

Henderson City-County  
Planning Commission  
September 5, 2017

The Henderson City-County Planning Commission held their regular meeting September 5, 2017 at 6:00 p.m., at the Henderson Municipal Center, 222 First Street, 3rd floor assembly room. Members present: Chairman Herb McKee, Vice-Chair David Williams, Bobbie Jarrett, Gary Gibson, Dickie Johnson, Rodney Thomas, David Dixon, Kevin Herron, Gray Hodge, Mac Arnold, Doug Bell, and Attorney Tommy Joe Fridy. Kevin Richard was absent.

Staff present: Director Brian Bishop, Theresa Curtis, and Heather Lauderdale.

*(The following minutes were transcribed from an audio tape recording of the meeting on September 5, 2017. The audio tape recording is on file at the Planning Commission office and will be retained for 30 days after the minutes are approved)*

**MEETING BEGAN AT 6:00PM**

Chairman McKee: Let's call this September meeting of the Henderson City-County Planning Commission meeting to order. Madame Clerk, will you please call the roll?

Madame Clerk, we have a quorum.

Before we have the Public Hearing, I would like to call Mr. Bill Hubiak up to the podium.

Do you swear to tell the truth about this?

Bill Hubiak: I do.

Chairman McKee: Thank you.

Bill Hubiak: Last week we were at our Kentucky Associate of Mitigation Managers meeting, and we had one of Henderson's own, bestowed a very great honor. Our Planning Executive Director, Mr. Brian Bishop was

awarded the Flood Plain Manager of the Year Award; I stole this from his office today. I want to make sure that everybody here knows about it; Brian, this is yours.

(Applause from Commissioners and audience)

Brian Bishop: I just asked T.J., I wonder when he stole that.

Heather Lauderdale: Right before you went to lunch. (laughter)

Dickie Johnson: Now you can take it back and put it in your office.

Brian Bishop: Back again?

Dickie Johnson: Glue it to your desk. (laughter)

Bill Hubiak: This is a great honor really. It's something that he worked very hard to earn. He did a lot of great things for this city and county, and his flood plain management; working with the GIS, with FEMA, and all those departments to bring us into compliance and help the citizens of our community.

So, he worked very hard to have it, and very deserving of it.

Chairman McKee: Thank you, Mr. Hubiak.

Also, before we get started, I would like to recognize our newest member, Mr. Doug Bell.

(Applause from commission members and audience)

Chairman McKee: The Chair will entertain a motion to go into **Public Hearing**.

***MOTION WAS MADE BY MAC ARNOLD SECONDED BY GARY GIBSON TO GO INTO PUBLIC HEARING.***

Chairman McKee: We have a motion and a second. All in favor signify by saying aye. Are there any opposed?

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: Next on the agenda is the approval of the **August 1, 2017 Minutes**, first.

***MOTION WAS MADE BY DAVID WILLIAMS SECONDED BY RODNEY THOMAS TO APPROVE THE AUGUST 1, 2017 MINUTES AS PRESENTED.***

Chairman McKee: We have a motion and a second, any discussion? All in favor signify by saying aye. Are there any opposed?

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: Next on the agenda is the approval of the **August 15, 16, AND 17, 2017 SPECIAL CALLED MEETING Minutes**. Have you had an opportunity to review those?

***MOTION WAS MADE BY DAVID DIXON SECONDED BY GARY GIBSON TO APPROVE THE AUGUST 15, 16, AND 17, 2017 SPECIAL CALLED MEETING MINUTES AS PRESENTED.***

Chairman McKee: We have a motion and a second, any discussion? All in favor signify by saying aye. Are there any opposed?

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: The first item for consideration on the agenda is **Lot #2 Darry R. & Bettye H. Cain Subdivision**. Mr. Bishop, are you going to lead that discussion?

Brian Bishop: Yes sir.

Chairman McKee: Will you please proceed?

Brian Bishop: Submitted by Darry R. & Bettye H. Cain for the property located in Henderson County at 13478 US Hwy 60 E, (PIDN#105-137).

Applicants are requesting a subdivision approval, which is located in a Special Flood Hazard area.

This is the area, on the aerial map as you can see. They are requesting the lot be subdivided, and there is a small portion near the northeast corner that is in the flood plain. The entire property is not located in the Special Flood Hazard area but our flood damage prevention ordinance requires that any division of land in a flood plain come before the full Planning Commission. Had this not been in the flood plain, Staff would have approved it under the Minor Subdivision process.

So, with that being said we recommend approval.

Chairman McKee: Any questions for Staff? Hearing none, the Chair will entertain a motion.

***MOTION WAS MADE BY DOUG BELL SECONDED BY MAC ARNOLD TO APPROVE LOT #2 DARRY R. & BETTYE H. CAIN SUBDIVISION.***

Chairman McKee: We have a motion and a second, any discussion? All in favor signify by saying aye. Are there any opposed?

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: Motion is approved.

Next on the agenda is the **Planning Commission 2016-2017 Fiscal Year Audit**. Mr. Brian Crafton, are you going to present?

Brian Crafton: Yes.

Chairman McKee: Please come forward.

Brian Crafton: I won't be quite as quick as Mr. Bishop but I will try my best not to get everybody to sleep.

If you've got an Audit Report in front of you, I'm going to skip past; if you look at your page numbers down there, go to page six (6) and seven

(7). The first; page two (2) through five (5) is Management Discussion Analysis. Basically, that is an overview or summarization of the Financial Year for the Planning Commission but that is from management, and not from us. We generally skip over that portion.

Going straight to the Independent Auditors Report; we have an unmodified opinion. Basically, that means you have a clean opinion. Basically, the financials that were presented to us were fair and accurate, there was not modifications that needed to be made.

If you skip to the next page, should be page eight (8); statement of Net Position. Most people look at this and refer to it as a balance sheet. There's another report that's actually called Balance Sheet here, and in just a minute I'll explain the differences.

There are two (2) or three (3) things on here that you see, that you will not see on the other report I'm getting ready to show you, and this is what typically most people look at and it's going to include property and equipment, and it's going to include accumulated depreciation; which you can see that property and equipment that fourth and fifth number down there. And it's also going to include what's called deferred outflows, and deferred inflows. Those deferred outflows and deferred inflows have to do with a big pension adjustment, as probably most of you are aware of, if you're not it was probably made about three (3) years ago, and there is a large number down there on long-term liabilities, the unfunded pension liability. Every governmental entity is required now just as basically for better accounting to put what an actuary comes, we don't put this number this number is given to us by the State that has been calculated by a third party, and you're required now to put that pension liability on your books.

So, there is deferred outflows, there is a long-term liability of un-funded pension liability and deferred inflows; all three (3) of those are part of what is called GASB 68. More information is also noted in note six (6) which is in the notes the financials.

Skip to the next page, statement of changes to net position. This just gets you to your ending net position; basically, your equity. You can see about

midway down through there you've got your revenues for the year on the top portion, you have summarization of expenses. The difference between the two (2) is your net position. You have a net position last year, beginning number last year \$438,978, and then you have an ending \$-466,196, and if you're asking why is that \$-466,196 is because when we did put that big liability in a few years ago, which is basically that \$600,00 number; when we had to make that adjustment, obviously, the equity went to negative, which is pretty common with a lot of governmental entities.

Page ten (10), balance sheet-governmental funds. In short, basically when you've got a government, they don't look at assets and depreciation, they just say if you have an asset we're going to throw it in as an expense. So, this is the other way to show it, which is a required format. You'll see on there, there is no deferred outflows, no deferred inflows, and there's no assets in accumulated depreciation. Everything else would be the same though.

The next page, page eleven (11), is a reconciliation just between the two (2) reports. So, that top number \$59,797 comes from towards the bottom of page ten (10). You add in depreciation and your assets, deferred inflows/outflows, and the pension liability and it will get you down to your net position which is that big, large number I just referred to; the \$466,196, again that's on page eight (8). So, that's just a reconciliation between the two.

The next page, page twelve (12). Revenues, expenditures, and changes in fund balance. Again, a summarization of the year for revenues, expenditures gets you to your net income/net loss number, and then this bottom number \$59,797 again, just ties into your fund balance on page ten (10).

Just like I said, with the balance sheets we also have a reconciliation with your revenues and expenses. So, again, this is just a reconciliation between two (2) different reporting mechanisms. The top number comes from page twelve (12), you've got some differences between the two (2) reporting to get you down to the net position from page nine (9).

If you want me to, I can kind of go into more detail I just know most people don't really want to look through all the details and all the numbers, through all this stuff so try to just explain what the reports are.

The next several pages, looks like it's through page twenty-three (23), are your notes to the financial statements. The way I would explain the notes of the financial statements is if anybody wanted to know what the organization was like, what type of entity it was, how they operate, the accounting behind it, I would go to the notes of the financial statements. There's also some detail in behind some of the numbers that are showing up on some of these reports that I just showed you. So, operating leases, your capital assets, depreciation, things like that.

The page twenty-four (24). I won't go through these schedules. These are required to be in here but these are not reports that we actually audit, not required to, and these are just supplementary schedules. This is your, like actual to budget, you've got some additional pension information in there on page twenty-five (25) and twenty-six (26) as well.

There is one other report that is required to be in here, and I will quickly go through it. If there were any accounting estimates that were changed during the year, there were none. If there were any difficulties encountered performing the audit, there were none. If there were any corrected or uncorrected misstatements that occurred, that we had seen, there were none. There were no disagreements with management, and management did sign, what's called a Management Rep Letter. Basically, saying that this is the information they gave to us, they agreed to it. If there were any consultations with any other outside accountants, we didn't see that there were any or any other matters. I just explained those supplementary schedules, outside of that it was a pretty clean audit.

If anyone has any questions, I will be more than glad to entertain those.

Chairman McKee: Questions for Mr. Crafton? Mr. Crafton, we thank you and everybody at MYRIAD for the way that you've conducted the audit, and the opinion that you expressed.

Brain Crafton: Thank you very much. If anyone does have any questions later, you're more than welcome to contact me, and I will be more than glad to try to answer any questions for you.

Chairman McKee: Thank you sir.

Brian Crafton: Thank you.

Chairman McKee: We need to consider the acceptance of the audit report.

***MOTION WAS MADE BY DAVID WILLIAMS SECONDED BY MAC ARNOLD TO ACCEPT THE AUDIT REPORT AS PRESENTED.***

Chairman McKee: We have a motion and a second that we accept the audit report as presented. Madame Clerk, will you please call the roll?

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: Motion is approved. Next on the agenda is **Rezoning #1078**, Mr. Bishop?

Brian Bishop: Yes sir.

Chairman McKee: Please proceed.

Brian Bishop: Rezoning #1078 is submitted by The Gaines Family Trust (Bobby Gaines) owner and Susan Cox Development, located in Henderson County on Hwy 416 West (PID# 80-116), containing approximately 1.96+ acres. Applicants are requesting a zoning classification from Heavy Industrial District (M-2) to Highway Commercial (HC).

This is the area as it is currently zoned. This is Hwy 41 S, this is Hwy 416, and this is currently where the new interchanges were built for the Pennyrile Parkway, which will someday be I-69.

This is what the property currently looks like. There is a non-conforming mobile home park there currently, and then this is the Development Plan,

for lack of a better word. It's a rezoning exhibit but it's essentially going to function as a Development Plan.

As I said the applicant is requesting a zoning change from M-2 to Highway Commercial for 1.96 acres. The applicant is proposing the construction of a 9,100-square foot Dollar General Store.

There is heavy tree growth around the property, which you will notice here and here but the applicant is proposing the construction of a wooden privacy fence that will extend along this property line back north, the north-west, and then back this way.

The applicant has submitted a permit to KYTC to construct a new entrance here, this will be bonded and approved by the Kentucky Transportation Cabinet.

The applicant has submitted an engineered site plan, which we will be reviewing later in the meeting. At this time, Staff recommends approval, and I will answer any questions you may have.

Chairman McKee: Questions for Staff?

David Williams: Is this the site that was zoned Industrial?

Brian Bishop: It is. It was zoned M-2 which is Heavy Industrial, it's the most intense zone we have in Henderson County.

David Williams: That's the only lot that's zoned that way?

Brian Bishop: No, it's actually this entire area. If I'm not mistaken, the property was rezoned Heavy Industrial in the early 70's, '73 I believe Commissioner Williams.

David Williams: Was there a purpose for that?

Brian Bishop: I briefly looked at the rezoning. I believe that you would see more industrial development along the Pennyrile Parkway.

David Williams: So, everything around there is what? What's the most prominent other zone, Agricultural?

Brian Bishop: The most prominent zone is going to be Agricultural. Which are currently large, residential lots in that area of the county. You may recognize this area, we recently rezoned that to Highway Commercial, I believe it was last year. Then you will notice this is the Sportsman's...

Dickie Johnson: Sportsman's Club.

Brian Bishop: Sportsman's Club which is a large camping and fishing area. You'll have some residential lots here, and then this is the Pennyrile itself, Swan Lane, and then Hwy 41 S.

Dickie Johnson: Then right down the road on 2096 or 2097, I'm not sure which number that is, there's a house and a Union Hall.

Brian Bishop: There is. I believe that's 2096.

Dickie Johnson: What is that Union Hall zoned at?

Brian Bishop: I'm not sure, we can look at GIS real fast.

Dickie Johnson: Well, I mean, I just thought maybe you...

Brian Bishop: We didn't look at that because it was not in the immediate area. I think that is outside of the scope of this rezoning so, we didn't consider it from a Staff standpoint.

Dickie Johnson: Alright.

Chairman McKee: Any other questions for Staff?

David Williams: I guess the basic question I have here is what would be the reason for making this zoning change? What has changed that we would change it from Industrial to Commercial?

