

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 FEBRUARY 14, 2019

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:30 p.m. on Thursday,
5 February 14, 2019, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

8 MEMBERS PRESENT: Larry Moore, Chairman
9 Lewis Jean, Vice Chairman
10 Mike Edge, Secretary
11 Brian Howard, Director
12 Terra Knight, Attorney
13 Irvin Rogers
14 Beverly McEnroe
15 Manuel Ball
16 Fred Reeves
17 Angela Hardaway
18 Larry Boswell
19 Jay Velotta

20 * * * * *

21 CHAIRMAN: I would like to call the February
22 meeting of the Owensboro Metropolitan Planning
23 Commission to order. We always start our program,
24 meetings with a pledge and a prayer. That honor this
25 month goes to Mr. Ball.

26 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

27 CHAIRMAN: Before we get started, I would like
28 to wish everyone a happy Valentine's Day.

29 All of the commissioners should have received
30 a packet with the minutes and have had an opportunity

1 to take a look at those minutes. Do you have any
2 adjustments, any changes, anything about the minutes?

3 (NO RESPONSE)

4 CHAIRMAN: Seeing none the chair is ready for
5 a motion.

6 Mr. Ball.

7 MR. BALL: Motion to approve.

8 CHAIRMAN: We have a motion. Do we have a
9 second?

10 MR. JEAN: Second.

11 CHAIRMAN: Second by Commissioner Jean. All
12 those in favor indicate by raising your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries.

15 -----

16 GENERAL BUSINESS

17 CELLULAR TELECOMMUNICATIONS FACILITIES PER KRS 100.987

18 ITEM 3

19 10519 Possum Trot Road
20 Consider approval of a wireless telecommunications
21 tower.

21 Applicant: New Cingular Wireless PCS, LLC
22 d/b/a AT&T Mobility; Anthony T. & Debra Rafferty

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

24 MR. PEDLEY: Trey Pedley.

25 (TREY PEDLEY SWORN BY ATTORNEY.)

1 MR. PEDLEY: The applicant is seeking to
2 construct a monopole tower at 10519 Possum Trot Road.
3 The proposed tower is 195-foot tall structure with a
4 4-foot tall lightning arrestor. All materials for a
5 complete application has been submitted in accordance
6 with the Owensboro Zoning Ordinance.

7 The applicant is requesting a waiver to
8 Section 20-5(c) Setbacks. The required setback for
9 the tower and all structures constructed in connection
10 with the tower are to be 25-feet from the front
11 property line and 20-feet from the rear property line.
12 The proposed spaces for reserved future co-location
13 will not be able to comply with these setbacks due to
14 the limited size of the lease area.

15 FINDINGS

16 1. The application is complete with all
17 materials in accordance with the Owensboro
18 Metropolitan Zoning Ordinance;

19 2. The site is in compliance with all design
20 criteria of the Owensboro Metropolitan Zoning
21 Ordinance;

22 3. The permanent tower will improve service
23 for users within the community; and,

24 4. By providing the opportunity for multiple
25 service providers on this tower, we are promoting the

1 goal of the Comprehensive Plan to encourage
2 co-location in order to minimize the number of
3 telecommunication towers needed.

4 We would like to enter the Staff Report into
5 the record as Exhibit A.

6 CHAIRMAN: Thank you.

7 Before we go any further, I forgot to mention
8 the fact that anyone in the audience that wishes to
9 speak for or against any of the issues before this
10 committee, please come to the microphone. There's one
11 in each aisle. State your name and be sworn in by our
12 attorney. Please direct all your questions to the
13 chair; in turn, I will try to find the answer for you
14 either through Mr. Howard, Staff or the applicant. We
15 will ask that you be respectful. Stay on topic.
16 Everybody has the opportunity to speak and everyone
17 has the right for their opinion so please be
18 respectful.

19 Anyone in the audience that would like to
20 speak for or against?

21 Please go to the microphone and state your
22 name.

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

25 MR. BOYLE: Nancy B. Boyle.

1 (MS. BOYLE SWORN BY ATTORNEY.)

2 MS. BOYLE: We were invited to come here.

3 It's not on our property, but it might be within 20
4 foot. Our property adjoins. It shows a circle around
5 on our place. I'm not sure what that means. I just
6 wondered what the ramifications are. I'm pleased that
7 there might be a tower out there, but I don't know why
8 we needed to come. It's Rafferty's property. We have
9 nothing to do with that property. I don't know who I
10 need to direct my questions to. Do you?

11 CHAIRMAN: Ask your question and I'll try to
12 find the answer.

13 MS. BOYLE: Our property evidently from what
14 he said is within 20 foot of where the tower is going
15 to be. What does that have to do with our property?
16 Are there ramifications against that? I have no
17 problem with them putting on the property what they
18 want. I just don't know why I might be contacted.

19 CHAIRMAN: Thank you.

20 Mr. Howard, can you answer the question?

21 MR. HOWARD: I know the applicant is here to
22 answer it as well.

23 The property that they're proposing this on is
24 on the Rafferty property. You were notified because
25 state law requires that adjoining property owners

1 within a 500-foot radius be notified as well.

2 Melissa maybe can get her packet out. On the
3 exhibit map it shows the 500-foot radius and where
4 your property is. Based on the scale of this drawing,
5 you know, you're probably 300-feet away from the
6 parcel that the tower will be located on, the edge of
7 your property. That's a ballpark estimate.

8 Mr. Pike may have an exact distance, if we can
9 swear him in to answer it as well.

10 MS. KNIGHT: If you could go ahead and state
11 your name for the record.

12 MR. PIKE: David Pike, Pike Legal Group, P.O.
13 Box 369, Shepherdsville, Kentucky.

14 MS. KNIGHT: Mr. Pike, you're sworn as an
15 attorney.

16 MR. PIKE: Good evening, Ladies and Gentlemen.
17 It's a pleasure to appear before you again. Nothing
18 says romance quite like a Valentine's Day cell tower
19 hearing.

20 First of all, ma'am, if I can respond directly
21 to the question, Mr. Chairman?

22 CHAIRMAN: Sure.

23 MR. PIKE: Before I decide what type of
24 presentation, if any, you want to hear from me.

25 The minimum setback for this tower from any

1 adjoining property is 314 feet. On the various
2 compass points, it varies from that all the way up to
3 1,263 feet. Perhaps most importantly, from the
4 commission's perspective and perhaps from your
5 perspective as an area landowner, is it's 891 feet to
6 the nearest residential structure, and that's on our
7 property, our lessor's property. No other residence
8 is located within 1,000 feet of this cell tower. This
9 tower is configured to be less than 200-feet tall so
10 it does not have to be lit for aviation warning
11 purposes.

12 Ultimately, I'd like to defy this commission
13 or anyone else to find a tower with better setbacks in
14 this community than this one would have.

15 I don't know if that answers her question.
16 Perhaps we can determine what else I may need to do
17 here tonight.

18 MS. BOYLE: So it's just a state requirement
19 that we were notified?

20 MR. PIKE: This is perhaps proof positive of
21 the facts that I'm fond of and that is the public is
22 never safe when the general assembly is in session.

23 Yes, the state law requires that notice to be
24 sent out to you. I apologize if you came here
25 needlessly this evening, but that wasn't our choice.

1 That's was the general assembly's choice.

2 MS. BOYLE: So it has nothing to do with our
3 property?

4 MR. PIKE: It in no way encumbers or adversely
5 affects your real estate.

6 MS. BOYLE: The tower not on our property?

7 MR. PIKE: Nothing.

8 MS. BOYLE: I think we're finished.

9 MR. PIKE: Very good.

10 Mr. Chairman, Members of the Commission, as I
11 indicated, it's a pleasure to appear before you again.
12 As you might suspect, I have come here prepared for
13 any contingency. I also have with me Ms. Sherri Lewis
14 who is the senior radio frequency design engineer with
15 AT&T to answer any questions I'm unable to answer;
16 fortunately, she got much better math grades in school
17 than I did.

18 I can do as much or as little as is your
19 pleasure. I have hearing distribution binders. I
20 have a PowerPoint presentation or I can stand here and
21 say nothing. Perhaps what might be helpful, would it
22 be possible for the Chair to inquiry whether there's
23 anyone else here to speak?

24 CHAIRMAN: Anyone else in the audience need to
25 speak to this issue?

1 (NO RESPONSE)

2 CHAIRMAN: Any of the commissioners need to
3 speak?

4 (NO RESPONSE)

5 MR. PIKE: In that case, I believe I will sit
6 down with style and grace.

7 CHAIRMAN: Thank you.

8 We need a motion for approval.

9 MR. VELOTTA: Motion to approve.

10 MR. HOWARD: If I could interject real quick.
11 Including the waiver on the setback requirement of the
12 Zoning Ordinance.

13 MR. VELOTTA: Correct.

14 CHAIRMAN: We have a motion.

15 MR. REEVES: Second.

16 CHAIRMAN: Seconded by Mr. Reeves. All those
17 in favor raise your right hand.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion passes.

20 RELATED ITEM

21 ITEM 3A

22 10519 Possum Trot Road, 0.23 acres
23 Consider approval of a minor subdivision plat.
24 Applicant: New Cingular Wireless PCS, LLC
d/b/a AT&T Mobility; Anthony T. & Debra Rafferty

25 MR. HOWARD: This comes before you to create

1 the parcel that the cell tower that you just
2 considered will be located on. It's a land-lock
3 parcel without road frontage which means we cannot
4 approve it at the Staff level, but it's for utility
5 infrastructure purposes only; otherwise, it's a
6 non-buildable lot and is recommended that you consider
7 it for approval.

8 CHAIRMAN: Anyone in the audience wish to
9 speak on this besides Mr. Pike?

10 (NO RESPONSE)

11 MR. PIKE: One thing I did not do earlier was
12 to thank your Staff for all their help. In the fact
13 that we had this in in a timely fashion is a direct
14 reflection that their assistance and also their
15 willingness to answer our questions in a timely
16 manner.

17 CHAIRMAN: Thank you.

18 Chair is ready for a notion.

19 Mr. Boswell.

20 MR. BOSWELL: Thank you, Mr. Chairman. I
21 would like to make a motion to approve the application
22 for the minor subdivision plat.

23 CHAIRMAN: Do we have a second?

24 MR. EDGE: Second.

25 CHAIRMAN: Second by Mr. Edge. All those in

1 favor raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion passes.

4 MR. PIKE: On behalf of AT&T and our thousands
5 of customers of this community, thank you very much.
6 I started practicing law under my dad. He once said,
7 that if you won leave immediately before anyone
8 changes their mind.

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

15 ZONING CHANGES

16 ITEM 4

17 Portion of 3200-3400 Blocks Hayden Road, 1.228 acres
18 Consider zoning change: From B-4 General Business to
19 R-3MF Multi-Family Residential
Applicant: Gateway Land, LLC

20 PLANNING STAFF RECOMMENDATIONS

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

23 FINDINGS OF FACT:

24 1. Staff recommends approval because the
25 proposal is in compliance with the community's adopted

1 Comprehensive Plan;

2 2. The subject property is located in a
3 Business Plan Area, where urban mid-density
4 residential uses are appropriate in limited locations;

5 3. The proposed use of the subject property
6 as a multi-family residential development will conform
7 to the criteria for urban residential development;

8 4. The proposal is a logical expansion of the
9 R-3MF Multi-Family Residential zoning to the south;

10 5. Sanitary sewer services are available to
11 the subject property; and

12 6. At 1.228 acres, the proposal should not
13 overburden the capacity of the roadways or other
14 necessary urban services that are available within the
15 affected area.

16 MR. PEDLEY: We would like to enter the Staff
17 Report into the record as Exhibit B.

18 CHAIRMAN: Thank you, Trey.

19 Anyone in the audience representing the
20 applicant?

21 MR. RAY: Good evening, Mr. Chair and Members
22 of the Commission. My name is Ed Ray with Gulfstream
23 Commercial Services.

