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OWENSBORO METROPOLITAN PLANNING COMMISSION

NOVEMBER 10, 2005

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The Owensboro Metropolitan Planning Commission met in regular session at 6:00 p.m. on Thursday, November 10, 2005, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: Drew Kirkland, Chairman
- Gary Noffsinger
- Dave Appleby
- Scott Jagoe
- Irvin Rogers
- Sister Vivian Bowles
- Judy Dixon
- Martin Hayden
- Madison Silvert,
Co-Counsel
- Stewart Elliott,
Attorney

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CHAIRMAN: I would like to welcome everyone to the November 10, 2005, Owensboro Metropolitan Planning Commission. Would you please rise while our invocation is given by Mr. Scott Jagoe.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Our first order of business is to approve the minutes of the October 13, 2005 meeting. Are there any additions, questions, corrections?

1 (NO RESPONSE)

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

4 MS. DIXON: Move to approve.

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

7 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, please, Mr. Noffsinger.

13 -----

14 PUBLIC HEARING

15 ITEM 2

16 Consider text amendments to the Owensboro Metropolitan
17 Subdivision Regulations, Article 2, Article 3,
Article 4 and Article 5

18 MR. NOFFSINGER: At this time I would like
19 to ask Planning Staff, Becky Stone, please describe
20 what this amendment is about.

21 CHAIRMAN: State your name, please.

22 MS. STONE: Becky Stone.

23 (BECKY STONE SWORN BY ATTORNEY.)

24 MS. STONE: All of the changes that are
25 proposed have to do with the electronic digital

1 submissions to the Planning Commission approved
2 subdivision and also with monumentation to try to get
3 that in accordance with Kentucky Minimum Standards of
4 Surveying.

5 We've had several meetings with local
6 surveyors to try to get this language right. This
7 week we have had some additional comment and we would
8 ask that the Planning Commission postpone this item
9 for one more month so that we can have another meeting
10 with the surveyors and make sure that we have the
11 language so it's understood by everyone.

12 CHAIRMAN: Thank you, Ms. Stone.

13 The chair is ready for a motion if there
14 aren't any questions.

15 MR. APPLEBY: Move to postpone.

16 CHAIRMAN: Motion to postpone by Mr.
17 Appleby.

18 SISTER VIVIAN: Second.

19 CHAIRMAN: Second by Sister Vivian. All
20 in favor raise your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 Next item, please.

24 -----

25 ZONING CHANGES - CITY

1 ITEM 3

2 Portion of 2211 West Second Street, 0.815 acres
3 Consider zoning change: From I-2 Heavy Industrial to
4 B-5 Business/Industrial
5 Applicant: Henry E. O'Bryan, Owensboro Warehouse Co.

6 MR. ELLIOTT: State your name, please.

7 MR. HOWARD: Brian Howard.

8 (BRIAN HOWARD SWORN BY ATTORNEY.)

9 PLANNING STAFF RECOMMENDATIONS

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

15 Condition: Access to the subject property shall be
16 limited to River Road only. No direct access shall be
17 permitted to West Second Street.

18 Findings of Fact:

19 1. The subject property is located within
20 a Business/Industrial Plan Area, where general
21 business and light industrial uses are appropriate in
22 general locations.

23 2. The subject property lies within an
24 existing area of mixed general business and light
25 industrial uses;

 3. The Comprehensive Plan provides for

1 the continuance of mixed use areas; and,

2 4. The proposed land use for the subject
3 property is in compliance with the criteria for a
4 Business/Industrial Plan Area and to B-5
5 Business/Industrial zoning classification.

6 MR. HOWARD: We would like to enter the
7 Staff Report as Exhibit A.

8 CHAIRMAN: Is anybody here representing
9 the applicant?

10 (NO RESPONSE)

11 CHAIRMAN: Does anybody in the audience
12 have any questions?

13 (NO RESPONSE)

14 CHAIRMAN: Any questions from the
15 commission?

16 (NO RESPONSE)

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

19 MR. ROGERS: Motion for approval based on
20 Planning Staff Findings of Fact 1 through 4 and the
21 one condition.

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

24 MR. JAGOE: Second.

25 CHAIRMAN: Second by Mr. Jagoe. All in

1 favor raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries unanimously.

4 Next item, please.

5 Related Item:

6 ITEM 3A

7 2211 West Second Street, 0.815 acres

Consider approval of amended final development plan.

8 Applicant: Henry E. O'Bryan, Owensboro Warehouse Co.

9 MR. NOFFSINGER: Mr. Chairman, this plan

10 has been reviewed by the Planning Staff and

11 Engineering Staff. It's found to be in order. It's

12 found to be consistent with the adopted comprehensive

13 plan as well as the adopted zoning ordinance and

14 subdivision regulations.

15 CHAIRMAN: Does anybody have any

16 questions?

17 (NO RESPONSE)

18 CHAIRMAN: If not the Chair is ready for a

19 motion.

20 MS. DIXON: Move to approve.

21 CHAIRMAN: Motion for approval by Ms.

22 Dixon.

23 MR. ROGERS: Second.

24 CHAIRMAN: Second by Mr. Rogers. 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 4

5 300 East 14th Street, 0.731 acres
6 Consider zoning change: From I-1 Light Industrial to
7 B-5 Business/Industrial
8 Applicant: Flower Enterprises, LLC

9 PLANNING STAFF RECOMMENDATION

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

15 Condition: Access to the subject property shall be
16 limited to East 14th Street or the alley only. No
17 direct access shall be permitted to J.R. Miller
18 Boulevard.

19 Findings of Fact:

20 1. The subject property is located within
21 a Business/Industrial Plan Area, where general
22 business and light industrial uses are appropriate in
23 general locations;

24 2. The subject property lies within an
25 existing area of mixed general business and light
26 industrial uses;

1 3. The Comprehensive Plan provides for
2 the continuance of existing mixed use areas; and,

3 4. The proposed land use for the subject
4 property is in compliance with the criteria for a
5 Business/Industrial Plan Area and a B-5
6 Business/Industrial zoning classification.

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

9 CHAIRMAN: Is there anybody representing
10 the applicant?

11 (NO RESPONSE)

12 CHAIRMAN: Does anybody in the audience
13 have any questions?

14 (NO RESPONSE)

15 CHAIRMAN: Any questions from anybody on
16 the commission?

17 (NO RESPONSE)

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

20 MS. DIXON: Move to approve based upon
21 Planning Staff Recommendations 1, 2, 3 and 4 and
22 subject to condition as stated.

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

25 MR. HAYDEN: Second.

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

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: Motion carries unanimously.

5 Next item, please.

6 ITEM 5

7 122 East 18th Street, 0.305 acres
8 Consider zoning change: From P-1 Professional/Service
9 to B-4 General Business
10 Applicant: Cary Reynolds

11 PLANNING STAFF RECOMMENDATIONS

12 Staff recommends denial because the
13 proposal is not in compliance with the community's
14 adopted Comprehensive Plan. The findings of fact that
15 support this recommendation include the following:

16 Findings of Fact:

17 1. The subject property is located in a
18 Professional/Service Plan Area where general business
19 uses are appropriate in very limited locations;

20 2. The subject property is located in an
21 established residential neighborhood where no other
22 contiguous General Business uses or zones abut the
23 same street.

24 3. The subject property does not meet the
25 specific criteria in the Comprehensive Plan to qualify
as a logical expansion of an existing General Business

1 zone within a Professional/Service Plan Area;

2 4. The current P-1 Professional/Service
3 zoning classification is appropriate in the
4 Professional/Service Plan Area; and,

5 5. There have been no major changes in
6 the vicinity that have changed the character of the
7 neighborhood that were not anticipated in the
8 Comprehensive Plan.

9 MR. HOWARD: We would like to enter the
10 Staff Report as Exhibit C.

11 CHAIRMAN: Is anybody here representing
12 the applicant?

13 MR. REYNOLDS: Yes.

14 CHAIRMAN: Does anybody in the audience
15 have a question of the applicant?

16 (NO RESPONSE)

17 CHAIRMAN: Does the applicant have a
18 statement he'd like to make?

19 MS. REYNOLDS: I guess.

20 MR. ELLIOTT: State your name, please.

21 MS. REYNOLDS: Cary Reynolds.

22 (CARY REYNOLDS SWORN BY ATTORNEY.)