Brian Bishop: For me, one thing that I considered was the need for local retail space for local residents to use. The property has not developed in an Industrial nature as expected. There have been physical changes in the area, which is the interchanges that have been recently constructed near the area that would impact traffic. Those are the ones off the top of my head. We put some suggested findings of facts in your packet if that helps Commissioner Williams.

Tommy Joe Fridy: You might notice that I'm looking at the Staff Report that the Future Land Use Map does not show this as Heavy Industrial, it shows it as Medium Density Residential.

David Williams: It's not that I necessarily against rezoning a Commercial but I would think that the I-69 ramp is going to lead to more, be more likely to lead to industrial uses rather than commercial uses right here.

David Dixon: The total site is less than two (2) acres?

Brian Bishop: Yes sir, it's 1.96.

David Williams: I guess zoning this way would not impede egress to the rest of that area would it, necessarily lock it in?

Brian Bishop: I don't believe so.

David Williams: For industrial uses?

Brian Bishop: The sites that I believe you are referring to, these sites, would access of Hwy 416 along these current existing entrances.

Kevin Herron: As well as visibility from I-69 right?

Brian Bishop: Correct.

David Dixon: There is other industrial zoning in this area?

Brian Bishop: There is. The large area which is this property, which is 80-114, you have these two (2) smaller lots. Then this may ring some bells, we did this last year, I believe, which is Highway Commercial.

Dickie Johnson: That was the one that we changed over to a mechanic shop?

Brian Bishop: It was.

David Dixon: Go back one please. Ok. Thank you.

Chairman McKee: Any other questions for Staff?

Gary Gibson: Yes, how far is the City of Robards from there, it's real close isn't it?

Brian Bishop: The City of Robards is further down 41.

Tommy Joe Fridy: Down 416.

Brian Bishop: The City of Robards is 41 South, this way. We can call GIS up, and I can give you an answer real fast if you'd like.

Gary Gibson: Like the City of Corydon, when we got our Dollar General, that was Highway Commercial when we did that. The Dollar General will come in good for down in Robards.

Brian Bishop: It is, and when we were preparing the Staff Report and the Findings of Facts, I went back and looked at the rezoning that was in the Spottsville area, this was a very similar situation. It had been zoned Residential, and went to Highway Commercial. It's basically intended that these stores serve more rural areas so that the people that live in the area do not have to spend as much time in their car.

Commissioner Gibson would you like an exact number as to how far...

Gary Gibson: No. That Dollar General out there is not built in Spottsville, it's built outside. So, that came in handy too. At least it keeps those people from driving all the way to Henderson, and that makes a big difference when you don't have to drive to Henderson.

Chairman McKee: Any other questions for Staff?

David Dixon: Is this motion subject to bonding?

Brian Bishop: It is. If you'll notice in your handout that Mrs. Curtis gave you, there is a total bonding worth \$50,000. Thirty-thousand (\$30,000) of which will be storm water detention. Ten-thousand (\$10,000) will be for silt control, over one (1) acre nearly two (2) acres worth. Five-thousand (\$5000) for revegetation. Twenty-five hundred (\$2,500) for handicap parking. Twenty-five hundred (\$2,500) for the dumpster enclosure, for again, a total of fifty-thousand dollars (\$50,000).

Chairman McKee: Any other questions for Staff? Is there anyone that would like to speak for or against this rezoning application? Will you please state your name and address for the record?

Brandy Zachary: Brandy Zachary, 1136 South Park Drive, Bowling Green, Kentucky.

Chairman McKee: Do you swear the statements you are about to make are the truths to the best of your knowledge?

Brandy Zachary: I do.

Chairman McKee: Thank you, and that's the correct hand.

Brandy Zachary: I'm here on behalf of Susan Cox Development so, I really don't have anything else to add but if anybody has any questions, I'll be happy to answer them.

Chairman McKee: Any questions for Brandy?

Chairman McKee: Do you have a question for Brandy? If you'll wait just a moment please (speaking to someone in the audience). No one has questions for Brandy? Will you please come to the podium then? Please, just a moment, would you give us your name and address for the record?

Alicia Lococo: Alicia Lococo, I live in 1001 Whitewood Bend, LaGrange, Ky. We have the property with the lake that's adjoining that.

Chairman McKee: Do you swear the statements you are about to make are the truths to the best of your knowledge?

Alicia Lococo: Yes.

Chairman McKee: Thank you, please proceed.

Alicia Lococo: I was just curious about the status of the sewers for such development out there.

Chairman McKee: Sewer service to that development?

Alicia Lococo: Yes.

Chairman McKee: Brandy, would you like to address that?

Brandy Zachary: Yes.

Chairman McKee: If you could, please come to the podium. Status of the sewer service.

Brandy Zachary: So there's not public sanitary sewer service available at this location, and the Dollar General Store doesn't require it whenever there's not public service available. They go through the standard septic evaluations by the Health Department that you do if you get a residential septic tank of anything like that. Theirs is a little bit larger, I'm sure, than a residential septic tank. We've already signed an agreement, she's already signed an agreement if everything gets approved with Henderson County Water District, and we are bringing a larger water main out Hwy 416, and there will be a new fire hydrant installed right there across the road at the intersection. I think it's Swann Lane so, Mrs. Cox is actually paying Henderson County Water to do that work, to bring a larger main. Because I think right now there was only a three-inch (3") water main out there so, it didn't offer adequate fire protection to set a fire hydrant.

Brian Bishop: To Brandy's point, I was going to bring that up under the Site Plan since it was more technical in nature but I spoke to Pete Conrad, who is the Director of county water; they have entered into the contract the Board will give final approval this coming week, I believe it's Monday he said. They are going to be running six hundred fifty feet (650') of six-inch (6") water line, and install a fire hydrant in this general vicinity. It's going to be where it can be located best but this will give you a ballpark estimate of where the fire hydrant will be.

Chairman McKee: Ms. Lococo, did that answer your question?

Alicia Lococo: Yes.

Chairman McKee: Do you have any other questions?

Alicia Lococo: No, thank you.

Chairman McKee: Thank you ma'am, we appreciate your coming. Is there anyone else who would like to speak for or against this rezoning? Seeing none, the Chair will entertain a motion.

David Dixon: This motion is also subject-to Site Plan approval?

Brian Bishop: Correct?

David Dixon: Ok.

***MOTION WAS MADE BY DAVID DIXON SECONDED BY MAC ARNOLD REGARDING APPLICATION FOR REZONING # 1078 – PROPERTY CONTAINING 1.96 ACRES, PARCEL ID NUMBER 80-116, LOCATED AT 6057 HWY 416 W IN THE COUNTY OF HENDERSON.***

***I MOVE THAT THE PLANNING COMMISSION RECOMMEND THE ASSIGNMENT OF AN HIGHWAY COMMERCIAL (H-C) ZONING CLASSIFICATION TO 1.96 ACRES, PARCEL (PID #80-116), AND I LEAVE THE MOTION OPEN FOR OTHER MEMBERS OF THE PLANNING COMMISSION TO ADD FINDINGS OF FACT IN SUPPORT OF THIS MOTION, BECAUSE:***

***THE EXISTING M-2 HEAVY INDUSTRIAL ZONING CLASSIFICATION IS INAPPROPRIATE AND THE PROPOSED (H-C) HIGHWAY COMMERCIAL ZONING CLASSIFICATION IS MORE APPROPRIATE, BECAUSE:***

- ***AN INTERCHANGE WAS RECENTLY CONSTRUCTED NEAR THE SITE WHICH ALLOWS ACCESS TO PENNYRILE PARKWAY FROM HWY 416 W. THIS HIGHWAY IMPROVEMENT PROJECT IS AIMED AT HELPING EXTEND I-69 UP THE PENNYRILE. THIS ALLOWS FOR MORE EFFICIENT VEHICULAR TRAFFIC IN THE AREA.***
- ***IN 1973 (REZONING #142) THE HENDERSON CITY-COUNTY PLANNING COMMISSION REZONED THE SITE***

**FROM AG TO M-2 AND THE HIGHWAY COMMERCIAL ZONING CLASSIFICATION IS LESS INTENSE.**

- **THE SITE HAS NOT DEVELOPED IN AN INDUSTRIAL MANNER AS EXPECTED.**
- **THE SITE IS CURRENTLY, AND HAS BEEN HISTORICALLY USED AS A NON-CONFORMING MOBILE HOME PARK. THE PROPOSED USE IS MORE CONDUCTIVE.**
- **THE PROPERTY IS SERVED BY ADEQUATE UTILITIES.**

**THE PROPOSED ASSIGNMENT OF ZONING IS IN AGREEMENT WITH THE GOALS AND OBJECTIVES OF THE COMPREHENSIVE PLAN, IN THAT:**

- **WISELY PLAN FOR LAND USES IN APPROPRIATE LOCATIONS TO MAXIMIZE QUALITY DESIGN AND MINIMIZE THE ADVERSE IMPACTS OF DEVELOPMENT. (BALANCING LAND USE GOAL # 1).**
- **IDENTIFY AREAS OF OPPORTUNITY FOR INFILL, REDEVELOPMENT AND ADAPTIVE REUSE THAT RESPECT THE AREA'S CONTEXT AND DESIGN FEATURES. (BALANCING LAND USE OBJECTIVE # A)**
- **ENCOURAGE INNOVATIVE, SAFE, AND SUSTAINABLE DESIGN FOR NEW DEVELOPMENT AND/OR INFRASTRUCTURE. (LAND USE OBJECTIVE F).**
- **GUIDE DESIGN AND IMPROVEMENTS OF DEVELOPMENT ALONG MAJOR TRAFFIC CORRIDORS TO MAINTAIN THE COMMUNITY CHARACTER AND CREATE GATEWAYS. (INCREASING MOBILITY OBJECTIVE F)**

**THIS MOTION IS SUBJECT TO SITE PLAN APPROVAL AND TO BONDING IN THE FOLLOWING AMOUNTS; STORMWATER DETENTION BASIN \$30,000, SILT CONTROL IN EXCESS OF ONE (1) ACRE \$10,000, REVEGETATION \$5,000, HANDICAPPED PARKING \$2,500,**

***DUMPSTER ENCLOSURE \$2,500 FOR A TOTAL BONDING AMOUNT OF \$50,000.***

Chairman McKee: We have a motion and a second, and you accept additional findings of fact?

David Dixon: Yes sir.

Chairman McKee: Are there any additional findings of fact that a Commissioner would like to add to that motion? Hearing none, anything else we should consider before we vote?

Brian Bishop: No sir.

Chairman McKee: Moving ahead. Madame Clerk will you please call the roll?

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: The recommendation will move forward. That concludes the item for the public hearing portion of our meeting. The Chair will entertain a motion to go out of public hearing.

***MOTION WAS MADE BY BOBBIE JARRETT SECONDED BY GARY GIBSON TO GO OUT OF PUBLIC HEARING.***

Chairman McKee: We have a motion and a second, any discussion? All in favor signify by saying aye. Any opposed.

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: Motion carries. First on the agenda for the non-public hearing items is the **Finance Report for August 2017** if you've had the opportunity to review that. When you're ready, the Chair will entertain a motion.

***MOTION WAS MADE BY DAVID WILLIAMS SECONDED BY RODNEY THOMAS TO APPROVE THE FINANCE REPORT FOR AUGUST 2017.***

Chairman McKee: We have a motion and a second, any discussion? All in favor signify by saying aye. Any opposed.

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: So mote it be. Next on the agenda is the **Bond Report**.

***MOTION WAS MADE BY MAC ARNOLD SECONDED BY BOBBIE JARRETT TO ACCEPT THE BOND REPORT AS SUBMITTED.***

Chairman McKee: We have a motion and a second, any discussion? All in favor signify by saying aye. Any opposed.

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: Motion carries. Next on the agenda is the **Dollar General Store Site Plan** presented by the Gains Family. Mr. Bishop, are you going to lead that conversation?

Brian Bishop: Yes sir. This is the Site Plan we just spoke about. It is submitted by The Gaines Family Trust (Bobby Gaines) owner and Susan Cox Development, located in Henderson County on Hwy 416 West (PID# 80-116). Applicant is requesting Site Plan approval.

This is a more detailed drawing of what you just saw for the rezoning exhibit. It has a lot more detail in regards to parking, drainage, and things of that nature. You'll notice this is the entrance that we spoke about previously, this will be bonded and approved by the Kentucky

Transportation Cabinet. You'll notice that the handicapped parking is near the front entrance. Unloading will be to the rear of the property, and also this is where the trash disposal will be. Parking will be along this area here near the front of the store.

One thing that we will discuss, and Brandy will probably elaborate on, there is an existing gas line that crosses the property here, which there is a fifty-foot (50') easement that Brandy is actually working with the owner to gain approval to construct in that area. I believe she will discuss about the required level of cover required to construct there.

As I mentioned before, you will see a more detailed drawing of the fence. It starts roughly at the building set-back line, runs along the property line then cuts across that way; then this way, then to a Southwest direction.

David Dixon: So the fence is all the way around the place except for the front?

Brian Bishop: It is. Except for along this front property line and here. I'll do my best to answer any questions you may have but that's it in a nutshell.

Chairman McKee: Questions for Staff? Brandy would you like to comment?

Brandy Zachary: The gas line he's talking about, I think maybe it was originally Texas Gas, I don't know. The guy that we spoke with is with Boardwalk Pipeline. So, there are some transmission lines, is what it is, that cross that. There were three (3) but there's a ten-inch (10") line that they have abandoned. There's a sixteen-inch (16") transmission line, which is what falls outside the parking lot so we're not over any of that. There is a twelve-inch (12") line that is what runs through our drive aisle along the side of the building. They have seen the plans, and he has given that to his engineering department, he said, the main think they're doing right now is checking the grading plan just to make sure it's got the cover height over the gas main that they want, and that we're not getting too close to the top of the line.

Chairman McKee: Any questions for Brandy?

David Dixon: I assume that there is some kind of regulation that would prevent you from interfering with the gas line or getting too close to it or whatever.