24 (ED RAY SWORN BY ATTORNEY.)

25 MR. RAY: I don't have anything to add to the

1 Staff Report, other than being available for any
2 questions.

3 CHAIRMAN: Thank you.

4 Any commissioners have any questions
5 concerning this application?

6 (NO RESPONSE)

7 CHAIRMAN: Seeing none the Chair is ready for
8 a motion.

9 Mr. Jean.

10 MR. JEAN: I'd like to make a motion we
11 approve the application based on the Staff Report, the
12 site visit and Findings of Fact 1 through 6.

13 CHAIRMAN: We have a motion. Do we have a
14 second?

15 MS. McENROE: Second.

16 CHAIRMAN: Second by Ms. McEnroe.

17 MS. KNIGHT: Mr. Chair, I believe Mr. Velotta
18 wants to recuse from the vote on this, just for the
19 record.

20 CHAIRMAN: All those in favor indicate by
21 raising your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE -
23 WITH JAY VELOTTA RECUSING HIMSELF)

24 CHAIRMAN: Motion passes.

25 ITEM 5

1 6301, 6345, 6373 Highway 54, 2.719 acres
2 Consider zoning change: From A-R Rural Agriculture to
3 B-4 General Business
4 Applicant: Robert E. Bryant; City of Whitesville

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

7 MS. EVANS: Melissa Evans.

8 (MELISSA EVANS SWORN BY ATTORNEY.)

9 MS. EVANS: This Staff Report is for
10 recommendation of denial and as is custom with those
11 Staff Reports we will read the entire Staff Report
12 into the record.

13 PROPOSED ZONE & LAND USE PLAN

14 The applicant is seeking a B-4 General
15 Business zone. The subject property is located in a
16 Rural Maintenance Plan Area, where general business
17 uses are appropriate in very limited locations.

18 SPECIFIC LAND USE CRITERIA

19 (A) Building and lot patterns; outdoor storage
20 area - Building and lot patterns should conform to the
21 criteria to "Nonresidential Development" (D7), and
22 outdoor storage yards, with "Buffers for Outdoor
23 Storage Yards" (D1).

24 (B) Logical zoning expansions of proportional
25 scope - Existing General Business zones may be
expanded onto contiguous land that generally abuts the

1 same street(s). The expansion of a General Business
2 zone should not significantly increase the extent of
3 the zone in the vicinity of the expansion and should
4 not overburden the capacity of roadways and other
5 necessary urban services that are available in the
6 affected area.

7 PLANNING STAFF REVIEW

8 GENERAL LAND USE CRITERIA

9 Environment

10 • It appears that the subject property is not
11 located in a wetlands area per the US Department of
12 Agriculture Soil Conservation Service Map dated March
13 6, 1990.

14 • The subject property is not located in a
15 special flood hazard area per FIRM Map 21059C0305D.

16 • It does appear that the subject property is
17 partially designated as prime agricultural farmland
18 per the US Department of Agriculture Soil Conservation
19 Service map dated March 1980.

20 • It appears that the subject property is not
21 located within the Owensboro Wellhead Protection area
22 per the OMU map dated 2015.

23 • The developer is responsible for obtaining
24 permits from the Division of Water, The Army Corp of
25 Engineers, FEMA, the EPA, the OMPC

1 building/electrical/HVAC division or other state and
2 federal agencies that may be applicable.

3 URBAN SERVICES

4 Electricity, water and gas are available to
5 the subject property. Sanitary sewage disposal would
6 be accomplished by an on-site septic system.

7 DEVELOPMENT PATTERNS

8 The subject properties are three tracts
9 totaling 2.719 acres, located at the northeast
10 intersection of Jack Hinton Road and Highway 54. Jack
11 Hinton Road serves as the dividing line between the
12 Rural Community of Philpot and the Rural Maintenance
13 Plan Area.

14 6301 Highway 54 is a small 625 square foot
15 tract owned by the City of Whitesville; 6345 Highway
16 54 is vacant and a single-wide manufactured home sits
17 on 6373 Highway 54. All of the surrounding properties
18 on this side of Jack Hinton Road and in the Rural
19 Maintenance Plan Area are zoned A-R Rural Agriculture
20 and are being used for cropland and single-family
21 residential homes consistent with the subject
22 properties.

23 The property to the west, across Jack Hinton
24 Road, was zoned to B-4 General Business in 2018 and is
25 the site of a new Dollar General. This property was

1 appropriate for the B-4 General Business zoning as it
2 is located within the Rural Community Plan Area and
3 met the criteria of the Comprehensive Plan for the B-4
4 zoning. The subject property however is located in
5 the Rural Maintenance Plan Area, outside of the Rural
6 Community, and an expansion of the B-4 General
7 Business zoning across Jack Hinton Road would be
8 expanding the B-4 zoning outside of the Rural
9 Community which is discouraged by the Comprehensive
10 Plan.

11 The applicant sites two previous rezonings as
12 precedent for this application to be approved; 7251
13 Hobbs Road and 806 Highway 279 North.

14 7251 Hobbs Road was recommended for approval
15 to the B-4 General Business zone at the January 2013
16 OMPC meeting. The applicant contends the Staff Report
17 indicated the proposal was in compliance with the
18 Comprehensive Plan even though the property was
19 located in the Rural Maintenance Plan Area. However,
20 the property at 7251 Hobbs Road was, at that time,
21 partially located in the Rural Maintenance Plan Area
22 and partially located within the Rural Community Plan
23 Area and therefore did meet the criteria of the
24 Comprehensive Plan for the B-4 zoning classification.
25 Furthermore, the property at 7251 Hobbs Road, as being

1 in the Rural Community of West Louisville, was
2 surrounded by various existing land uses including a
3 restaurant, retail firearms dealer and the Diamond
4 Lakes complex and directly adjoined existing B-4
5 zoning to the west.

6 806 Highway 279 North was recommended for
7 approval to the I-1 Light Industrial zone at the June
8 2018 OMPC meeting; however, the Staff recommended the
9 application for denial in its Staff Report. 806
10 Highway 279 North is also located in the Rural
11 Maintenance Plan Area, but the criteria of the
12 Comprehensive Plan to rezone a property to I-1 Light
13 Industrial are very different from those to rezone to
14 a B-4 General Business zone. In fact, in Section 15.4
15 of the Owensboro Metropolitan Zoning Ordinance, there
16 are specific criteria to even be eligible to apply for
17 consideration to rezone a property to B-4 General
18 Business whereas the same criteria do not apply to the
19 I-1 Light Industrial zone.

20 The applicant also states that the existing
21 zoning classification of A-R Rural Agriculture given
22 to the subject properties is inappropriate. Staff
23 contends the A-R zoning is appropriate for the subject
24 properties as they are and have been used for cropland
25 and single-family residential uses and there is no

1 definitive plan for the properties other than the
2 generic retail sales.

3 The applicant contends there have been major
4 changes of an economic, physical, or social nature
5 within the area of the subject properties which were
6 not anticipated by the adopted Comprehensive Plan and
7 these changes have substantially altered the basic
8 character of the area involved. Although Highway 54
9 area has grown, it has not grown out to the point of
10 the subject properties. The growth and changes along
11 the Highway 54 corridor were accounted for and
12 anticipated in the current Comprehensive Plan which
13 was adopted at the December 10, 2018 OMPC meeting.
14 There have been no changes to the area in the last two
15 months.

16 It appears that the subject properties are
17 partially designated as prime agricultural land
18 according to the "Important Farmlands" map created by
19 the US Department of Agriculture Soil Conservation
20 Service dated March 1980.

21 If the rezoning is approved, the applicant
22 will be required to provide vehicular use area
23 screening compliant with Article 17 of the zoning
24 ordinance around the perimeter of any proposed parking
25 area that faces the Highway 54 or Jack Hinton Road

1 rights-of-way. Any outdoor storage areas shall be
2 screened with a six foot high continuous solid wall or
3 fence.

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

10 SPECIFIC LAND USE CRITERIA

11 The applicant's proposal is not in compliance
12 with the Comprehensive Plan. The proposed use as
13 retail sales does conform to the criteria for
14 nonresidential development. However, the expansion of
15 the B-4 General Business zone across Jack Hinton Road
16 would nearly double the extent of the B-4 zone in the
17 vicinity. The proposal would expand the B-4 zone
18 outside of the Rural Community Plan Area which is
19 discouraged by the comprehensive Plan. The current
20 zoning is appropriate for the subject properties as
21 they have been and continue to be used as cropland and
22 residential with no definitive plan for the future.
23 Additionally, there have been no changes to the area
24 in question not anticipated by the most recent
25 Comprehensive Plan as it was adopted on December 10,

1 2018.

2 PLANNING STAFF RECOMMENDATIONS

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

5 FINDINGS OF FACT

6 1. Staff recommends denial because the
7 proposal is not in compliance with the community's
8 adopted Comprehensive Plan;

9 2. The subject property is located in a Rural
10 Maintenance Plan Area, where general business uses are
11 appropriate in very limited locations;

12 3. The proposed use as retail sales would be
13 nonresidential in nature;

14 4. The proposed expansion of the B-4 General
15 Business zone nearly doubles the extent of the zone in
16 the vicinity;

17 5. The proposal would allow for the expansion
18 of the B-4 General Business zone beyond the boundary
19 of the Rural Community Plan Area; and,

20 6. There have been no major changes to the
21 area in question not anticipated by the Comprehensive
22 Plan as it was most recently adopted on December 10,
23 2018.

24 MS. EVANS: We would like to enter the Staff
25 Report into the record as Exhibit C.

1 CHAIRMAN: Thank you.

2 Anyone in the audience representing the
3 applicant?

4 MR. KAMUF: Charles Kamuf.

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

7 MR. KAMUF: Charles Kamuf, and I represent the
8 applicant Robby Bryant.

9 Robby's family has owned this property since
10 1903, nearly all of it since 1903. Several years ago,
11 I think in 1977, the City of Whitesville needed a pump
12 station and they put a pump station on this property.
13 The only reason I mention that is that this property
14 for years has had some type of industrial or
15 commercial use on the property.

16 First of all, I'll be having several handouts
17 so you'll have to hold on with me.

18 I'm passing two copies to you. One is the
19 plat that shows the rezoning in March of last year.
20 That will be the one with the small red block that you
21 see.

22 In talking about the first exhibit that I
23 have, it shows the property along Highway 54. In the
24 color that you have here, the green in an industrial
25 property, and the little red mark that we have here

1 was about a 1.5 acre that we got zoned, and the
2 property was zoned last year. The property was zoned
3 in March by this Board and the Staff recommended
4 approval. One of the main issues that we'll talk
5 about is that they recommended it because it was at an
6 intervening site.

7 If you could see the green is industrial. The
8 property was zoned B-4 commercial. All the green
9 along here that you see here is industrial. The blue
10 is commercial. It goes all the way -- I might point
11 out this is Highway 54, which in I think 2015 we
12 testified with the Gateway Commons project that it was
13 the fastest growing area in Western Kentucky.

14 The second photograph that we show or the
15 blowup, this blowup that I show you right now, this is
16 a 2.75 acres right across from the subject property
17 was zoned in March of last year. It shows the
18 property, that now across is B-4. Across from the
19 other property is industrial, and the map that I show
20 you at the top, I saved this. We did not file the
21 application for rezoning in March of last year. The
22 reason we didn't is I wanted to be able to show you
23 this picture. We paid for this other one and another
24 picture we paid over \$700. This picture explains
25 everything in a nutshell.

1 If you see this property, right in the corner
2 this sits at the intersection of 54 and Jack Hinton
3 Road. The property is located directly to my right.
4 Dollar General store is right in front. What we're
5 asking you to do is to zone right across the street,
6 right across Jack Hinton Road to the same zoning that
7 we got in March of last year.