23 MR. REYNOLDS: I'm not really sure why
24 they've turned us down except for possibly the
25 acreage. The building pretty much dictates the size

1 of the retail that I would like to get established
2 there. The parking would be adequate for a retail or
3 a small gift shop or a small dress shop, something of
4 that size. I don't think that you can put in a
5 Wal-Mart where the building is sitting there. I think
6 with the adequate parking and the access off of
7 Daviess, off of 18th Street, I would like to see this
8 get passed so that I can possibly get at least out to
9 either professional or a retail establishment. I
10 think dental and doctors offices probably have more
11 people coming and going as far as cars and parking
12 than would be necessary rather than a small retail
13 shop. I don't see that that's really a problem
14 involved with this building.

15 CHAIRMAN: Let me have the Staff respond
16 to that. I think in their report there that they did
17 mention about the parking situation, but let me have
18 Mr. Reynolds respond to that.

19 MR. HOWARD: Sure. I'd be glad to.

20 Based on what we know, there are
21 approximately 3200 square area leasable area in the
22 building at a 1 to 300 parking requirement which is
23 what we require for retail uses for a building under
24 10,000 square feet. They would be required to have 11
25 parking spaces. Based on a field evaluation there are

1 only eight there currently. It's our feeling that
2 that they don't have the parking that would be
3 required to meet the 1 to 300 for 3200 square feet.
4 They're also proposing to go to the B-4 zone. Some of
5 the uses that he's mentioned, doctors office, dental
6 offices, any kind of an office use would be permitted
7 in what is currently the proper current zone which is
8 P-1 Professional Services.

9 CHAIRMAN: Thank you.

10 MR. REYNOLDS: My point is that doctors
11 and dental offices, if you'll go around and look at
12 them they've got people coming and going on an
13 entirely quicker basis than what you would in a retail
14 like a gift shop or a little dress shop or something
15 like that.

16 CHAIRMAN: Mr. Reynolds, please address
17 your comments to the chair and then we'll bring forth
18 who nodes needs to respond. He may not be the
19 respondent.

20 MR. REYNOLDS: I'm just saying there would
21 be less traffic involved with a retail or a gift shop
22 or a dress shop or something along those lines. I
23 don't know who is going to want to lease the
24 establishment. I've had a couple of people inquire
25 about it, but I haven't got anybody firm involved. I

1 think it would open up a few more possibilities for me
2 to lease the building if we take this building from
3 being a non-taxable entity. I bought it, it was going
4 to be bought by somebody who was going to turn it into
5 a parking lot and tear the building down. I didn't
6 want that done because I like the fire station. It's
7 an old, nice building. That's why I bought the
8 building. I'd like to see it continue as it is. It's
9 a nice building that was built in 1944, but I need a
10 little help from the city. No matter what we do I
11 think it's going to be put on the tax base because I
12 bought it and now it's not essentially a building or a
13 fire station. Plus if we can get a retail or whatever
14 in there then we'll have occupational taxes paying
15 towards the city. So I think it's a good all win
16 situation for the city, but I need a little help from
17 the city. I hear all the time that the city is
18 wanting to help bring in businesses into Owensboro and
19 this, that and the other. I'm trying to do that. I'
20 trying to get this building to where we can bring a
21 business in to the Owensboro area instead of going out
22 on South Frederica or - -

23 CHAIRMAN: Now, wait a minute. When you
24 made the comment "help from the city," I don't believe
25 I understand your statement there.

1 MR. REYNOLDS: Help from you all. I don't
2 know whether - -

3 CHAIRMAN: You mean as far as the zoning
4 situation?

5 MR. REYNOLDS: Right.

6 CHAIRMAN: He did bring up in his response
7 and in his findings you're okay to do professional,
8 dental, those type of offices.

9 MR. REYNOLDS: I understand that.

10 CHAIRMAN: But where we are there's
11 certain situations in where we are tied is the ratio
12 to parking. There are other applicants and other
13 people that have been enforced also. That's pretty
14 well just a set regulation that we have. Now, if you
15 can demonstrate where you can come up with you've got
16 8 and you need 11.

17 MR. REYNOLDS: Well, it says I've got
18 eight but it's actually nine. There's two behind the
19 building if you want to count those that could be
20 considered parking spots behind the building itself.
21 That would give you the 11.

22 CHAIRMAN: I think 11 is the magic. Let
23 me bring him back to comment to your response on that
24 issue.

25 MR. APPLEBY: Another point, Mr. Chairman,

1 is the acreage to meet, to be in compliance with the
2 Comprehensive Plan and the zoning across the
3 intervening street has to be at least an acre and a
4 half in size and this is only three-tenths of an acre.

5 MR. HOWARD: As far as the parking goes,
6 when we went out to looked, there are eight spaces
7 that I think meet the nine foot wide, 18 foot in
8 depth. There's one space on the far end that looks to
9 be substandard. They would also be required, if
10 approved, to put in vehicular use area landscape
11 screening which would also eliminate some of the paved
12 area that could actually be for parking when that
13 landscaping would be installed.

14 CHAIRMAN: If he stays in his correct zone
15 or the zone that's he's in right now, none of that, as
16 far as his landscaping and none of that would take
17 affect.

18 Bring up Mr. Mischel.

19 MR. ELLIOTT: State your name, please.

20 MR. MISCHEL: Jim Mischel.

21 (JIM MISCHEL SWORN BY ATTORNEY.)

22 MR. MISCHEL: It very well could be a
23 change of use. The zoning is correct, but typically
24 that use that was in there is gone. If a different
25 use comes in, then they would have to comply with the

1 ordinance as far as the landscaping and such.

2 CHAIRMAN: As far as going from the museum
3 property to the - -

4 MR. MISCHEL: To maybe a dental office or
5 something like that.

6 CHAIRMAN: Thank you, Mr. Mischel.

7 Mr. Reynolds, did you understand that?

8 MR. REYNOLDS: I do, but I don't agree
9 with it, the landscaping deal.

10 CHAIRMAN: It is in our Comprehensive
11 Plan. In our ruling a judgment has to be based on the
12 Comprehensive Plan. We've got the acreage situation
13 and we had the number of parking spaces. It's not
14 that the Planning Commission does not want to put more
15 people on the tax rolls. I think the commission has
16 done an excellent job of putting everybody we can on
17 the tax rolls. It's a situation due to the
18 Comprehensive Plan and our regulations. There are
19 certain things that we're just not allowed to do.
20 That's where we do not have any flexibility.

21 If you do or when you do open up, if you
22 do get a dental office or a professional office or
23 some sort of office like that, then as Mr. Mischel
24 stated, there will be a certain criteria that you will
25 have to meet in your parking screening and things like

1 that that are required by P-1 ordinance or P-1 zoning.
2 I didn't want you to not be aware of those situations.

3 MR. REYNOLDS: Okay.

4 CHAIRMAN: Are there any other questions
5 or comments?

6 (NO RESPONSE)

7 CHAIRMAN: Anybody on the commission have
8 a comment?

9 MR. JAGOE: Figure out how I can state
10 this. Because there's an existing building there, he
11 doesn't have to file a plan; is that correct?

12 CHAIRMAN: We'll bring Mr. Howard back up.

13 MR. HOWARD: Could you restate that.

14 MR. JAGOE: In changing the zoning with an
15 existing building there, do you have to file a plan?

16 MR. NOFFSINGER: Yes.

17 MR. HOWARD: Yes. They would have to file
18 a site plan since it's one building one use on the
19 lot.

20 MR. JAGOE: It's not up to use - - I guess
21 you went out and looked at the site to determine
22 whether or not there was parking or not.

23 MR. HOWARD: Right. Went out this
24 afternoon, as well as when I was on site to post the
25 rezoning signs.

1 MR. JAGOE: If Mr. Reynolds could figure
2 out how to get 11 parking spots on there, then that
3 goes away, correct?

4 MR. HOWARD: They would have to
5 demonstrate that, yes, there was room on site to meet
6 all specific parking requirements, parking space size,
7 landscaping requirements, access issues. All of that
8 would have to be addressed.

9 CHAIRMAN: What about the acreage issue
10 that Mr. Appleby referred to?

11 MR. REYNOLDS: Could I ask question?

12 CHAIRMAN: Absolutely.

13 MR. REYNOLDS: Well, the front drive
14 comes in off of 18th Street. I didn't consider that
15 parking at all. I notice that you all have written up
16 something that I received from you all that that
17 access was either limited or not to be used or
18 whatever. I mean there's parking spots there off of
19 18 Street which would accommodate two or three more
20 parking spots for like employees. It wouldn't be
21 coming and going ,if that's a consideration. I don't
22 know whether that's allowable or not.

23 CHAIRMAN: If we were able to overcome the
24 parking or, as Mr. Jagoe was making comment to, we
25 still have the lot size situation.

1 MR. HOWARD: It doesn't meet the
2 Comprehensive Plan requirements of an acre and a half.
3 I will answer the question pertaining to access on
4 East 18th Street.