Brandy Zachary: Yes. They actually have a fifty foot (50') wide right-of-way easement that all three (3) of those lines are within. Our building and everything is off of the easement. The building is about twenty-six feet (26') away from the closest line. But they do actually, and we're supposed to get one from them as well; originally there's an old document that was an easement that was granted from them to the current property, I think it is, that allowed them; one of the mobile homes I think was actually sitting on top of one of the gas lines but, they had an easement to allow them to put it there so, we're going to try to get an easement from them similarly stated just because our dumpster enclosure's going to be within that fifty foot (50') easement.

David Dixon: I guess what I'm asking is if this engineering firm says that you have to make changes because of that gas line, then you'll have to make changes?

Brandy Zachary: Oh yes, we'll have to, yes. The gas company, if they don't like the clearance, then we will have to change the grading to get it to what they want, they will have to sign off on it.

Chairman McKee: Would it have to come back here?

Brian Bishop: I would think it would depend on the nature of the change. It would probably depend on how much the grading would change.

Brandy, would you mind addressing the entrance for KYTC too?

Brandy Zachary: One more thing about the gas line, I will say when I spoke with him, his main concern was that we were going to be doing any cut activity, and most all of that area that the easement was in has actually got a little bit of fill on it, not cut. So, I don't foresee any issues with the grade that he was talking about.

As far as the easement, I actually got an email from Taylor Franklin at KYTC, District 2 office today, and he gave us the bond amount, and verbally in the email version said that they were good with the entrance. So, once we send the bond in, they'll issue the permit for that.

Chairman McKee: How about asking you to tell me, but have you considered what you would do if that engineer does not approve it?

Brandy Zachary: The gas line?

Chairman McKee: Yes.

Brandy Zachary: If the gas line were to not be approved, I mean it would... everything would probably have to...we'd have to re-do the whole site. So, it would probably come back before you if it was not approved.

Chairman McKee: Thank you.

Brandy Zachary: I don't foresee any issues but...

Chairman McKee: Understood.

David Dixon: I guess my original question is, you would be legally bound to correct, to make it right in the eyes of the gas line people?

Brandy Zachary: Yes, because they have a right-of-way easement there.

David Dixon: Very good.

Brian Bishop: Chairman McKee, Staff recommends approval. We just request that it be subject-to the same bonding that Commissioner Dixon referred to in the rezoning, and we request that the encroachment permit be finalized and provided to the Planning Commission.

Chairman McKee: Is that in your packet?

Brian Bishop: It is not.

Chairman McKee: Thank you. Any other questions? Noting what Mr. Bishop said, the Chair will entertain a motion.

**MOTION WAS MADE BY BOBBIE JARRETT SECONDED BY GARY GIBSON TO APPROVE THE DOLLAR GENERAL STORE SITE PLAN SUBMITTED BY THE GAINS FAMILY TRUST (BOBBY GAINS) OWNER AND SUSAN COX DEVELOPMENT LOCATED IN HENDERSON COUNTY ON HWY 416 (PID#80-116) SUBJECT TO; BONDING AND THE ENCROACHMENT PERMIT PROVIDED BY THE KENTUCKY TRANSPORTATION CABINET.**

Chairman McKee: Did that motion encompass the whole consideration?

Brian Bishop: I believe so.

Chairman McKee: We have a motion and a second, any discussion?  
Madame Clerk, would you please call the roll?

**ALL IN FAVOR: AYE**

**OPPOSED: NONE**

Chairman McKee: Motion has passed. Next on the agenda is the **Little Caesars Pizza Site Plan**, Mr. Bishop?

Brian Bishop: Yes sir.

Chairman McKee: Please proceed.

Brian Bishop: This is submitted by Rita Stagg (owner) and Path Amin Developer for the property located in the City of Henderson at 701 North Green Street, (PID #1-17-2-9). Applicants are requesting Site Plan approval.

This is the current site. This is the current property of the Thelma B. Johnson Educational Center; this is Seventh Street; this is a restaurant that has been known as Culley's in the past, I believe it's currently vacant; this is a former convenience store, I believe there was a pet food store there at one point. It is currently a used car lot. This is North Green Street, going Northeast.

The applicant is proposing the construction of a 1,950-square foot Little Caesars building. You'll notice that they are proposing to limit their entrance, as in this way with one-way traffic around which can exit along Seventh Street, or exit heading South on Green Street.

We have received approval from KYTC; this, via the Encroachment Permit. Mr. Doug Boom with the City has approved both of these entrances. The applicant is proposing new sidewalks along Seventh Street, and along North Green Street that will be handicap accessible, which is what's being displayed here.

You will notice that you'll have new tree plantings here, and this is where the dumpster enclosure will be. Handicap parking will be here, and then additional parking will be in the front of the building, and along Seventh Street.

It will be night-sky friendly, the cut-off luminaire lighting will be used for this project.

Staff recommends approval, subject to bonding. Bonding will be a total of fifty-six thousand, six hundred fifteen dollars (\$56,615). Fifty-thousand, six hundred twenty dollars (\$50,620) of which will be for the construction of sidewalks, entrances, and curbing which will be rebuilt during the construction process. The second bonding amount is five-thousand, nine hundred, ninety-five dollars (\$5,995), which is for erosion control for the site and the inlet that is shown on the drawing here.

We have received all appropriate approvals from the agencies and entities such as the City Engineering, HWU, and the Codes Department; and I will do my best to answer any questions that you may have.

Chairman McKee: Questions for staff?

David Dixon: So, if I'm going North on Green Street, how do I get into this place?

Brian Bishop: You will turn on Seventh Street here, and then come in the entrance...

David Dixon: The entrance on the side.

Brian Bishop: Then you can come in and park here, and then walk into the store. If you're coming South on Green Street, you would come in this entrance, and then come around; then you could exit going South. This will be a raised median to prevent traffic from going left or right when they're not supposed to.

Chairman McKee: The Seventh Street ingress is both ingress and egress?

Brian Bishop: It is sir.

Chairman McKee: Is it directional?

Brian Bishop: Directional in that you can go in this way, and out this way as the arrows are depicting here.

Chairman McKee: When you come out, can you turn left or right?

Brian Bishop: Yes.

Bobbie Jarrett: Is there a drive-thru? Will there be a drive-thru?

Brian Bishop: There is.

Bobbie Jarrett: Ok.

Brian Bishop: This is the drive-thru here, it's probably hard to see on the screen.

Chairman McKee: So it does allow for you to circle the building?

Brian Bishop: It does. You may be able to see it here, one-way come in; you can go through the drive-thru close to the building, see the lane? Then this would be the lane for traffic going around the building or parking.

Bobbie Jarrett: Ok.

Chairman McKee: Questions for Staff?

David Dixon: From looking at the aerial photograph, and then this site plan; the building is pushed back farther from Green Street?

Brian Bishop: It is sir. I believe they pushed it back, and Mr. Vickers is here representing the applicant. I believe they pushed it back so that they have greater queuing length for the drive-thru.

David Dixon: When you look at the aerial, there's more space behind the building than there is in front of the building; it looks like that they are now planning to make better use of.

Brian Bishop: There is.

Mike Vickers: Brian, would you like me to address that?

Brian Bishop: Yes sir.

Chairman McKee: Just state your name and address for the record.

Mike Vickers: Mike Vickers, QK4 Engineering and Planning; 110 North Water Street, Suite B, Henderson, Ky.

Chairman McKee: Please proceed Mr. Vickers.

Mike Vickers: Mr. Dixon, the reason for the location of the building is two-fold. The developer wants one (1) of two (2) spots in front of the structure to allow drive in, pick up, and get out. Secondly, because of the turning radius is required to make the turn around the building for the right-in, right-out movement, we had to push the building back a little bit further which caused us to impact some of the green space in the back but we still me the twenty percent (20%) reduction in impervious area for redevelopment to avoid the need for water quality and quantity requirements.

David Dixon: Ok, thank you.

Mike Vickers: Does that answer your question?

David Dixon: Yes, thank you.

Chairman McKee: Any other questions for Mr. Vickers? Thank you, sir, we appreciate you. Any other questions? Hearing none, the Chair will entertain a motion.

***MOTION WAS MADE BY DOUG BELL SECONDED BY MAC ARNOLD TO APPROVE THE LITTLE CAESARS PIZZA SITE PLAN; SUBJECT TO BONDING AS PRESENTED.***

Chairman McKee: We have a motion, and a second.

David Williams: Don't we need to have it subject-to the bonding?

Bobbie Jarrett: Yes, subject-to.

Chairman McKee: Need details.

David Williams: Subject to bonding.

Brian Bishop: Subject to bonding.

Chairman McKee: That's it?

Brian Bishop: Yes sir.

Chairman McKee: As presented?

Brian Bishop: As presented.

Chairman McKee: And the second agrees to that?

Mac Arnold: Yes.

Chairman McKee: Madame Clerk, will you please call the roll?

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: Motion approved. Next on the agenda is the Access Standards Manual. Mr. Bishop, are you and Mr. Boom going to lead that...

Brian Bishop: We will. We are going to tag-team this application if you don't mind.

Chairman McKee: From the floor?

Brian Bishop: Yes sir. **ACCESS STANDARDS VARIANCE** – Submitted by Mike Vickers, PE and Path Amin Developer on behalf of Rita Stagg (owner), are requesting a 42’ variance from the 115’ minimum corner clearance requirement for the proposed right-in/right-out access for the development at 701 N. Green Street.

Essentially what the applicant is requesting is a seventy-three-foot (73’) distance where one hundred fifteen foot (115’) is required by the Access Standards Manual, and with that I will turn it over to Mr. Boom.

Chairman McKee: Let the record show Mr. Boom is the City Engineer. Please proceed Mr. Boom.

Doug Boom: Basically since KYTC allowed right-in/right-out, we allowed the variance to meet this requirement. Basically, the requirement is from the front side of the curb, back to the inside of the drive-way at the minimum throat distance. This is currently seventy-three feet (73’) based on their drawing. So, we allowed a forty-two-foot (42’) variance.

Gray Hodge: Where would one hundred fifteen feet (115’) wind up?

Doug Boom: Basically, it would be way to the edge on the other drawing. Can you go back to Site Plan?

Brian Bishop: You have my tool.

Doug Boom: This is about twenty-nine feet (29’). So, the lot itself is one hundred (100), so, that puts the entrance in way up here, and it would be too tight for a right-in/right-out.

Mac Arnold: Doug, this is an improvement over the existing situation?

Doug Boom: Yes, it is, it’s currently wide open. This is part of the Green Street Corridor Study, which is trying to eliminate all the open accesses along Green Street in this area.

Gray Hodge: Why is the standard under fifteen feet (15'')?

Doug Boom: That's based off the Access Standards; it's part of the manual based off the distance from this minor road-way since it's a stop sign requirement...

Gray Hodge: Do you know what is the origin of the hundred-fifteen feet (115')? They didn't just pull a number out of air, did they?

Doug Boom: No, no. I can get that information you...It's based off the Access Manual, the EMPO basically did the study originally.

Gray Hodge: I'm sorry?

Doug Boom: The EMPO, Evansville Metropolitan Planning Office.

Brian Bishop: Commissioner Hodge, the Access Standards Manual has not been updated since 1990 so, it pre-dates just about everyone here. It is something the Planning Commission will need to look at updating in the near future.

David Williams: Basically Doug, isn't that based on being able to see what's coming at you, and be able to react to it?

Doug Boom: Yes. Basically, that's what it is; reaction time, and to slow people down. I mean, if this was a full access this would never be a full access because Green Street itself is a four (4) lane roadway, there's no; if someone was turning out into the roadway, they can't turn into traffic in any direction because there's no way to rescue that vehicle; to have an area of rescue if he's turning in and out.

Can you go back to the map, the entire map? Right there.

Basically, since it's four (4) lanes if someone wanted to turn left into here they can't because there's no way to stop traffic, physically stop traffic.

If this was a five (5) lane access, then there would be an inside lane they could turn to get into it. So, KYTC limits the right-in/right-out in this particular case on a four (4) lane highway.

Now, if this was further down where we have from Fourth to Third, or from Third to Second in that area where you have the storage lane right there, or left turn lane in both directions.

To answer your question, the main reason is site distance of those vehicles coming down; it's all based on speed limit. The speed limit has a lot to do with this, and depending on... this is a major; this is arterial which is a major roadway, this being a local road, that's why this one is moved back far enough because in this case, you've got a right-of-way that sits right here. In that instance, it (inaudible) to have be seventy-five feet (75').

Brian Bishop: Doug for example, if there were a larger speed limit, the site distance would be increased?

Doug Boom: Right, correct. Currently, right now a lot of the access is based off the actual frontage of the roadway. In this particular case, it's frontage is one hundred feet (100') only, if it was two-hundred feet (200') then there would be, you know, this is what the client had gone to KYTC to ask for a right-in/right-out. If it didn't have it, they couldn't build it, there would be no way to access it.

Gray Hodge: Except from Seventh Street.

Doug Boom: This is similar to O'Reilly's.

Gray Hodge: Right.

Brian Bishop: Correct, Commissioner Hodge; to the Seventh Street entrance.

Gray Hodge: You could still access it from Seventh Street.

Brian Bishop: It would be, it would have to be accessed from Seventh Street.

Gray Hodge: Did O'Reilly's get a similar variance?

Doug Boom: No, their lot width was sufficient.

Gray Hodge: Do either of you recall, has there been a similar variance for a business on Green Street?

Mac Arnold: Didn't the area up there on the little strip-malls there on 41 North; aren't some of those basically; didn't we give some variances on some of those?

Brian Bishop: Correct. Since I can recall since I've been in this position or Assistant Director; we've had two (2) variances. They were both on 41 North. One (1) is the Cardinal Crossing entrance I believe is one (1), and the other was the gas station further up 41 North, Circle K. I believe they got an Access Standards Variance as well. But not that I can recall, North Green Street since I've been in this position.