8 As you can see this one here -- bear with me
9 because I want to be sure that I get all of my points
10 across.

11 The second photograph that I show you shows
12 the property coming from the opposite direction, and
13 it shows you the land that we, the exact corner that
14 we intend to get rezoned.

15 I might point out to you: Immediately after
16 we got the property zoned last year, signs came up
17 from all around. We want our property zoned at this
18 intersection.

19 If you can see over here on this big exhibit,
20 there's a "For Sale" sign here. Directly behind the
21 Dollar General store, that property is for sale. Once
22 we got the property zoned at Jack Hinton Road and 54,
23 it triggered, it triggered many of the area wanting to
24 sell their property.

25 I would like to walk you through the Land Use

1 Plan, and what's applicable as far as the law in this
2 case. It's very simple. The Staff has made it very
3 complicated.

4 Let me walk you through it. For us to get
5 this property rezoned all we have to do to qualify
6 under the Land Use Plan and the Comprehensive Plan is
7 do what's on the front of this.

8 Are we in a rural maintenance area? Yes.

9 Are we a title to zoning of a B-4? Yes; in
10 very limited locations.

11 What does it say? It says right under, look
12 at A and B. "A" is okay. Everybody agrees on that.

13 Then number "B," what do we have there?
14 Existing general business zones may be expanded where?
15 Onto contiguous land that generally abuts the same
16 street. The expansion of the general business zone
17 should not significantly increase the extent of the
18 zoning in the vicinity of the expansion and should not
19 overburden the capacity of the roadway and other
20 necessary urban services that are available.

21 So what have we done? We asked for a small
22 tract. It's a 2.5 acre tract. The reason for that,
23 even though this property has been in the family since
24 1903, these lots were already cut out. One of them
25 was cut out from the City of Whitesville to put in a

1 pump station. So the property has had some type of
2 commercial use. These other two lots were cut out of
3 Mr. Bryant's property because he thought one day his
4 granddad was going to build a house there.

5 So that's why we've asked for 2.5. Certainly
6 2.5 acres is not going to overburden any road.

7 Let's go over what it says.

8 "General Business zones may be expanded onto
9 contiguous land that generally abuts the same street."

10 Now, did we qualify? This is the same street,
11 Jack Hinton Road. Is it contiguous? No question.
12 The Staff even admits that. So what we want to do is
13 -- what is the Comprehensive Plan for? What does it
14 say here? "For expansion." Certainly expansion
15 across that road would be qualifications under the
16 Comprehensive Plan. I submit to you that there's
17 nothing in the Comprehensive Plan that we violate in
18 getting this property zoned to B-4 commercial. All
19 that is necessary to qualify is the black and white
20 letter of the law and that's it.

21 Are we in the rural maintenance area? Yes.
22 Very limited location.

23 Do we meet the qualifications? The Staff
24 comes up with the idea that it should be discouraged.
25 That's their opinion.

1 The reason that it's so important is because
2 you have the discretion to do what you want to do.
3 I'm going to give you three precedence that you all
4 established. One of them will be by Martin Hayden who
5 was on your board for 12 years. He's here to testify
6 about one of them.

7 Here is where we are: Existing general zone,
8 yes. May be expanded. Where? Onto contiguous zones,
9 if it generally abuts the same street. Like I said,
10 there's nothing in that Comprehensive Plan that says
11 we can't do this.

12 Let me point out: The importance of property
13 being at an intersection. Your Comprehensive Plan, if
14 you look at the little layout that I gave you a few
15 minutes ago, read the top of that, if you will, where
16 where it says "General Business Uses includes a wide
17 range of commercial and professional/service
18 activities. These uses exist in many locations
19 throughout Daviess County, but are more concentrated
20 along urban arterial and major collector streets, and
21 within rural communities." That's what it's about.
22 That's why we have it here as stated in the plan.

23 The Staff's findings in a recent case in
24 March, one of their five findings was it's located at
25 the site of an intersecting street.

1 Let me explain to you about how important that
2 is. I'm an agent for Dollar General store there.
3 They sent me out in rural areas. We probably had five
4 cases with you all in the last three or four years.
5 They asked me to go over in Ohio County and see if I
6 could find a spot. It wanted someplace between
7 Pleasant Ridge and Hartford. So I find this
8 intersecting street over there and I knocked on the
9 guy's door. I said, how would you like to sell your
10 property? The guy says, you know, I bought that
11 property ten years ago and I've been waiting for you
12 to come to talk to me.

13 So the point I'm making is Dollar General
14 store nowadays has changed the idea of these
15 intersecting streets in the county. They're looking
16 all over. Used to be ten miles. Now it's five miles.

17 So the point I'm saying is: What changes this
18 from some of these other examples I'm going to give
19 you in a few minutes? It's at an intersecting street
20 which is critical under -- if you read the Land Use
21 Plan it talks in all cases about intersecting streets.
22 It's more important because now many commercial
23 activities are looking for intersecting streets where?
24 In rural areas. It's not that important in the city,
25 but it is there.

1 So I'm saying to you that once we got the
2 property zoned in March, this is a logical expansion.
3 It doesn't make any difference whether it's in a rural
4 maintenance area or whether it's in a community rural
5 maintenance area. It's a logical expansion.

6 We have one more map. The Staff tells you
7 that there's no changes out there. Some of you guys
8 know all about Highway 54. You're out there every
9 day.

10 This property here, it's in the middle of that
11 block that we had a few minutes ago. What it is, as
12 we speak they're in the process of building a
13 convenient care facility out there as we talk. This
14 is not something that just changes. This is a
15 continual change in the area that you see along 54,
16 right in the immediate area of the subject property.

17 In the immediate area of this property,
18 there's a feed mill, a restaurant, a sheet metal shop,
19 and a medical center that we see. This is as we talk
20 that's being developed.

21 To my knowledge in the last ten years there
22 has never ever been a rezoning denied on Highway 54
23 where the property fronts on Highway 54. I put that
24 in my application. Nobody has denied this.

25 Now, I'm going to give you three strong

1 precedents of areas where you have -- the Staff says,
2 we discourage anything in a rural maintenance area as
3 far as B-4. I'm going to be make a case for you.

4 The first case is at Hobbs Road. This is a
5 case where I think it was 2013 the Staff recommended a
6 zoning in this area, which is several blocks from
7 downtown West Louisville. It was partially in the
8 rural maintenance area, and part in the rural
9 community area. The Staff was able to recommend this
10 even though part of it was in the rural community
11 maintenance area. Your board voted 10 to nothing to
12 approve it.

13 As we talk about it, the Staff said that in
14 the report if you look, that it was surrounded by B-4
15 zoning. Look where that is. That's out south of West
16 Louisville. It's in a rural maintenance area
17 partially. The Staff approved a rezoning in that
18 area.

19 The orange that you see is Whittaker's Gun
20 Store in the middle of West Louisville. So it's out
21 in nowhere. Staff approved it. Staff recommended
22 rezoning in a rural maintenance area. That's the
23 first one.

24 This property, many of you were on the board
25 when this was done. This is the property down there

1 at 279 near Stanley. That was in 2018. I refer you
2 to the back page where you have the pink marker,
3 second page.

4 Here is what the Staff said in that case:
5 "Staff Recommendations: The Planning Staff recommends
6 denial subject to the findings of fact that follow."

7 I might point out, as see this property, it's
8 out in no place. It's somewhere on Highway 279 in the
9 middle of the block. The Staff says:

10 "1. Staff recommends denial because the
11 proposal is not in compliance with the community's
12 adopted Comprehensive Plan.

13 "2. The subject property is located in a
14 Rural Maintenance Plan Area, where light industrial
15 uses are appropriate in limited locations.

16 "3. The proposed use as a fresh fruit
17 packaging facility would be nonresidential in nature;

18 "4. There is no other industrial zoning in
19 the area; all surrounding property are zoned A-R Rural
20 Agricultural; and,

21 "5. At 10.017 acres the subject property does
22 not meet the minimum requirements of 500 acres for a
23 large industrial reserve nor is this an expansion of
24 an existing large reserve."

25 Now, let's see what happened. Turn the page

1 over to the front. What makes this different is the
2 fact that the Staff recommended a denial. It was in a
3 rural maintenance area. You all did this. You all
4 are able -- you don't have to abide by the Staff
5 Report. You don't have to abide by the Comprehensive
6 Plan. The Comprehensive Plan is a guide. The Staff
7 Report is a guide. This is what you all did. You all
8 overruled the Staff and here is what it says:

9 "A public hearing was conducted for the
10 above-reference application June 14, 2018 OMPC
11 meeting. After testimony, the Planning Commission
12 recommended approval of the application. J.D. Meyer
13 represented the applicant, presented a case for the
14 Commission to approve the application on the changes
15 in the area, and that the proposed zoning is more
16 appropriate than the existing zoning." You
17 understand? "More appropriate than existing." Didn't
18 say it was a logical expansion.

19 "David Reynolds represented CTC Investments,
20 an adjoining property owner, and brought up concerns
21 relative to ingress/egress, the history of failed
22 businesses on the property, questioned what changes
23 have occurred to justify the rezoning, and concern
24 over the increased traffic. Mr. Reynolds' concerns
25 were addressed by the applicant's Engineer, the County

1 Engineer, and Mr. Meyer. Commissioners Mike Edge,
2 Larry Boswell, Larry Moore and Fred Reeves all asked
3 questioned for clarification on items presented."

4 Now, why did I bring this up? I bring this
5 up, and the point that this board has discretion. If
6 you didn't have discretion, all we would need is
7 somebody over at the Planning Staff saying, A, B, C,
8 just mark it up. So you all exercise in this case
9 your judgment and did not abide by the Planning Staff.

10 I point out, in the case that we got, we got
11 all neighbors in the area of Jack Hinton Road are
12 here. Larry O'Bryan lives down the road. We got
13 Mr. Berry here. We got Robby Bryant and some of the
14 other neighbors.

15 So what make this is so different than the
16 other one?

17 One, intersecting road. You don't see any
18 intersecting road here.

19 Second of all, all the neighbors in our case
20 are for it. The neighbors in this case were against
21 it, and you still zoned it because you used your
22 discretion that you're able to use.

23 The vote I think was 10 to nothing.

24 Now, another case that we have, and this one
25 is real big.

1 I might point out Martin Hayden is here.

2 This case is identical to the case that we
3 have at hand. The same issues that were talked about
4 in this case, the same issues were with the Martin
5 Hayden case.

6 Let me kind of review where you are. You're
7 at the intersection of 405 and 144 in Thruston,
8 Kentucky. This was a later case, but the law still
9 applies.

10 The night that I represented Martin Hayden in
11 1993. His idea was he wanted to put a hardware store
12 in the middle of Thruston. The property that you see
13 in blue was zoned. There was a nursery there, and I
14 think there's Cousin's, some of you that visit out
15 there, Cousin's Dairy Cream, and then there's a little
16 service station, but all the property on that side of
17 the road was zoned. There was nothing on the side
18 where you see the red area.

19 Since this, I've gotten, this is where the
20 Dollar General store is. Anyway, here is what took
21 place:

22 Martin Hayden goes down. He gets all of his
23 neighbors to sign that they have no problem with the
24 rezoning. He comes before the Board and the Staff
25 says, wait a minute. Wait a minute. This was when

1 Roger was the director. The Staff says, we're not
2 going to allow anything on the south side of 144.
3 That's a boundary line and we're not going to cross
4 it.

5 What are they doing in the case that we got
6 here today? They're saying Jack Hinton Road is a
7 boundary line. There's no zoning on the east side of
8 Jack Hinton Road. Let's see what happened.

9 If you'll turn your tab to the little blue
10 marker. Here is what it says:

11 SPECIFIC LAND USE CRITERIA - The applicant's
12 proposal" - this is what the Staff says - "does not
13 meet the specific land use criteria for general
14 business proposal in a Future Urban Plan Area.
15 Because the subject property does not adjoin an
16 existing General Business zone, the proposal cannot be
17 considered for logical expansion."

