

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 MAY 12, 2005

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4 The Owensboro Metropolitan Planning
5 Commission met in regular session at 6:00 p.m. on
6 Thursday, May 12, 2005, at City Hall, Commission
7 Chambers, Owensboro, Kentucky, and the proceedings
8 were as follows:

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

22 * * * * *

23 CHAIRMAN: I would like to welcome
24 everybody to the May 12, 2005, Planning Commission.
25 Please stand. Our invocation will be given by Mark
Bothwell.

26 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

27 CHAIRMAN: First item of business is
28 consider the minutes of the April 14th meeting. Are
29 there any additions, corrections, questions?

30 (NO RESPONSE)

Ohio Valley Reporting
(270) 683-7383

1 CHAIRMAN: If not, the Chair is ready for
2 a motion.

3 MS. DIXON: Move to approve.

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

6 SISTER VIVIAN: Second.

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

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries unanimously.

11 Next item, please.

12 -----

13 PUBLIC FACILITIES PLANS
14 REVIEW FOR CONSISTENCY WITH COMPREHENSIVE PLAN

15 ITEM 2

16 2801-2901 Blocks Bittel Road
17 Land Acquisition and Facilities Construction
18 Consider request for the acquisition of property and
19 the construction of a soccer field with parking.
20 Referred by: Owensboro Public Schools

21 MR. NOFFSINGER: Mr. Chairman, Planning
22 Staff has reviewed this application. We find no
23 conflict with the Comprehensive Plan. We have been in
24 communication with the Owensboro Public School
25 superintendent and their attorney, Mr. Wilson, is here
 tonight about the extension of Thompson Drive through
 this property. At this time the public schools are

1 making no plans for that extension; however, the
2 soccer complex that's being proposed would not
3 preclude a street from being extended at some point in
4 time in the future. What would likely happen there,
5 instead of Thompson Drive extending straight on out to
6 Bittel Road, it's likely that Thompson Drive could
7 cross the ditch and then turn to the west over toward
8 the Good Shepherd Church property.

9 However, the applicant nor their attorney
10 can commit future boards to that happening, but they
11 have indicated at least from their standpoint
12 willingness to work with that in the future. With
13 that it's ready for consideration.

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

16 (NO RESPONSE)

17 CHAIRMAN: If there are none, the Chair is
18 ready for a motion.

19 MR. CAMBRON: Motion for approval, Mr.
20 Chairman.

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

23 DR. BOTHWELL: Second.

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

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries unanimously.

3 Next item, please.

4 ITEM 3

5 2002, 2014, 2016, 2026, 2038 Frederica Street
6 310, 314, 316 Ford Avenue

6 Land Disposition, Land Acquisition and Building
Construction

7 Consider request by the Owensboro Public School to
dispose of property and request by Daviess County
8 Public Library to acquire property and construct new
library facility.

9 Referred by: Owensboro Public Schools
Daviess County Public Library District

10

11 MR. NOFFSINGER: Mr. Chairman, Planning

12 Staff has reviewed this application. We find no

13 conflict with the Comprehensive Plan.

14 CHAIRMAN: Are there any comments or

15 questions?

16 (NO RESPONSE)

17 CHAIRMAN: If not, the Chair is ready for

18 a motion.

19 SISTER VIVIAN: Move to approve.

20 CHAIRMAN: Motion for approval by Sister

21 Vivian.

22 MR. CAMBRON: Second.

23 CHAIRMAN: Second by Mr. Cambron. All in

24 favor raise your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Motion carries unanimously.

2 Next item, please.

3 ITEM 4

4 450 Griffith Avenue, 1624 Alderson Court
Land Disposition, Land Acquisition
5 Consider request by Daviess County Public Library
District to dispose of property and request by
6 Owensboro Public School System to acquire property.
Referred by: Owensboro Public Schools
7 Daviess County Public Library District

8 MR. NOFFSINGER: Mr. Chairman, Planning
9 Staff has reviewed this application. Find no conflict
10 with the adopted comprehensive plan.

11 CHAIRMAN: Are there any questions?

12 (NO RESPONSE)

13 CHAIRMAN: If there are no questions,
14 Chair is ready for a motion.

15 MR. ROGERS: Motion for approval.

16 CHAIRMAN: Motion for approval by Mr.
17 Rogers.

18 MR. HAYDEN: Second.

19 CHAIRMAN: Second by Mr. Hayden. All in
20 favor raise your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 Next item.

