

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 JULY 14, 2011

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:30 p.m. on Thursday, July
5 14, 2011, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

- 8 MEMBERS PRESENT: Drew Kirkland, Chairman
- 9 Ward Pedley, Vice Chairman
- 10 David Appleby, Secretary
- 11 Gary Noffsinger, Director
- 12 Madison Silvert, Attorney
- 13 Rev. Larry Hostetter
- 14 Tim Allen
- 15 Irvin Rogers
- 16 Wally Taylor
- 17 John Kauzlauskas

18 * * * * *

19 CHAIRMAN: I want to welcome everyone to our
20 July 14, 2011 Owensboro Metropolitan Planning
21 Commission meeting. Will you please rise for our
22 invocation will be given by Chief John Kauzlauskas.

23 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

24 CHAIRMAN: Our first order of business is to
25 consider the minutes of the June 9th meeting. Are
there any additions, corrections?

(NO RESPONSE)

CHAIRMAN: Anybody from the audience have any
questions?

1 (NO RESPONSE)

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

4 MR. PEDLEY: Motion for approval.

5 CHAIRMAN: Motion for approval by Mr. Pedley.

6 MR. ALLEN: Second.

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

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries unanimously.

11 Next item, Mr. Noffsinger.

12 -----

13 CELLULAR TELECOMMUNICATIONS FACILITIES

PER KRS 100.987

14

ITEM 2

15

2401 Highway 1554

16 Consider approval of a wireless telecommunications
tower.

17 Applicant: Green Valley Farms, LLC; New Cingular
Wireless PCS d/b/a AT&T Mobility

18

19 MR. NOFFSINGER: Mr. Chairman, I have a letter
20 here that's signed by Lisa D. Kramer asking that this
21 item be postponed tonight and be rescheduled for our
22 August meeting which will be the second Thursday in
23 August. They are working on this application to
24 provide some more information. There may be some
25 changes to it, but they are asking that it be

1 postponed and you will need to vote on a postponement.
2 CHAIRMAN: Do we have a motion?
3 MR. APPLEBY: Motion to postpone.
4 CHAIRMAN: Motion for postponement by Mr.
5 Appleby.
6 MR. TAYLOR: Second.
7 CHAIRMAN: Second by Mr. Taylor. All in favor
8 raise your right hand.
9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
10 CHAIRMAN: Motion carries unanimously.
11 Next item, please.
12 Related Item:
13 ITEM 2A
14 2401 Highway 1554, 0.230 acres
Consider approval of a minor subdivision plat.
15 Applicant: Green Valley Farms, LLC
16 MR. NOFFSINGER: Mr. Chairman, for the same
17 reasons the applicant has asked that this item be
18 postponed.
19 CHAIRMAN: Chair is ready for a motion.
20 MR. PEDLEY: Motion to postpone.
21 CHAIRMAN: Mr. Pedley will have the motion.
22 MR. APPLEBY: Second.
23 CHAIRMAN: Mr. Appleby will have the second.
24 All in favor of the motion raise your right hand.
25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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1 CHAIRMAN: Motion carries unanimously.

2 Next item.

3 -----

4 ZONING CHANGES

5 ITEM 3

6 4100, 4660, 4681, 4690, 4730, 4751, 4840 Free Silver
Road, 4225, 4379 Ridge Road, 453.74 acres

7 Consider zoning change: From A-R Rural Agriculture to
EX-1 Coal Mining

8 Applicant: Western Kentucky Minerals, Inc.; Pence
Farms; Bryan & Linda Langford; William Lanham; G.W.
9 Hazel Heirs; Barry & Alice Bickett; William & Regina
Toon; Western Kentucky Leasing, LLC

10

11 MR. SILVERT: Would you state your name,
12 please.

13 MR. HOWARD: Brian Howard.

14 (BRIAN HOWARD SWORN BY ATTORNEY.)

15 MR. HOWARD: I will note that all rezonings
16 heard tonight will become final 21 days after the
17 meeting unless an appeal is filed. The appeal forms
18 are available on the back table, in our office and on
19 our website. If an appeal is filed, then the rezoning
20 will be forwarded to the appropriate legislative body
21 for their final action.

