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

19 Now, if one were to believe it is common
20 practice, you've read 16-2 it says what it says. Not
21 supposed to be doing it. It's an Ordinance. It's a
22 law. If we had some of Owensboro's finest here right
23 high they would probably say, people think they can do
24 certain things and it's common practice. The third
25 car in line runs a red light in Owensboro. Everybody

1 knows that. It's common practice. Doesn't make it
2 right. Is it against the law to run a red light? Can
3 you get a ticket for running a red light? Well,
4 everybody else does it. Doesn't make it right.

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

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

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

21 I just say if you're going to recognize common
22 practice on this and violation of obvious Ordinance,
23 where does it end? This body has an Ordinance in
24 front of it that says they have to put the fence at
25 the rear of the parking lot. Not somewhere in the

1 next county at the rear of it. Edge of the parking
2 lot. Specific. They call it a parking lot. Not
3 anywhere on the asphalt, but parking lot.

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

7 CHAIRMAN: Thank you.

8 MR. HENDRIX: May I speak?

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

11 MR. HENDRIX: My name is David Hendrix. I'm a
12 resident of Woodlands. I'm having a little trouble
13 speaking because of throat problems so bear with me.

14 (DAVID HEDRIX SWORN BY ATTORNEY.)

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

20 Has anyone from the Planning Commission been?
21 Mr. Howard, have you been to the site?

22 MR. HOWARD: Yes.

23 MS. KNIGHT: Sir, we're not witnesses up here.
24 I understand your point.

25 MR. HENDRIX: I need to know that too because

1 if anyone has been to that site you would recognize
2 that it is not buffered.

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

22 Now, there was some mention about Kohl's, some
23 mention about Menard's. If you look at Kohl's, Kohl's
24 does not back up to a residential single-family
25 neighborhood. Throw it out.

1 You want to talk about Menard's, you go look
2 at that 15 or 20 foot fence around it and look at
3 acreage between it and the surrounding neighborhood.
4 That's buffered.

5 In my mind, the wording is fair. To be
6 buffered. To be protected. I can go home at night
7 once I get past this development and I'll be in my
8 residential neighborhood. Mr. Taylor can't do that.
9 He can't get away from this property. Developed on
10 54, but the problem is it's right in Mr. Taylor's face
11 and that's what is happening right here. I think when
12 you vote you should go look at that property to say,
13 you want it abutting up against your residence just
14 like Mr. Taylor and just like the neighborhood people.

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

18 CHAIRMAN: Thank you, sir.

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

21 Mr. Kazlauskas.

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

25 I want to regress for a little before I make a

1 motion because I want everybody to understand why I'm
2 making this motion.

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

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

21 I tell you what, our Staff does one heck of a
22 job. I was a policeman for a number of years and was
23 faced with some problems, but I don't think I face the
24 problems that Planning and Zoning Staff face. So I
25 commend them for the work they do and for the work

1 they do for us. They're fine people and they do great
2 work, but I've got some concerns.

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

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

19 Then the third thing that really concerns me
20 after looking at the photos is the encroachment on the
21 neighborhood. Going back to what was originally
22 submitted, I think most people thought they were
23 facing this. Not facing this. Also common sense
24 tells me after that wooded area that's been cut down,
25 if you put an 8 foot fence, continuous fence in there,

1 what's that going to do? What purpose is that going
2 to serve? Why have a fence now all of that is cut
3 down. Doesn't make sense to me. It just doesn't make
4 sense to me.

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

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

13 MR. MOORE: Second.

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

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

18 CHAIRMAN: Certainly.

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

1 you help me with that?

2 CHAIRMAN: I'll let counsel address that.

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

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

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

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

21 CHAIRMAN: Certainly.

22 MR. BALL: I guess another question of mine is
23 we've gone back and forth between buffering and what's
24 buffering and what's not. Maybe I have a different
25 perspective from being the Zoning Administrator in the

1 past. A buffer in my opinion, and I guess maybe we
2 can ask Staff as well. I don't know. A landscape
3 buffer does not necessarily mean that it's full of
4 existing trees. In fact, in more cases than not, it
5 is actually an empty area where landscaping is
6 required. Can you help me with that? Am I looking at
7 that correctly, Fred or Staff?