David Dixon: If I understand correctly, this is necessary because Green Street is only four (4) lanes, there's not turn lanes, and the lot itself is so narrow that you have to use the right-in/right-out?

Doug Boom: Correct.

David Dixon: So, anybody else who does this on Green Street with a similar sized lot, they would have to do right-in/right-out as well?

Doug Boom: Depending on what KYTC...

(INAUDIBLE- NOT CLOSE TO THE MICROPHONE)

Chairman McKee: Let the record show Mr. Vickers is speaking.

Mike Vickers: Commissioner Hodge you're correct. This is not the ideal situation. The alternative here would be to not impact anything in the right-of-way of KYTC, and leave the access the way it is now which would be a very, much more unsafe condition which is basically fully paved. That's not what the developer wanted, it's not what the City wanted, it's not what KYTC wanted. If there are issues with the access performance, I would make the assumption that if there was ever a major widening or reconstruction of Green Street, the access inconsistencies would be addressed as much as possible with that. I can't speak on behalf of KYTC but as a consultant that works on a lot of roads like this, and situations like this, they are addressed if it becomes an issue. If this was a two-way in and out on Green Street, you would have a legitimate concern but no one is going to be trying to make, with a raised median like that, a left turn movement into this facility.

Gray Hodge: Ok, so traffic is limited coming out of this site, traffic can only go South on Green Street?

Mike Vickers: That's correct. They would have to go...

Gray Hodge: Is the safety issue traffic going into the site or traffic pulling out of the site?

Mike Vickers: Safety would be traffic coming out of the site, trying to make a left-hand movement, or traffic coming into the site making...or Northbound traffic making a left-hand movement into the site which is being prohibited by the six-inch (6") raised, concrete median which was approved at O'Reilly's. This mimics exactly the access that O'Reilly's has off of Green Street.

Gray Hodge: So, I mean you're altering access to the site, I get that. But I can't see where it's, I don't understand the safety issue part of it. So, where is the safety issue? I'm trying to understand.

Brian Bishop: The safety issue, Mike and Doug please jump in, is that it's near the intersection and it creates a danger of people turning, in people having full access turning in and out. Is that it in a nutshell? Am I saying it correctly.

Gray Hodge: Ok.

Mike Vickers: The way this access manual would work, if you had a controlled intersection is where this becomes an issue as well because you need storage length from the intersection back to the entrances; you don't want cars to back up so people cannot get in and out of the intersection.

So, in this case I don't think the access manual really is relevant in this case because it's an un-controlled intersection along the major roadway which is Green Street. If we were to get into a real discussion about the access manual. But we're following the regulation of what the access manual is now, and had to request the variance.

Rodney Thomas: The Rite Aid right down the street has the same thing, don't they?

Gary Gibson: Yes, Fifth Street. You've got the same thing two (2) blocks down.

Rodney Thomas: Yeah.

Mike Vickers: So, the purpose of me stepping up here is the alternative is leaving the condition the way it is now without effecting anything on the right-of-way which would be a much more unsafe condition than what we're proposing.

Brian Bishop: So, in your professional opinion, the proposed entrance is more safe than the current, existing entrance?

Mike Vickers: Most defiantly.

Chairman McKee: Are the Access Manual Standards promulgated by the EMPO and accepted by us?

Doug Boom: Yes. They were, I think they were written in 1990, and we've been looking to upgrade them ever since.

Chairman McKee: But we could update them ourselves if we felt the need to do so?

Brian Bishop: Doug do you want to jump in? The EMPO acts as our traffic consultant. It would probably be un-wise to update them without running it by them, so to speak.

Chairman McKee: So, they get the first look?

Doug Boom: Yes.

Chairman McKee: All we are challenged to do is grant variances as appropriate?

Brian Bishop: Correct.

Chairman McKee: Any other questions for City Engineer Boom or Mr. Bishop?

David Dixon: Yes, the State Encroachment Permit has been issued?

Brian Bishop: It has sir.

Chairman McKee: Thank you Mr. Boom, we appreciate it. Are there any other concerns? This variance applies only to this location?

Brian Bishop: Correct.

Chairman McKee: Hearing none, the Chair will entertain a motion for this variance.

***MOTION WAS MADE BY DAVID WILLIAMS SECONDED BY DAVID DIXON TO APPROVE THE ACCESS STANDARDS VARIANCE FOR MIKE VICKERS, PE AND PATH AMIN DEVELOPER, ON BEHALF OF RITA STAGG OWNER, REQUESTING A 42' VARIANCE FROM THE 115' MINIMUM CORNER CLEARANCE REQUIREMENT FOR THE PROPOSED RIGHT-IN/RIGHT-OUT ACCESS FOR THE DEVELOPMENT AT 701 NORTH GREEN STREET.***

Chairman McKee: We have a motion and a second, is there any discussion? Madame Clerk, would you please call the roll?

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: Motion is approved. Next on the agenda is the **Players Club**-The Planning Commission voted at the August 17, 2017 Special Meeting to recommend Disapproval of **Rezoning #1075** and **Rezoning #1077** with a Narrative Development Plan; Submitted by **Corman-McQueen Golf, Inc., Daniel McQueen President, and MBTJ, LLC, Mike Chambers**, and such Rezoning's were tabled for Staff to prepare proposed motions, findings of fact and summary of evidence.

It is appropriate that I ask you if you were not here to hear all of the testimony that you not vote on these next items. I believe we added up the faces, and there is a quorum of us present who did attend all of the sessions.

Heather Lauderdale: Correct.

Chairman McKee: So, the first action that we are required to do is **Remove both rezoning's from the table.**

***MOTION WAS MADE BY DAVID DIXON SECONDED BY MAC ARNOLD TO REMOVE REZONING #1075 AND REZONING #1077 WITH A NARRATIVE DEVELOPMENT PLAN FROM THE TABLE.***

Chairman McKee: We have a motion and a second, any discussion? All in favor signify by saying aye. Are there any opposed?

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: So mote it be.

Doug Bell: I abstain, Mr. Chairman.

Chairman McKee: Abstain, abstain, abstain, abstain. (Referring to Doug Bell, Kevin Herron, Gray Hodge, and Rodney Thomas)

Rodney Thomas: Abstain.

Chairman McKee: Should have had a roll call Madame Clerk.

Next on the agenda is the **Adoption of the motions, findings of facts, and summary of evidence.** And while we are considering that, the Chair will consider any additions or changes to the findings of facts, and let's deal with those first.

Mr. Fridy, do you have any comments to make at this point?

Tommy Joe Fridy: I do not. I'm open for questions but we are following our agenda.

David Williams: Call for questions then.

Chairman McKee: Any changes to the findings of fact? Once again, if you were not present for all of the hearing and testimony, abstain and we will do the roll call this time. Forgive me for not doing that last time.

The Chair will entertain a motion.

***MOTION WAS MADE BY DAVID WILLIAMS SECONDED BY MAC ARNOLD THAT THE TWENTY-SIX (26) PAGE PROPOSED***

***MOTIONS, FINDINGS OF FACT AND SUMMARY (THE “FINDINGS”), WERE DISTRIBUTED TO THE PLANNING COMMISSION MEMBERS IN ADVANCE OF THIS SEPTEMBER 5, 2017 REGULAR MEETING, AND SUCH FINDINGS WERE ALSO OFFERED TO THE ATTENDEES OF THIS MEETING. I MOVE THAT SUCH TWENTY-SIX (26) PAGE FINDINGS BE ADOPTED IN ITS ENTIRETY AS THE FINAL FINDINGS IN SUPPORT OF THE PLANNING COMMISSION’S VOTE ON AUGUST 17, 2017, RECOMMENDING THAT THE CITY OF HENDERSON BOARD OF COMMISSIONERS DISAPPROVE (NOT APPROVE) REZONING #1075 AND REZONING #1077; AND, THAT THE SAME BE TYPED INTO THE TRANSCRIPT OF THIS MEETING AS IF SUCH FINDINGS HAD BEEN RECITED VERBATIM, BY THE MOVING COMMISSIONER;***

## **PROPOSED**

### **MOTIONS, FINDINGS OF FACT AND SUMMARY**

The Henderson City-County Planning Commission held a special called meeting which commenced on Tuesday, August 15, 2017, for the purpose of conducting a public hearing to consider Rezoning #1075 and Rezoning #1077. The special meeting and public hearing was continued from night to night and was heard over three nights: Tuesday, August 15, 2017; Wednesday August 16, 2017; and Thursday, August 17, 2017.

#### **REZONING 1075:**

The Planning Commission voted at the August 17, 2017, continued special meeting to recommend that the Henderson City Board of Commission (“City Commission”) **DISAPPROVE** (not approve) the request to *Rezone of 5.088 acres and 25.8 acres which was submitted by Corman-McQueen Golf, Inc., Daniel McQueen, President, and MBTJ, LLC, Mike Chambers, (the “Applicants”)*, for the property located in the City of Henderson which is a portion of Henderson County Property Valuation Administrator’s Map Number (also sometimes referred to as Parcel Identification Number ‘PIDN’) #64-28.4, as follows:

A. Application to rezone 5.088 acres along Constanza Drive from Agricultural (AG) - **Golf Course Only Restricted Use** to Residential 1; and, then subdivide this 5.088 acres into lots 1 through 4, with the rezoning being contingent upon and subject to the subdivision being finally approved.

B. Application to rezone 25.44 acres north of Wolf Hills Blvd. and west of Wathen Lane from Agricultural (AG) - **Golf Course Only Restricted Use** to Residential 1; and, then subdivide this 25.44 acres into lots 5 through 8, with the rezoning being contingent upon and subject to the subdivision being finally approved.

### **REZONING 1077:**

The Planning Commission voted at the August 17, 2017, continued special meeting to recommend that the Henderson City Board of Commission (“City Commission”) **DISAPPROVE** (not approve) *Rezoning # 1077 with a Narrative Development Plan, to Rezone the balance of the area commonly known as the Players Club Golf Course, containing 133.8 acres, more or less, from Agricultural (AG) - Golf Course Only Restricted Use to GOLF COURSE OR SOD FARM ONLY RESTRICTED USE IN AN AGRICULTURAL ZONE, pursuant to the Narrative Development Plan, which is attached hereto and incorporated herein by reference, which was submitted by Corman-McQueen Golf, Inc., Daniel McQueen, President, and MBTJ, LLC, Mike Chambers, (the “Applicants”)*, such 133.8 acres is located in the City of Henderson and is a portion of Henderson County Property Valuation Administrator’s Map Number (also sometimes referred to as Parcel Identification Number ‘PIDN’) #64-28.4.

And, the matters were tabled until this September 5, 2017, regular meeting, for staff to prepare proposed findings of fact which are consistent with the record of the three (3) day/night public hearing, a summary of the evidence, etc., for the Planning Commission to consider.

### **MOTION**

I move that the actions of August 17, 2017 recommending disapproval be and hereby are ratified and confirmed and that the following be adopted as findings of fact and conclusions of the Planning Commission in support of such recommendations to DISAPPROVE (not approve) both Rezoning #1075 and Rezoning #1077, *and I leave the motion open for other members of the Planning Commission to add findings of fact in support of this motion:*

**KRS 100.2111 Alternative regulations for Zoning map Amendment and KRS 100.347 Appeals:**

The City of Henderson has adopted the Alternative Rezoning procedures set out in KRS 100.2111. Pursuant to KRS 100.2111(4), the recommendation of the Planning Commission (in this case a recommendation to deny the rezoning requests) shall become final and be automatically implemented; unless either (a) an aggrieved person files a written request with the Planning Commission that the City Commission consider the matter and make a final determination, or (b) the City Commission files a notice with the Planning Commission that it (the City Commission) will consider and finally determine the application to rezone.

The Appeal procedures set out in KRS 100.347 are also applicable.

**Finding of Fact and Conclusions:**

Neither Rezoning Application #1075 or Rezoning Application #1077 is consistent with or in agreement with the Future Land Use Map of the adopted Comprehensive Plan. The Future Land Use Map of the Comprehensive Plan depicts this area as Parks & Recreation, which is consistent with the current golf course only restricted use zoning classification.