22 PLANNING STAFF RECOMMENDATIONS

23 The Planning Staff recommends approval subject
24 to the findings of fact that follow:

25 FINDINGS OF FACT:

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1 1. Staff recommends approval because the
2 proposal is in compliance with the community's adopted
3 Comprehensive Plan;

4 2. The majority of the subject property is
5 located in a Rural Maintenance Plan Area where coal
6 mining uses are appropriate in general locations;

7 3. The majority of the subject property is
8 located in the Rural Service Area outside of a Rural
9 Community Plan Area while the portion within the Rural
10 Community Plan Area is a landlocked tract on the
11 southern end of the proposed mining side;

12 4. The subject property adjoins existing
13 areas of EX-1 Coal Mining zoning;

14 5. The Maceo Quadrangle Map indicates the
15 presence of coal deposits on the site; and,

16 6. State and county roads proposed to be used
17 for the transportation of coal have been approved by
18 the appropriate officials.

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

21 CHAIRMAN: Do we have anybody representing the
22 applicant?

23 MR. SILVERT: Would you state your name,
24 please?

25 MR. HAYNES: Brian Haynes.

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1 MR. SILVERT: Mr. Haynes, you're sworn as an
2 attorney.

3 MR. HAYNES: Thank you.

4 I'm Brian Haynes. I'm an attorney. I'm here
5 on behalf of Western Kentucky Minerals, Inc. I have
6 Mr. Tony Lanham who is one of the owners and Mr. Tim
7 Rye who is an engineer for a company here if there are
8 in questions in regard to the zoning.

9 CHAIRMAN: Thank you very much.

10 Are there any questions from the audience?

11 MR. SILVERT: Could you state your name,
12 please.

13 MR. GENE LANHAM: Gene Lanham.

14 MR. SILVERT: Judge, you're duly sworn as an
15 attorney.

16 MR. GENE LANHAM: My name is Gene Lanham. I
17 represent Marvin and Josephine Boling whose names you
18 don't see anywhere on the application. The owners are
19 shown as Langford, Bryan and Linda Langford. I don't
20 see them in the audience tonight, although I did see
21 their signature on the application.

22 Let me first say that Mr. and Ms. Boling and I
23 have no real objection to the rezoning of any one of
24 these pieces of property, but with respect to 4379
25 Ridge Road, the Langfords purchased the property for

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1 \$175,000 roughly five years ago. Mr. and Ms. Boling
2 carry the first mortgage, the balance of which is in
3 excess of \$162,000. So in that sense they are
4 certainly interested to this, whatever happens to this
5 property.

6 The 162,000 that's still owed against it
7 represents approximately 90 percent of its value.
8 They learned about this rezoning application in the
9 newspaper. They have expressed their displeasure to
10 the owners, Bryan and Linda Langford, for a number of
11 weeks, that they not so much as against the rezoning
12 or the company or the people, but they have been kept
13 in the dark with respect to any terms of any lease,
14 any terms with respect to any royalties, to any timber
15 or coal that might be removed from this property
16 seriously jeopardizing their interest.

17 Again, I don't see Mr. and Ms. Langford here
18 today. We attempted negotiations in the last two or
19 three days to resolve the issues with them. We have
20 filed a lawsuit today in Daviess Circuit Court to
21 resolve the issues between us and the Langfords.
22 Again, with that said, we have no objection to the
23 rezoning or the mining of the property, but trust me,
24 there will be some resolutions of the issues. We will
25 obtain the terms of the lease, we will obtain the

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1 information as to royalties, whether any have been
2 paid and how they will be paid in the future. We want
3 to learn the process and the procedure by which it
4 will be mined, whether we're first, last. We just
5 need information.

6 That's all we have to say except that I do
7 want to say that in closing we have no objection
8 subject to the Boling's rights being protected to
9 having the priority to any royalties off of that land.
10 100 percent go to the lien that Mr. and Ms. Boling
11 have subject to any other funds being reached to any
12 one.