18 What did they tell you in our case? Same
19 deal, if you read the findings that they are.

20 "Furthermore, because property immediately
21 across the road and to the west of 144 is not zoned
22 General Business, the Staff cannot find that the
23 proposal qualifies as an expansion."

24 Staff says, wait a minute. We're not going
25 across the road for an expansion.

1 "That the subject property is in close
2 proximity to existing General Business zoning and uses
3 to the northwest. Staff further agrees that the
4 subject property does not meet size requirement for
5 expansion across an intervening street." They raised
6 the same issue here.

7 "Staff does not believe that the rezoning
8 would significantly increase the extent of the General
9 Business zone in the area."

10 Now, here is the key, here is what it says:
11 "However, Staff contends that the intersection of 144
12 and Kentucky 405 creates," what, "a logical boundary
13 by which business uses should not be expanded
14 westwardly."

15 What have we got? Same situation that I've
16 got here. They're saying over here that, the Staff at
17 that time, we've got a boundary line on 144 and we
18 don't want to cross it. Even though there's an
19 expansion we're not going to have any expansion across
20 144.

21 What did the Board do? Let's go to the front
22 page at the bottom. Here's what they said about it:
23 "Rezoning of the subject property to General Business
24 is appropriate in that it is directly in the
25 intersection of Highways 144 and 405 and certainly a

1 logical expansion of the General Business zoned to the
2 north.

3 "The expansion of the subject property, which
4 includes 2.56 acre tract," ours is 2.7, "meets the
5 requirements," and goes on down.

6 "The Land Use Plan recognizes" what, "the need
7 for existing sites to be able to expand their current
8 operations where they have existed for many years
9 since the land surrounding the subject property is
10 mixed use as shown on the Land Use Plan even though
11 there is some residential use continuing." That's
12 exactly what we've got in this case.

13 Martin Hayden is here and he'll be able to
14 talk to you about it.

15 You have to rely on precedent. In other
16 words, you can't treat Robby Bryant different than you
17 treat on Hobbs Road or out at Stanley or Martin
18 Hayden. I'm just saying fair play indicates that you
19 treat everybody the same. We have presented we think
20 a good case on that point.

21 We've given you the three cases: One,
22 Stanley, 279, where you all took issue with the report
23 of the Planning Staff.

24 We've given you the one at Hobbs Road where it
25 was partially in the rural maintenance area.

1 And then give you the Martin Hayden case.

2 Now, what makes our case even twice as strong
3 as those other cases, the two at Hobbs Road and
4 Stanley; they weren't at an intervening street. I've
5 explained to you, intervening streets in the Land Use
6 Plan is important. Intervening streets out in the
7 public, as far as what you use property for, is
8 important.

9 So we think the property to be rezoned meets
10 the logical expansion.

11 It also meets, in our opinion -- what the
12 Staff has done is that they have reworked the
13 Comprehensive Plan. When they reworked the
14 Comprehensive Plan, in my opinion, they didn't take
15 into consideration this property here.

16 You mean to tell me that this is an A-R zone,
17 and I think that was an A-R zone. That once you zone
18 the property on the west side of Jack Hinton Road,
19 that it didn't trigger something with the Planning
20 Staff to say, we need to look at this corner. We're
21 not talking about -- the tract that you had at 279 was
22 a 10 acre tract. We're talking about a 2.75 acre
23 tract in that particular area.

24 Let's talk about the boundary line. If you
25 get a boundary line should not keep growth from coming

1 on 54. What they're trying to do evidently is to stop
2 any growth past Jack Hinton Road on 54.

3 The boundary line should be flexible. What if
4 we said two years ago, four years ago, that all zoning
5 should stop at 142? These boundary lines that you put
6 up they can't last for long.

7 Just like I showed you at Thruston, at
8 Thruston now across the road there's a Dollar General
9 store, there's a hardware store, and other things that
10 are across the road. You cannot stop growth, and the
11 Comprehensive Plan takes consideration expansion,
12 growth, but you have to be flexible when you do that.

13 Let's talk about, there's one other thing if
14 you look at that little sheet that I passed out. What
15 does it say? "In very limited locations."

16 What we have here: We did not do a 10 acre
17 tract. I didn't do a 100 acre tract. I did a 2.79
18 acre tract so there would not be any issue about a
19 limited location.

20 Now, the important thing is for you to use
21 your discretion. There's a landmark case, and it's
22 call Bryan versus Salmon. We used it when I was the
23 attorney for the Board years ago. We used the same
24 case.

25 Here is what this case says just basically:

1 "While the Comprehensive Plan is extremely important
2 and must not be treated lightly in considering
3 applications for rezoning, it's a guide, not a
4 straitjacket."

5 In the case here, if you allow this to have a
6 boundary line here, in my opinion, you're having a
7 straitjacket for anybody trying to get any application
8 for B-4 zoning in a rural maintenance area.

9 We have presented those three cases. All
10 those cases that I give were unanimous decision of the
11 board where they exercised, the Board exercised its
12 discretion. Staff does what they're supposed to do.
13 They have their own ideas. The Board then has to take
14 and apply what we're given and what the general facts
15 are.

16 I can't impress on you, and I tried to use
17 that little story about Dollar General. At how
18 important in the county, if there's any development is
19 going to be at intersecting streets or intersections.
20 Dollar General stores and these convenient stores want
21 at an intersection. A lot of reasons, one, is because
22 it's a lot less expensive because the streets are
23 already there.

24 Our case differs. Intersecting street, there
25 is nobody objecting to it. Who will be hurt? Who

1 will be hurt?

2 This is a case that -- the Staff has a case.
3 The Board has a case. I have a case, but Robby
4 Bryant, this is his only time, only time to appear
5 before the Board.

6 I might say this: Let me explain how
7 important it is to you. This property over here that
8 you see in blue that we got zoned in March, the
9 property sold for \$190,000. So doesn't fair play
10 indicate that if he's got that for \$190,000, directly
11 across the road there his property is worth \$4,500 an
12 acre. I don't think -- to take that in real
13 consideration, it's so important to figure out what
14 Robby has to lose that he has in that situation.

15 I'm just saying, this is just another case for
16 you, for me, for the Staff, but it's not just another
17 case.

18 It's sort of like this: Robby has used this
19 property for retirement. It's sort of like being a
20 teacher and you make \$100,000 a year, 50, and you get
21 that, and then you're supposed to get a retirement,
22 and at the end you can't get a retirement for some
23 reason or another. This is Robby's retirement.

24 I submit to you that the Comprehensive Plan
25 that I have just showed you, the Land Use Plan, that's

1 all we have to do, is qualify under the Land Use Plan
2 in a limited area. I can't imagine anybody saying
3 that that's not a logical expansion of an existing use
4 across the same street.

5 Now, we have several witnesses. Robby will be
6 my first witness, and then we've got some neighbors
7 that want to testify, and then I've got Martin Hayden
8 that will be here.

9 MS. KNIGHT: Sir, you would state your name
10 for the record, please?

11 MR. BRYANT: Robert Bryant.

12 (ROBERT BRYANT SWORN BY ATTORNEY.)

13 MR. BRYANT: I'm Robert Bryant. I'm the
14 fellow seeking to rezone the northeast corner of
15 Highway 54 and Jack Hinton Road to B-4 General
16 Business on it.

17 The northwest corner of Jack Hinton Road and
18 54 was just rezoned to B-4 General Business and a new
19 Dollar Store was built there and it's open. The state
20 has plans to widen Highway 54 to four lanes all the
21 way through Philpot on it. This is one of the fastest
22 expanding roads in areas in Western Kentucky.

23 When I was about five years old, I sat and
24 watched bulldozers and equipment build Highway 54
25 through the center of my farm that my family has owned

1 the majority of since 1903, 115 years on it. My
2 grandfather didn't like the idea of the road going
3 through the middle of the farm on it, but was told,
4 Owensboro is expanding to the east, and this is
5 progress, and this road would make this farm worth a
6 lot of money some day. The road was built and he was
7 told "that's progress."

8 About 1978 the City of Whitesville came to my
9 father on it and wanted to run a fairly large
10 waterline up the farm going to the city, in that area.
11 They needed four-hundredths of an acre for a pump
12 station on the corner of this property. It's a little
13 bitty spot right in here, and he got \$600 for it and
14 he was really happy. It was about 600 foot. That
15 also was progress in this area. New water line to
16 Whitesville, pumping station. Once again, it was
17 progress right there on 54 on it.

18 When the pumping station was built at that
19 corner, it began being used basically as a light
20 industrial site and it has been used ever since on it.
21 One of the reasons why that was not an issue is
22 because the City of Whitesville being a municipality
23 did not have to seek the rezoning in that corner at
24 the time to put the little pump station right there.
25 Seeing the Dollar store rezoning and getting ready to

1 be built there, the Dollar store coming up, I thought,
2 well, I'll wait until the Dollar store gets up, and as
3 you can see it's right here. It would be very logical
4 that we would rezone the other corner right there
5 beside it.

6 Well, when I went to seek about rezoning, I
7 couldn't believe what I was told. I was told that in
8 December, basically after the Dollar store opened,
9 that we have enacted, the Planning Staff, we've
10 enacted a new Comprehensive Plan. In this
11 Comprehensive Plan, we've drawn an imaginary line down
12 the center of this road and we don't think anything
13 ought to be rezoned on the other side of the road on
14 the thing. I was in shock with it sitting there right
15 on the other side of the road. I thought this was a
16 very biased opinion or decision that was made to do
17 this on it. Basically with the new Dollar Store
18 sitting on the corner we're told, we're going to stop
19 the zoning. The owner of that little corner sold it
20 for \$190,000, and I am told, you can grow soy beans on
21 your corner and I guess you could, you know, consider
22 4,500 or \$5,000 bucks for farm ground on it.

23 I asked this question: I said, if this
24 imaginary line was drawn down this road, I said, how
25 come 30 or 40 years ago we didn't draw this same line

1 at Fairview Drive and then we wouldn't have anything
2 out Highway 54? It would have stopped there and we
3 wouldn't have the expansion and the progress that has
4 grown out Highway 54, as we all know, that has changed
5 continuously over the last ten years and is continuing
6 to change as we speak.

7 In this Comprehensive Plan, it states in there
8 under the rural maintenance plan area, general
9 business uses are appropriate in limited locations.
10 We feel like this certainly meets that. The only
11 reason this is any larger than where the Dollar Store
12 is, is because in the '60s my grandfather had
13 considered building a home here. This was already an
14 existing survey on the corner of the farm. I didn't
15 want to have to spend another 2,500 or \$3,000 to
16 simply cut that little plat in half right there. That
17 is the only reason this shows any larger than where
18 the Dollar Store is sitting right now on the thing.

19 As we can see, the progress has just came out
20 54 continuously on it.

21 What I'm asking for is a reasonable business
22 zone and expansion of what already exist on the other
23 side of the road. As it states in the Comprehensive
24 Plan, business uses are appropriate in limited
25 locations.

1 You know, I'm not asking to go out here in the
2 middle halfway to Whitesville and rezone a spot or
3 anything like that. I don't want to put a nuclear
4 power plant there or coal mine or anything along those
5 lines. I just simply want to be able to have the
6 opportunity to do something compatible with what is on
7 the other side of the road right there.

8 From standing on my property right here, I can
9 see the new medical clinic that Charlie brought up is
10 being built; the hardware store; a restaurant; a grain
11 mill; and a sheet metal shop. All businesses right
12 here that I can stand on this corner and see from the
13 property that I own right there.

14 The property in front of the Dollar store it's
15 for sale. You can see the sign right there. It's
16 kind of hard to see it, but there's a sign right
17 behind the Dollar store. That property is also for
18 sale, but yet I'm told you can't do anything but grow
19 soy beans on your corner is what I'm being told by the
20 Planning Staff on it.