The proposed Rezoning's are also NOT in agreement with the following elements of the adopted Comprehensive Plan:

*Balancing Land Use*

*Page 1-5*

*1.) Wisely plan for land uses in appropriate locations to maximize quality design and minimize the adverse impacts of development.*

*Healthy Neighborhoods*

*Page 1-6*

*Objective*

*a) Promote stability of existing neighborhoods...*

*f. Foster a sense of place by including elements that contribute to community pride.*

*g. Encourage recreational and community facilities into developments to afford active living alternatives for residents.*

*Protecting Natural Systems*

*Page 1-7*

*Goal*

*1) Protect and enhance the quality of natural environment while permitting appropriate development on suitable lands.*

*Objective*

*c. Preserve significant natural features and enhance existing green areas.*

*d. Anticipate future community needs by encouraging environmentally sustainable uses of natural resources.*

*Improving Community Services*

*Page 1-10*

*2) Promote, preserve, and extend the high level of community services for the benefit of all citizens.*

## *Objective*

*a) Encourage community involvement in establishing priorities and programs that will serve our recreational and leisure needs and desires.*

*e) Encourage new recreational facilities that support the needs of the community's youth and create economic development opportunities.*

*g) Develop facilities that make the most efficient use of the land, are designed for the convenience, health, safety, and pleasure of the intended users, and represent positive examples of design, energy use and concern for people and the environment.*

*Page 5-8*

## *PARKS AND RECREATIONAL FACILITIES*

*As communities grow, it is important to insure that land is available for parks, recreation, open space and greenways to meet the future needs of the community. Such recreational places greatly contribute to the overall quality of life in Henderson. As described in this section, the citizens of Henderson are blessed with a variety of opportunities for recreation, and also with a number of nature preserves. It is the Goal of this Comprehensive Plan to continue to promote the management of these existing recreational resources, while also planning for future.*

*Page 5-10*

## *GOLF COURSES*

*Golf courses in the county include eighteen-hole courses at Henderson Country Club and Players Club of Henderson. Nine-hole golf courses include Bent Creek Golf Course on Airline Road, Audubon State Park, and the City of Henderson Municipal Golf Course.*

*Page 8-11*

*8. Areas of critical environmental importance, areas of high ecological sensitivity, and areas containing unique features shall be preserved in the development process.*

The existing zoning classification of *Golf Course Only Restricted Use in an Agricultural (AG) Zone*, is **appropriate** and the requested map amendments (zone changes) set out above are inappropriate. Because:

- Those speaking against the requests for rezoning entered into the record as **Exhibit S**, and discussed the Kentucky Court Of Appeals case of Gramex Corp. v. Lexington Fayette County Gov't, 973 S. W. 2<sup>nd</sup> 75, which generally provides, among other things, that: 1) the Applicant must prove a compelling need for the rezoning; and, 2) that the fact the Applicant could make a larger profit if the land is rezoned is insufficient to mandate a zone change.
- The Planning Commission has the duty and responsibility to balance the interest of; 1) the golf course owners to sell their property for a larger price if the rezoning's were recommended, against, 2) the loss in value to those who own property on or near the golf course, if the property can no longer be an 18-hole golf course. The Planning Commission has therefore recommended that the rezoning requests be denied.
- The Planning Commission finds that recommending the rezoning and therefore preventing the property from being an 18 hole golf course would result in the lowering of the property values of those who own property on or near the golf course.
- The Planning Commission finds that the Applicants have not presented a compelling need for a rezoning, and that the property could be sold as a golf course, although possibly for a lesser price. That the golf course owners do not have a right to benefit from a loss in value to the owners of homes on and near the golf course.
- The Planning Commission considered the testimony of the many people who live on the golf course that the owners have not mowed

and maintained the property or the ponds as is required by the City of Henderson Codes.

- The Planning Commission considered the testimony of the many people who lived on the golf course that Mr. Chambers intentionally destroyed certain aspects of the golf course.

There have been no major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted Comprehensive Plan, other than those brought about by the applicant; and, the basic character of the area has not been substantially altered, other than alterations brought about by the applicants.

The Planning Commission took into consideration that the owners of the golf course testified that they would make 74 acres of the 133.8 acres of request for Rezoning #1077, available for a 9 hole golf course, although the Applicants did not make the same a condition of the rezoning.

It was uncontroverted that golf courses are worth less today than they once were.

## **ATTACHMENTS**

As part of the recommendation to deny the requested rezoning's, the Planning Commission Staff shall forward the following, among possibly other things, to the City Commission:

### **General, Pertains to Both Rezoning #1075 and Rezoning #1077:**

- Rezoning Notice Letter sent to area residents, and the address list to which the letter was sent. (**Attachment #1**)
- Newspaper advertisement receipt. (**Attachment #2**)
- Planning Commission Agenda for August 15, 2017, and related documents as provided to the Planning Commission members in advance of the meeting: (**Attachment #3**)

- Proposed Public Hearing and Meeting rules
- Staff Report – Regarding Rezoning #1075
- Staff Report – Regarding Rezoning #1077
- Pictures & Maps of property
- A Transcript of the August 15, August 16, & August 17, 2017, Special Meeting and Public Hearing, which includes a Motion to Recommend Disapproval and to table for staff to prepare proposed findings of fact. (**Attachment #4**)
- Attendees at the Public Hearing were ask to sign it at the door. Five (5) pages of sign in sheets are attached and incorporated by reference. (**Attachment #5**)

**Rezoning #1075 Attachments:**

- Applicant’s Rezoning Application with the applicant’s attachments, as follows:  
(**Attachment #6**)
  - Applicant’s four (4) page supplement to application
  - Exhibit Map #1
  - Corman-McQueen Resolution
  - MBTJ, LLC., Resolution

**Rezoning #1077 Attachments:**

- Applicant’s Rezoning Application with the applicant’s attachments, as follows:  
(**Attachment #7**)

- Applicant's four (4) page supplement to application
- Exhibit Map #1
- Corman-McQueen Resolution
- MBTJ, LLC., Resolution

- Narrative Development Plan signed by MBTJ, LLC. and Narrative Development Plan signed by Corman-McQueen Golf, Inc. (Attachment #8)

## SUMMARY

KRS 100.211(2)(f) requires a summary of the evidence and testimony presented by the proponents and opponents (although the full transcript of the hearing shall be considered the official record of the Public Hearing and not this summary); such summary is as follows:

**Dorin Luck**, attorney for the Applicants Corman-McQueen Golf, Inc., and MBTJ, LLC., called witnesses and spoke in favor of the Applications:

Mr. Luck's First Witness: Dennis **Branson**, testified, as follows:

- Mr. Branson contacted the City of Henderson and the City was not interested in purchasing the Players Club Golf Course.
- Mr. Branson testified that they have had a study done by Mr. David Matthews from Evansville, Indiana to determine the highest and best

use for the subject property.

- If the rezoning is approved, they intend to offer 74 acres of the property for sale or lease as a 9 hole golf course.
- Mr. Chambers never intended to develop the property, he just wanted to own it but I (Dennis Branson) did and do want to develop it.
- If approved some of the residents have expressed an interest in purchasing an area at the back of their lots.
- The sanitary sewers must be expanded to develop the 4 lots along Constanza Drive.
- A Narrative Development Plan for Rezoning #1077 was introduced as **Exhibit A**. The Narrative Development Plan, would, among other things, restrict the use of the 133.8 acres to Golf Course or Sod Farm only Restricted Use in an Agriculture Zone, if the rezoning was approved. The Narrative Development Plan was read into the record. The Narrative Development Plan also requires the property owner, from time to time, to file for a rezoning request if they want to change the use of the property. The Narrative Development Plan is as follows:

### **Narrative Development Plan**

**Re: Rezoning #1077 containing 133.8 acres, more or less.**

**The undersigned hereby certify that they are the only owners of the subject property and by the execution hereof they do hereby restrict the Application to Rezone such 133.8, more or less, with this Narrative Development Plan, and do hereby restrict the use of the subject property, if such Application to Rezone #1077 is approved, to only a Golf Course or Sod Farm; and therefore waive the other uses otherwise permitted in the City of Henderson Agricultural Zone. If such Rezoning #1077 is approved the zoning classification shall be**

referred to as "GOLF COURSE OR SOD FARM ONLY RESTRICTED USE IN AN AGRICULTURAL ZONE". This restricted use may only be changed by making an application to rezone the property with the Henderson City - County Planning Commission.

The "subject property" as that term is used in this Narrative Development Plan restricting the use of the property is the 133.8 acres, more or less, which is all of the balance of what is commonly known as the Player's Club Golf Course, including the Club House area but not including the 5.088 acres and the 25.44 acres which is the subject of Application to Rezone # 1075; also being a portion of PVA/PIDT #64-28.4.

The undersigned swear, subject to the penalty of perjury, that the foregoing has been duly approved by the Board of Directors or other governing body of the undersigned owners and that the undersigned individuals were duly authorized to sign.

- Mr. **Branson** continuing to testify: "If some entity wants to buy or lease that seventy-four (74) acres more or less, or whatever it takes; we would lease them that property along with right to use whatever portion of the clubhouse that might be necessary for a successful operation, and whatever portion of the maintenance building might be necessary for storing maintenance equipment for the nine (9) hole golf course."
- "We still want to retain the right to use the clubhouse our self..."
- "On the maintenance building, we still need a large portion of that maintenance building for our maintenance purposes, depending on what happens with the golf course."
- Commissioner Williams ask a series of questions and interjected that he had concern the owner or lessee of a 9-hole golf course could get at odds with the owner of the clubhouse and the maintenance building.

Commissioner **Hodge** ask Mr. Branson: Denny, I'm not a sod farmer. I have no idea what a sod farm looks like. What is a sod farm? What do the operations of a sod farm look like? What would it mean to neighbors?

- **Mr. Branson:** Gray, I don't have a clue, I don't have a clue. I've seen sod farmed before in my life. I don't have any idea how that works. I'm sure in order for them to continue selling sod, they immediately re-seed whatever they strip, would only make sense, and grow it back as fast as they can. But I'm sorry Gray, I don't have any idea how that works. It's not an intrusive endeavor, obviously. It's not row cropping. There's not dust involved that I know of, it would make sense; I've seen the machines work and I haven't seen any dust generated by it. That's the best answer I know.
- Taylor DeCorrevont testified sod farming was intrusive.
- Commissioner Johnson interjected he had observed a sod farm in Alabama.
- Alvey Bruce **Kanipe** testified the terrain was very steep for sod farming.
- **Mr. Branson:** "I would like to add that we might be using the wrong words. Mr. Chambers wants the ability to strip sod. I'm not sure that he has any intentions about operating a sod farming business. But I think Mr. Kanipe is correct in so far as a lot of the property is concerned..."
- "Our goal, above all other goals, is to be fair and to help generate some revenue for the continued maintenance of this property..."
- Commissioner **Dixon:** Just so I understand what's being proposed here; if the seventy-four (74) acres is not leased to another party, and developed as a golf course, then it could become a sod farm whether it's a good sod farm or not?
- **Mr. Branson:** It could. It could, what portions are usable topographically for that purpose...

Second witness for the Applicant is expert witness: Mr. **David Matthews** with David Matthews Associates from Evansville, Indiana:

- Mr. Matthews passed out a report. It is not clear if he introduced it into evidence, but it is attached at the end as **Exhibit FF**.
- David Matthews and Associates is a full service real estate appraisal and consulting firm.
- I was asked to provide expert testimony on the highest and best use of 164.328 acres proposed for rezoning, and then to analyze the probable impact of that proposed rezoning to allow a nine (9) hole golf course or sod farm, and the eight (8) single family residential lots on Wathen Lane and Constanza Drive.
- So, let me explain what that is. Highest and best use is defined as follows: *The reasonably, probable, and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value.* The four (4) criteria for the highest and best use that they must meet would be *Legal Permissibility* which is why we are here tonight. *Physical Possibility*, which I will address shortly. *Financial Feasibility*, which I will also address, and *Maximum Productivity*, which leads from all of that.
- Mr. Matthews went through the various elements as they pertained to the subject property.
- Mr. Matthews testified that Mr. McQueen had lost money operating the golf course over the last few years.
- Mr. Matthews testified at length that the Players Club Golf Course could not be operated profitably.
- Mr. Mathews suggested the City of Henderson close the municipal course and buy Players Club.
- Mr. Matthews testified that in his opinion a sod farm would be the closest agricultural use to a golf course.
- Commissioner **Arnold**: I've got a question too. As far as using part of that ground for a golf course, is it more logical that if someone

was going to put a course in there, that an eighteen (18) hole course would be more attractive as far as even looking for...if you have industries wanting to relocate to this area as opposed to having another nine (9) hole course?

- Mr. Matthews: Definitely.
- Mr. Matthews testified that golf courses are worth far less today that they were a few years ago.

Third witness for the Applicant: **Danny McQueen:**

- Attorney Dorin Luck and Mr. McQueen introduced as **Exhibit B**, pages seven (7) through twelve (12) of Mr. McQueen's testimony from the August 2, 2016 Planning Commission Public hearing regarding the Players Club Clubhouse, which was ultimately withdrawn.

A brief summary of Mr. McQueen's testimony and evidence at the August 2, 2016 Public Hearing, is as follows:

- The major problem we've had is being 3 hours away.
- The golf course has lost money for the last 4 years.
- He recently talked to 3 different groups about buying it;  
Bill Randall group;  
Chris from Bent Creek;  
And, Mike Chambers
- Hard to profitably operate a privately-owned golf course that isn't subsidized someway.
- Introduced financial information into the record.
- The golf course was not advertised for sale.
- Mr. McQueen ask Mike Chambers if he was interested in it.
- Mr. **McQueen** then testified about the financials for the Players

Club Golf Course for 2012 through 2015 that were attached to **Exhibit B** to the August 2, 2016, testimony.

- Mr. McQueen testified “we operate three (3) golf courses in Central Kentucky.”
- Commissioner Dixon ask for Mr. McQueen to address the losses at the Players Club set out on the attachment.
- Mr. McQueen: “The only thing on the losses that I would, and I pointed this out to my wife, on each of those losses there’s about fifty to sixty thousand dollars (\$50,000 to \$60,000) in there that was really debt retirement, so it’s not actually an expense. I mean, this is showing like four hundred ninety-eight thousand dollars (\$498,000) worth of losses, it’s more like two-sixty (\$260,000) actual expenses.”
- Mr. McQueen testified he owns and operates 3 golf courses in central Kentucky: University Club, Golf Club of the Bluegrass, and then Peninsula. 2 of them are in Lexington and 1 of them is in Nicholasville, Kentucky.
- Mr. McQueen testified he never received an offer from anyone who would operate Players Club as a golf course.
- Mr. McQueen testified he started Players Club as a bent grass golf course, and that was probably a mistake on our part but we wanted to elevate the golf course, and we knew that Victoria National was a bent grass golf course, plus we had three (3) courses in Lexington, and Central Kentucky that were bent grass. But the problem with bent grass, it costs you about fifty thousand dollars (\$50,000) more a year to operate versus Bermuda, and the problem down here is you’re about five (5) to eight (8) degrees warmer than we are in Central Kentucky. So, that’s why we switched over four (4) years ago to Bermuda grass, and that was part of this cost here.
- Mr. McQueen testified his problem was living 3 hours away from Players Club.

Fourth Witness for Mr. Luck: Dennis Branson, testified again.