13 I'll be glad to answer any questions from
14 anyone in the audience or from the board.

15 CHAIRMAN: Thank you, Judge Lanham.

16 Mr. Silvert --

17 MR. GENE LANHAM: Excuse me. For the record I
18 was a previous judge. I have no problems with anyone
19 referring to me as judge. I know it's force of habit.
20 So that there's no misinformation or misunderstanding,
21 I appreciate your comments.

22 CHAIRMAN: Mr. Silvert, could you sort of
23 categorize all of Mr. Lanham's comments in regards to
24 the Planning Commission.

25 MR. SILVERT: Actually, Mr. Chairman, if there

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1 are questions as to ownership of the property, that's
2 something that I'd rather deal with directly with
3 counsel off the record. I didn't hear him assert
4 that, and maybe you can just attest to this. I didn't
5 hear you assert that you actually own the property.
6 You just had a mortgage, correct?

7 MR. GENE LANHAM: Yes. That is correct.

8 MR. SILVERT: And don't otherwise object to
9 this application?

10 MR. GENE LANHAM: That is correct. That's
11 correct.

12 MR. SILVERT: Would you otherwise consent to
13 the application?

14 MR. GENE LANHAM: That is correct. Here's the
15 situation we're caught in. If we don't appear and put
16 our information on the record, we don't want to be
17 caught in a situation in circuit court saying, why
18 didn't you make your objections known to so-and-so.

19 Again, we have no objections to it being mined
20 and royalties paid. It might make a difference, it
21 could make a sizeable difference on the tax. I'm not
22 a tax lawyer. It could make a difference on the
23 ramifications of the taxes of Mr. and Ms. Boling, but
24 I'm sure we can work those things out by way of an
25 escrow account, etcetera. I simply didn't want to not

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1 make our position known. It's public record. We have
2 filed our claim today. As of this morning, the lease
3 have not been filed of record. I don't know whether
4 they plan to file it or not file it. I think probably
5 technically speaking we're ahead of any lease on that.

6 CHAIRMAN: I just wanted to get Mr. Silvert to
7 clear up our position. As far as your situation with
8 your clients, is not to oppose the zoning as far as --

9 MR. GENE LANHAM: That is a fair statement.
10 So long as Mr. Lanham's company is mining it. We
11 would have an objection to any kind of assignment or
12 transfer.

13 CHAIRMAN: I'll take care of that for you.

14 MR. GENE LANHAM: Thank you.

15 CHAIRMAN: Why don't we ask Mr. Lanham to step
16 to the podium.

17 MR. SILVERT: Would you state your name,
18 please?

19 MR. TONY LANHAM: Tony Lanham.

20 (TONY LANHAM SWORN BY ATTORNEY.)

21 CHAIRMAN: Mr. Lanham, you understand the
22 question of what --

23 MR. TONY LANHAM: Yes.

24 CHAIRMAN: The reason I brought you to the
25 stand rather than your attorney, confer with you about

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1 whether you have any other people that are in on the
2 deal with you or whether it will be co-signed or
3 anything else to another party. It's a very simple
4 question, but I just want to make sure we get it.

5 MR. TONY LANHAM: I'm not sure in the lease if
6 it states in there it can or cannot be co-signed.
7 That's a question you're asking?

8 CHAIRMAN: That's the question.

9 MR. TONY LANHAM: We could address that, but I
10 can't answer that now. I haven't got the lease in
11 front of me. My interest is to mine the property from
12 that part of it.

13 CHAIRMAN: Let me ask your attorney there. He
14 might be able to address that part of it. Thank you,
15 Mr. Lanham.

16 MR. HAYNES: The lease is assignable.

17 CHAIRMAN: The lease is assignable?

18 MR. HAYNES: No intention to assign it to any
19 other party. Western Kentucky Minerals plans to mine
20 the property. The issue we're talking about here is
21 not a zoning issue. It's an issue for the circuit
22 court to decide.

23 Mr. Lanham is the owner. He has signed the
24 application. Mr. Boling does have a mortgage on the
25 property, but as Mr. Lanham says, he's already filed

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1 suit in circuit court to have these issues resolved.
2 They don't have anything to do with whether the
3 property is appropriate for zoning.