21 Once again, what I'm asking for is stated in
22 the Comprehensive Plan, a limited reasonable B-4
23 expansion right here. And it states in the
24 Comprehensive Plan that that is acceptable and I would
25 ask for you all to approve this zoning request. Thank

1 you for your time.

2 MR. KAMUF: Steve Conkright.

3 MR. CONKRIGHT: My name is Steve Conkright. I
4 live at 5065 Jack Hinton Road.

5 (STEVE CONKRIGHT SWORN BY ATTORNEY.)

6 MR. CONKRIGHT: I am probably the closest
7 residential neighbor to this property. I personally
8 do not object to it. Of course, the presentation as
9 you know was fairly complete. I'm going to be brief.
10 I don't have a problem with it. The Dollar General
11 store is on the opposite corner. It looks fine. I
12 have no gripe for him to put something on the opposite
13 corner. Not a problem. Any questions?

14 (NO RESPONSE)

15 CHAIRMAN: Thank you.

16 MR. KAMUF: Martin Hayden.

17 MS. KNIGHT: Please state your name.

18 MR. HAYDEN: Martin Hayden.

19 (MARTIN HAYDEN SWORN BY ATTORNEY.)

20 MR. HAYDEN: Charlie mentioned Thruston. When
21 I went up there to rezone that, they told me no way.
22 The line was right in the middle of 144, turned down
23 405. All that section through there and across the
24 road where I built hardware store, no, you can't do
25 that; the comprehensive Plan won't let you do it.

1 That don't make sense to me. I said, all these other
2 people build whatever they want to on the property. I
3 said, what do I need to do; bring it before the board?
4 Yes.

5 I got Charlie to take care of the paperwork
6 and everything as my attorney. He said, why don't you
7 get a petition to show that nobody in that area
8 objects to a hardware store there. So that's what I
9 did. I talked to all of them. Explained what I was
10 doing. They were all in favor of it.

11 Well, since then I got that part rezoned,
12 built a hardware store, and sold it after seven, eight
13 years. Somebody wanting it worse than I did. That's
14 beside the point.

15 The Dollar General store on that side of the
16 road. There's another piece of property between that
17 property and the Dollar General store, and that's
18 zoned commercial and it's expanded.

19 I give you a little example about expanding.
20 I'm a farmer, raise cattle. If I don't move my
21 property lines and expand my pastures, I'm dead. I
22 can't do nothing. I can't raise no more cattle, make
23 any more money. It's not the same thing, but the same
24 idea. You tell this farmer on this side he can sell
25 his property and be zoned for it, and the other guy

1 right across the road can't do that. The
2 comprehensive Plan says you can't do it. Why?
3 Because the Comprehensive Plan, they come up with a
4 plan what we should follow. But when you fill that
5 plan up, then you should change and go ahead move the
6 line, if you want to move it. I don't understand the
7 line to start with. I was on the Board for 12 years
8 and never did understand it. That's my opinion of it.
9 I just think that it should be rezoned and not let the
10 line stop it, because you're stopping progress when
11 you're doing that. No matter what you say, the
12 progress coming out 54 is really, really expanding.
13 We won't see it. I won't see it. One of these days
14 Whitesville and Owensboro will be tied together.
15 That's all I have to say. Thank you.

16 CHAIRMAN: Thank you.

17 MR. BERRY: My name is Curtis Berry. I live
18 at 5573 Pleasant Point Road.

19 (CURTIS BERRY SWORN BY ATTORNEY.)

20 MR. BERRY: It makes logical sense that there
21 is a Dollar Store on that corner. I don't see any
22 reason why there can't be something on the adjacent
23 corner. I own the property on the other side of 54,
24 the next corner.

25 MR. KAMUF: Can you show them where you own

1 the property?

2 MR. BERRY: This is Robby's corner here, and I
3 own the property on this corner right here.

4 It may also benefit me some day down the road.
5 We're in a fast growing community and have been for
6 years. Everybody, I suppose agree, we live in a fast
7 lifestyle, a fast pace, and convenience is something
8 we're all looking for in our life. I'm glad the
9 Dollar Store is there. Very convenient for me and my
10 family, you know. Every day, you go through the
11 intersection every day. I won't be opposed to
12 something being on the other side.

13 MR. O'BYRAN: I'm Larry O'Bryan.

14 (LARRY O'BRYAN SWORN BY ATTORNEY.)

15 MR. O'BRYAN: My address is 5117 Pleasant
16 Point Road, which I live about two-tenths of a mile
17 from where this property is.

18 Me and my wife have no problems with this
19 property being rezoned. As a matter of fact, we
20 really enjoy the Dollar General, especially my wife.
21 I've been a CPA and financial adviser for about 50
22 years and I'm pro-business. I believe in expansion.
23 I believe in development. My observation is that your
24 Staff wants to slow economic development. Not expand
25 it. This is my second meeting in a roll, and that's

1 my observation.

2 You look at the river on the north. We had a
3 proposal last meeting on the west end, and you all
4 voted not to do that.

5 You look at the south, it's low land. So
6 where are you going to expand? You're going to either
7 expand from the east or from the west. To draw an
8 imaginary line at Jack Hinton and say, we're not going
9 to allow no economic development beyond this I think
10 is foolish. I mean you could have said that from 142
11 to Fairview Drive and beyond. Looks like to me you
12 need to review your Comprehensive Plan every now and
13 then and make it work for the residents here and be
14 for economic development.

15 If you have any questions of me, I'll be happy
16 to answer any questions.

17 (NO RESPONSE)

18 CHAIRMAN: Thank you, sir.

19 MR. KAMUF: That's our case. Thank you for
20 listening to me. I apologize for taking so long, but
21 this is a big case for Robby.

22 CHAIRMAN: Anyone else in the audience that
23 speak for or against this particular application?

24 (NO RESPONSE)

25 CHAIRMAN: Anybody have any questions of Mr.

1 Kamuf?

2 (NO RESPONSE)

3 CHAIRMAN: Do any commissioners have any
4 questions about the application?

5 Mr. Ball.

6 MR. BALL: I've got quite a few questions
7 actually. Probably a lot of them directed toward
8 Staff.

9 I would consider myself very pro-development.
10 I think you guys hear me say on multiple occasions
11 that I ask, does this set a precedent or not. That's
12 one of those things that worries me on a lot of
13 occasions.

14 With that being said, I think Charlie has
15 provided two or three different cases that he thinks
16 are precedent. I think they have somewhat gone
17 through in the Staff Report, but I rely heavily on
18 precedent too. Charlie's thoughts are that the
19 precedent is apples to apples. What does the Staff
20 think? Are these precedent, are they apples to
21 apples; are they apples to oranges? What are we
22 looking at? Do you follow?

23 MR. HOWARD: Yes, I follow what you're saying.

24 The example on 144, according to the
25 information that was provided, that was in a future

1 urban plan area which is actually a subsection of the
2 urban service area.

3 So, no, I don't think that's an apples and
4 apples comparison in this instance because this
5 property is located in a rural maintenance plan area.
6 To my knowledge there's never been an expansion
7 outside of the rural community of B-4 zoning under
8 rural maintenance plan area.

9 So this was an example in the urban service
10 area where a request was made. Staff didn't recommend
11 approval of it, but it got approved.

12 For the Cabbage rezoning, that's an example
13 of, yes, Staff recommended denial. The Planning
14 Commission recommended approval. But again, I don't
15 think it's an apples to apples comparison because if
16 that property come in with a request for a B-4 zoning
17 based on Chapter 15 of the Zoning Ordinance, we would
18 not have taken the application. The only reason we
19 could take application here was because there is a B-4
20 zoning across the boundary in the rural community.

21 Then the Hobbs Road zoning. Mr. Kamuf is
22 correct; that property was partially in a rural
23 community plan area, partially in a rural maintenance
24 plan area. If it had been in a rural maintenance plan
25 area in general, no rural community, we would not have

1 been able to take application. The only reason that
2 we took application on that was because it was
3 partially in a rural community plan area.

4 The zoning ordinance is very specific as far
5 as in order to go to B-4 zoning you have to meet
6 certain criteria. I think what I'm hearing from
7 Mr. Kamuf and others are that the comp plan should
8 allow along a corridor like Highway 54 for B-4 zoning
9 to expand. If that's the instance, then I guess we
10 need to look at along Highway 54, and 231, and 431,
11 and 56, and 81, all those corridors that we need to
12 put them in a rural community, I guess, where we can
13 take application for B-4 zoning if it's not a logical
14 expansion.

15 That's the concern we have as Staff. Once it
16 gets out of a rural community plan area, then it's a
17 logical expansion.

18 If there was B-4 zoning in the rural
19 maintenance plan area right now, we would recommend
20 approval of this application. We would have, but this
21 is taking B-4 zoning outside of the rural community
22 where the Comp Plan says under a goal of within a
23 rural service area where emphasis is placed on
24 protecting agricultural land from urban encroachment,
25 the following policies apply. One of those is in

1 rural areas outside of rural communities, which this
2 property is located, urban type residential,
3 subdivision development, small lot rural housing and
4 other general urban-related commercial, industrial or
5 single activities should be discouraged outside of
6 designated rural communities.

7 The Comp Plan, the way it's set up, is there
8 are lines. This is an example where the boundary
9 follows Jack Hinton Road. That didn't change with
10 this last Comp Plan update. The boundary of the
11 Philpot is the way it has for ages, for a long time.
12 That didn't change with this last update.

13 They're correct. There was a B-4 zoning on
14 the corner. We know that it's there.

15 There is a medical clinic that has been
16 developed in Philpot. There's another -- and the
17 Dollar General, those are the only, in the last
18 several years, the only kind of changes that have
19 taken place in this area. To get to the other
20 development on Highway 54, to get to Thruston Dermont
21 Road, you're looking at three and a half miles in.

22 That's the concern we have. Once it gets
23 outside of a rural community, it can go all the way
24 potentially to Whitesville along that corridor. If
25 that's the will of the community, the next Comp Plan

1 update, if that's the will of the elected officials in
2 the community, that's something we need to look at,
3 but that's not the way the Comp Plan has been set up
4 and that's not the way that it is now. I hope that
5 answers your question.

6 MR. BALL: I guess on that same note that was
7 something else I wanted to ask about.

8 Really the thought process of the line, which
9 was not new, but the thought process of the line is
10 to, I guess, as far as good planning for the community
11 is to keep it from being urban sprawl; is that fair?

12 MR. HOWARD: Yes. Mr. Kamuf is correct.
13 We've seen a tone of Dollar General that have popped
14 up in the community. We've had five or six of them
15 out in the rural community. Every one of those have
16 been in a rural community. There's not been one
17 developed that's been outside of a rural community.

18 I can't say what I've looked back through
19 every rezoning in the last 14 years since I've been
20 here. I don't recall a single rezoning for commercial
21 use in the rural area that wasn't in a rural
22 community, or within the Whitesville service area, or
23 within the urban service area boundary that is outside
24 city limits. So when commercial development has taken
25 place outside of the urban service area boundary, it's

1 taken place in rural communities. Again, that's the
2 way the Comp Plan is geared. When we get outside of
3 that, then that's going to promote sprawl. As a
4 planner that's part of what we look at. That's part
5 of what we try and evaluate on any rezoning, on any
6 kind of development practice. It's not an effort to
7 work development or whatever. The idea is to have
8 development take place in areas where the
9 infrastructure and things like that are available to
10 it. Not all the way out 54, not all the way down 431,
11 that kind of thing.

12 MR. BALL: I guess I just have one more. I
13 don't know if it's a question or comment here.

14 So if we're not wanting -- as a Staff, and as
15 a commission, as a town, we really need to think about
16 what we're going to do with that sprawl, if we want it
17 to move out further or not.