- Mr. **Branson**: We never received an offer. Then there was a discussion about the Golf Course Restriction in an Agricultural Zone. Then discussed the possibility for a 9-hole golf course as part of the remaining 133.8 acres.
- Mr. Bishop discussed master plans, in response to a question.
- Mr. Luck stated he had concluded for now.

Attorney **Dane Shields** representing some of the individuals who are against the requested rezoning:

- Until tonight those against the rezoning were not aware the Applicant was going to restrict the 133.8 acres to either a golf course or sod farm. Mr. Shields stated that expert witness David Mathews had testified that an 18-hole golf course was preferable to a 9-hole golf course and that an approval of the last (Rezoning 1075) would adversely affect an 18-hole course. Mr. Shields then addressed who owns the property and pointed out the deed is in Corman-McQueen's name, not Chambers.
- Mr. Shields then called expert witness Herb Pritchett, who lives in Henderson County and has his office in Madisonville. Mr. Shields introduced Mr. Pritchett's resume and qualifications as **Exhibit C**. Mr. **Pritchett** testified he looked at properties that fronted on golf courses in Henderson and other communities and those that did not, and looked at the Property Valuation Administrator's assessments to prepare the 5-page **Exhibit D**, which was introduced, along with **Exhibit E**. Mr. Pritchett explained **Exhibit D**. Mr. Pritchett introduced **Exhibit F**. Then Mr. **Pritchett** explained **Exhibit E**, which shows 85 properties that abut the golf course, and 115

properties that adjoined but do not abut; The 85 properties have a total aggregate assessment of \$17,993,010.00, and the 115 properties that adjoin but do not abut the golf course have an aggregate assessed value of \$22,762,100.00. For a total property value of those property values of over \$40,000,000.00, in Wolf Hills I, II, and Gray Stone. It is Mr. Pritchett's opinion the residents that front on the golf course will collectively lose \$1,800,000.00 or 10%, if there is no golf course; and that the other properties in the subdivision with a golf course but which do not front on it, will collectively lose \$1,138,000.00 or 5%. Mr. Pritchett then addressed the marketability of the Golf Course and his research. Mr. Pritchett introduced **Exhibit E**, showing the sales of 12 golf courses in this area since 2012. Mr. Pritchett found those golf courses sold for an average of just over \$66,000 per hole, and a median of \$47,000 per hole; Mr. Pritchett testified these sales were all as golf courses. Mr. Pritchett testified that his research shows an upturn in golf, and introduced **Exhibit G**. **Exhibit H**, was introduced and discussed to show the increase in young people playing golf. Next, **Exhibit I**, was introduced to show the population per golf hole in this surrounding areas, which showed an average of 13,716 people per golf hole, and the figure included Players Club; and Mr. Pritchett testified that there was 13,214 people per hole in Henderson County, including Players Club. "So, the data from the market is telling me that the golf courses can be sustained around thirteen, fourteen thousand (13,000-14,000) per population level."

- Mr. **Pritchett** was then asked to discuss the Planning Commission recommending approval or disapproval of a zoning request pursuant to KRS. 100.213; and Mr. Pritchett introduced **Exhibit J**. Mr. Pritchett testified that the Planning Commission must first determine if the application is in agreement with the Comprehensive Plan, then the other two elements. Mr. Shields ask Mr. Pritchett if in his expert opinion the applications are in agreement with the Comprehensive Plan. Mr. Pritchett testified it was not, and Mr. Pritchett referred to 24 points in the Comprehensive Plan, set out in **Exhibit J**. Mr. Pritchett next testified that the existing zoning being appropriate,

then testified there had not been major changes of an economic, physical, or social nature within the area, that were not anticipated in the adopted Comprehensive Plan. That the layout of the golf course was still present. Commissioner Richards ask Mr. Pritchett if the 10% and 5% loss factors, referred to above, were taken from analysis of data, not from some kind of an assessment value table or standards in the industry, and Mr. Pritchett agreed they were from analysis of data. Commissioner Dixon: It's not the actual loss in value, it's your calculations based on comparing homes that are on a golf course with homes that are not on a golf course, never have been on a golf course; no golf course around? That's the kind of comparison you came up and were using, right? Mr. Pritchett generally agreed. Then Mr. Pritchett next referred to the house that sold at auction yesterday, July 31, 2017, located on Dylan Circle, and I think Knight Court. The house, 2100 square feet sold for a hundred and seventy-two thousand dollars (\$172,000.00), eighty-two dollars (\$82) a square foot, much less than people thought it would have brought a year or two ago. "Now when we begin to have some of those sales, those would be actual losses in values but an appraiser would use the damage factors from those sales to apply to the properties that they were studying." A discussion of whether the decrease in value had already occurred – occurred when the golf course was closed.

- Commissioner **Hodge** asked; when Corman-McQueen Golf took over the golf course, did they have anything to do with the residential development out there, or was that all done by previous owners or by different entities? Mr. McQueen testified they sold some of the lots to Joe Mattingly... "but we weren't actually involved that much in the sale of the lots."

The Meeting and Public Hearing was stopped about 9:00 P. M. to be continued the following night on Wednesday, August 16, 2017 at 6:00 P. M.

The Meeting and Public Hearing was called to order at 6:00 P. M. August 16, 2017 and continued.

Attorney Dane Shields representing some of the individuals who are against the requested rezoning, continued.

First witness for Attorney Dane Shields: Area Resident **David Chrisman** summary:

- Lives on the golf course on Constanza Drive.
- The golf course has not been adequately mowed and maintained by Chambers.
- From my backyard, it is consistently been in violation of City Code with regards to grass maintenance. Many times, the weeds around the cart path, and the ponds behind my home, exceed thirty (30) inches in height.
- On July 12 of this year, in between one of the ponds and the cart path, I measured seventy-two (72) inches of weed growth.
- The pond has never been free of algae, and today it is completely covered in algae and moss.
- From January of 2017 when Mr. Chambers agreed with the Henderson City Codes Department to keep it 10 inches or less: I have communicated with Codes Department repeatedly, this manner. I will say that it has not been in compliance with City Code once this year.
- He is against both rezoning requests, because the property has not been maintained at all around the ponds, and adjacent to my home. I can't believe that he's going to do any better if he's given this rezoning.

Second witness for Attorney Dane Shields: Area Resident **Bruce Kanipe**, summary:

- Lives on the golf course on Constanza Drive, approximately at the number 2 hole.
- Since January of 2017, Mr. Chambers has been regularly out of compliance with the ten (10) inch mowing requirement.
- He is against both rezoning requests.
- The property has not been maintained. He has reported the condition of the lakes to the Codes Department.
- Home values: The zoning change, in my opinion, will affect our homes and cause a decrease in our existing home values, approximately eighty-five (85) homes along the course, and approximately one hundred fifty (150) additional homes in adjoining subdivisions.
- Homes for sale: Five (5) homes are for sale, right now, within the sight of my property. These homes are not selling, they have been on the market for quite some time, and they are nice homes. People who want to buy and live within the City Limits in an existing and upscale subdivision don't want to live next to a general AG zoned property. This zoning change will not maintain or increase mine or our home values.
- The golf course was here and operating since 1995, approximately twenty-two (22) years. My home was built at 681 Constanza in 1999, which was eighteen (18) years. Why should I agree to the possibility of reducing my home value for the benefit of Mr. McQueen and Mr. Chambers commercial endeavors? I believe in the right of any party to develop their land as they wish, except when the proposed rezoning action will reduce the value of my home and the surrounding subdivisions. These gentlemen are not acting for the benefit of the community, they only benefit themselves at the detriment of their neighbors.
- Mr. **Kanipe's** comments on why the requested rezoning is not in

compliance with the Comprehensive Plan: Chapter Six (6), Healthy Neighborhoods, page one dash six (1-6), the objective of healthy neighborhoods is to promote stability of existing neighborhoods. Also, it says foster a sense of place by including elements that contribute to community pride. Encourage recreational, and community facilities; this is specifically in the plan.

- Then under page six-one (6-1), promote stability of existing neighborhoods in all aspects of housing that includes both the removal of blighted properties, unsafe structures, and public nuisances. And I think this place has been pretty clear about how it's been maintained.
- On page six-two (6-2); encourage development that will not be in conflict with the existing, economic assets. And I will assume that's homes because as Mr. Pritchett said last night, and Dane has talked to him, and they come out and basically say the loss, that's going to be immediate in my opinion if it's anything else other than possibly a golf course.

Third witness for Attorney Dane Shields: Area Resident **Taylor DeCorrevont**, summary:

- Lives on the golf course on Constanza Drive.
- Mr. Chambers has not maintained the property. As a matter of fact, I would like to enter into evidence a picture from this morning which is on the golf course just outside my property line where you can see the grass and weeds at the top, as of today, are fifteen (15) inches. See "**EXHIBIT K**"
- It has been much higher on other days.
- He is against both rezoning requests, not only because of the weeds, and the maintenance but even the sod farm. I had a little time today, I told you that I worked for a family who had a sod farm, to talk with them and did some talking.
- The most economic way to get sod out of a sod farms are by semis,

which are eighty thousand (80,000) pound trucks. So, economically to get this material out of what is now the Players Club Golf Course, the subdivision down Wolf Hills Boulevard would be entertaining eighty thousand (80,000) pound trucks as the most economical way to get it out.

- Those are large semis, there are already a few spots on Wolf Hills Boulevard that are having problems. Not only the road maintenance but now we're talking about health and safety.
- Also sod farms have to have time to cure after that's been taken off. So, it's not a...every time you take sod, on a sod farm you're moving a little bit of top soil each time. So, to maintain that, and make it economical, you got to let that soil recover.
- I feel, and I know, by the way the maintenance has been, that will be high weeds, and high growth. So, those are a few of the things that I have learned today on the sod farm.
- Also, on Chapter Eight (8), Balancing Land Use, in our Comprehensive Plan on page 8-11 and 8-14 you know, it pretty well points out what the Comprehensive Plan requires...
- The Comprehensive Plan requires written policies and the map that should be utilized together in making a decision. The Players Club Golf Course is in the plan and map as recreation. So, it should be protected as such. And, it's actually identified, written out, on the map as recreation...as a recreational facility.

Fourth witness for Attorney Dane Shields: Area Resident **Chris Bowen**, summary:

- Lives on the golf course on Constanza Drive.
- Mr. Chambers has not kept it in compliance with the 10" rule the entire time that he has been in charge of the property.
- Mr. Bowen introduced photographs; **Exhibit L**, **Exhibit M**, **Exhibit N**, and **Exhibit O** and discussed each in detail, showing how tall the grass and weeds have been on the golf course; and that the golf

course was not maintained according the Codes. Mr. Bowen discussed another picture regarding the poor condition of the lakes or ponds.

- Contrary to earlier testimony, Mr. Bowen testified the course was watered from the lakes except for one dry year.
- That he has talked to the City Codes Department 20 to 25 times in the year and a half over the maintenance of the golf course. That the City has been responsive but there's a time lag between when they send the letter out, and when compliance is required.
- Dane Shields introduced as **Exhibit P** a letter from Dawn Kelsey, City Attorney, and also nine (9) letters from the Codes Department of the City of Henderson to Corman-McQueen, citing them for violations for not maintaining the golf course.
- Mr. Bowen is against the rezoning's because Mr. Chambers maintained the property or had respect for the neighbors he has just done things the way he wanted to do them and not really cared. They have only mowed when they were forced to.
- That things are continually changing. Then yesterday, we've gone to a sod farm. So, it's frustrating that, number one (1), the property really hasn't changed hands yet, and there's no evidence that it can change hands or will change hands. And also, there is no real evidence of what's going to really happen here. So, I have a hard time agreeing to changing anything until, you know, there's something certain here.
- I think it should be fairly marketed as a golf course at first. That's what it is, that's what it should be marketed as. It should have its chance, and it hasn't been given that chance.
  
- Dane Shields introduced **Exhibit Q** showing that MBTJ, LLC., formed by Mr. Chambers is in bad standing with the State of Kentucky. There was an interchange between the attorneys.
  
- Dane Shields: Last night Commissioner **Hodge** asked if Mr.

McQueen or Corman-McQueen Golf had conveyed any lots directly to individuals, and Mr. McQueen came to the witness stand and testified that he had conveyed a number of lots to Anthony Hazelwood and Joe Mattingly but he didn't think he had conveyed any other lots. Dane Shields introduced as **Exhibit R**, nine (9) separate deeds bearing the signature of Daniel H. McQueen going from December 15, 1998 to April 13, 2002, to nine (9) separate individuals with a total consideration of three hundred twenty-seven thousand dollars (\$327,000).

Attorney **Curt Hamilton** representing some of the individuals who are against the requested rezoning.

- There were a hundred and twenty-seven (127) people here last night. The people in the back of the room couldn't hear very well that were standing out in the hallway. Downstairs on the first floor was packed with people watching on television. This has been the biggest meeting since last year at Players Club, and perhaps before that since Wal-Mart.

First witness for Attorney Curt Hamilton: Henderson City Codes Administrator, **Ray Nix**, summary:

- John Stroud has handled Codes in the past and Ray **Nix** just started in April of 2017.
- The owners have been written up primarily for tall grass since April of 2017 when Ray **Nix** started.
- Compliance has been sporadic at best since April of 2017.
- They discussed modification to the Clubhouse.
- **Mr. Hamilton** then introduced as **Exhibit S**, a case decided by the

Court of Appeals of Kentucky, Gramex Corp. v. Lexington-Fayette Urban County Govt, 973 S. W. 2<sup>nd</sup> 75. Mr. Hamilton summarized the Case basically as follows: The Gramex Corporation in Lexington wanted to, basically build shopping malls across the street from other shopping malls because they'd make a whole lot more money than if it were just houses or apartments. The court held that the fact that Gramex would be able to make a larger profit if the land is rezoning for commercial use is insufficient to mandate a zoning change; and, further summarized; 1) There must be a compelling reason to change the zoning; 2) The fact the applicant can make a larger profit if the property is rezoned is insufficient to mandate a zoning change.