4 CHAIRMAN: I agree with you. That's why I had
5 Mr. Silvert comment.

6 MR. SILVERT: I do need to ask a couple of
7 questions just to clear something up for my own
8 edification.

9 Mr. Haynes, you may be able to satisfy this
10 for me to direct them as to whether or not they can
11 move on.

12 Mr. Lanham has stated and we now have notice
13 that a lis pendens on the property has been filed. I
14 do not know whether that lis pendens relates to a suit
15 that makes a claim on the property directly or whether
16 a lis pendens was filed because the claim involves the
17 property which is two different things. The reason
18 that's relevant to me is because if we know that
19 there's an outstanding dispute as to who owns part of
20 this property and not everyone has signed this
21 application for a rezoning, then it is not in order.
22 I need to know from Mr. Lanham whether or not his suit
23 makes claim on the property directly or makes claim as
24 to royalties.

25 MR. GENE LANHAM: As to the property in Count

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1 I, actually I did do an alternative to the court,
2 second count with respect to royalties and the lis
3 pendens filed. We did not make the coal company a
4 party defendant. Frankly, we didn't want to, unless
5 we were legally required to do so. A copy of the
6 lease was not recorded; therefore the question is
7 whether they have a claim against the property, but
8 with respect to Mr. Haynes and Mr. Lanham, Tony, my
9 nephew, we had some conversations within the last two
10 or three days trying to resolve this issue.
11 Apparently where it's broken down at Mr. Haynes, we've
12 been going through him because he represents the
13 Langfords as well as Mr. Lanham.

14 My last communication with Mr. Haynes was a
15 fax letter from him yesterday that he had spoken to
16 the Langfords and that he would be back in touch with
17 me, if he heard back from them. We haven't heard back
18 from them and obviously that's why we were caught in
19 this trap.

20 MR. SILVERT: I think I have two questions for
21 you to be able to move forward on this.

22 MR. GENE LANHAM: Sure. We have no objection
23 to the rezoning subject to the conditions that we
24 mentioned.

25 MR. SILVERT: You otherwise assent to the

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1 application and the application can move forward?

2 MR. GENE LANHAM: Absolutely. Absolutely. We
3 don't intend to delay anything at all.

4 MR. SILVERT: If you were found to be the real
5 party in interest and the owner of this property, you
6 would have signed this application and you would
7 therefore go ahead and say this application can move
8 forward?

9 MR. GENE LANHAM: That's correct.

10 CHAIRMAN: For the record, Madison, why don't
11 we bring his clients up and have them --

12 MR. GENE LANHAM: He doesn't hear well, but he
13 does hear.

14 MR. SILVERT: Can you state your name, please?

15 MR. BOLING: Marvin Boling.

16 (MARVIN BOLING SWORN BY ATTORNEY.)

17 MR. SILVERT: Mr. Boling, the question that I
18 asked your attorney is if you were found to be the
19 actual owner of this property with the suit that you
20 have moving forward currently in Daviess Circuit
21 Court, would you have otherwise assented to this
22 application moving forward? Would you have signed it
23 and let it move forward? Your attorney has previously
24 said, yes, and just to be absolutely clear, the chair
25 has asked that you come up and say the same.

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1 I'm sorry, your attorney has motioned that
2 he'd like to clarify something.

3 MR. GENE LANHAM: One thing, it's subject to
4 the terms of the lease. We don't know what -- we've
5 been told what the royalties and the terms were
6 vaguely. It's somewhat unfair and certainly not
7 intended, but for us to be saying we would sign the
8 application and go forward. It depends on what the
9 obligations of the lease were.

10 MR. SILVERT: Well, ascending to the change in
11 -- would you agree, if I could bring you back up.
12 Would you agree that ascending to the change in zoning
13 is different to whether or not you ascend to the terms
14 of their lease. Those are two different issues.
15 Whether or not you would be okay with this rezoning or
16 would you be --

17 MR. GENE LANHAM: Exactly. With respect to --

18 CHAIRMAN: Excuse me. Just logistics. Would
19 you move over so we can get you on the mike, Mr.
20 Lanham.

21 MR. GENE LANHAM: Sure.

22 MR. SILVERT: Here's what I'm stuck with.
23 We've got an application that is signed by somebody
24 that claims to be the property owner.