18 I guess one of my concerns, and I don't know
19 how quickly that occurs, but even tonight we've heard
20 that there are other properties here in the area that
21 may be interested in rezoning and kind of with
22 Mr. Hayden's case as well. It was rezoned, but once
23 it was rezoned it also opened up the opportunity for
24 other areas to be rezoned.

25 MR. HOWARD: Sure. Once B-4 zoning is

1 established, it's a very desirable zone and there will
2 very likely be the potential for expansion or request
3 for expansion.

4 In this instance here, just going back to what
5 I was talking about in the zoning ordinance. If the
6 Dollar General wasn't there, if B-4 zoning was not on
7 that corner right now, we would not have been able,
8 the zoning ordinance would prohibit us from even
9 taking application.

10 MR. KAMUF: Let me take issue with that.

11 In 2013, Mr. Little on Hobbs Road came to
12 Charlie Kamuf and said, I would like to get that
13 property zoned. That's the one we just talked about,
14 2013. I don't think you were the director. I think
15 Noffsinger, Gary Noffsinger was. So I came and asked
16 the Staff, I said, they want to get this property
17 zoned and it's in a rural maintenance area and also --
18 the Staff says, we will not take an application. So I
19 don't turn many cases, if I bring a case over here I
20 think it's winnable. If the Staff wouldn't take an
21 application, how am I going to win a case.

22 So I told Mr. Little, I said, I can't come
23 over here because the Staff won't take an application.
24 So I'm driving down the road on Hobbs Road and I
25 see -- let me tell you what it is. It's an area, if

1 you pull up on your careen, it's an area right behind
2 Whittaker store. The guy, what he wanted to do was
3 continue to sell golf carts. The Staff would not take
4 my application. I'm driving by there and I said, I
5 wonder how they got that zoned? The man himself made
6 an application and he got it zoned, but they told me
7 they wouldn't take my application.

8 When I first got involved in this case, I come
9 over here at the Planning Staff in August. I kept
10 pushing. I've known Robby for years. I've
11 represented Robby for years. I said, Robby, the
12 minute they get that property zoned out there on Jack
13 Hinton Road, you need to make application.

14 When I came over here, the first thing they
15 told me, we're not going to take an application.
16 Really? So we come back and they let me have an
17 application.

18 This deal about an application I'm telling you
19 what happened top Mr. Little on Hobbs Road, and I felt
20 bad. Here I told this man I couldn't get an
21 application. Then later on he applied, he got it
22 zoned. You got to treat everybody the same. That's
23 my position here.

24 I can't imagine a stronger case than Martin
25 Hayden at Thruston where we had the same facts, the

1 same situation. We had a boundary line issue, and I
2 think Roger, he'll tell you, Roger Anderson was the
3 director then, and they said, we're not going to let
4 you cross 144 and build a hardware store. The Board,
5 they didn't follow the Staff Report. The Staff Report
6 was strong. They did what was discretionary. You
7 have the discretion to do in this, to use the
8 Comprehensive Plan as a guide or the Staff Report as a
9 guide, but you've got an obligation to use it as -- it
10 has to be -- it can't be inflexible. You need to tell
11 me we're doing something bad for the county by getting
12 2.75 acres zoned at an intersection, at an
13 intersection. And we have precedent because that case
14 of Martin Hayden's was exactly the same thing. But to
15 say you can't use discretion you might as well do away
16 with the Planning and Zoning Board. What are we
17 talking about expansion? I read you exactly what the
18 land use is. It talks all about expansion.

19 Manuel, I didn't mean to -- I'm trying to help
20 instead of hinder. Maybe help my side.

21 MR. HOWARD: I guess I have a couple of
22 comments on that.

23 The Hobbs Road rezoning, you are correct.
24 When they initially came in, and I looked through the
25 file recently, we did tell them they couldn't ask for

1 that. With GIS, when we were able to go in and
2 actually look at parcel layer information, that was
3 when there's not a street in the vicinity. So the
4 rural community boundary line was somewhat nebulous.
5 It was just drawn in. We went back and looked at the
6 old Mylars. If my memory serves, Becky Stone was the
7 lead on that case. We looked at the Mylar Map, we
8 looked at GIS and determined that a portion of it was
9 in the rural community plan area and that's what
10 allowed the application to take place.

11 I would disagree that the one on, Mr. Hayden's
12 on 144 is apples to apples comparison. Again, it was
13 not an expansion of B-4 zoning inside a rural
14 community to outside rural community. There may have
15 been this, you know, 144 was some type of boundary,
16 but it was within the urban service area, in a future
17 urban plan area. So that's an area that is
18 anticipated for growth, but you need to have sewer, or
19 road infrastructure, things like that available. It's
20 anticipated that they would get there at some point.
21 When it does, then would be open for zoning potential.
22 I don't think that's an apples to apples comparison.

23 MR. KAMUF: My answer to that is: It was in a
24 future urban plan area. A future urban plan area is
25 the same thing as a rural maintenance area, in my

1 opinion. That's what that property was out in
2 Thruston with the Martin Hayden case. I disagree with
3 Brian.

4 CHAIRMAN: Any other questions?
5 Commissioner Boswell.

6 MR. BOSWELL: Yes, a number of question.
7 We've heard a lot of information. Some of it is
8 really hard to follow at some point in time.

9 Whenever the new comp plan was adopted, I'm
10 assuming -- I haven't seen the new comp map or
11 anything at this point. Nothing changed on the land
12 key designation as far as what is in a rural
13 maintenance and what's in a rural community. Correct
14 me if I'm incorrect, Mr. Howard.

15 It looks like everything from the Dollar
16 Store, I guess that would be back toward Owensboro
17 area in, in the Philpot area, everything that was done
18 that sort of, I guess, talked to counsel's definition
19 of expansion, you know, great expansion. That was all
20 done within that rural maintenance area which was
21 acceptable at that point in time, correct?

22 MR. HOWARD: So you just used the term "rural
23 maintenance," but I believe you intended to say rural
24 community, correct; where the development is taking
25 place?

1 MR. BOSWELL: That's right.

2 MR. HOWARD: The boundary line in the last
3 comp plan update, the Philpot rural community did not
4 change to answer your first question.

5 MR. BOSWELL: Thank you.

6 The other thing I'm a little bit puzzled
7 about, and I know this is associated to the expansion
8 in general business areas. The statement in Section
9 15 actually states that in order to assure and to
10 accommodate logical expansion to existing business
11 areas there's certain criteria in order to look at a
12 B-4 zoning. One of that criteria is that such larger
13 tract must be located within the designated service
14 area of a rural community in Daviess County; which
15 obviously this would not be located in that particular
16 service area.

17 MR. HOWARD: Yes. There are three basic
18 criteria. One is that it's within the Owensboro belt
19 line on an arterial type street or as a new location
20 potential. Another is that it's a logical expansion
21 along an existing corridor. Then there's criteria for
22 that within a rural community. That's where as we
23 discussed, and I've said, and I would stand by this,
24 if there was a B-4 zoning already adjoining this
25 property in the rural maintenance plan area, we would

1 have been able to recommend approval of this
2 application. It doesn't existing in a rural
3 maintenance plan area. We're expanding it outside of
4 the rural community; which the way the goals and
5 objectives are setup in the Comp Plan, it discourages
6 that from taking place.

7 MR. BOSWELL: Thank you, Mr. Howard. I may
8 have some more questions later.

9 CHAIRMAN: Mr. Ball.

10 MR. BALL: I guess as far as the Comp Plan
11 itself and the land use map, you said that Charlie had
12 stated that he had looked at this in August. Were you
13 aware of that line in August, where that designated
14 line along Jack Hinton Road was?

15 MR. KAMUF: Let me show you this. I didn't
16 necessarily want to bring it up, but let's talk about
17 it.

18 I spent about two hours just making this
19 paragraph. We went over and talked to the Staff. If
20 we had filed my motion for rezoning in August, came
21 over -- I really came over about three times. I think
22 Brian will tell you that. You know, I was concerned.
23 My client he said, we need to get my property zoned
24 too. If we had filed the application in August, when
25 we went over to talk to the Staff to discuss the

1 rezoning, there would be no question, no question that
2 we would satisfy the question of KRS 213 Subchapter
3 Number 3 where it says, "major socioeconomic physical
4 changes required by KRS of the Comprehensive Plan as
5 it existed at that time."

6 You understand, if we would have been told in
7 August that the Comprehensive Plan was going to be
8 changed, we could have applied in August, had a major
9 change. There's no question a major change. It
10 happened in March. It happened at that intersection.
11 If I had been told at that time, we would have applied
12 that day that they were going to change the plan.
13 When I heard and saw in the report here that they
14 changed the Comprehensive Plan after I had already
15 talked to them, it really concerned me. I didn't aim
16 to bring that up. You understand what I'm telling
17 you? If in August I would have applied, we would have
18 met the requirements of KRS that there had been a
19 major physical, socioeconomic changes which were not
20 anticipated in the plan, what would that be? It just
21 takes one. That would have been the rezoning of that
22 property in March. Nobody told me it was going to be
23 changed.

24 MR. BALL: Did it change though; did the line
25 change?

1 MR. HOWARD: No.

2 MR. BALL: I guess I'm confused. Maybe I
3 should be more forward. The reason for my question
4 was, if you knew that the line was there, I guess I
5 would feel much more comfortable about this if we had
6 the conversation in -- when did we do the Comp Plan,
7 December? If we had looked at the amendment to the
8 Comp Plan in December and this was kind of brought to
9 our attention and somebody came up and said, hey, this
10 is what your new Comp Plan is that you're getting
11 ready to adopt, but we think that there needs to be
12 more growth in that area. I guess I'm feeling more
13 comfortable about the application at that point in
14 time. I guess I'm confused as to why you knew that
15 the Comprehensive Plan had a cutoff there.

16 MR. KAMUF: I didn't know that. I had no idea
17 that there was going to be a cutoff. All I did -- and
18 the reason we came over because of that picture.
19 Robby kept saying, I don't want to apply until such
20 time as I can have a picture of that Dollar General
21 store in the rear. He said, that should be sufficient
22 to allow the Board to see that it would be a logical
23 expansion because they're talking about so many feet
24 across the road.

25 When I came over in August, I had no idea they

1 were going to change the Comprehensive Plan. Am I
2 missing something? You understand, if I come over in
3 August, I file an application. We don't qualify
4 necessarily under a logical expansion, but we qualify
5 completely under there. Has there been a change in
6 the area, a physical socioeconomic change? Sure there
7 has. We just got the property zoned in March. That
8 would have been -- that's a slam dunk. If I had filed
9 this application in August -- you're before the Board,
10 you've got to make a decision. Was there a major
11 change that was not anticipated in the Comprehensive
12 Plan? Yes. We just had one.

13 Our other argument is, if that property was
14 zoned on that corner, wouldn't it automatically at an
15 intersection, the zoning on the other side or to look
16 at it and say, we're not going to use a boundary line.
17 This is change.

18 I'm missing something and I don't know what
19 I'm missing.

20 MR. HOWARD: I would like to say, when the
21 Dollar Store was rezoned, it met the criteria of the
22 Comprehensive Plan, it's in a rural community.

23 MR. BALL: It was anticipated.

24 MR. HOWARD: The rural community is the area
25 outside of the urban service area where commercial

1 development should be focused. It's anticipated
2 within that rural community that commercial type,
3 industrial office, residential development would take
4 place. Absolutely nothing in regards to the Comp Plan
5 changed from March to August to today as far as what
6 you're talking about. The land use map didn't change.
7 The language in the Comp Plan didn't change. The
8 boundary of this rural community didn't change. You
9 know, my question would be, it should automatically
10 change once the rezoning happened. Where do we stop
11 it at? There's a very logical line there. There have
12 across the street where the Dollar Store is there had
13 been an industrial tire storage place there for a long
14 time. Jack Hinton Road has been the cutoff from where
15 anything urban-like had been located from basically
16 there on into Whitesville it had been in a rural
17 agricultural farm type residential uses. Nothing with
18 that boundary changed. I guess I'm a bit confused as
19 far as what the difference is there.