24 -----

25 ZONING CHANGE - CITY

Ohio Valley Reporting
(270) 683-7383

1 ITEM 5

2 3830 Broadleaf Court
3 Consider zoning change: From R-3MF Multi-Family
4 Residential to R-1C Single-Family Residential
5 Applicant: James Estel & Betty J. Hagman

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

8 MR. HOWARD: Brian Howard.

9 (MR. BRIAN HOWARD SWORN BY ATTORNEY.)

10 PLANNING STAFF RECOMMENDATIONS

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

15 Findings of Fact:

16 1. The subject property is located in an
17 Urban Residential Plan Area, where urban low-density
18 residential uses are appropriate in limited
19 locations;

20 2. The dwelling unit located on the
21 subject property was constructed, and has always been
22 used for single-family residential activities;

23 3. The existing R-3MF Multi-Family
24 Residential zoning classification is inappropriate and
25 the proposed R-1C Single-Family Residential zoning
26 classification is appropriate; and,

1 4. Sanitary sewers are available to the
2 site.

3 MR. HOWARD: We would like to enter the
4 Staff Report as Exhibit A.

5 CHAIRMAN: Are there any questions?

6 (NO RESPONSE)

7 CHAIRMAN: Does the applicant have
8 anything they would like to say?

9 (NO RESPONSE)

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

12 DR. BOTHWELL: Motion for approval, Mr.
13 Chairman, based on Findings of Fact 1 through 4.

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

16 MS. DIXON: Second.

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

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries unanimously.

21 Next item, please.

22 -----

23 ZONING CHANGES - COUNTY

24 ITEM 6

25 4527 KY 54

1 Consider zoning change: From B-4 General Business
2 with conditions to B-4 General Business

3 Applicant: Shamrock Land, LLC

4 PLANNING STAFF RECOMMENDATIONS

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

10 Conditions:

11 1. Access to the subject property shall
12 be limited to the proposed full access on
13 Thruston-Dermont Road and the right-turn in only on KY
14 54;

15 2. Interconnection via a public access
16 easement should be provided to the adjoining property
17 to the east which could provide a future full access
18 for the subject property to KY 54 at which time the
19 right-turn in only access currently proposed on KY 54
20 shall be eliminated;

21 3. Interconnection via a public access
22 easement should be provided to the adjoining property
23 to the north that is currently residentially zoned;
24 and,

25 4. Install a 10' landscaping easement

1 along the north and east boundaries of the property
2 with one tree every 40 linear feet with continuous six
3 foot high planting, hedge, fence, wall or earth mount.

4 Findings of Fact:

5 1. The subject property is located in a
6 Business Plan Area, where general business uses are
7 appropriate in limited locations;

8 2. The subject property is currently
9 zoned B-4 General Business with an access condition
10 that will be replaced with this rezoning; and,

11 3. The applicant's proposal should not
12 significantly increase the extent of B-4 General
13 Business zone within the area and should not
14 overburden the capacity of roadways and other
15 necessary urban services that are available in the
16 affected area.

17 MR. HOWARD: We would like to enter the
18 Staff Report as Exhibit B.

19 CHAIRMAN: Is there anybody here
20 representing the applicant?

21 APPLICANT REP: Yes.

22 CHAIRMAN: Anybody have any questions of
23 the applicant?

24 (NO RESPONSE)

25 CHAIRMAN: If there are no questions, the

1 Chair is ready for a motion.

2 MR. CAMBRON: Mr. Chairman, motion for
3 approval based on Conditions 1 through 4 and Findings
4 of Fact 1 through 3.

5 CHAIRMAN: Motion for approval by Mr.
6 Cambron.

7 MR. HAYDEN: Second.

8 CHAIRMAN: Second by Mr. Hayden. All in
9 favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 Next item.

13 6A RELATED ITEM:

14 4527 KY 54, 2.011 acres
15 Consider approval of final development plan.
16 Applicant: Shamrock Land, LLC

17 MR. NOFFSINGER: Mr. Chairman, the
18 Planning Staff and the Engineering Staff have reviewed
19 this application. The application is found to be in
20 order. Found to be consistent with the adopted
21 Comprehensive Plan and the adopted Zoning Ordinance
22 and is ready for your consideration.

23 CHAIRMAN: Does anybody have any
24 questions?

25 (NO RESPONSE)

CHAIRMAN: If not, the Chair is ready for

1 a motion.