5 East 18th Street is classified as a major
6 collector roadway. In our Staff Report, we note that
7 there's a 250 spacing requirement. That drive does
8 not meet that space requirement. Our recommendation
9 would be that that closed, if the rezoning itself is
10 approved. We've made the same request of the property
11 that's adjacent, I believe it's 116, that was in for
12 rezoning in December. That they closed their access
13 as well.

14 MR. REYNOLDS: But that driveway has been
15 there since 1944. So that was before your Planning &
16 Zoning created this master plan or whatever you've
17 done. This building has been there since '44. The
18 driveway has since there since '44. So now you're
19 coming back and you're saying that because this was
20 created later on that this is no longer a viable
21 entity. I don't know if I can go on with all of that
22 or not.

23 CHAIRMAN: The original use of that
24 building was a fire station.

25 MR. REYNOLDS: That's correct.

1 CHAIRMAN: The entry and exit off of 18th
2 Street was the only way the trucks could come and go.

3 MR. REYNOLDS: Right.

4 CHAIRMAN: As the city has changed and the
5 usage of the building has changed, the Comprehensive
6 Plan come into being. Then as that building changes
7 ownerships, it is covered by the current Comprehensive
8 Plan.

9 MR. REYNOLDS: True, but the streets in
10 the city were established or maintained for vehicles
11 to get to and from retail establishments or wherever
12 else it is you're going. I find this ludicrous that
13 we're coming back to a situation that you can't
14 establish a retail space on a commercial street. All
15 18th Street from that corner all the way out is just
16 about commercial or P-1 or something. It's all
17 commercial. The only part of 18th Street that's got
18 very few residential left is from Frederica to that
19 corner. I've got commercial on all three corners
20 across from me. I think from Frederica down to my
21 corner, if somebody will allow it, ought to be turned
22 into commercial, you know, to establish more retail
23 outlets within the city instead of having to go out on
24 South Frederica or 54.

25 I find this kind of backwards that we're

1 not trying to establish more commercial within the
2 city rather than saying, no, you can't. You have to
3 have so many acres in order to do this when there's
4 not that acreage within the city. I don't know how
5 you can abide by - - I think they stated you'd have to
6 buy from Frederica all the way down to my corner in
7 order to get 1.5 acres for a commercial zoning. I
8 don't know that you can do that. I can't do that. I
9 can't buy up the whole block just to put a gift shop.

10 CHAIRMAN: But there are things that you
11 can do within your professional zoning with minor
12 adjustments. I mean there's going to have to be - -
13 landscaping regulations are going to have to be met
14 and there's going to be some other things. The two
15 things that you mentioned you wanted to do you can
16 already do.

17 MR. REYNOLDS: But I can't open up a
18 retail store.

19 CHAIRMAN: No.

20 MR. APPLEBY: Gary, he's talking about the
21 block from Frederica all the way down to this corner.
22 If by chance that property over a period of time from
23 Frederica Street to 18th Street went commercial and it
24 was a logical expansion, it was on the same side of
25 the road, not an intervening street, the acreage

1 wouldn't be a problem; is that right?

2 MR. NOFFSINGER: Yes.

3 MR. APPLEBY: In theory that could go
4 commercial at some point, but right now it does meet
5 the criteria. If we're to overturn the Staff's
6 recommendation, we've got to come up with a findings
7 of fact in support of it, and there are no findings of
8 fact that would support a commercial zone on a lot of
9 that size that doesn't meet the minimum requirements
10 under the ordinance; is that right?

11 MR. NOFFSINGER: Yes, sir, that is
12 correct. It would not take the entire block all the
13 way to Frederica Street because this is about a third
14 of an acre. So it would take about three lots
15 actually to get an acre. So you're looking at about
16 five lots roughly to get an acre.

17 MR. APPLEBY: And those could go over a
18 period of time as a logical expansion, if the one next
19 to it does. Then he's beyond the requirement for an
20 acre and a half.

21 MR. NOFFSINGER: Right.

22 MR. APPLEBY: Where it doesn't matter any
23 more.

24 MR. JAGOE: I think what the applicant is
25 saying is that it seems that the change of use from

1 overall an area is really coming from Triplett to
2 Frederica.

3 CHAIRMAN: I think he said from Frederica
4 to Triplett.

5 MR. JAGOE: I'm thinking of what's out
6 there and how that corridor has changed.

7 MR. NOFFSINGER: That particular block,
8 from Frederica Street to Daviess Street, the trend has
9 been to more residential. I say that because we had
10 two lots that were rezoned on the opposite side of
11 18th Street about mid block back years ago from
12 residential to professional. They didn't develop.
13 Recently there was a rezoning to take those two lots
14 from P-1 Professional Service back to residential. I
15 believe Habitat for Humanity built two houses, one on
16 each lot.

17 The property immediately next-door to this
18 property to the west was rezoned back just a few
19 months ago from residential to P-1 Professional
20 Service.

21 The subject property is P-1 now. The
22 history it was a fire station. Then it became the
23 Symphony headquarters. Then it went up on the auction
24 block. It's a public building. This particular piece
25 of property could be used for professional offices

1 based upon the zoning that's allowed.

2 When we go to a retail classification, we
3 could to a classification that's generally more
4 intense in terms of activities that could be located
5 on the property. Once a piece of property is rezoned
6 to B-4 general business, neither the Planning
7 Commission or the city can say you can have this use,
8 but you can't have this use. It can be anything
9 that's allowed in that zone. So the intensity of use
10 becomes an issue and parking because generally B-4
11 general business just means you're going to have more
12 vehicles, more traffic.

13 Now, there was some talk about dental
14 offices, physician offices. It would be very
15 difficult to use this particular piece of property for
16 that type of use because parking is a much higher
17 standard than retail sales for medical offices. It's
18 a in a 1 to 200 square feet. You would be looking at,
19 what, 16 parking spaces would be necessary if that
20 building were used for medical or dental offices. So
21 that particular use is out whether it's rezoned or
22 not. But a general type office could be used, could
23 work at that site.

24 MR. JAGOE: I realize we can't say that
25 you can change the use. Can the board of adjustment

1 do that?

2 MR. NOFFSINGER: No, sir.

3 MR. JAGOE: They can't do that either?

4 MR. NOFFSINGER: No, sir.

5 MR. REYNOLDS: You're saying under the
6 current P-1 I can't put a dental office or a doctors
7 office in there; is that correct?

8 MR. NOFFSINGER: Your limitation is going
9 to be parking because parking is based upon 1 per 200
10 square feet.

11 MR. REYNOLDS: You all are killing me on
12 all fronts. I thought when I bought it it was P-1 and
13 therefore the possibility was at least for a doctors
14 or a dentist office. Now you're saying that's not
15 even a possibility?

16 MR. NOFFSINGER: Parking is 1 per 200
17 square feet and you have a 3200 square foot building.
18 You would need 16 parking spaces.

19 MR. REYNOLDS: It' snot 3200. It's about
20 2800 square feet, but you're still killing me on that.

21 MR. NOFFSINGER: And you still need 14
22 parking spaces on site. Just because the building is
23 zoned a certain way doesn't mean it can be used for
24 just any type of use. You have to be able to meet the
25 parking requirements for that use.

1 MR. REYNOLDS: I'm dead.

2 CHAIRMAN: Does anybody have any further
3 comments?

4 (NO RESPONSE)

5 CHAIRMAN: If not the Chair is ready for a
6 motion.

7 MR. APPLEBY: I make a motion for denial
8 based on the Staff's Recommendations, Findings of Fact
9 1 through 5.

10 CHAIRMAN: We've got a motion for denial
11 by Mr. Appleby.

12 MS. DIXON: Second.

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

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carry unanimously.

17 Next item, please.

18 -----

19 ZONING CHANGES - COUNTY

20 ITEM 6

21 4641 KY 1514, 4601 BLK KY 1514, 64.61 acres
22 Consider zoning change: From R-1A Single-Family
23 Residential and A-R Rural Agriculture to A-R Rural
24 Agriculture
25 Applicant: Kevin Ferguson

24 PLANNING STAFF RECOMMENDATIONS

25 Staff recommends approval because the

1 proposal is in compliance with the community's adopted
2 Comprehensive Plan. The findings of fact that support
3 this recommendation includes the following:

4 Findings of Fact:

5 1. The subject property is located in a
6 Rural Maintenance Plan Area where agricultural uses
7 are appropriate in general locations;

8 2. The use of the subject property will
9 remain as the golf course and clubhouse for the
10 Panther Creek Golf Club;

11 3. The current zoning is inappropriate
12 and the proposed zoning is more appropriate as the
13 property has been used as a golf course since the
14 early 1970's and the clubhouse since the early 1990's;
15 and,

16 4. The rezoning will bring the entire
17 site into compliance with the conditional use permit
18 process that is applicable to the subject property.