- Both the **Gramex** Case above and Mr. Hamilton discussed KRS 100.213, which sets out the statutory law (there is other law) on what the Planning Commission must find in order to grant a zoning change (which is referred to as a map amendment, in the statute). Rather than summarize either the Case or Mr. Hamilton, the statute has been copied here, as follows:

**100.213. Findings necessary for proposed map amendment — Reconsideration.**

- (1) **Before any map amendment is granted, the planning commission or the legislative body or fiscal court must find that the map amendment is in agreement with the adopted comprehensive plan, or, in the absence of such a finding, that one (1) or more of the following apply and such finding shall be recorded in the minutes and records of the planning commission or the legislative body or fiscal court:**
  - (a) **That the existing zoning classification given to the property is inappropriate and that the proposed zoning classification is appropriate;**
  - (b) **That there have been major changes of an economic,**

**physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of such area.**

**(2) The planning commission, legislative body, or fiscal court may adopt provisions which prohibit for a period of two (2) years, the reconsideration of a denied map amendment or the consideration of a map amendment identical to a denied map amendment.**

- Mr. **Hamilton**: “So, your task, as I understand it, is that you have to have a compelling reason to grant this zoning application.
- Now, let’s talk about some of the reasons that we’ve heard. First of all, there was testimony that, hey I can’t sell the property, we can’t sell it. Golf courses are dead. It’s not worth having any longer. It’s not going to sell for anything. Well, that is absolutely and patently untrue.
- **Exhibit T** and **Exhibit U** were introduced. These two (2) exhibits go together. Exhibit T is the listing of the golf course property, this Spring, for \$1,800,000.00. Mr. Hamilton testified he found Exhibit U on the internet, listing it as a commercial property. Interestingly, at the bottom of Exhibit U, it says property type: Industrial, for \$1,800,000.
- Mr. Hamilton then introduced **Exhibit V**. Curiously, if we’ll go to Exhibit V; in 2013 Mr. McQueen wrote a letter to all Wolf Hills residents at the time, and any of you, my neighbors who lived out there; you remember getting this letter, 2012 or 2013. And he basically said that Scott Settles had killed the course, it was in terrible shape but he would sell it for \$1,500,000 or \$1,575,000.00 with the golf carts; and then, it was still an on-going operation, and he said it would cash flow in excess of two hundred thousand dollars (\$200,000) if operated properly.
- Now, I was part, and I told this group the last time we were here, that I represented an ownership group in 2011 that had made an offer

on the property as well. That offer was \$1,100,000, and we had taken a look at the course, we had experts in the golf business to do a cash flow analysis, the issues that were with the course at the time we addressed, and we felt like we could cash flow it at that price for at least the next three (3) years. And mind you, this was in the middle of the golf crash in 2011, three (3) years after the economy failed, and the housing market crashed. Alright? So, we had offered \$1,100,000, and that was rejected at the time. So, the testimony that you heard yesterday evening; that there were no offers, is patently untrue, patently untrue.

- Mr. Hamilton introduced **Exhibit W** which shows Boonville has a tentative agreement to purchase the 18-hole course there for \$600,000.00.
- I submit to you that the \$1,800,000 asking price, was simply to bamboozle you. To make you think that he could get no offers.
- **Mr. Hamilton** introduced **Exhibit X** and argued I-69 would help Players Club.
- Mr. Hamilton ask if David Matthews gave his opinion of what the 18-hole golf course was worth as a golf course. That would be important.
- The application to rezone is way too vague, the houses that surround the golf course are some of the nicer homes in Henderson. They understand Mr. McQueen would like to sell it for more money if he can get the zoning changes. Then argued the law required the Planning Commission to find a compelling reason to change the zoning and that the Planning Commission was required to balance the interest of the homeowners losing money if the zoning is changed against Mr. McQueen making more money.
- Argued that recommending approval of the rezoning would kill the possibility of a golf course.
- The plan is vague. We've heard sod farm but they admit they don't know how to run a sod farm. The last time when they wanted to rezone the clubhouse we heard; adult daycare, vineyard, wedding chapel, kids' daycare, dance hall. The burden is not on the

homeowners to propose a plan, it's on the applicant.

- An 18-hole golf course is much more likely to make it than a 9-hole course.
- Mr. Hamilton personally as a resident on the golf course and for his clients urged the Planning Commission to vote no.

Dorin Luck recalled **Ray Nix**, Henderson City Codes Administrator.

- Mr. Luck ask Mr. Nix if Mr. Chambers was responsive. There is no answer in the record because it was inaudible on the tape.

Next began testimony **FOR** from area residents

- Area Resident **Sharon Pepper**, summary: I am not actually for or against... but I am... here for the subdivision, and what is best for the subdivision. I would like, also, for the Players Club to be a golf course, I think we all would. We all moved there, and it was a golf course, we'd like for it to continue to be. But the golf course has been in decline for 10 years. She has come to the conclusion it is not going to be a golf course. She believes the applications are neighborhood friendly and she supports it.

Next began testimony **AGAINST** from area residents:

- Area Resident **Darren Spainhoward**, summary: Moved back to Henderson from Evansville to live on the golf course in Gray Stone. He did his due diligence and was told it was golf course restricted. I wouldn't have bought the house if there could be a farm behind me. He brought clients from Evansville, played the course and took them to dinner in Henderson. The course was nice when it was maintained. One must plan for down turns and one must reinvest in your property. He knows Mr. McQueen and knows he is chairman of a bank. Mr. Spainhoward called the bank and left messages for Mr. McQueen to return his call. Mr. Spainhoward ran out of time

and will testify more later.

- Area Resident **David Chrisman**, summary: He agreed with Mr. Herb Pritchett's testimony regarding the application not being in agreement with the Comprehensive Plan.
- Area Resident **Taylor DeCorrevont**, summary: A sod farm would be like a heavy construction site in the middle of the subdivision. I do not believe that fits with the Comprehensive Plan. A sod farm would be a safety issue.
- Area Resident **Bruce Kanipe**, summary: Reported he lives near 2 of the ponds and they are retention ponds not detention pond. They are wet ponds, not dry ponds that drain out after a rain. The ponds are awful, they are full of silt, if you permit a sod farm they will be worse. There is a lot of algae and mosquitos.
- Area Resident **Dan Melton**, summary: Encourage the Planning Commission to vote no, because this is going to affect a lot of families in that community.
- Area Resident **Glenn Hawkins**, summary: Mr. Hawkins ask the Chairman to direct his questions to expert witness, Herb Pritchett, regarding his testimony about the Comprehensive Plan. Staff commented on something being in agreement or not being in agreement with the Comprehensive Plan but not being a "violation of the Comprehensive Plan". Mr. Pritchett referred to his testimony which in essence is that the application to rezone is not in agreement with several provisions of the Comprehensive Plan. Mr. Hawkins encouraged a no vote.

- Area Resident **Tammy Oxford**, summary: She is not from Henderson, if it is rezoned she would like to move.
- Area Resident **Darren Spainhoward**, continuation as he ran out of time earlier, summary: Continued that he left a message for Mr. McQueen and that Mr. McQueen did not call him back. Pointed out that Mr. McQueen wasn't aware how and by whom the property was marketed, that Mr. McQueen had to look back and ask. That Mr. McQueen does not know if there is a market for the golf course. Mr. Chambers does not want a golf course and that impacts me. Mr. Spainhoward called Mr. McQueen again, didn't reach him and gave up. At this point the golf course was operating but there were rumors of it closing. After it closed there was work done to try and make sure it couldn't be a golf course again. Cart paths were destroyed with heavy equipment. Now we need for you to help us. I don't want to lose \$35,000.00 on my house. Curt Hamilton said he would put in \$200,000.00 to \$300,000.00 to buy it and I will put in \$200,000.00, for a golf course, if you turn down the rezoning. If it is rezoned, property values are going to go down and the City Tax revenue is going to drop. We are not asking for money we are asking for your help. Just make Mr. McQueen try and sell it as a golf course and see what happens. He hasn't done it yet. The last time we were here Mr. Luck said the sale was going through soon but it hasn't gone through. Mr. Spainhoward directed questions through the Chairman to Mr. McQueen.
- Mr. McQueen: The sale to Mr. Chambers is not contingent upon rezoning. Couldn't answer why the sale hadn't closed but said he had gotten a substantial down payment. The contract price with Mr. Chambers it \$1,100,000.00. Mr. McQueen said he never received a message to return a call to Mr. Spainhoward. Mr. McQueen testified he was not aware the golf course had been destroyed.
- Mr. **Spainhoward** continuing. Hold Mr. McQueen's feet to the fire. Make him market it as a golf course. Award the people who did their due diligence that if was restricted to a golf course, let's make

him market it as a golf course. Some people are not going to recover from the losses.

- Area Resident **Kevin Payne**, summary: He was a member of the Players Club and there has been nothing but jack legs running the golf course for the last 5 years it was in operation. A course of that magnitude, if you had someone running it correctly would still be in business today, I would be there. Discussed the Henderson Municipal course being dangerous. There hasn't been an effort to sell it as a golf course. I encourage you to vote no.
- Area Resident **Judy Buckman**, summary: Golf courses that have activities for kids are successful. They have done nothing for the community, they have done nothing for the kids. They have done nothing with the restaurant. I bet they have good meals over in Lexington. If they had done the right things it would have been successful. They wouldn't rent the clubhouse out for parties. They did not have things to sell in the pro shop. I'm sure he has a wonderful golf course where he lives, but he doesn't live here. Generally, that the course was mismanaged.
- Area Resident **Jerry Stone**, summary: Wanted to go on record opposed to the zoning request, for all the reasons that the people have already stated, but especially for a sod farm. That is residential area out there, surrounded by single families and why would you put a sod farm in the middle of it.
- Area Resident **Troy Manlove**, summary: Vote no. I have lived on the number three (3) tee box since 2004. I have seen the course when it was a beautiful course, manicured. I have seen it when it went south, but I have played it the whole time. I love the course, and I don't want to see anything else but a golf course. I hope you

vote for my investment. He thinks the decline of the golf course was just mismanaged.

- Area Resident **Norman Lambdin**, summary: I purchased the property in October of 2014 based primarily on a golf course. It lasted until March. It wasn't very long until someone with a bulldozer comes onto the number one (1) hole and pushes dirt into the green. Since that time, I have purchase another home on a golf course in Henderson County. My property is up for sale. I would respectfully ask that this board vote no on the rezoning.

There were a number of other area residents who signed up to speak again the rezoning but did not return the second and third nights.

**Dorin Luck**, attorney for the Applicants Corman-McQueen Golf, Inc., and MBTJ, LLC., called rebuttal witnesses:

- Expert witness David **Matthews**: Said he had not testified the highest and best use of this property is a golf course, nine (9) or eighteen (18). But 18 holes is better than 9. He agreed with Mr. Pritchett that youth participation in golf is increasing but does not think it will happen quickly enough for Players Club. It's not going to be sold as a golf course. There are too many golf courses for sale. In his opinion, there is not enough population to support a golf course. Even though there is a slow increase in the number of rounds of golf being played, it won't happen soon enough. The Player's Club is just not a financial, viable use due to excess competition. He disagrees with Mr. Pritchett on the impact losing the golf course will have on the value of homes in the area of the golf course. His research on sod farming is that you need to keep it cut and you need to keep the weeds out. He discussed a homeowner's association.
- Witness Dennis **Branson**: I just wanted discuss the confusion about what Mr. Chambers goals are. He made the deal with Mr. McQueen

because he wanted to own the property, not because he wanted to develop it and today he really doesn't have any long-range goals in mind. Mr. Branson don't doubt that properties out there have lost value. I live there, I'm in Wolf Hills Subdivision. I have been there for nearly twenty years (20) and I have lost money too, if that's the case. I more than anybody or as much as anybody would love to see a golf course there, an 18-hole golf course, would love it. So, as far as their desires that they have expressed about wanting to have an 18-hole golf course, I'm right there with them. I would love to see that too. When I first found out that the golf course was closing, and I mentioned this before, I went to the city and asked them if they had any interest, just like Dickie did. I got, "no". Mr. Branson showed several aerial photographs and discussed them but did not enter them into the record. He also discussed the basins or lakes. He discussed the proposal for large lots for large homes. He said they would offer 74 acres for a very nominal amount for a 9-hole golf course but did not discuss figures. Reported that Mr. Chambers has been approached by property owners in the Dylan Circle area to purchase an area behind their houses and that he had allowed for that in his plan.

Mr. Hamilton reported he could not be back tomorrow night and would make arrangements for Mr. Shields to ask his question.

The meeting stopped, to continue again tomorrow night, Thursday, August 17, 2017 at 6:00 P. M.

The meeting began again at 6:00 P. M. Thursday August 17, 2017.

Attorney **Dane Shields** representing some of the individuals who are against the requested rezoning, called rebuttal witnesses:

Mr. Shields called Andrea Payne:

- Area Resident **Andrea Payne**, summary: Reported she held both the Chambers family and Corman-McQueen in high regard. She is

concerned converting a former golf course with the topography being as it is, and the drainage issues that you've heard about, to a possible sod farm, in the middle of a residential neighborhood, does not support the ideals of the progressive nature of the City of Henderson, nor does it support the goals of the Henderson Comprehensive Plan, nor the Henderson Vision Plan. She quoted from The Henderson City-County Development Process Analysis and Community Perception Survey: "Its purpose is to make recommendations that improve the efficiency, positive perception, and effectiveness of policy and procedures for development in the community of Henderson. This document speaks to the importance of following specific guidance and recommendations from The Henderson Comprehensive Plan, and the Henderson Vision Plan as it relates to development processes such as rezoning, and map amendments, variances, subdivision, etc." She then drew an analogy between not allowing industrial near residential to converting a golf course to a sod farm near residential. She feels the zoning board would be providing a disservice to the residents of Wolf Hills and the neighboring subdivisions by allowing this rezoning without knowing the specific intended use for the property. Without that defined information, this board cannot make a thorough evaluation of how this rezoning request could impact the safety of the neighborhood residents and surrounding property values. She asked for a no vote.