2 MR. HAYDEN: I make a motion for approval.

3 CHAIRMAN: Motion for approval by Mr.

4 Hayden.

5 SISTER VIVIAN: Second.

6 CHAIRMAN: Second by Sister Vivian. All

7 in favor raise your right hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries unanimously.

10 Next item.

11 -----

12 MAJOR SUBDIVISIONS

13 ITEM 7

14 Hialeah at the Down, Unit 3, 6.063 acres
15 Consider approval of major subdivision final plat.
16 Surety (Letter of Credit) posted: \$26,647.60
Applicant: Thompson Homes, Inc.

17 MR. NOFFSINGER: Mr. Chairman, Planning
18 Staff has reviewed this application and Engineering
19 Staff. It's found to be consistent with the adopted
20 Comprehensive Plan and the approved preliminary plat
21 that's on file in the office.

22 CHAIRMAN: Is anybody here representing
23 the applicant?

24 APPLICANT REP: Yes.

25 CHAIRMAN: Does anybody have any questions

1 of the applicant?

2 (NO RESPONSE)

3 CHAIRMAN: If not, the Chair is ready for
4 a motion.

5 MR. ROGERS: Motion for approval, Mr.
6 Rogers.

7 CHAIRMAN: Motion for approval by Mr.
8 Rogers.

9 SISTER VIVIAN: Second.

10 CHAIRMAN: Second by Sister Vivian. All
11 in favor raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimously.

14 Next item, please.

15 ITEM 8

16 Highlands of Heartland, Phase 2, 8.370 acres
17 Consider approval of major subdivision final plat.
18 Surety (Certificate of Deposit) posted: \$25,628.40
19 Applicant: Jagoe Homes & Construction Co, LLC

20 MR. NOFFSINGER: Mr. Chairman, this plat
21 has been reviewed by the Planning Staff and
22 Engineering Staff. It's found to be consistent with
23 the adopted Comprehensive Plan, as well as in
24 compliance with the soon to be approved development
25 plan.

There has been a minor amendment proposed

1 to it regarding a ditch or a drainage way that was
2 being required, I think, a change by the Division of
3 Water. That development plan is in the office and
4 will be approved shortly. So with that we recommend
5 approval conditioned upon the approval of an amended
6 development plan.

7 MR. JAGOE: Mr. Chairman, I need to
8 disqualification myself.

9 CHAIRMAN: Let the record note that Mr.
10 Jagoe will be disqualified on this item.

11 MR. CAMBRON: Mr. Chairman, motion for
12 approval.

13 CHAIRMAN: Motion for approval by Mr.
14 Cambron.

15 MR. APPLEBY: Second.

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

18 (ALL BOARD MEMBERS PRESENT - WITH THE
19 DISQUALIFICATION OF SCOTT JAGOE - RESPONDED AYE.)

20 CHAIRMAN: Motion carries unanimously.

21 Next item.

22 ITEM 9

23 Shadewood Village, 5.084 acres
24 Consider approval of major subdivision final plat.
25 Surety (Letter of Credit, Certified Check) posted:
\$26,572.00
Applicant: Image Builders

1 MR. NOFFSINGER: Mr. Chairman, Planning
2 Staff and Engineering Staff have reviewed this
3 application. It has been brought to the attention of
4 the Planning Staff as well as Planning Commission
5 attorney, Mr. Stewart Elliott. The adjoining property
6 owner may have a binding contract on a portion of this
7 property and there is some dispute over that.

8 I would like to say that the plat is in
9 order. I can say that the plat is consistent with the
10 approved development plan that's on file; however,
11 with this issue being brought to our attention, I'd
12 recommend that we hear from the applicant. I think
13 the adjoining property owner is here tonight as well
14 as our attorney, Mr. Stewart Elliott.

15 CHAIRMAN: Would the applicant step
16 forward, please.

17 MR. ELLIOTT: State your name, please.

18 MR. BRANCATO: My name is Frank Brancato.

19 (MR. FRANK BRANCATO SWORN BY ATTORNEY.)

20 MR. BRANCATO: I'm not sure what the
21 objection is. It's a little difficult to respond to
22 something until you're made aware of it.

23 This is a plat that's previously been
24 approved. The property is now owned by a different
25 organization who has filed to modify it because they

1 can get more lots in the same area. So it's a change
2 essentially of density. What I've been advised of by
3 the Staff is that a neighbor has claimed to have an
4 interest in the property. I have provided Mr. Elliott
5 with some information. There is no contract in which
6 he's a party. I've checked the title. He's not in
7 the chain of title. So I would like to hear under
8 oath what his claim is so that we can really assess
9 it.