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

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

20 They can come in different varieties. They
21 can look different ways. Instead of putting a fence
22 in the Zoning Ordinance, you can actually put a double
23 row of staggered pine as an alternative. You can
24 count the wall of a building potentially as that
25 buffer, depending on proximity.

1 There are different things you can look at.
2 You can count existing trees. You can count new
3 trees.

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

9 MR. HOWARD: No.

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

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

21 MR. BALL: Thank you.

22 CHAIRMAN: Any other Commissioners have any
23 questions that they would like to have answered before
24 they vote? Because I think this helps to get these
25 questions asked before you vote.

1 (NO RESPONSE)

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

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

6 CHAIRMAN: All opposed.

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

9 CHAIRMAN: The motion fails.
10 Do we need a motion to approve the development
11 plan?

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

14 CHAIRMAN: I'll entertain another motion.

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

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

1 this.

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

4 MS. McENROE: Second.

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

7 (NO RESPONSE)

8 CHAIRMAN: All in favor raise your right hand.

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

11 CHAIRMAN: All opposed.

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

14 CHAIRMAN: It passes four to two.

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

18 Next related item.

19 RELATED ITEM

20 ITEM 7A

21 3830 Highway 54, 1.886 acres (Postponed from the
22 January 14, 2016 meeting)
23 Consider approval of a minor subdivision plat.
24 Applicant: Lamco Properties

25 MR. HOWARD: Mr. Chairman, Commissioners, this
 plat comes before you. It's been reviewed by the

1 Planning Staff and Engineering Staff. It's found to
2 be in order. It meets the ideas laid out on the final
3 development plan, as far as access easements and those
4 type of things. So it's ready for your consideration.

5 CHAIRMAN: Anybody here representing the
6 applicant?

7 MR. OVERSTREET: Yes.

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

10 MR. OVERSTREET: No, sir.

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

14 (NO RESPONSE)

15 CHAIRMAN: If not the Chair will entertain a
16 motion.

17 MR. FREY: Motion to approve.

18 CHAIRMAN: Motion by Mr. Frey.

19 MR. BALL: Second.

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

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion is approved.

24 MINOR SUBDIVISION PLATS

25 ITEM 8

1 7486 Texas Gas Road, 7.269 acres
2 Consider approval of a minor subdivision plat.
3 Applicant: Lawrence Eugene Wink Estate & Hines
4 Properties, LLC

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

13 CHAIRMAN: Anybody representing the applicant?

14 (NO RESPONSE)

15 CHAIRMAN: Any questions by any of the
16 Commissioners?

17 (NO RESPONSE)

18 CHAIRMAN: If not I'll entertain a motion.

19 MR. FREY: Motion to approve.

20 CHAIRMAN: Motion to approve by Mr. Frey.

21 MR. MOORE: Second.

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

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: Motion passes.

1 NEW BUSINESS

2 ITEM 9

3 Consider approval of December 2015 financial
4 statements

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

10 (NO RESPONSE)

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

13 MR. KAZLAUSKAS: So move.

14 CHAIRMAN: Motion by Mr. Kazlauskas.

15 MS. McENROE: Second.

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

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 ITEM 10

20 Comments by the Chairman.

21 CHAIRMAN: I want to say this: We didn't have
22 an unanimous motion this evening, but I'm not sure
23 that's not healthy. I think we had good healthy
24 discussion. I think everybody up here had beneficial
25 views and perspective on what we were voting on and

1 voted accordingly. I think you're to be congratulated
2 on that because this is one of those real difficult
3 ones. We had a lot of people leave upset with us this
4 evening. I'm sorry that they did, but I hope at least
5 we heard them out fully and we considered everything
6 presented to us. We might not have voted how we
7 wanted to vote, but we voted the way we thought we
8 should vote. That's what is important to me.

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

16 ITEM 11

17 Comments by the Planning Commissioners

18 CHAIRMAN: Any comments by any of the Planning
19 Commissioners?

20 (NO RESPONSE)

21 ITEM 12

22 Comments by the Director

23 CHAIRMAN: Director, do you have any comments?

24 MR. HOWARD: I have no comments.

25 CHAIRMAN: Think then we're ready to entertain

1 a motion to adjourn.

2 MR. BALL: Motion to adjourn.

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

5 MR. MOORE: Second.

6 CHAIRMAN: All in favor raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: We are adjourned.

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