19 MR. HOWARD: We would like to enter the
20 Staff Report as Exhibit D.

21 CHAIRMAN: Is there anybody representing
22 the applicant?

23 (NO RESPONSE)

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

1 (NO RESPONSE)

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

4 SISTER VIVIAN: Move for approval based
5 upon Findings of Fact 1 through 4.

6 CHAIRMAN: Motion for approval by Sister
7 Vivian.

8 MR. HAYDEN: Second.

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

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries unanimously.

13 Next item, please.

14 ITEM 7

15 2800, 2810 KY 54, 3200 Alvey Park Drive West,
16 75.617 acres (POSTPONED from October Meeting)
17 Consider zoning change: From A-U Urban Agriculture,
18 MHP Manufactured Housing Park and I-1 Light Industrial
19 to B-4 General Business
20 Applicant: B&K Development, LLC

21 PLANNING STAFF RECOMMENDATIONS

22 Staff recommends approval because the
23 proposal is in compliance with the community's adopted

24 Comprehensive Plan. The conditions and findings of

25 fact that support this recommendation include the

following:

Conditions:

- 1 1. Approval of a final development plan
2 by the OMPC;
 - 3 2. The Wimsatt Court access shall be
4 limited to right turn in and right turn out only. The
5 access shall be channelized to prohibit left turning
6 vehicles at the access;
 - 7 3. Install a 100 foot full length right
8 turn storage lane and 100 foot decel taper at the
9 Wimsatt Court access.
 - 10 4. Lengthen the existing westbound right
11 turn lane on KY 54 at the Highland Pointe Drive
12 intersection to a minimum of 250 feet of full storage
13 with a 180 foot taper;
 - 14 5. Install an additional northbound lane
15 on Highland Pointe Drive to allow for dual northbound
16 left turn lanes;
 - 17 6. Post surety at the time of final plat
18 submittal for 20 percent of the construction cost for
19 the installation of a second right turn lane at the
20 Wendell Ford Expressway exit ramp and KY 54
21 intersection; and,
 - 22 7. Provide a connection from the Highland
23 Pointe development to the Greenbelt Park along the
24 south side of the property.
- 25 Findings of Fact:

1 1. The subject property is partially
2 located in a Business Plan Area where general business
3 uses are appropriate in limited locations and
4 partially located in an Industrial Plan Area where
5 general business uses are appropriate in very-limited
6 locations;

7 2. The development of the subject
8 property will be non-residential in nature and
9 consistent with development patterns in commercially
10 zoned property;

11 3. The proposal is a logical expansion of
12 existing B-4 General Business zoning located
13 immediately east of the subject property; and,

14 4. With the required improvements
15 completed as conditioned with the rezoning, the
16 development should not overburden the capacity of
17 roadways and other necessary urban services that are
18 available in the affected area.

19 MR. HOWARD: We would like to enter the
20 Staff Report as Exhibit E.

21 CHAIRMAN: Is anybody representing the
22 applicant?

23 MR. WILSON: Yes.

24 MR. ELLIOTT: State your name, please.

25 MR. WILSON: Bill Wilson.

1 (BILL WILSON SWORN BY ATTORNEY.)

2 MR. WILSON: I'm here on behalf of the
3 applicant. Bill Hayes is here who has done a traffic
4 study. Don Bryant is here to address any questions
5 you all might have, as is Matt Hayden one of the
6 developers.

7 With that said if any of you all have any
8 questions we'll try to address them. I believe we
9 can. I believe everything is in compliance. We would
10 ask that it be voted on and rezoned tonight.

11 CHAIRMAN: Does anybody in the audience
12 have any questions of the applicant?

13 (NO RESPONSE)

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

16 (NO RESPONSE)

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

19 MR. HAYDEN: Motion for approval based on
20 Staff Recommendations, Condition 1 through 7 and
21 Findings of Fact 1 through 4.

22 CHAIRMAN: We have a motion for approval
23 by Mr. Hayden.

24 MR. APPLEBY: Second.

25 CHAIRMAN: Second by Mr. Appleby. All in

1 favor raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries unanimously.

4 Next item.

5 RELATED ITEM:

6 ITEM 7A

7 Highland Pointe, Lots 1-19, 75.617 acres
8 Consider approval of preliminary development plan.
9 Applicant: B&K Development, LLC

10 MR. NOFFSINGER: Mr. Chairman, this plan
11 has been reviewed by the Planning Staff. It's found
12 to be in order. It's found to be consistent with the
13 adopted Comprehensive Plan as well as the adopted
14 subdivision regulations and zoning ordinance.

15 CHAIRMAN: Is anybody representing the
16 applicant?

17 MR. WILSON: Mr. Chairman, the same as
18 previously stated. Here on behalf of the applicant
19 and all the same gentlemen are here if you have any
20 questions.

21 CHAIRMAN: Thank you.

22 Are there any questions of the applicant
23 at this time?

24 (NO RESPONSE)

25 CHAIRMAN: Questions form the commission?

(NO RESPONSE)

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

3 MS. DIXON: Move for approval.

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

6 MR. APPLEBY: Second.

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

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries unanimously.

11 Next item, please.

12 ITEM 8

13 Portion of 4100 Veach Road, 3.7 acres
14 Consider zoning change: From R-1A Single-Family
15 Residential to R-1C Single-Family Residential
16 Applicant: Thompson Homes, Inc., PKP 79 Company

17 PLANNING STAFF RECOMMENDATIONS

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

22 Findings of Fact:

- 23 1. The subject property is located in an
24 Urban Residential Plan Area where urban low-density
25 residential uses are appropriate in limited locations;
2. The plans for the subject property are

1 consistent with urban residential developments in
2 character, size and configuration.

3 3. Sanitary sewer service is available to
4 the site and will be incorporated in the development;
5 and,

6 4. The subject property is a portion of a
7 larger tract of property of which the majority is
8 currently zoned R-1C.

9 MR. HOWARD: We would like to enter the
10 Staff Report as Exhibit F.

11 CHAIRMAN: Is anybody here representing
12 the applicant?

13 (NO RESPONSE)

14 CHAIRMAN: Does anybody have any
15 questions?

16 (NO RESPONSE)

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

19 MS. DIXON: Move to approve based upon
20 Planning Staff Recommendations and Findings of Fact 1
21 through 4.

22 CHAIRMAN: Motion for approval by Ms.
23 Dixon.

24 MR. ROGERS: Second.

25 CHAIRMAN: Second by Mr. Rogers. All in

1 favor raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries unanimously.

4 Next item, please.

5 ITEM 9

6 5400 Blk Willow Brook Loop, 6.490 acres (POSTPONED
7 from October Meeting)

8 Consider zoning change: From A-R Rural Agriculture to
9 R-1A Single-Family Residential

10 Applicant: O'Bryan Development, Inc.

11 PLANNING STAFF RECOMMENDATIONS

12 Staff recommends approval because the
13 proposal is in compliance with the community's adopted
14 Comprehensive Plan and there have been major changes
15 of an economic fiscal or social nature within the area
16 involved which were not anticipated in the adopted
17 Comprehensive Plan. Those changes have substantially
18 altered the basic character of the area involved. The
19 findings of fact that support this recommendation
20 include the following:

21 Findings of Fact:

22 1. The subject property is located in a
23 rural preference plan area where urban low-density
24 residential uses are appropriate in very limited
25 locations.

26 2. The adjacent property was rezoned in
27 1998 and 2001 to R-1A Single-Family Residential and

1 the applicant's proposal is a logical expansion of
2 that zone and development.

3 3. The adopted Comprehensive Plan update
4 now recognizes the location of a new elementary school
5 in the vicinity of the subject property.

6 4. The adopted Comprehensive Plan update
7 now recognizes the extension of sanitary sewers in the
8 vicinity of the subject property, the availability of
9 sanitary sewers to the immediate vicinity as resulting
10 in creation of an urban residential growth area within
11 a rural preference plan area under the adopted
12 Comprehensive Plan.

13 MR. HOWARD: We would like to enter the
14 Staff Report as Exhibit G.

15 CHAIRMAN: Is anybody here representing
16 the applicant?

17 APPLICANT REP: Yes.

18 CHAIRMAN: Does anybody have any questions
19 of the applicant?

20 (NO RESPONSE)

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

23 MR. ROGERS: Motion for approval based on
24 Findings of Fact 1 through 5.

25 CHAIRMAN: Motion for approval by Mr.

1 Rogers.

2 MR. JAGOE: Second.

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

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries unanimously.