10 CHAIRMAN: Thank you.

11 Is the adjoining property owner here?

12 Would you step forward to the mike,
13 please.

14 MR. ELLIOTT: State your name, please.

15 MR. SMITH: Mark Smith.

16 (MR. MARK SMITH SWORN BY ATTORNEY.)

17 MR. SMITH: On April 17, 2003, I received
18 a letter from the Planning & Zoning office stating
19 request for the said property to be rezoned to R-1B
20 Single-Family residence, which has occurred.

21 May 26, 2004, I received a letter and
22 original plat from the former owner which was H.W.
23 Woodhouse, Jr. after the sale of the property to Image
24 Builders advising that I was receiving a gift of 20
25 feet in width of the west side of then lot 28 and

1 brief instructions how to proceed in adding it to my
2 existing property.

3 Starting in June of 2004, I started
4 contacting Brian Howard here in City Hall once a month
5 to see if the final plat had been filed with the
6 city's Planning & Zoning office.

7 In mid 2004, I contacted Mr. Estes about a
8 final plat of the property. That it was to be given
9 to me as outlined earlier. That conversation
10 deteriorated and ended. It went nowhere.

11 In mid March of 2005, I met with Don
12 Bryant Engineering. His plat did not show the 20 foot
13 section given to me. I was advised that he was
14 unaware of information contained in the sales contract
15 and the survey to the present property line. He
16 advised later that Image Builders did not recognize
17 any such agreement. I then contacted Mr. Woodhouse.
18 He authorized someone from South Central Bank to
19 provide me a copy of the sales contract, which I then
20 obtained.

21 A proposal by Bryant Engineering dated
22 April 20, 2005, estimates the cost for me to revise
23 and submit an amended combination preliminary plat and
24 final development plan for Shadewood Village
25 Subdivision would be \$1800. This appeared to be

1 redesign of a plat that was drawn up incorrectly from
2 the beginning with the intent of ignoring the terms of
3 the sales contract.

4 Talked with personnel at Simmons Surveying
5 and Cecil Surveying both. They advised this could
6 have been handled in a financially cheaper manner if
7 Bryant Engineering had been made aware of the sales
8 contract stipulations and move back 20 feet off the
9 existing line to start survey and design.

10 April 25, 2005, I called Randy Hayden to
11 see where we stood on the above proposal. I left him
12 a voice message. I later received a call from Mr.
13 Estes. In a taped conversations by me, he advised
14 that I needed to sign the proposal to obtain the
15 property in question. When I asked him why he felt
16 that I was responsible for the redesign an improperly
17 prepared plat, he stated he did not know that I wanted
18 the property.

19 He called back six minutes later and,
20 again, the conversation deteriorated.

21 On April 28th, I received a letter from an
22 attorney representing his interest advising me I had
23 ten days to either sign the contract with the
24 surveying company and pay to have those three lots
25 redesigned or to accept it as is and move personal

1 property off of their property.

2 So I'm asking to pay for my fair share
3 which I was aware of that from the very beginning. It
4 was a gift from a very nice gentleman. That gift has
5 become costly because no one contacted me from the
6 very beginning to see what my interest or intentions
7 were. Whether I was interested or uninterested. I
8 feel responsible for a portion of it related to me,
9 but not the redesign of something that I was never
10 involved with to begin with.

11 CHAIRMAN: Thank you.

12 Does anybody have any questions of either
13 applicant?

14 MR. CAMBRON: Did you have a recorded
15 contract of some type did you say?

16 MR. SMITH: I only have a copy of the
17 sales agreement, the original sales agreement.

18 MR. CAMBRON: You have that?

19 MR. SMITH: Yes, sir.

20 MR. CAMBRON: Do you have it with you?

21 MR. SMITH: Yes, sir.

22 MR. APPLEBY: Stewart, is this an issue -
23 - we shouldn't even be deliberating on this.

24 MR. ELLIOTT: No. Whether or not it's
25 enforceable we shouldn't be dealing with that.

1 CHAIRMAN: Stewart, are we at the point
2 here where we ought to just postpone?

3 MR. ELLIOTT: Until they can work it out,
4 yes.

5 CHAIRMAN: Mr. Brancato, do you have a
6 comment?

7 MR. BRANCATO: Yes.

8 Well, first of all, I didn't hear anything
9 that said he had an ownership interest in the
10 property.

11 Secondly, I don't believe he produced a
12 document to show that he did.

13 Thirdly, if it's this commission's
14 decision to postpone it, then I'm asking you what do
15 we need to do? You're asking me to prove a negative.
16 Prove that he doesn't have an interest. I think the
17 burden is on him. Prove that he does have an
18 interest. Whether he proves it to you or proves it to
19 somebody else. I can come here every meeting you have
20 and say, I think I might have an interest in
21 property, if that's all it takes to stop a plat like
22 this.