25 MR. GENE LANHAM: I think they are the owner.

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1 MR. SILVERT: You think they are the owner?

2 MR. GENE LANHAM: Yes. There's no question
3 about that.

4 MR. SILVERT: Then I don't think we need to
5 move forward. If they're the owner just because you
6 have some type of secondary right of the property
7 through your mortgage or something like that, that's
8 no different than any other bank in my opinion. If
9 they're the property owners and they signed it, you
10 agree that they are the property owners, then let's
11 move forward.

12 MR. GENE LANHAM: That's right. That's right.
13 I didn't want to hold up anything at all.

14 With respect to what you're saying -- Count I
15 we filed for a foreclosure which would be at a public
16 sale. Count II is in the alternative it's going to
17 direct the royalties to my clients go forward. Either
18 way we have no objection to this application. We have
19 no objection.

20 CHAIRMAN: Mr. Lanham, would you be seated and
21 now -- would you move to the podium there and just
22 affirm what your attorney, Mr. Lanham, has said. You
23 agree to everything that Mr. Lanham has stated on your
24 behalf?

25 MR. BOLING: Correct, sir.

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1 CHAIRMAN: You may be seated unless you want
2 to make a further comment.

3 Thank you very much.

4 Now, at this point in time are there any other
5 questions or comments from anybody in the audience?

6 Yes, ma'am.

7 MR. SILVERT: Would you state your name,
8 please?

9 MS. PAYNE: My name is Ruth Payne.

10 (RUTH PAYNE SWORN BY ATTORNEY.)

11 MS. PAYNE: I have some concerns concerning my
12 home that I have on Free Silver Road. I'm wondering
13 how many feet restrictions does the coal company give
14 me to protect my property?

15 CHAIRMAN: I will get a list of questions and
16 then we'll bring him back up. Do you have some other
17 questions, Ms. Payne?

18 MS. PAYNE: That's the main question that I
19 have. Is how far away does the coal company have to
20 stay from my house? I have a story and a half brick
21 home with a walkout basement. I also have two
22 concrete porches, one on each side. I'm afraid when
23 the blasting starts that my house is going to start
24 cracking.

25 CHAIRMAN: Is your husband Joseph Payne?

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1 MS. PAYNE: No, I don't have a husband, sir.

2 CHAIRMAN: Well, there's an Edward Payne and a
3 Dorothy.

4 MR. NOFFSINGER: Ma'am, we're trying to locate
5 you on the map.

6 MS. PAYNE: It's 4667 Free Silver Road.

7 MR. NOFFSINGER: And we do not have the
8 addresses. We have Dorothy Payne and Edward Payne,
9 Thomas Payne, Joseph Payne, Terry and Perry Payne.

10 MS. PAYNE: I am in front of Edward Payne. My
11 property lies in front of him.

12 CHAIRMAN: Edward Payne would be Number 6.
13 We're just trying to locate you on the map.

14 MS. PAYNE: My property runs to Pence Road.

15 CHAIRMAN: Mr. Noffsinger, can you help us
16 with that?

17 MR. NOFFSINGER: Yes, sir.

18 The local zoning ordinance requires that the
19 mining company stay at least 100 feet away from a
20 public right-of-way and at least 300 feet from a
21 residential structure. So your buffer would be 300
22 feet from your actual, any part of your structure.

23 MR. APPLEBY: I think it's from the property,
24 isn't it?

25 MR. NOFFSINGER: It is from the structure.

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1 MR. APPLEBY: Is it?

2 MR. NOFFSINGER: Yes. That is consistent
3 with the state requirements as well. Now, if they
4 were to mine closer than that, then they would have to
5 obtain a Board of Adjustment, a Variance from the
6 Board of Adjustment and it would take your consent to
7 allow them to mine closer than 300 feet to your
8 structure. There would be another public hearing
9 before a different board to address that.