7 Next item, please.

8 MR. NOFFSINGER: Related Item is a first
9 for the Planning Commission because this is a
10 Variance. Usually variance request are handled by the
11 Owensboro Metropolitan Board of Adjustment.

12 However, the Kentucky Statute allows the
13 Planning Commissions to review variance request in
14 conjunction with rezonings. Now, in the past the duty
15 has always been given to the board of adjustment.
16 However, when the zoning ordinance was reviewed and
17 revised back a couple of years ago, I believe it
18 was. The zoning ordinance allowed the Planning
19 Commission to consider variance requests where we
20 differ from the requirements of the zoning ordinance
21 if it's in conjunction with the rezoning. So this, as
22 I stated earlier, is the first for the Planning
23 Commission.

24 I just want to mention to the Commission
25 is there's certain considerations that you must take

1 into account for a variance request. The first one in
2 considering a variance request you're to determine if
3 there are special circumstances on the land that
4 generally do not exist. Also whether or not there's a
5 hardship.

6 You also should consider whether or not
7 the applicant's actions are wilful in terms of their
8 approach to the variance or if the relief that's
9 sought is not a result of the applicant's actions.

10 There are findings that you have to make
11 as a requirement of law. Those four findings, I think
12 each of you have a list, but in granting of a variance
13 you're to find, if you approve, that the granting of
14 the variance will not adversely affect the public
15 health, safety or welfare; will not alter the
16 essential character of the general vicinity; will not
17 cause a hazard or a nuisance to the public; and will
18 not allow an unreasonable circumvention of the
19 requirements of the zoning regulations.

20 Now, you do not have to find each and
21 every one of those; however in making your motion you
22 do need to attach specific findings as to why granting
23 a variance will not adversely affect the public
24 health.

25 If you were to deny the variance, you

1 would do just the opposite. You would find that it
2 would adverse affect the public health, safety or
3 welfare. Then you would state findings as to why
4 that's the case.

5 Now, we have helped the Planning
6 Commission in terms of a variance request because just
7 like zoning changes we've prepared a recommendation
8 for you that addresses those findings. However, we've
9 not given specific, we were not that specific on each
10 finding. Just make sure when you do consider this and
11 if you do make a motion that you specifically address
12 the situation. If you're uncomfortable in terms of a
13 finding, then the Planning Staff would be glad to
14 assist you as well as legal counsel.

15 RELATED ITEMS:

16 ITEM 9A

17 5400 Blk Willow Brook Loop, in an R-1A zone
18 Consider request for a Variance to eliminate the 20
19 foot project boundary buffer for the proposed
20 Whispering Meadows Sudivision, Section 3
Reference: Zoning Ordinance, Article 10,
Section 10.44
Applicant: O'Bryan Development, Inc.

21 MR. NOFFSINGER: Mr. Chairman, this
22 particular property is part of an ongoing residential
23 subdivision. It's a plan development where generally
24 they will show the lot arrangements as well as show
25 buildings envelopes, where buildings can be placed on

1 a particular piece of property.

2 In the plan residential development
3 section in our zoning ordinance, it says that along
4 the perimeter of your proposed development you're to
5 provide a 20 foot setback so that your structures are
6 no closer than 20 feet to that property line of your
7 adjoining neighbor.

8 In this particular case, we feel that the
9 developer will be developing the adjoining property.
10 Because of that, and it will be harmonious with the
11 development that's occurring out there now and in the
12 future, the Planning Staff is recommending that the
13 variance be approved. We make that recommendation
14 based upon what I've just stated to you, as well as
15 there have been other variances of this same nature
16 issued in this development by the board of
17 adjustment. So this is certainly not out of character
18 with this particular development.

19 Because of this, we feel we can find that
20 the granting of the variance would not adversely
21 affect the public health, safety or welfare; will not
22 alter the essential character of the general vicinity,
23 because we've already experienced development that is
24 approaching that 20 foot or being developed into that
25 20 feet setback; it will not cause a hazard or a

1 nuisance to the public, because this setback is
2 generally toward the rear lots and does not affect the
3 public view or use; and it will not allow an
4 unreasonable circumvention of the requirements of the
5 zoning regulations.

6 The applicant comes to you with this
7 variance consideration in advance. It's not something
8 that they're coming in saying, hey, we've made a
9 mistake. They're trying to address this issue up
10 front. I know I've been a little long-winded on this;
11 however, it was worthy of explanation to you. I hope
12 I've explained to you what is being asked of you and
13 you're clear on the findings.

14 CHAIRMAN: Thank you, Mr. Noffsinger.

15 MR. JAGOE: I have a question. Just so I
16 understand. Each time the applicant comes in and then
17 we have passed it with the buffer has gone back and
18 got the variance to eliminate it.

19 MR. NOFFSINGER: Yes, sir.

20 MR. JAGOE: As the applicant is moving
21 through this piece of property, they are zoning as
22 they go along.

23 MR. NOFFSINGER: Yes, sir.

24 MR. JAGOE: You're still keeping the
25 buffer along the area that's not zoned or is that

1 being asked to be taken away as well?

2 MR. NOFFSINGER: Well, this development is
3 being planned in phases. Phases just like you see
4 here rather than overall development. The areas in
5 which we feel will not be developed as a part of this
6 ongoing development, then they have not requested a
7 buffer, a variance on that buffer. One has not been
8 granted. They've adhere to that, but this would be
9 the areas that are internal to what we believe will be
10 ongoing into the development.

11 If we had a master plan, and we're not
12 doing this in a piecemeal fashion, then this buffer
13 would not be an issue.

14 MR. JAGOE: If you had a master plan,
15 there no assumption as to what's being planned?

16 MR. NOFFSINGER: That's correct.
17 Therefore, there would not be a need for that buffer.

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

20 (NO RESPONSE)

21 CHAIRMAN: Any further questions from the
22 Commission?

23 (NO RESPONSE)

24 CHAIRMAN: If not I believe the Chair
25 would be ready for a motion.

1 MR. JAGOE: We may have to ask help from
2 counsel on this one. I guess we're going to ask for -
3 -

4 MR. CHAIRMAN: How about the findings of
5 "will nots."

6 MR. JAGOE: Would that work?

7 MR. ELLIOTT: That will work.

8 MR. JAGOE: Move for approval - -

9 CHAIRMAN: Wait a minute.

10 Mr. Elliott, do you agree with the
11 findings of "will nots"?

12 MR. ELLIOTT: Yes.

13 MR. JAGOE: With the four findings of will
14 nots as they're stated.

15 CHAIRMAN: In the form of a motion Mr.
16 Jagoe has made a motion for approval.

17 MR. APPLEBY: Second.

18 CHAIRMAN: Second by Mr. Appleby. All in
19 favor raise your hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries unanimously.

22 Next item, please.

23 ITEM 9B

24 Meadow Run at Whispering Meadows, Section 3, 6.490
25 acres (POSTPONED from October Meeting)
26 Consider approval of major subdivision preliminary

1 plat/final development plan.
Applicant: O'Bryan Development, Inc.

2

3 MR. NOFFSINGER: Mr. Chairman, this plan
4 has been reviewed by the Planning Staff. It's found
5 to be considered with the adopted Comprehensive Plan
6 as well as the adopted zoning regulations and
7 subdivision regulations.

8 CHAIRMAN: Do we have anybody representing
9 the applicant?

10 APPLICANT REP: Yes.

11 CHAIRMAN: Do we have any questions of the
12 applicant?

13 (NO RESPONSE)

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

16 SISTER VIVIAN: Move for approval.

17 CHAIRMAN: Motion for approval by Sister
18 Vivian.

19 MR. HAYDEN: Second.

20 CHAIRMAN: Mr. Hayden has a second. All
21 in favor raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Next item, please.

25

1 COMBINED DEVELOPMENT PLAN/MAJOR SUBDIVISIONS

2 ITEM 10

3 Paddock Pointe, 2.330 acres (POSTPONED from October
Meeting)

4 Consider approval of major subdivision preliminary
plat/final development plan.

5 Applicant: Paul J. Martin, Paddock Swim & Tennis
Club, Inc.

6

7 MR. NOFFSINGER: Mr. Chairman, this plan
8 has been reviewed by the Planning Staff. We find it
9 to be consistent with the adopted Comprehensive Plan
10 as well as the adopted Zoning Ordinance and
11 subdivision regulations.