23 CHAIRMAN: Mr. Elliott, have you seen the
24 said contract?

25 MR. ELLIOTT: I got faxed a copy of the

1 contract, but it's not - - I don't think it's my
2 responsibility or my duty is to determine whether or
3 not that contract is enforceable. I think they need
4 to do that before they bring the issue to us. It's
5 not our responsibility to be the determination of
6 legal issues. That's what we're being asked to do
7 here.

8 CHAIRMAN: Mr. Brancato, based on - -

9 MR. BRANCATO: This gentleman is not a
10 party to any contract. In fact, he said a former
11 owner promised to give him something, but he's not any
12 party to a written contract.

13 CHAIRMAN: Mr. Brancato, if our attorney
14 feels that there is an issue that should be settled
15 before we rule, then it would be very precarious for
16 this board to make a ruling. I mean you see our
17 situation. I mean we'll go ahead and make a ruling on
18 anything that's put before us, but in this situation
19 where there's a questionable issue, I think it's very
20 difficult for this board to move forward.

21 MR. BRANCATO: I guess my dilemma here is,
22 again, I'm being asked to prove a negative. Prove
23 that he doesn't have an interest instead of we have a
24 third party essentially an interloper for saying I do
25 have an interest. You're taking that with all

1 credibility.

2 CHAIRMAN: Let me ask Mr. Elliott a
3 question here.

4 Could we possibly either approve or
5 disapprove this issue based on a condition of fact,
6 the outcome of a solution of the total and proper
7 ownership or would you recommend against it?

8 MR. ELLIOTT: I wouldn't recommend it. I
9 think they should get their problem resolved. It
10 seems to me it's a problem of who is going to pay for
11 engineering cost. It seems like they ought to be able
12 to resolve that.

13 Isn't that the issue?

14 MR. BRANCATO: That essentially is part of
15 the issue. The point is whether his claim, if it is a
16 valid claim, still could be satisfied after this
17 commission makes a ruling on the plat. All we're
18 asking this commission to do is is this plat as
19 presented in order with the Planning & Zoning
20 regulations. I believe it is. There's no question
21 he's not an owner of this property. I don't think he
22 would stand up under oath and say, I own any piece of
23 this property that's under consideration by this
24 commission. So his signature is not required for this
25 decision tonight.

1 Now, if he has a cause of action or he
2 believes he has an equitable interest in the property,
3 he can still pursue that and nothing this commission
4 does tonight impairs that ability in the future. What
5 I'm saying is if somebody can simply stand up and say
6 without documentation, without being in the chain of
7 title, I think I have an interest in something, I can
8 think of a way that we can stop every application
9 coming before this commission.

10 CHAIRMAN: Mr. Brancato, with the
11 commission we have to take counsel on this issue
12 because I am not qualified to make that type of
13 judgment. The only thing is that a commissioner that
14 I have at my disposal is to check with our counsel and
15 take his advice. I mean this issue will come before
16 us and I'll accept a recommendation and then we will
17 go accordingly.

18 MR. BRANCATO: Help me understand. If you
19 run title on the property, and I think this gentleman
20 has to admit he's not in the chain of title, what
21 information will I need to present to this commission
22 to double verify and over qualify the fact that my
23 client is the record title holder and that there are
24 no other title holders that need to be a part of the
25 application?

1 DR. BOTHWELL: My question is, it's not a
2 question of title. It's the question of if you're
3 going to have to redesign these lots. Then we get in
4 the middle of approving as said, that you have to
5 redesign because if he does have a claim we could get
6 into a mess and have to come back. We've been through
7 this before and it wasn't a good thing.

8 MR. APPLEBY: My question is: Assuming
9 that he turns out to be right and he sues and proves
10 that he has 20 feet coming, at that point are you
11 going to have to deed him 20 feet off of three of
12 these lots or one of these lots?