10 MS. PAYNE: Thank you.

11 CHAIRMAN: Do we have any other questions from
12 anybody in the audience?

13 Yes, sir.

14 MR. SILVERT: Could you state your name,
15 please?

16 MR. PALMITER: Morgan Palmiter.

17 (MORGAN PALMITER SWORN BY ATTORNEY.)

18 MR. PALMITER: My name is Morgan Palmiter. I
19 live at 4349 Ridge Road. I also had some concerns
20 with distance from the property which you answered
21 with Ms. Payne.

22 One question I do have is, is there anything
23 that monitors any property damage, anything that
24 pre-existing? Is there anything in place where --
25 because I just built a home probably two months ago on

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1 Ridge Road. This is going to go probably on two sides
2 of me. I'm just curious what protection.

3 MR. NOFFSINGER: Yes, sir, there is. There's
4 a requirement of a preblast survey. I think at this
5 point we would need to defer to the applicant to
6 address how he intends to handle those preblast
7 surveys in that area and how far out they're going and
8 how far you are from the mining area.

9 MR. PALMITER: One other question that you all
10 have pretty well answered. It's 300 feet. So if my
11 house is, if my property line is more than 300 feet,
12 they can come right up to edge of my property. Did I
13 interpret that correctly?

14 MR. NOFFSINGER: Yes, sir.

15 MR. PALMITER: Thank you.

16 CHAIRMAN: The preblast, Mr. Lanham, do you
17 want to address that or do you want to have your
18 engineer?

19 MR. SILVERT: Could you state your name,
20 please?

21 MR. RYE: Timothy Rye.

22 (TIMOTHY RYE SWORN BY ATTORNEY.)

23 MR. RYE: Good evening.

24 CHAIRMAN: Mr. Rye, did you understand the
25 question about the concern about blasting? Would you

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1 respond, please?

2 MR. RYE: Preblast survey, the state does
3 require the company to offer each residence within a
4 half mile a preblast survey on their property.
5 Everybody will receive a notice within the next month
6 or two months offering that from a company called
7 Vibronics out of Evansville. That's who we've hired
8 to conduct these surveys for us. We'll be getting
9 those out soon.

10 CHAIRMAN: Thank you very much.

11 MR. NOFFSINGER: I do have a question. Do you
12 know if this gentleman, if his home would be within
13 that area and he would be --

14 MR. RYE: He is.

15 MR. NOFFSINGER: This is a requirement by the
16 state. It's not at the local level. It is at the
17 state level that these preblast surveys are required
18 and they're actually, I guess, filed with the State
19 Mine & Minerals.

20 MR. RYE: There will be a copy filed with the
21 Department of Surface Mining. The homeowner will get
22 a copy and our company will have a copy in our office
23 also. It is required by the department certifying at
24 the state level that they be done.

25 CHAIRMAN: Thank you.

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1 Are there any other questions from anybody
2 else in the audience?

3 Yes, sir.

4 MR. SILVERT: Could you state your name,
5 please?

6 MR. PAYNE: Thomas Payne.

7 (THOMAS PAYNE SWORN BY ATTORNEY.)

8 MR. PAYNE: The preblast survey sounds pretty
9 generic. I didn't really get any information on what
10 actually is going to be done.

11 CHAIRMAN: Let me ask you to be seated and
12 we'll bring him back.

13 Could you be a little bit more detailed? Let
14 me ask you to step back to the podium.

15 I'm sure you gave a correct response, but
16 would you be a little bit more detail about what
17 actually -- I know obviously you're hiring an
18 independent company to do these surveys, and I know
19 you're not going to be doing these surveys, but in a
20 generality would you give Mr. Payne about what will
21 take place during a survey at his house.

22 MR. RYE: Once he accepts the offer to have a
23 preblast survey done, they will come out. They will
24 survey the home.

25 MR. NOFFSINGER: Excuse me, sir. I need to

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1 interrupt you at this point. Could you speak closer
2 to the microphone and pull it up to you. Some people
3 might be having trouble hearing you.