12 CHAIRMAN: Is there anybody representing
13 the applicant?

14 (NO RESPONSE)

15 CHAIRMAN: Does anybody have any
16 questions?

17 (NO RESPONSE)

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

20 MR. JAGOE: Move for approval.

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

23 SISTER VIVIAN: Second.

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

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries unanimously.

3 Next item, please.

4 -----

5 DEVELOPMENT PLANS

6 ITEM 11

7 1026, 1100 West 5th Street, 0.259 acres
8 Consider approval of final development plan.
9 Applicant: The Church of the Living God

10 MR. NOFFSINGER: Mr. Chairman, we've
11 reviewed this application. We find it to be
12 consistent with the adopted Comprehensive Plan, Zoning
13 Ordinance and subdivision regulations.

14 CHAIRMAN: Is there anybody representing
15 the applicant?

16 APPLICANT REP: Yes.

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

19 (NO RESPONSE)

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

22 MS. DIXON: Move to approve.

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

25 MR. HAYDEN: Second.

CHAIRMAN: Second by Mr. Hayden. All in

1 favor raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries unanimously.

4 Next item.

5 -----

6 MAJOR SUBDIVISIONS

7 ITEM 12

8 East Byers Avenue, 54.567 acres
9 Consider approval of major subdivision final plat
10 For development transfer only, no surety required.
11 Applicant: National City Bank, Kentucky

10

11 MR. NOFFSINGER: Mr. Chairman, Planning
12 Staff has reviewed this application. We find the use
13 to be consistent with the adopted Comprehensive Plan;
14 although it does not meet all the technical
15 requirements of the subdivision regulations and zoning
16 ordinance. It is for property transfer only and we do
17 have a preliminary development plan on this property
18 that details how it will be developed in the future
19 and that no notation is contained on this plat.

20 MR. JAGOE: Mr. Chairman, I need to
21 disqualify myself.

22 CHAIRMAN: Let the record note Mr. Jagoe
23 is disqualifying himself.

24 Is anybody representing the applicant?

25 (NO RESPONSE)

1 CHAIRMAN: Do we have any questions?

2 (NO RESPONSE)

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

5 MS. DIXON: Move to approve.

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

8 SISTER VIVIAN: Second.

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

11 (ALL BOARD MEMBERS PRESENT - WITH THE
12 DISQUALIFICATION OF MR. JAGOE - RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimously with
14 Mr. Jagoe disqualifying himself.

15 ITEM 13

16 Hayden Developmetn Company, Inc. 14.584 acres
17 Consider approval of major subdivision preliminary
18 plat.
Applicant: Hayden Development Co., Inc.

19 MR. NOFFSINGER: Mr. Chairman, this plat
20 has been reviewed by the Planning Staff and Engineer
21 Staff. Found to be consistent with the adopted
22 Comprehensive Plan, Zoning Ordinance and subdivision
23 regulations.

24 CHAIRMAN: Is anybody representing the
25 applicant?

1 APPLICANT REP: Yes.

2 CHAIRMAN: Anybody have any questions of
3 the applicant?

4 (NO RESPONSE)

5 CHAIRMAN: If not the chair is ready for
6 a motion.

7 SISTER VIVIAN: Move for approval.

8 CHAIRMAN: Motion for approval by Sister
9 Vivian.

10 MR. APPLEBY: Second.

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

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries unanimously.

15 Next item.

16 ITEM 14

17 H & I Development, 4.246 acres
18 Consider approval of major subdivision final plat.
19 Surety (Letter of Credit) posted: \$26,335.10
20 Applicant: H & I Development

21 MR. NOFFSINGER: Mr. Chairman, Planning
22 Staff has reviewed this plat. Find that the use to be
23 consistent with the adopted Comprehensive Plan. We
24 find that it's consistent with the Zoning Ordinance
25 and subdivision regulations.

 CHAIRMAN: Is anybody representing the

1 applicant?

2 APPLICANT REP: Yes.

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

5 (NO RESPONSE)

6 CHAIRMAN: If not the chair is ready for a
7 motion.

8 MS. DIXON: Move to approve.

9 CHAIRMAN: Motion for approval by Ms.
10 Dixon.

11 MR. HAYDEN: Second.

12 CHAIRMAN: Second by Mr. Hayden. All in
13 favor raise your right hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries unanimously.

16 Next item.

17 ITEM 15

18 Woodlands Plaza, Unit 2, Lots 12-13, 5.234 acres
19 Consider approval of major subdivision final plat.
20 Surety (Performance Bond) posted: \$200,816.50
Applicant: BAMJAC, LLC

21 MR. NOFFSINGER: Mr. Chairman, this plat
22 is consistent with the Comprehensive Plan, subdivision
23 regulations and zoning ordinance.

24 CHAIRMAN: Is anybody representing the
25 applicant?

1 APPLICANT REP: Yes.

2 CHAIRMAN: Any questions of the applicant?

3 (NO RESPONSE)

4 CHAIRMAN: If not the chair is ready for a
5 motion.

6 MS. DIXON: Move to approve.

7 CHAIRMAN: Motion for approval by Ms.
8 Dixon.

9 MR. HAYDEN: Second.

10 CHAIRMAN: Second by Mr. Hayden. All in
11 favor raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimously.

14 Next item, please.

15 -----

16 MINOR SUBDIVISIONS

17 ITEM 16

18 7758 Joe Haynes Road, 2.285 acres
19 Consider approval of minor subdivision plat.
Applicant: Evelyn Hagan

20 MR. NOFFSINGER: Mr. Chairman, this plan
21 has been reviewed by the Planning Staff. It is found
22 to be inconsistent with the adopted subdivision
23 regulations in that it creates a flag-shaped lot with
24 50 feet of frontage on Joe Haynes Road extending back
25 approximately 400 feet where it widens out to about a

1 two acre tract of land. The Planning Staff may have
2 additional information to add to this; however, the
3 Planning Staff is not recommending it be approved due
4 to the shape of the property and there is additional
5 land here that's available to extend the frontage of
6 the subject tract. With that it's ready for your
7 consideration.

8 CHAIRMAN: Is anybody representing the
9 applicant?

10 (NO RESPONSE)

11 CHAIRMAN: Does anybody have any questions
12 from the commission?

13 (NO RESPONSE)

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

16 MR. APPLEBY: Motion for denial.

17 CHAIRMAN: Motion for denial by Mr.
18 Appleby.

19 MR. JAGOE: Second.

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

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Next item.

25 ITEM 17

1 9575 McCamish Road, 9.243 acres
Consider approval of minor subdivision plat.
2 Applicant: Paulette E. Howard, Geneva Lake

3 MR. NOFFSINGER: Mr. Chairman, this plat
4 has been reviewed by the Planning Staff. It's found
5 to be in order.

6 It takes an existing lot that was created
7 back some time ago and consolidates approximately four
8 acres to it. This property is directly in behind the
9 subject property. The Planning Staff is recommending
10 approval of this development or this division although
11 it does exceed the depth to width ratio of three to
12 one that the subdivision regulations speak to. It
13 does have sufficient frontage along the existing
14 county road. It does not create additional tracts of
15 land. It's simply consolidates to the rear of an
16 existing lot of record what couldn't be further
17 subdivided. If it were, it would create additional
18 irregular shape lots. This is really probably the
19 best thing that could happen with this particular four
20 acres given its shape.

21 CHAIRMAN: Is anybody representing the
22 applicant?

23 APPLICANT REP: Yes.

24 CHAIRMAN: Anybody have any questions of
25 the applicant?

1 (NO RESPONSE)

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

4 SISTER VIVIAN: Move for approval.

5 CHAIRMAN: Motion for approval by Sister
6 Vivian.

7 MR. ROGERS: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 Next item, please.

13 ITEM 18

14 12332 Red Hill-Maxwell Road, 1.56 acres
15 Consider approval of minor subdivision plat.
16 Applicant: April D. Hutchason

17 MR. NOFFSINGER: Mr. Chairman, this plat
18 does not meet the requirements of the adopted
19 subdivision regulations. I'll have to defer to staff
20 in terms of giving you a little bit of history on the
21 property.

22 MR. HOWARD: Mr. Noffsinger is correct.
23 The subdivision plat as submitted violates the three
24 to one length to width ratio requirement. It was also
25 part of a subdivision plat that was before this
commission in September of 2004 where they actually

1 consolidated a portion of this property with some
2 surrounding property so that another lot could be
3 divided that didn't meet the requirements. It was too
4 narrow and too long. That was allowed to go through
5 at that time, though we required that they add a note
6 to the plat stating that this property shall not be
7 further subdivided as to create additional irregular
8 shape lots, not meeting the requirements of the
9 subdivision regulations. As they've submit this plat,
10 it violates that note that was placed upon the plat in
11 September of 2004.