13 MR. BRANCATO: It would be off of one or
14 two of the lots.

15 MR. APPLEBY: At this point it's not an
16 issue of whether or not they own the property or
17 whether or not this plat is in order. It seems to me
18 that all we're here to deliberate is whether or not
19 this plat is in order. If through the court system
20 they determine that he owns this property, the burden
21 will be upon them to bring this back and amended it,
22 won't it?

23 MR. BRANCATO: That's exactly right.

24 MR. CAMBRON: Can I ask a question real
25 quick, Dave.

1 Are we talking about lot 20, and 19, and
2 18 or are we just talking about lot 20, 19? Which one
3 are we talking about, Mr. Brancato?

4 MR. BRANCATO: It's just two lots. I
5 don't have the map in front of me.

6 MR. APPLEBY: It don't think it really
7 make any difference.

8 MR. CAMBRON: I'm just curious. I just
9 wanted to know.

10 DR. BOTHWELL: I guess my biggest concern
11 here is that I'm not an attorney. We have an
12 attorney. His legal recommendation is we postpone and
13 do nothing until legally he's satisfied with the
14 standing of where this proposal is. I have to defer
15 to him. That's my feeling.

16 MR. CAMBRON: The plat is correct, is it
17 not, Mr. Noffsinger? Is this development plan
18 correct?

19 MR. NOFFSINGER: Yes, sir. The plat is
20 consistent with the approved development.

21 MS. DIXON: But not necessarily in order,
22 correct?

23 MR. CAMBRON: But my thing is that I have
24 to take issue because anybody can come up and make an
25 issue whether or not they own it.

1 MR. ELLIOTT: I understand that. We have
2 to acknowledge that issue. You can't just ignore it.

3 MR. CAMBRON: We have acknowledged it. We
4 haven't ignored it.

5 MR. BRANCATO: If it's not in order, then
6 tell me what's not in order in the application.

7 MR. CAMBRON: I see what you're saying. I
8 understand what he's saying too. We have to
9 acknowledge it. We've done that. This is something
10 that I see that can be resolved later on down the
11 road. This is something that you're talking about 20
12 foot on the back of that lot, on the back of two lots.
13 Nothing probably would be built there until this was
14 issue, until this was taken of. Nobody is going to
15 build on the back of the lot.

16 CHAIRMAN: Let's answer his question.

17 Mr. Brancato, you do not content that he
18 does own the 20 feet?

19 MR. BRANCATO: He does not own the 20
20 feet. I think he would admit to you that he does not
21 own it. What the agreement says that he is not a
22 party to, is that the owner will give him 20 feet if
23 he pays for the engineering of it. He hasn't done
24 that in the last year. He was sent notice he needed
25 to do it before this was done for the very reason that

1 Ms. Dixon pointed out. We didn't want to come here
2 twice, but coming here twice is not an impediment to
3 his right.

4 CHAIRMAN: Let me ask Mr. Elliott a
5 question.

6 Mr. Elliott, what should Mr. Brancato do
7 or what would you want him to do to clear up your
8 concern on the issue?

9 MR. ELLIOTT: It's my understanding in
10 talking with the Staff that this was not in order.
11 It wasn't in line with the rules and regulations.
12 That's what we need for it to do. Becky can probably
13 enlighten us.

14 MR. NOFFSINGER: Mr. Elliott, if I could.
15 That is true; however, this plat is in order and it's
16 consistent with the plan. It came to our attention
17 that there was a landowner that had an interest in
18 this property. Therefore, the only reason, if this
19 plat is not in order, is that all parties that have an
20 interest in this land have not signed. Now, Mr.
21 Brancato is saying that he does not have an interest
22 in that.

23 Is that what you're alleging, he does not
24 have an interest in it?

25 MR. BRANCATO: Yes. He's under oath. Ask

1 him if he owns the 20 feet. Ask him if he has a deed
2 to it. That's a simple yes or no question.

3 MR. NOFFSINGER: That obviously is, no, he
4 doesn't, but by having this contract that he has - -

5 MR. BRANCATO: He doesn't have a contract.
6 He's not a party.

7 MR. NOFFSINGER: This sales agreement,
8 does that constitute a contract and having interest in
9 that property, in your legal opinion?

10 MR. BRANCATO: He has a potential future
11 interest in the property if he does certain things
12 beforehand. He has not done those things. If he
13 chooses to do those things, then it might trigger an
14 obligation to transfer the 20 feet. He could have
15 done those things six months ago. He can do it
16 sometime in the future. Neither affects what's before
17 this commission. He does not have a legal interest in
18 the property today. His signature is not required
19 under the rules and regulations of this commission.