4 MR. RYE: Once he accepts his preblast survey,
5 it will have the notice on there for him to contact
6 Vibronics, Incorporated out of Evansville. They will
7 come out and do a preblast survey on his house. They
8 will survey the structure, any concrete, any
9 inside/outside damage that might be there prior to the
10 blasting occurring. All that will be completed prior
11 to any blasting on our part on the mine site. They
12 look for drywall cracks, cracks in the mortar on the
13 brick, sidewalk cracks. If there's another structure
14 building, garage, separate from the home, they'll
15 review those also. They'll take pictures. They will
16 document all of it. What their determination is with
17 what may be the problem, settling of the ground, so on
18 and so forth. All of that be will documented clearly
19 in the preblast survey.

20 MR. APPLEBY: Homeowner gets a copy of that I
21 assume?

22 MR. RYE: Pardon?

23 MR. APPLEBY: The homeowner gets a copy of the
24 preblast?

25 MR. RYE: Homeowner gets a copy. We have a

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1 copy. The state has a copy.

2 MR. APPLEBY: So the homeowner, if they don't
3 agree with it they can dispute?

4 MR. RYE: They can dispute it. If there's any
5 problem with them -- this is a protection for the
6 homeowner and for Western Kentucky Minerals. If
7 anything happens after that, then we know it was
8 caused by the blasting. We want it to be correct as
9 much as the homeowner does. We want all the
10 documentation there so if they have a problem, they
11 can contact Vibronics and Vibronics will respond.
12 They can contact us. So either way. We'll make sure
13 it's done right.

14 CHAIRMAN: Mr. Payne, step back.

15 Do you have any further questions in regard to
16 the survey?

17 MR. PAYNE: No. I just wanted to know just a
18 little bit more about what he was talking about.

19 CHAIRMAN: Thank you.

20 Are there any other questions from anybody
21 else in the audience?

22 (NO RESPONSE)

23 CHAIRMAN: If there are no further questions,
24 any questions from the commission?

25 (NO RESPONSE)

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1 CHAIRMAN: If there are no questions from the
2 commission, the chair is ready for a motion.

3 MR. APPLEBY: Mr. Chairman, I make a motion
4 for approval based on the Staff Recommendations with
5 Findings of Fact 1 through 6.

6 CHAIRMAN: We've got a motion for approval by
7 Mr. Appleby.

8 MR. PEDLEY: Second.

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

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries unanimously.

13 Next item, please.

14 ITEM 4

15 5541 Highway 54, 0.722 acres

16 Consider zoning change: From R-1A Single-Family
Residential to I-1 Light Industrial

17 Applicant: Bruce A. Hardesty

18

18 PLANNING STAFF RECOMMENDATIONS

19 The Planning Staff recommends approval subject
20 to the findings of fact that follow:

21 FINDINGS OF FACT:

22 1. Staff recommends approval because the
23 proposal is in compliance with the community's adopted
24 Comprehensive Plan;

25 2. The subject property is located in a Rural

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1 Community Plan Area, where light industrial uses are
2 appropriate in limited locations;

3 3. The subject property is located within the
4 Rural Community of Philpot which has existing mixed
5 uses and zonings; and,

6 4. The subject property is located at the
7 corner of intersecting streets and is major-street
8 oriented with road frontage on Highway 54.

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

11 CHAIRMAN: Is there anybody representing the
12 applicant?

13 APPLICANT REP: I'm the applicant. I'm here.

14 CHAIRMAN: We do have a representative. Do we
15 have any questions of the applicant?

16 (NO RESPONSE)

17 CHAIRMAN: Would the applicant like to make a
18 statement?

19 APPLICANT REP: No.

20 MR. APPLEBY: Is chair ready for a motion?

21 CHAIRMAN: Chair is ready for a motion, Mr.
22 Appleby.

23 MR. APPLEBY: Motion for approval based on the
24 Staff Recommendations with Findings of Fact 1 through
25 4.

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1 CHAIRMAN: We have a motion for approval by
2 Mr. Appleby.

3 MR. TAYLOR: Second.

4 CHAIRMAN: Second by Mr. Taylor. All in favor
5 raise your right hand.

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries unanimously.