12 CHAIRMAN: Is anybody representing the
13 applicant?

14 MR. ELLIOTT: State your name, please.

15 MR. POTEAT: State Poteat.

16 (STEVE POTEAT SWORN BY ATTORNEY.)

17 MR. POTEAT: Members of the Commission, we
18 recognize first of all that when that plat was done in
19 2004 that there was a notation put on there. Mr.
20 Staples, who is setting back here, is in the process
21 of attempting to buy that land to move down here from
22 Louisville. Moving his mother down here with him. We
23 recognize that the three to one ratio has been in
24 existence for a few years now. We recognize the
25 history of how that came about 10 years ago, 14 years

1 ago. Lots were being created 50 feet wide and 2000
2 feet in depth. We understand that, but if you look at
3 the plat on this one, what they're requesting the
4 existing 1.56 acres will have 100 foot road frontage
5 across on Red Hill-Maxwell Road.

6 What Mr. Staples is trying to do is where
7 there's already utility services at the rear of that
8 1.56 acres, that's where he wants to put a place for
9 his mother. If you look in the parent tract in the
10 circle, you will still have over 100 feet of width
11 left on that one. The three to one ratio as we saw
12 just a moment ago, it's not so stringent that it can't
13 be overcome. You have to look at the circumstances of
14 what's being done. We're creating a lot that already
15 has utility services to it in the back. There's other
16 lots down through there. Again, we've got over 100
17 foot of road frontage. It's just to get us back where
18 he can do that and hopefully have a place for his
19 mother and then have a place for himself over on the
20 other hill, on that other ten acres that will be
21 remaining. We're just asking that the commission
22 approve there plat for Mr. Staples so that he can go
23 through with this and build a couple of homes out
24 there. Thank you.

25 CHAIRMAN: Any questions from anybody in

1 the audience?

2 (NO RESPONSE)

3 CHAIRMAN: Any questions from the
4 commission?

5 MR. JAGOE: I've got one.

6 When we did the lot, in 2004 I guess is
7 when we did that, has the property changed ownership
8 when it was put on the plat?

9 MR. POTEAT: In 2004 - - I can tell you
10 very quickly.

11 In 2004 it was owned, part of the property
12 was owned by Patty Peach or Patty Barnett and her
13 mother Pauline Peach and her daughter April Hutchason.
14 Now the entire property is owned by April Hutchason
15 who is selling to, as I said, Mr. Staples who is in
16 the process of purchasing that property. He's the one
17 who actually filed for this.

18 CHAIRMAN: Was Mr. Staples aware of the
19 previous notation on the property plot?

20 MR. POTEAT: I'm not sure that he was, but
21 I know that he was aware that there's a three to one
22 ratio. He was made aware of that.

23 Again, in talking with him and with
24 others, I know that that has been - - I know this
25 commission looks to the circumstances on each case.

1 I know if we were asking for a 50 foot by 400 foot,
2 you know, I wouldn't do that, but we do have 100 foot
3 of road frontage. That was the standard for many
4 years until - - I know the purpose was to stop the
5 basically destruction of farmland, but this has not
6 been a farm for farm purposes for many years. We're
7 not creating really that irregular of a lot compared
8 to others. We feel like that this is one that we
9 think the commission should approve.

10 CHAIRMAN: Mr. Poteat, we had looked at
11 this property once before. A notation had been made
12 on it about that.

13 MR. POTEAT: I understand that.

14 CHAIRMAN: It's not as if this commission
15 has not considered and made an exception for the said
16 piece of property that we're reviewing again 13 months
17 later.

18 MR. POTEAT: Mr. Staples understands that
19 and I understand that. The commission can go back and
20 revise that. You have the authority.

21 CHAIRMAN: We've been very sympathetic.
22 Somebody moving from Louisville, I mean what a deal
23 coming that way too. That's one of the situations I'm
24 sure your client realizes. We're sort of hind
25 ourselves in with. We have made an exception with

1 this particular piece of property and it is somewhat
2 irregular to begin with and now it's somewhat
3 irregular.

4 MR. POTEAT: We can always change our
5 minds and we know that. That's what we're asking. As
6 I said, what Mr. Staples is wanting to do is move him
7 and his mother down here and have a place for both of
8 them. That would be a perfect place out there on Red
9 Hill-Maxwell Road.

10 CHAIRMAN: We're not questioning that.

11 MR. POTEAT: I understand.

12 CHAIRMAN: Have you advised or has Mr.
13 Cecil possibly given them other options of drawing up
14 this property to be a little bit more of a uniform
15 parcel?

16 MR. POTEAT: The only way that - - I don't
17 know that he has. I honestly don't. I don't think he
18 has. We realize that with a three to one ratio that
19 it's not absolute that you will even approve it at 100
20 foot, 300 feet because of the remaining lot that's
21 over there. If you did that, I don't know whether
22 that's a consideration or not.

23 The reason they're trying to draw the lot
24 as it is is because there are already utilities back
25 there where they wouldn't have to - - the septic

1 system is already in. It's been approved. This is
2 from a prior home that was there. I don't know how
3 long ago, but there was another home back there.

4 CHAIRMAN: Let me ask Mr. Noffsinger.

5 Is there any vision that you have for
6 where this could be conforming piece of property?

7 Mr. Howard, are you going to address this?

8 MR. HOWARD: It's my understanding that
9 Staff has met I guess with the previous owners of this
10 property and developed a way that you could create a
11 lot that is regular shape of the remainder frontage,
12 but it would be over ten acres and still qualify as an
13 agricultural division. The issue I think would be
14 they won't have access to their utilities, but a more
15 regular shape lot could be created.

16 MR. APPLEBY: You're saying leave a 50
17 foot right-of-way to a 10 acre tract and the remainder
18 lot would be more regular?

19 MR. HOWARD: As it stands right now we
20 have a 10.01 acres remaining, which is an agricultural
21 tract. They could extend the road frontage, narrow it
22 down to 50 feet and make a more regular shaped lot.
23 It seems that the potential exist to do something
24 along those lines. I think previously, and maybe not
25 to the applicant, they didn't come in and talk with

1 us, but other people prior to this we have discussed
2 that option.

3 CHAIRMAN: It would be a 50 foot by 150?

4 MR. APPLEBY: No. It makes an ag division
5 of the remainder lot. Am I hearing that right? With
6 a 50 foot of access and it would give this one 150
7 feet and you move the rear line to make it a more
8 regular shaped lot. That's what I'm hearing.

9 MR. HOWARD: You could make a lot say 150
10 by 450. That would meet the three to one requirement
11 and still be over an acre and meet the size
12 requirement for the property as well and still leave
13 50 feet frontage to the agricultural tract and still
14 be over 10 acres. That would meet all our
15 requirements.

16 CHAIRMAN: Mr. Poteat.

17 MR. POTEAT: All I can do is discuss that
18 with him. As I said, Mr. Cecil has not discussed that
19 part of it with them.

20 MR. STAPLE: That creek is the issue.

21 CHAIRMAN: You must come to the podium.

22 MR. ELLIOTT: State your name, please.

23 MR. STAPLE: Ernest Staple.

24 (ERNEST STAPLE SWORN BY ATTORNEY.)

25 MR. STAPLE: The three to one ratio could

1 be met without a problem. The problem is there's a
2 creek that runs right on, it's just a small drainage
3 creek. In the event of flooding, that field has
4 flooded before. This property generally goes up hill
5 where the previous utilities are at where we're
6 wanting to put the house. The utility being there is
7 not the big issue. The big issue is if I bring that
8 house down to where it meets the requirements it's in
9 a possible flood zone. Where it's at there is high
10 and dry We tried to give as much road front footage
11 as we could and still keep the property up out of the
12 flood trouble. If it wasn't for that drainage creek
13 right there, we could plat it off right there by the
14 road no problem. We're just trying to keep it high
15 and dry. That's all.

16 CHAIRMAN: Mr. Noffsinger.

17 MR. NOFFSINGER: Mr. Staples, I think
18 that's about the best justification I've heard on this
19 particular case because that's a valid point. Very
20 valid point in terms of when you're considering making
21 an exception.

22 In this particular case, we're looking at,
23 well, if we adjust the frontage, what I'm really
24 looking at is we're creating one additional
25 development lot. Is that a good thing? Well,

1 probably not out in that area. If there's a way to do
2 it, then I start to raise the question, well, why is
3 this shape so important. Then you've raised the issue
4 of the creek and the utilities. Those are valid
5 reasons why you might consider making an exception.
6 But my question to Mr. Staples is: Where are you
7 going next?