20 CHAIRMAN: Mr. Elliott, is that a viable
21 argument or how does the commission stand?

22 MR. ELLIOTT: If we act on it, then it's
23 my understanding that we're shifting the cost under
24 the contract back on this gentleman.

25 MR. BRANCATO: Where it is right now.

1 MR. ELLIOTT: Where it is right now.

2 MR. APPLEBY: We're not shifting the cost
3 of the contract. He's got to prove it in court to do
4 it or he's got to go to court and prove that they were
5 not right in the way they handled it. Either way it's
6 not our - - are we setting a precedent - -

7 MR. ELLIOTT: I think that we are. I
8 think that we're getting into things that we
9 shouldn't.

10 CHAIRMAN: Let Ms. Stone respond. She's
11 waiting patiently.

12 MS. STONE: I just have one thing to add.
13 Becky Stone.

14 (MS. BECKY STONE SWORN BY ATTORNEY.)

15 MS. STONE: The Staff's concern was that
16 we would be approving a final plat that there would be
17 an interest, whether future or current, in that plat
18 that would change the boundaries of those three lots
19 that are final platted.

20 Our advice to the engineer when they
21 called to see what could be done to transfer this 20
22 feet to the adjoining property, we advised that a
23 preliminary development revision needed to be done,
24 which is I'm guessing what the engineering cost that
25 were quoted to Mr. Smith were. Once that was done,

1 then a final plat could come in in accordance with
2 that preliminary development plan showing the 20 feet
3 not included in the boundary of this property.

4 Now, that could be done at a later date,
5 but you're looking now at approving a final plat
6 that's going to be a recorded document and those lots
7 can be transferred to individual owners. So once that
8 preliminary development plan, if it's revised to
9 accommodate this 20 feet, now you've got the owner of
10 the development plus any owners that maybe have bought
11 property in that development being a party to this
12 revised development plan. That was one of our
13 concerns. If you're going to be able to transfer
14 these two or three lots and then in the future when it
15 is worked out by whoever is doing this revised
16 development plan, you've got three more lots that may
17 have been sold.

18 CHAIRMAN: Thank you.

19 Mr. Smith, why don't you step forward to
20 the podium there. The contract, as I understand it,
21 did it state that you needed to pay for the
22 engineering surveying of this property before
23 transfer?

24 Mr. Elliott, do you have a copy of the
25 contract?

1 MR. ELLIOTT: I think I do.

2 Is that what you sent me?

3 MR. BRANCATO: Yes. Paragraph 9. I have
4 a copy of it.

5 CHAIRMAN: Mr. Brancato, we're asking Mr.
6 Smith a question.

7 MR. SMITH: I have a copy if that's what
8 you're wanting.

9 CHAIRMAN: Very good. I want you to
10 answer: Does the contract state that you have to pay?

11 MR. SMITH: Can I read it in whole, sir?

12 CHAIRMAN: Any way you want to respond is
13 fine.

14 MR. SMITH: "Per condition the purchaser
15 agrees to deed Mark Smith a 20 foot strip off of what
16 is proposed Lot 28 of the preliminary plat, which is
17 20 foot strip that will be adjacent to the Smith's
18 adjoined property. The surveying and plat approval
19 expense related to such conveyance shall be the
20 responsibility of Smith. Upon execution of the
21 agreement, seller agrees to provide purchaser with a
22 copy of a recently received" - -

23 CHAIRMAN: Mr. Smith, I will ask Mr.
24 Elliott.

25 Mr. Elliott, did that state what I think

1 it stated?

2 MR. ELLIOTT: Yes.

3 CHAIRMAN: What I think it stated was that
4 Mr. Smith is responsible for paying for the surveying
5 before transfer; is that correct?

6 MR. ELLIOTT: Right.

7 CHAIRMAN: Mr. Smith, do you have any
8 other statement that you'd like to make?

9 MR. SMITH: No. My only concern was the
10 letter that I received from the attorney here
11 representing Mr. Estes' interest. The concern was
12 that the property would be modified within ten days of
13 receipt of this letter, which I think has come and
14 gone, you know, prior to the decision, whatever is
15 reached here today. It involves trees. It says
16 removal of a number of trees which Image Builders
17 considered to be interfering with its work in the
18 area.

19 CHAIRMAN: Mr. Smith, I understand, but
20 there again the defense of where the property stands
21 is where the property stands at this very moment. At
22 this very moment you had situations and obligations
23 that you had to meet to become an owner of this
24 property. Based on the contract that you read to me,
25 and under advice of counsel that I determined, it

1 appears at this present time you are not an owner of
2 the property.