20 MR. KAMUF: Let me ask you this: What's wrong
21 with good planning to zone an intersection? I didn't
22 go to out to Whitesville. I just adjoined property of
23 a 2.75 acre. You say, it's all bad. Wait a minute.
24 That's what the Staff -- you guys are authority. You
25 guys have gone to school. You know how to do it, but

1 to say you can't join -- it's an intersection. To say
2 that good planning, after we got the property across
3 the road zoned in March, that good planning wouldn't
4 say, wait a minute, this thing is coming. We got -- I
5 didn't ask for 10 acres. It says, in a rural
6 maintenance area, a limited area. We won't overburden
7 the streets. It just looks like to me good planning
8 would have required you, after I got the property
9 zoned in March to look at this intersection and say,
10 this is going to happen on 54. We're not -- you
11 understand, you got to stop. I understand. You don't
12 want to take care of infrastructure. You've got to
13 worry about that. I've looked at that rural service
14 area. What I'm saying is it's changed at that corner.
15 You just can't block it out and be blinded that this
16 didn't happen, and that across the street -- all of
17 these stores are commercial is coming. For you not to
18 say, to take some consideration in the Comprehensive
19 Plan and say, you're not going to do something with
20 that corner, as far as a commercial activity. I'm not
21 a planner. It looks like to me that you had to look
22 at that and you had to shift the line. It caused you
23 at that time to say, wait a minute, activity out here.
24 This is the fastest growing place in Western Kentucky.
25 We're going to have to do something about this

1 intersection at this corner. I might be wrong. I'm
2 doing the best I can.

3 MR. HOWARD: I get what you're saying. My
4 question would be: Okay, let's say we looked at it.
5 We expanded the rural community because the Dollar
6 Store went in along this intersection. Likely the way
7 that it would have been looked at would have been the
8 one corner parcel, you know, that probably would have
9 been a logical spot to stop it. You're requesting 2.7
10 acres. So I guess my question would be: We expanded
11 out the rural community a little bit, included some
12 area there in that intersection. Would you then
13 argue, if that corner got rezoned and then his
14 adjoining property he wanted to get that B-4 as well,
15 and then the next neighbor on down, would you not be
16 here making the same case to expand those as well?

17 MR. KAMUF: I would.

18 MR. HOWARD: That's our concern.

19 MR. KAMUF: That still doesn't do away with
20 the fact that this corner is ready to be developed and
21 you have to shift. I know it's complicated. I'm not
22 trying to tell you it's not complicated for the Staff
23 to make these decisions, but the Planning Staff has to
24 make a decision on expansion of commercial on 54.
25 They have to recognize it's coming, and it's not going

1 to stop at Jack Hinton Road. This is not an
2 application where I asked for something up at one of
3 those other streets up there. It's happening,
4 expansion. Why do we have that word in the land use
5 word, "expansion." Expansion, that's this is, an
6 expansion. I think the Staff has to look at it and
7 come up with some affirmative answer that this is
8 going to change.

9 In 2015 Gateway Common is coming. They're
10 getting ready to widen 54 to four lane traffic, just
11 to take care of additional traffic that's coming,
12 especially out at this intersection. I hope I'm not
13 bothering you. I just feel very strongly about this.

14 CHAIRMAN: Commissioner Reeves.

15 MR. REEVES: Mine is going to be more of a
16 comment. You may want to respond, Mr. Kamuf.

17 I'm more concerned about urban sprawl than
18 anything else. I'm concerned about in 20, 30 years
19 Highway 54 is Triplett Street. Have we consumed all
20 of the available useable B-4 property to the west of
21 this intersection?

22 MR. KAMUF: Let me help you; can I?

23 MR. REEVES: Yes.

24 MR. KAMUF: I own a Family Dollar Store. I
25 work with the people that -- Susan Cox owns the Dollar

1 General Store. I talked to them at a Family Dollar
2 Store and they said, go out on 54 and try to find some
3 property. I knocked on 142. I forgot who the people.
4 You're dealing out there with real estate out there.
5 142, the property is astronomical. You can't find any
6 property. I could not find a location for Family
7 Dollar to build on 54. Now that was before they got
8 this property that's a Dollar General store got lined
9 out. It's not out there. You're going to have to
10 expand if you're going to find any location.

11 Now, the property across the road over here,
12 this property here and this property, that's low.
13 That doesn't help you as far as the long range plan.
14 In answer to your question, I personally, I asked two
15 people to give me a price because Family Dollar, the
16 difference in Family Dollar and Dollar General is that
17 Dollar General, Susan Cox has 350 of them and she
18 builds them all, but a Family Dollar Store, you can
19 build it and you can own it. So I looked all up and
20 down that road and, Freddie, I couldn't find any
21 property that was available. Nobody would put a price
22 on it. That one lady -- she's out there by that True
23 Value. I said, put a price on it, and she wouldn't.
24 I'm trying to answer you honestly. I think I have.
25 It's gone. You can't find it.

1 CHAIRMAN: Any other questions?

2 MR. BOSWELL: Thank you, Mr. Chairman.

3 This may be a question for Mr. Howard and
4 counsel may want to add to it.

5 On one of the Type II Findings that you have
6 to substantiate your application, you made mention
7 about major changes in the Highway 54 area, but those
8 changes in my mind have really occurred from Thruston
9 Dermont Road back towards Owensboro more than they
10 have occurred from Thruston Dermont Road to Jack
11 Hinton Road. There have been changes, but not
12 significant major changes.

13 MR. KAMUF: I put that on about convenient
14 store just to answer that question. They've tearing
15 down buildings so they can build something out there.

16 MR. BOSWELL: I mean it's something like six
17 miles I think from the Gulfstream properties to where
18 this is at.

19 I guess I'm struggling to understand how
20 you're justifying that as major changes. Because
21 really --

22 MR. KAMUF: The major change in the area when
23 you've got the property zoned at Jack Hinton Road in
24 March. Isn't that a change? You got this property.
25 This property right here and behind it were zoned

1 industrial. Those properties are not zoned B-4
2 necessarily. They're industrial property. There's
3 all kind of mixed zones out there. Where that Dollar
4 General store used to have a tire reprocessing plant.
5 It was industrial. They got it changed from
6 industrial to B-4.

7 CHAIRMAN: Anyone else?

8 (NO RESPONSE)

9 CHAIRMAN: Mr. Kamuf, are you finished?

10 MR. KAMUF: That's the best I can do.

11 CHAIRMAN: Any other commissioners?

12 MR. EDGE: Can I make a comment?

13 CHAIRMAN: Sure.

14 MR. EDGE: I think it comes down to this,
15 guys, for us as the commissioners, or at least from my
16 point of view, and if I'm mistaken let me know.

17 Mr. Bryant, you make a propelling case in
18 regards to it being adjacent to B-4 and on the corner
19 of 54. The precedent argument I think they
20 crisscross. I think they're very confusing. On the
21 other side of the coin, I think the Staff does a great
22 job in regards to the Comprehensive Plan. I think our
23 decision really comes down to the fact that do we want
24 to make a variance against the Comprehensive Plan in
25 the fact that this is adjacent or across the road from

1 existing B-4. Basically I think it comes down to that
2 decision. Are we open to make an exception to the
3 Comprehensive Plan, understandings the precedent being
4 set and the fact that it's on the 54 corridor. I'm
5 incline to say, yes, for that reason simply because
6 Mr. Bryant can look at the property across the street
7 at Dollar General and it is on the corner of 54. I
8 don't the precedent arguments line up well for me, but
9 I think the one that does is the fact that, you know,
10 it is an imaginary line. It is extremely close to a
11 B-4 development already. I don't see it stretching
12 that too far for the record.

13 CHAIRMAN: Thank you.

14 MS. KNIGHT: Mr. Chairman, if I could just add
15 something. There's been a lot of discussion about
16 precedent and previous decisions. This has come up at
17 other Planning Commission meetings as well.

18 Mr. Reeves asked the question a lot about precedent.
19 My position, and I would submit to Mr. Kamuf, this
20 Planning Commission is not bound by previous decisions
21 at other property locations. I've said this before.
22 Each application stands on its own merits. These are
23 different properties. I agree there are similarities.
24 I also agree there are differences, and the Planning
25 Commission should consider all of that as a whole how

1 it relates to the Comprehensive Plan in making its
2 decision. I hope that helps clarify some of those
3 issues.

4 CHAIRMAN: Thank you.

5 Anyone else.

6 MR. REEVES: One more comment. I think I
7 piggyback off Mr. Edge.

8 What we're seeing here is inevitable. It's a
9 matter of whether or not do we recognize that it's
10 inevitable and deal with it as kind of an exception to
11 the current plan or realize that the next time the
12 plan is done, I think we would be foolish to approve
13 one that didn't recognize that there's going to be
14 development out this corridor. I appreciate the
15 Staff's work on it, and maybe we just didn't
16 anticipate the rapid growth that's taking place in the
17 current plan when we adopted it that it's taking
18 place. It's like throwing a seed out on a fertilized
19 ground.

20 MR. EDGE: You mentioned the Staff. You guys
21 did the job, do what you're supposed to do, which is
22 stay within the Comprehensive Plan. So totally
23 commend that. What they're asking for is an
24 exception. This is exactly what I want our Staff to
25 do, is stay within the Comprehensive Plan. I have no

1 problem with their denial, but I do understand making
2 variances. And to Terra's point, I'm not bound by
3 previous precedent, and I don't think even the
4 precedent -- I think all the other ones actually fit
5 within the Comprehensive Plan and being able to zone
6 it properly.

7 In this case, we're being asked to step
8 outside of the Comprehensive Plan in regards to where
9 the line is and what we decide in the Comprehensive
10 Plan, but the reality is there is expansion going on
11 here. It is foreseeable. Mr. Bryant makes a great
12 case. He can see the property right across the street
13 and it is on the 54 corridor. It's without exception
14 to Fred's point, it's happening. I'm in favor of
15 making this variance without being held to precedent
16 in the future.

17 CHAIRMAN: Thank you.

18 Mr. Kamuf.

19 MR. BRYANT: The only thing that I have to
20 add, I'm not real versed in this, but my point is
21 looking here at what we see. In the Comprehensive
22 Plan, it still even in that Comprehensive Plan was my
23 understanding it does allow for reasonable limited
24 expansion on it. This certainly would be a limited
25 expansion being right on the other side of the road

1 from that. If anything ever was a reasonable limited
2 expansion, that this certainly would fit that criteria
3 would be my thought, and I appreciate your all's time
4 on everything.

5 CHAIRMAN: Thank you very much.

6 Mr. Ball.

7 MR. BALL: How often can we look at the
8 Comprehensive Plan?

9 MR. HOWARD: State law requires it be updated
10 every five years.

11 MR. BALL: Can we look at it more often?

12 MR. HOWARD: You could. I mean you're talking
13 about -- yes, you could. You're talking about public
14 hearings and whatnot in order to go through the
15 process to amend the Comp Plan.

16 MR. BALL: So it would probably not make sense
17 to change the Comp Plan to change one boundary?

18 MR. HOWARD: Personally I would say, no, not
19 on such a short timeframe from when it was such
20 approved.

21 Now, if this zoning is approved tonight, then
22 certainly in the next update we'll be looking at where
23 this rural community boundary would go.

24 CHAIRMAN: I think we have asked all the
25 questions we need. Now chair is ready for a motion.

1 MR. KAMUF: Whatever happens, I want to thank
2 you. You've been very attentive and this is what the
3 Board is for. Whatever happens I want to thank all of
4 you for being attentive and asking questions and
5 trying to get to the truth of it.

6 CHAIRMAN: Thank you.

7 Still looking for a motion.

8 Mr. Ball.

9 MR. BALL: I would like to make a motion for
10 denial based on the Staff's Recommendations and
11 Findings of Fact 1 through 6.