8 MR. STAPLES: Where am I going next?

9 MR. NOFFSINGER: Are you going to want
10 another lot?

11 MR. STAPLES: No.

12 MR. NOFFSINGER: Where do we cut this off?

13 MR. STAPLES: We cut it off right here.
14 That's it. There will be no more.

15 CHAIRMAN: What about the other side of
16 this wedge looking lot? Could you square something
17 off on the other side? We're trying to help you.

18 MR. STAPLES: I understand.

19 The reason this property angles, if you
20 look at the plot, right there where it shows the
21 original septic system and all the services there, the
22 property line is actually divided on the other side.
23 The creek is the property line. If we come down
24 further closer to the road to meet the requirements,
25 we're putting the house right in arms way.

1 CHAIRMAN: I mean the other side.

2 MR. STAPLES: This side over here?

3 CHAIRMAN: Yes.

4 MR. NOFFSINGER: Is that north side?

5 MR. STAPLES: You could put it right down
6 there in the bottoms too right off the road. There's
7 another creek on this side. So anywhere out here
8 you're going to - - it wouldn't take a hard rain to
9 make trouble. Everything up here is, you know, the
10 whole property - - yes, we looked at that. We tried
11 every way in the world to get it in there. This creek
12 dividing the property the way it was propped up before
13 is a major problem.

14 MR. POTEAT: You're looking at the north
15 boundary.

16 CHAIRMAN: Just moving it down.

17 Mr. Appleby, this is sort of your area of
18 irregular lots.

19 MR. APPLEBY: In light of the
20 circumstances, I would make a motion for approval with
21 an additional notation on the plat that there be no
22 further - - I would make a motion for approval with
23 that notation that there will be no additional
24 divisions of this property ever.

25 CHAIRMAN: We've got a motion by Mr.

1 Appleby for approval based on - - you want to read
2 into your motion the conditions that you have.

3 MR. APPLEBY: The only condition is that
4 there is no additional divisions of this property of
5 either of these lots.

6 CHAIRMAN: Okay. Mr. Appleby has a motion
7 for approval on the floor with the condition of no
8 further division of this property in the deed and the
9 plat.

10 MR. JAGOE: Second.

11 CHAIRMAN: We have a second by Mr. Jagoe.

12 MR. STAPLES: Yes. I don't plan on ever
13 putting any more lots on there.

14 MR. POTEAT: What they're saying is one of
15 the condition in the deed so that everybody who
16 follows along, everybody that sees it is from here on
17 out that condition will be there that they can no
18 further subdivide these two lots if you sold it next
19 year or the year after.

20 MR. STAPLES: You couldn't really put any
21 more lots.

22 CHAIRMAN: Mr. Poteat, your client totally
23 understands what we're doing?

24 MR. POTEAT: I believe he does, Mr.
25 Chairman.

1 CHAIRMAN: We've got a motion on the floor
2 for approval with the conditions in the deed and on
3 the plot. We've got a second by Mr. Jagoe. All in
4 favor raise your right hand.

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries unanimously.

7 Next item.

8 MRS. STAPLES: I have a question. Could I
9 ask a question?

10 CHAIRMAN: Yes, ma'am. You have to come
11 to the podium.

12 MR. ELLIOTT: State your name, please.

13 MRS. STAPLES: Pauline Staples.

14 (MRS. PAULINE STAPLES SWORN BY ATTORNEY.)

15 MRS. STAPLES: The question about the
16 division of the land, you mentioned something about
17 the division. I didn't understand what that was
18 about.

19 MR. APPLEBY: We're asking that if we
20 grant this division that you agree that there will be
21 no further divisions. You won't cut no more lots off
22 of it.

23 MRS. STAPLES: No. No. That's all I
24 wanted to know. Thank you.

25 ITEM 19

1 2801 Blk, 2803 Tamarack Road, 21.10 acres
2 Consider approval of minor subdivision plat.
3 Applicant: Owensboro Daviess County Industrial
4 Development Authority, City of Owensboro

5 MR. NOFFSINGER: Mr. Chairman, this plat
6 has been reviewed by the Planning Staff. It is out at
7 the Mid American Air Park and this property division
8 comes to you as an exception to the regulations.
9 However, I believe it is for a utility purpose.

10 MR. HOWARD: It's actually a one acre
11 tract for the Green Belt Park.

12 MR. NOFFSINGER: So with that we're
13 recommending that it be approved as an exception for
14 public use.

15 CHAIRMAN: Are there any questions?
16 Anybody representing the applicant?

17 (NO RESPONSE)

18 CHAIRMAN: Chair is ready for a motion.

19 MS. DIXON: Move to approve.

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

22 SISTER VIVIAN: Second.

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

1 Next item, please.

2 ITEM 20

3 4920, 4930, 4986 Veach Road, 5001, 5015 Sutherland
4 Road, 363.30 acres

5 Consider approval of minor subdivision plat.

6 Applicant: James & Lilian Watts, Richard &
7 Paula Christ

8 MR. NOFFSINGER: Mr. Chairman, this plat
9 comes to the Planning Commission because of I guess
10 you would say it's a plat of correction. The surveyor
11 made an error in performing the work on this property
12 by failing to recognize an existing lot of record and
13 that can happen from time to time. A plat was
14 approved with that error. What we're doing is simply
15 coming back in and showing that existing lot of record
16 and respecting that old property line. It does create
17 I believe a tract that would be non-conforming in
18 shape; however, it does approve the overall situation
19 because we're taking a number of tracts that are land
20 locked that do no have frontage on the public
21 right-of-way and we're consolidating and actually
22 making that situation better. Staff is comfortable
23 with the plat as submitted and would recommend that
24 you approve the plat.

25 CHAIRMAN: Somebody representing the
26 applicant?

27 APPLICANT REP: Yes.

1 CHAIRMAN: Do we have any questions of the
2 applicant?

3 APPLICANT REP: No.

4 CHAIRMAN: If not the chair is ready for a
5 motion.

6 MS. DIXON: Move to approve.

7 CHAIRMAN: Motion for approval by Ms.
8 Dixon.

9 MR. HAYDEN: Second.

10 CHAIRMAN: Second by Mr. Hayden. All in
11 favor raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Next item, please.

14 ITEM 21

15 5695, 5705 Ware Road, 1.677 acres
16 Consider approval of minor subdivision plat.
17 Applicant: Miles Simmons

18 MR. NOFFSINGER: Mr. Chairman, this plat
19 has been reviewed by the Planning Staff. It is an
20 exception to the subdivision regulations. What we
21 have here is two lots that, well, one lot that
22 conforms the one acre minimum size requirement. The
23 other acre doesn't. It's about a half acre. They are
24 making one lot larger. So bring it up to almost a
25 little over three quarters of an acre, but they're
 making the one acre conforming lot smaller. They're

1 bringing it just under an acre at about nine-tenths of
2 an acre. This squares up the property and makes
3 certainly makes a better lot pattern. Staff for those
4 reasons would recommend that you approve the plat.

5 MR. JAGOE: Mr. Chairman, I need to
6 disqualify myself.

7 CHAIRMAN: Let the record show Mr. Jagoe
8 is disqualifying himself.

9 Somebody representing the applicant?

10 APPLICANT REP: Yes.

11 CHAIRMAN: Any questions?

12 (NO RESPONSE)

13 CHAIRMAN: If not the chair is ready for a
14 motion.

15 MR. APPLEBY: Motion for approval.

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

18 MR. HAYDEN: Second.

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

21 (ALL BOARD MEMBERS PRESENT - WITH THE
22 DISQUALIFICATION OF MR. JAGOE - RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Mr. Noffsinger, I think the chair is ready
25 for one final motion.

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MR. NOFFSINGER: Yes, sir.

SISTER VIVIAN: Move to adjourn.

CHAIRMAN: Sister Vivian moves to adjourn.

Do we have a second?

MR. APPLEBY: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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

3 I, LYNNETTE KOLLER, Notary Public in and for
4 the State of Kentucky at Large, do hereby certify that
5 the foregoing Owensboro Metropolitan Planning & Zoning
6 meeting was held at the time and place as stated in
7 the caption to the foregoing proceedings; that each
8 person commenting on issues under discussion were duly
9 sworn before testifying; that the Board members
10 present were as stated in the caption; that said
11 proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 71 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this
17 the 2nd day of December, 2005

18

19

LYNNETTE KOLLER, NOTARY PUBLIC
OHIO VALLEY REPORTING SERVICE
202 WEST THIRD STREET, SUITE 12
21 OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES:
23 DECEMBER 19, 2006

24 COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

25