3 MR. SMITH: Yes, sir.

4 CHAIRMAN: I just wanted to get that clear
5 in my mind. A question that I might ask: Do you plan
6 on acquiring that property or exercising that, which
7 it sounds like your rights have expired?

8 MR. SMITH: Well, the six month comment
9 that was made here was unaware to me. I have a letter
10 that suggested ten days, I believe the letter is dated
11 the 28th of April of this year, to respond, which was
12 prior to this meeting. My legal counsel advised me to
13 attend the meeting and see what I could learn on my
14 own prior to making any decisions to purchase. As far
15 as proceeding, I still have an interest personally. I
16 would like to find out a little bit more about the
17 exact cost as opposed to a rough overall estimate.

18 CHAIRMAN: Let me ask one other question.
19 I think we're getting to the end of this.

20 Mr. Elliott, due to the terms of that
21 contract, it appears that his date of exercise has
22 expired; is that correct?

23 MR. ELLIOTT: Yes. My question is: Are
24 we the body that is to enforce that contract? I don't
25 think we are.

1 DR. BOTHWELL: Are we truly enforcing it?

2 MR. ELLIOTT: Yes, you are. We're
3 approving a plat. In doing that, you're saying that
4 it's his responsibility.

5 MR. APPLEBY: Well, if we approve the
6 plat, then he's not dealing with one property owner in
7 theory. Could be additional property owners, but
8 until such time as they sell those lots, it's the
9 exact same situation as it was before as I said. What
10 have we changed? It was already platted and he was
11 already dealing with the portion of some lots. All
12 we're doing is changing a plat that creates more
13 lots.

14 My concern is that if we don't - - we're
15 charged with deciding whether this plat is in order.
16 If we postpone this, we open the door to anybody
17 that's had a property line dispute in the future. Any
18 plat that comes before us, somebody jumps down here
19 and says, you know, we've argued over this line. I
20 want ten feet on the other side of that property line.
21 I don't want to see us get into that.

22 CHAIRMAN: Are you proposing, are you
23 making a motion, Mr. Appleby?

24 MR. APPLEBY: I would make a motion that
25 we approve the plat because it's in order.

1 MR. JAGOE: Second.

2 CHAIRMAN: We've got a second by Mr.

3 Jagoe. All in favor raise your right hand.

4 (SEVEN COMMISSION MEMBERS PRESENT - DAVE

5 APPLEBY, JIMMY GILLES, SCOTT JAGOE, IRVIN ROGERS, DREW

6 KIRKLAND, NICK CAMBRON AND MARTIN HAYDEN - RESPONDED

7 AYE.)

8 CHAIRMAN: Seven for.

9 All opposed.

10 (TWO COMMISSION MEMBERS PRESENT - JUDY

11 DIXON AND DR. MARK BOTHWELL - RESPONDED NAY.)

12 SISTER VIVIAN: I abstain.

13 CHAIRMAN: We've got six for, two against

14 and one abstained.

15 The motion carries.

16 Next item, please.

17 -----

18 NEW BUSINESS
19 PUBLIC FACILITIES PLAN

20 ITEM 10

21 2300 Block of JR Miller Boulevard
22 Land Acquisition and Facility Construction
23 Consider request to acquire a portion of property
24 owned by H.J. Marks for the construction of an
25 extension of the Greenbelt Park.
Referred by: City of Owensboro.

24 MR. NOFFSINGER: Mr. Chairman, Planning

25 Staff has reviewed this application. It is a part of

1 the Greenbelt Park. We would recommend you send a
2 letter to the City of Owensboro stating no conflict
3 with the adopted Comprehensive Plan.

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

6 APPLICANT REP: Yes.

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

9 (NO RESPONSE)

10 CHAIRMAN: If there are no questions,
11 Chair is ready for a motion.

12 MS. DIXON: Move to approve.

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

15 DR. BOTHWELL: Second.

16 CHAIRMAN: Second by Dr. Bothwell. All in
17 favor raise your right hand.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries unanimously.

20 The Chair will entertain one more motion.

21 MS. DIXON: Move to adjourn.

22 MR. CAMBRON: Second.

23 CHAIRMAN: Motion to adjourn by Ms. Dixon.
24 Second by Mr. Cambron. All in favor raise your right
25 hand.

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: We are adjourned.

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