8 Next item.

9 ITEM 5

10 102 West 9th Street, 0.875 +/- acres

11 Consider zoning change: From I-1 Light Industrial to
12 B-2 Central Business

13 Applicant: Calvary Wesleyan Church; The Malcolm
14 Bryant Corporation

15 PLANNING STAFF RECOMMENDATION

16 The Planning Staff recommends approval subject
17 to the condition and findings of fact that follow:

18 CONDITION:

19 Submission and approval of an amended final
20 development plan.

21 FINDINGS OF FACT:

22 1. Staff recommends approval because the
23 proposal is in compliance with the community's adopted
24 comprehensive plan;

25 2. The subject property is located in a
Business Plan Area, where central business uses are
appropriate in very-limited locations;

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1 3. The subject property is located within the
2 downtown overlay districts as adopted by the City of
3 Owensboro and the request is consistent with the
4 concepts of the plan;

5 4. The use of the property as a church will
6 be nonresidential in nature;

7 5. The proposed zoning change is a logical
8 expansion of existing B-2 zoning on the subject
9 property; and,

10 6. The B-2 zoning classification will promote
11 the redevelopment of an existing building on the site
12 to provide a church facility in the near-downtown
13 area.

14 MR. HOWARD: We would like to enter the Staff
15 Report into the record as Exhibit C.

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

18 APPLICANT REP: I'm the applicant.

19 CHAIRMAN: Be noted that the applicant is
20 here.

21 Does anybody have any questions of the
22 applicant?

23 (NO RESPONSE)

24 CHAIRMAN: If there are no questions of the
25 applicant, does anybody on the commission have a

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1 question?

2 (NO RESPONSE)

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

5 MR. PEDLEY: Mr. Chairman, I make a motion for
6 approval based on the Staff Recommendations and
7 Findings of Fact 1 through 6.

8 CHAIRMAN: We've got a motion for approval by
9 Mr. Pedley.

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 -----

17 MAJOR SUBDIVISIONS

18 ITEM 6

19 Hunters Ridge, 3.03 acres

Consider approval of amended major subdivision
20 preliminary plat.

Applicant: Hunters Ridge, LLC

21

22 MR. NOFFSINGER: Mr. Chairman, this
23 application has been reviewed by the Planning Staff
24 and Engineering Staff. It's found to be in order.

25 The use of the property is consistent with the

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1 underlying zoning and it's ready for your
2 consideration.

3 MR. PEDLEY: Mr. Chairman, I need to
4 disqualify myself from this item.

5 CHAIRMAN: Let the record note Mr. Pedley is
6 disqualifying himself.

7 Is there anybody here representing the
8 applicant?

9 (NO RESPONSE)

10 CHAIRMAN: Does anybody have any questions?

11 (NO RESPONSE)

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

14 MR. APPLEBY: Motion for approval.

15 CHAIRMAN: Motion for approval by Mr. Appleby.

16 MR. ALLEN: Second.

17 CHAIRMAN: Second by Mr. Allen. All in favor
18 raise your right hand.

19 (ALL BOARD MEMBERS PRESENT -WITH THE
20 DISQUALIFICATION OR WARD PEDLEY - RESPONDED AYE.)

21 CHAIRMAN: Motion carries unanimously.

22 It looks like we will be ready for one final
23 motion.

24 MR. PEDLEY: Motion to adjourn.

25 CHAIRMAN: Motion for adjournment by Mr.

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1 Pedley.

2 FATHER HOSTETTER: Second.

3 CHAIRMAN: Second by Father Larry. All in
4 favor raise your right hand.

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries unanimously.

7 We are at adjourned.

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1 STATE OF KENTUCKY)

)SS: REPORTER'S CERTIFICATE

2 COUNTY OF DAVIESS)

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and
4 for the State of Kentucky at Large, do hereby certify
5 that the foregoing Owensboro Metropolitan Planning
6 Commission meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said 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 31 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 1st day of August, 2011.

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21
22
23
24
25

LYNNETTE KOLLER FUCHS
NOTARY ID 433397
OHIO VALLEY REPORTING SERVICES
202 WEST THIRD STREET, SUITE 12
OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES: DECEMBER 16, 2014

COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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