12 CHAIRMAN: We have a motion for denial. Do we
13 have a second.

14 MR. BOSWELL: Second.

15 CHAIRMAN: Second by Mr. Boswell. Any
16 questions from any commissioners about the motion or
17 the second?

18 (NO RESPONSE)

19 CHAIRMAN: All those in favor of the motion
20 please raise your right.

21 (BOARD MEMBERS LARRY BOSWELL, BEVERLY McENROE,
22 MANUEL BALL AND ANGELA HARDAWAY RESPONDED AYE.)

23 CHAIRMAN: All opposed.

24 (BOARD MEMBERS IRVIN ROGERS, LARRY MOORE,
25 LEWIS JEAN, MICHAEL EDGE, JAY VELOTTA AND FRED REEVES

1 RESPONDED NAY.)

2 CHAIRMAN: Four to six.

3 Now the Chair is ready for another motion. Do
4 we have another motion?

5 MR. EDGE: I make a motion, but I don't know
6 how to state it against the denial, but I'm in favor
7 of their request for the rezoning. I would like to
8 make a motion for the rezoning.

9 MS. KNIGHT: If you're going to make a motion
10 to rezone, the motion needs to include findings of
11 fact and the finding that it either is or is not in
12 compliance with the Comprehensive Plan and those type
13 of things. I think Mr. Kamuf have provided some
14 potential.

15 CHAIRMAN: Commissioners Reeves.

16 MR. REEVES: I make a motion to approve this
17 application based on the fact that the applicant is in
18 compliance with the Comprehensive Plan in that the
19 Comprehensive Plan allows for logical expansion onto
20 contiguous land that generally abuts the street.

21 MR. EDGE: Leave it at that because I don't
22 want to go too far into precedent. Stop right there.
23 I want to be clear about that in the fact that it's on
24 Highway 54. I would be careful the way you state the
25 rest.

1 MR. REEVES: Fact Number 2 --

2 MR. EDGE: That's where I disagree; that's why
3 I want you to be careful.

4 MR. REEVES: -- that there have been other
5 similar rezoning situations in the past where the
6 Board has deviated from the Comprehensive Plan, and
7 that this seems to be -- those are the two facts that
8 I would present.

9 CHAIRMAN: Thank you, Mr. Reeves.
10 Was that good enough?

11 MS. KNIGHT: There's some findings there. So
12 Mr. Reeves has made a motion. We need a second.

13 CHAIRMAN: We need a second.

14 MR. EDGE: Second.

15 CHAIRMAN: Second by Commissioner Edge. All
16 those in favor of that motion raise your right hand.

17 (BOARD MEMBERS IRVIN ROGERS, LARRY MOORE,
18 LEWIS JEAN, MICHAEL EDGE, JAY VELOTTA AND FRED REEVES
19 RESPONDED AYE.)

20

21 CHAIRMAN: All those opposed raise your right
22 hand.

23 (BOARD MEMBERS LARRY BOSWELL, BEVERLY McENROE,
24 MANUEL BALL AND ANGELA HARDAWAY RESPONDED AYE.)

25 CHAIRMAN: Motion carries six to four.

1 MR. KAMUF: Thank you. You all are very
2 important to the community. Do you realize that you
3 control the community. In whichever way it went, you
4 listened. Thank you very much.

5 MAJOR SUBDIVISION PRELIMINARY PLATS

6 ITEM 6

7 Angus Hills Commercial Subdivision, 16.82 acres
8 Consider approval of a major subdivision preliminary
9 plat.
10 Applicant: Angus Hills Farms, LLC

11 MR. HOWARD: Mr. Chairman and Commissioners,
12 this plat comes before you as a preliminary plat for a
13 new development. It is in compliance with the
14 underlying zoning, the requirements of the
15 Comprehensive Plan and subdivision regulations. It's
16 been reviewed by the Planning Staff and Engineering
17 Staff and it's ready for your consideration.

18 CHAIRMAN: Any of the commissioners have any
19 questions concerning the application?

20 (NO RESPONSE)

21 CHAIRMAN: The Chair is looking for a motion.

22 MR. ROGERS: Mr. Chairman, I make a motion for
23 approval.

24 CHAIRMAN: We need a second.

25 MS. McENROE: Second.

26 CHAIRMAN: We have a motion and a second. All

1 those in favor please raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries.

4 MINOR SUBDIVISION PLATS

5 ITEM 7

6 319 & 351 East Harmons Ferry Road, 19.137 acres
7 Consider approval of a minor subdivision plat
8 Applicant: Roger Dale & Deborah Tooley; Kimberly Lynn
9 Tooley Nevitt

10 MR. HOWARD: This plat comes before you as an
11 exception. There is to two parcels at present and
12 they are requesting that there still be two parcels.
13 The only change is that the smaller lot at 351,
14 they're adding acreage to the back which take it out
15 of compliance, the three to one compliance. They're
16 not maximizing the number of lots. They're not trying
17 to get any additional building sites here. They have
18 added notations that the properties can't be further
19 subdivided without being in requirements of the
20 subdivision regulations. So we would recommend that
21 you consider it for approval.

22 CHAIRMAN: The Chair is looking for a motion
23 for approval.

24 MR. BOSWELL: Motion to approve.

25 MR. JEAN: Second.

26 CHAIRMAN: Second by Mr. Jean. All those in

1 favor raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries.

4 ITEM 8

5 10390 & 10404 Highway 54, 3.364 acres
6 Consider approval of a minor subdivision plat.
7 Applicant: Ray Rice

8 MR. HOWARD: This plat comes before you as an
9 exception. There's a smaller, what will be .482 acre
10 parcel. They're adding some additional property
11 reducing the road frontage, a long skinny lot. When
12 that's done it takes that long skinny lot, which will
13 be 2.882 acres out of whack with the three to one
14 requirement. Again, both have a significant amount of
15 road frontage and they're not maximizing the number of
16 lots. So we would recommend that you consider it for
17 approval.

18 CHAIRMAN: Any questions.

19 (NO RESPONSE)

20 CHAIRMAN: Chair is ready for a motion.

21 Mr. Reeves.

22 MR. REEVES: Motion to approve.

23 CHAIRMAN: Do we have a second?

24 MS. McENROE: Second.

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

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries.

3 ITEM 9

4 11608 Highway 1513, 5.515 acres
5 Consider approval of a minor subdivision plat.
6 Applicant: Cole T. & Brett C. Lanham

7 MR. HOWARD: This is a 5 1/2 acre parcel and
8 they're adding a quarter of an acre to the backside of
9 it. It was already out of compliance with the three
10 to one. They're adding a little bit more to it. They
11 have added a no further subdivision note on here. So
12 we would recommend that you consider it for approval.
13 They're not requesting any new buildable lots.

14 CHAIRMAN: Chair is looking for a motion.

15 Mr. Ball.

16 MR. BALL: Motion to approve.

17 CHAIRMAN: Second?

18 MS. HARDAWAY: Second.

19 CHAIRMAN: Second by Ms. Hardaway. We have a
20 motion and a second. All those in favor please raise
21 your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries.

24 -----

25 NEW BUSINESS

ITEM 10

1 Consider approval of December 2018 financial
2 statements

3 CHAIRMAN: All commissioners should have
4 received a package of the financial statement. You've
5 had an opportunity to take a look at that. Anyone
6 have any changes, questions, concerns?

7 (NO RESPONSE)

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

10 MR. BOSWELL: Motion to approve.

11 CHAIRMAN: We have a motion. Do we have a
12 second?

13 MR. ROGERS: Second.

14 CHAIRMAN: Second by Mr. Rogers. All those in
15 favor please raise your right hand.

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries.

18 ITEM 11

19 Consider approval of the amended 2019 Filing Deadlines
20 and Meeting Dates

21 MR. HOWARD: You all approved the meeting
22 dates and filing deadlines; however, since that
23 happened, the APA Kentucky Annual State Conference has
24 been scheduled and it conflicts with our Planning
25 Commission meeting date in May, which is supposed to
be on May 9th. This year I am the immediate past

1 president on that Board, Melissa is our Western
2 Kentucky Regional Rep. The annual meeting of
3 membership is that Thursday afternoon.

4 As Staff we would request that you all -- we
5 need to attend, but as Staff we request that you all
6 consider amending this to double up on May 2nd like
7 we've done for Spring and Fall Break. It's just
8 another one of those where the Board of Adjustment
9 would meet first, Planning Commission after to allow
10 us to attend the board meeting for APA Kentucky on the
11 9th.

12 CHAIRMAN: Thank you.

13 We need a motion.

14 MR. ROGERS: Mr. Chairman, I make a motion to
15 move both meetings to May 2nd.

16 CHAIRMAN: Do we have a second?

17 MR. JEAN: Second.

18 CHAIRMAN: Second by Mr. Jean. All those in
19 favor raise your right hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 ITEM 12

22 Comments by the Chairman

23 CHAIRMAN: Chair has none.

24 ITEM 13

25 Comments by the Planning Commissioners

1 CHAIRMAN: Yes, Mr. Reeves.

2 MR. REEVES: I would just like to say, this
3 was a very difficult one that we dealt with, but I
4 want to say how healthy it is when you have a split
5 vote on the commission because I think that means
6 we're listening carefully and we're trying preference
7 the perspective that we think is correct. Certainly
8 not a reflection on Staff if we decide to take another
9 position. I thought it very helpful when we have
10 that. This shows that this group does listen and
11 consider everybody that appears in front of us. Thank
12 you.

13 MR. EDGE: I'd like to make a comment too.

14 I want to reiterate the fact that I totally
15 actually agreed with Staff even though I went against
16 you on this. I totally agree with why you did what
17 you did, and I expect you to do that with regards to
18 the Comprehensive Plan.

19 I looked at it strictly as a variance to that
20 logical kind of explanation or expansion. I
21 appreciate all your work. I actually agreed with your
22 assessment, but I also understood the variance they
23 were asking for. I appreciate the hard work done on
24 it, and Fred's comments as well.

25 CHAIRMAN: Anyone else?

1 (NO RESPONSE)

2 ITEM 14

3 Comments by the Director

4 * Jennifer Logsdon - Regular, full-time
appointment to the position of Plan Reviewer Trainee

5 MR. HOWARD: I only have one thing.

6 Last month I brought forward several folks
7 that have new positions or new hires in the office
8 based on retirements. Left poor Jenny off the list.

9 Jennifer Logsdon, she has moved from our front
10 desk role as the receptionist, the first person that
11 people see. Jenny is a go-getter and she wanted to
12 try and she wanted to do something different. She's
13 bright. She's been working with building stuff since
14 she's been with our office. She has taken a role as a
15 plan reviewer trainee training under Matt Warren and
16 Kyle Trunnel to learn the planning review process and
17 be ready one day when retirement happens for other
18 folks on our staff. Want to commend her for the
19 initiative to do that. She's following in a similar
20 path of what Ms. Evans did, start as a front desk
21 receptionist and now she's our associate director of
22 planning.

23 We like to promote from within and give people
24 opportunities to expand their area of knowledge and
25 expertise. Want to commend Jenny for her desire to do

1 that. She kind of doesn't stop. Always thinking,
2 always doing. Fully endorse her appointment to a
3 full-time position as plan reviewer trainee.

4 CHAIRMAN: Thank you. We need a motion to
5 accept Jenny Logsdon as plan reviewer trainee.

6 MR. BALL: I make a motion to accept.

7 CHAIRMAN: Second?

8 MS. HARDAWAY: Second.

9 CHAIRMAN: All those in favor please raise
10 your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Now Manuel.

13 MR. BALL: Motion to adjourn.

14 MR. EDGE: Second.

15 CHAIRMAN: We have a motion and a second. All
16 in favor raise your right hand.

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: We are adjourned.

19 -----

20

21

22

23

24

25