- Area Resident **Glenn Hawkins**, summary: Mr. Hawkins introduced as **Exhibit Y** his prepared statement and read it into the record. Please vote no. Generally, the golf course failed because of bad maintenance and bad management and that with local ownership and good management it can succeed. He is asking for a no vote to give the people a chance. He reported that Mr. Chambers had a price of \$1,100,000.00, and was asking \$1,800,000.00. If they have a fair chance to purchase it as a golf course and can't make a go of it he would favor another use. He presented some time frames and ways

to structure a deal. He also said he would be willing to be a partner in purchasing the property for a golf course.

**Attorney Curt Hamilton** was in Boston and unable to attend the meeting. Mr. Hamilton requested that attorney Dane Shields ask the following question. Mr. Shields is asking the following questions for Mr. Hamilton:

- Mr. Shields called expert witness Mr. Mathews for Mr. Hamilton: Mr. **Mathews**, in your expert opinion within one hundred thousand dollars (\$100,000) margin of error, do you have an opinion on the approximate fair market value of the property as it is currently zoned in its present condition? Mr. Mathews would not answer the question or make a guess or comment on a range.
- Mr. Shields then called Dennis Branson for Mr. Hamilton. In answer to questions Mr. **Branson** testified: Mike Chambers had made alterations to the clubhouse; and that Mr. Chambers did not own the property.
- Mr. Shields then called expert witness Herb Pritchett for rebuttal testimony. In summary, Mr. **Pritchett** testified: The Comprehensive Plan is for the betterment of the whole community and not for one or two people, and the Courts have recognized that. He pointed out the Land Use Map (Future Land Use Map) of the Comprehensive Plan has left green or open spaces and Mr. Pritchett pointed out several on the Map, including Players Club. Some of the frontage along US 60 E, has been zoned residential. You could put commercial uses there but we don't want US 60 E to have the strip development like US 41 A. Hence, we have put residential zones in there. Is that land worth less as residential than it is commercially? To those individual property owners, yes. But to the overall community, it adds value to all of us in our lives. His next point was that the existing zoning of a property is critical to the

appraisal process; and appraisers look at zoning as one of the first things when they are appraising property. That Mr. Mathews, in his testimony, mentioned the principle of supply and demand but there are more principles that appraisers must consider when they do their analysis of properties. Mr. Pritchett then introduced **Exhibit Z** and **Exhibit AA**, which are from the Textbook Fourteenth (14<sup>th</sup>) edition of the Appraisal of Real Estate and pointed out reasons he professionally disagreed with the testimony of Mr. Mathews; including that “property values are affected by local laws, and local government policies”; that legally permissible is a critical element of the “highest and best use of a property, before you consider what is physically possible on a property”. Mr. Pritchett believes the golf course can be financially viable if it is properly maintained and properly managed, and disagrees with Mr. Mathews in this regard. Mr. Pritchett introduced **Exhibit BB** in response to a question ask by Commissioner Williams earlier in the proceeding, which is a chart or spreadsheet of sales located on the golf course and another column of those close, etc. In his opinion, both price per square foot and volume have decreased since the golf course was closed. Mr. Pritchett responded to several questions from members of the Planning Commission.

- Mr. Luck questioned Mr. **Pritchett**: Made the point some of the green space on the Future Land Use Map referred to by Mr. Pritchett is publicly owned land and discussed other points about the Comprehensive Plan and the Planning Commission’s right to recommend either for or against the proposed rezoning.
- Mr. **Mathews** responded to Mr. Pritchett: Explained why he did not start with how the property is currently zoned, he basically assumed the request for rezoning would be granted. He pointed out that larger homes sell for less per square feet. Commissioner Williams ask him to compare other courses and he did.

- Mr. Luck called Mr. Branson again: After some general discussion, Mr. **Branson** introduced **Exhibit CC** and discussed why the requested Rezoning's were in agreement with the Comprehensive Plan. Discussed how Bermuda grass will fill back in when stripped. Went through what Mr. Chambers has spent. Stated the current request provides for a lot of open space.
- Commissioner **Williams** ask Mr. Branson: Mr. Branson, what about the future? I mean, we have, this development was built around a golf course, it was planned around a golf course, the golf course was considered essential to the development of the community. So, what has changed that the golf course is not essential to the development of the community at this time? Mr. Branson: Well, the neighborhood has been built out, the lots are all developed... doesn't disagree with their position that property values may have been lowered... It is true that the golf course and this subdivision were developed at the same time, and that one depended on the other, when it was developed. Mr. Williams: What can we expect you to request next for this property, R-1 or R-2 or R-3 in order to take better advantage of the property? Mr. Branson: That's a good question. Followed by a lengthy discussion of what if everyone walks away, etc., then discussed sod farming; including that semi-trucks couldn't use the streets in the subdivision. Then discussed how to get the sod out. After a lengthy discussion Mr. Branson said: "I'm not asking that you approve that request, I'm not asking you to deny the request. I'm asking you to do what's right. Really, you know me well enough to know that I mean that, whatever is right is what we want you to do, and I told Mike that I was going to say this. I told Dorin that I was going to say this. We want you guys to do what is right, and I don't know the answer to that, because I don't know if an 18-hole golf course can come back. I believe that it cannot..." In response to a series of questions from Commissioner Gibson, Mr. Branson testified they would not remove sod from the 74 acres until it was determined no one would use it for a 9-hole golf course.

- Mr. Luck called Chris **Bowen** and introduced **Exhibit DD** showing that the Property Valuation Administrator increased the fair cash assessment of his property \$15,000.00; that his property is now assessed at \$235,000.00; and, that it is for sale for an asking price of \$279,000.
- Mr. Luck introduced **Exhibit EE** prepared by Mr. Mathews.
- Dorin **Luck** closing statements, summary: He summarized the two rezoning requests. That the requested lots, if approved would improve the value of the existing owner. The purpose of choosing a sod farm was that it was the least intrusive, of possible agricultural uses; that Bermuda grass doesn't grow very tall and is more aesthetically pleasing, it must be mowed and would look more like a golf course. He went through the requirements to rezone as set out in KRS 100.213, which is quoted verbatim from the Statute above. He stated he was not aware of a case where something has occurred that was more profound than the golf course shutting down, in this case. He quoted from Mr. McQueen's testimony and generally said the golf course hadn't always been run as well as it could had been run, but what Mr. McQueen is saying is that he did the best he could do. That Mr. McQueen didn't want to close the golf course but that it lost about \$250,000.00, and that he had to close it. Mr. Luck referred to **Exhibit B**. Mr. Luck reminded the Planning Commission of Mr. Mathews testimony that in his opinion you could not make this golf course pay its way and that Mr. McQueen owned and successfully operates 3 other golf courses, but that he could not make this one work. That it would be great if someone took it over but it isn't feasible. That residential lots were the highest and best use. That a sod farm wouldn't reduce people's property values. Mr. Luck pointed out that if the rezoning is recommended and ultimately approved by the City, someone would be required to come back to the Planning Commission if they

desired to change the use in the future. If you deny it you are putting the property and the neighbors in jeopardy. Mr. Luck argued the Planning Commission should approve the rezoning and allow these residential lots to develop, make some money, take a deep breath, do whatever sod farming these people are proposing, but none the less do some sod farming, keep the property maintain and cross your fingers and hope, hope that somebody takes a look at that seventy four (74) acre piece of ground that is being offered up, that is being offered up to this group to this community and hope somebody takes the bait. Finally, Mr. Luck argued: "Take all the facts and make the decision what's best for the property, what's best for the neighbors around it, what's best for the applicants, because they have rights just like everybody else. But more importantly let's think about the consequences of turning this down, because if you ask me what's going to happen if y'all turn it down tonight, I don't know the answer. I just don't know the answer. The economics may create hardship and nobody wants to see the property go into foreclosure or go into ruin because nobody wants to operate it and they can't do anything else with it. So, we're asking for the rezone tonight."

- Commissioner **Dixon** Mr. ask Mr. Luck; what happens if the lots are approved and the sod farm is denied. Mr. Luck: The golf course restriction will stay in place for everything other than the residential lot.
- **Mr. Shields** Closing statement, summary: I would like to start off with a question that has been addressed by both sides that the sides disagree upon, and that question is fundamental in relationship to decision making and that question is, why is Player's Club now closed and why is it not on the market as an 18-hole golf course? We know that it's not on the market as an 18-hole golf course, and a good question is why is that? We have a difference of opinion... Now let's look at the facts on what has happened with the Player's Club in Henderson County, Kentucky, instead of saying it's the national economy that did it, or the downturn in golf in all fifty (50)

states, let's talk about Henderson County and the running of the Player's Club. I would like to address in my comments some voluntarily acts and business decisions that we have heard about with Mr. McQueen's operation and also Mr. Chambers operation of the Player's Club: Mr. Shields argued that voluntary act #1 was, Mr. McQueen buying the golf course out of bankruptcy with a golf course restriction; voluntary act #2 was, that Mr. McQueen planted bent grass which was more expensive to maintain, etc.; voluntary act #3 was, moving 3 hours away and letting someone else manage it for him and the golf course started going down; voluntary act #4, while he is gone he doesn't have complete control and other people did; voluntary act #5 and #6, Mr. McQueen testified he had no offers buy it as a golf course and others testified they did make offers and Mr. McQueen turned them down; voluntary decision #7, Mr. McQueen and Mr. Chambers got together knowing the property could only be used for a golf course and Mr. Chambers never intended to operate a golf course, the way it was zoned. Is it the national economy, etc. or is it the two knowledgeable business men taking a risk? If there is a loss to be taken who should take the loss, the business men who took the risk or the owners of the property around the golf course? Voluntary act #8, the decision to demolish the existing golf course before the zoning was changed, which affected the value of the golf course if someone wanted to buy it and operate a golf course. He argued all of this is relevant when the Planning Commission starts balancing to whom you're going to give relief when you start voting tonight on the rezoning. The opponents of this rezoning are not saying to this Commission, you have to make Mr. Chambers or Mr. McQueen run an 18-hole golf course here. But what you can do is - in denying the request to rezone - to say, we're going to give somebody who wants to run an 18-hole golf course the opportunity to run it based upon the market value of the golf course. Maybe it could be sold for what it worth for a golf course. He argued that highest and best use is not the standard the Planning Commission uses to decide whether to rezone a property; and that the law is that money is not the standard. That the R-1

requests will kill the 18-hole golf course. That the golf course isn't dead, it's dormant, and the footprint is there.

- Questions from Planning Commissioners:
- Summary of Commissioner **Richards** question to Ray **Nix**, Henderson City Codes: Would it be a violation if a property was only dirt/mud and it was contained so it didn't flow off the property? Mr. Nix, NO.
- Summary of Commissioner **Williams** questions to Darren **Spainhoward**: What if the Planning Commission votes no, someone buys it and operates a golf course, then it fails again, what would your position be then? Mr. Spainhoward: It could depend on several things, like was it run properly, then I would want them to try and market it to someone who had the capital to operate it, I think we can find someone. Then see what happens.
- Tommy Joe Fridy was ask for and gave a Summary of procedures, options and discussions about subdivision and master plan.
- The Chairman ask any Planning Commissioner that had information they were going to use to make their decision, that they had gotten outside the public hearing, to share it with the other commissioners. There was none.
- Motions and votes on Rezoning #1075.
- Mr. Branson interjected and discussed withdrawing Rezoning #1077 but after discussions with his clients and the attorney for his clients they decided to proceed.

- Motion and vote on Rezoning # 1077.
- The non-public hearing Master Plan was withdrawn as moot.
- Meeting adjourned.

Chairman McKee: We have a motion and a second, any discussion?  
Madame Clerk, would you please call the roll?

|                |         |
|----------------|---------|
| Doug Bell      | Abstain |
| Gray Hodge     | Abstain |
| Kevin Herron   | Abstain |
| David Dixon    | Aye     |
| Rodney Thomas  | Abstain |
| Gary Gibson    | No      |
| Dickie Johnson | Yes     |
| Mac Arnold     | Yes     |
| Bobbie Jarrett | Yes     |
| David Williams | Yes     |

Chairman McKee: Motion passed?

Heather Lauderdale: Yes.

Chairman McKee: Motion passed. Anything else we need to do on that?

Tommy Joe Fridy: No.

Chairman McKee: Next on the agenda is Administrative Business, Mr. Bishop?

Brian Bishop: Yes sir. As everyone knows, we've gotten off track a little bit with our Development Review process, it is Staff's intention for us to come back at next month's meeting to continue that process. You may remember that Staff has met with both members of the private and public sector to go over the suggestions made by our consultant, TSW Design Group. It is our intention to come back after reviewing those suggestions and both sets off comments, and come back with one comprehensive list of suggestions.

Assuming we don't get derailed again, that's what we plan to do to get back on track. I just wanted to give you a brief update. We have not forgotten it, there were just more important issues to address at the time.

Chairman McKee: Any questions about that? Thank you, Mr. Bishop.

Madame Clerk, did you have an admonition for the members of the Commission you would like to share?

Heather Lauderdale: I would please. If you would return your thumb drives to me after the meeting. I will more than happy to take your name off my list.

Chairman McKee: And the handcuffs too? (laughter)

Here's one from Mr. Williams, I don't have mine.

Did each of you get this letter from Mr. Hawkins?

Dickie Johnson: Yes.

Chairman McKee: It's very seldom that we get complimented so heavily; I'm going to ask the Clerk if she will enter this letter into the minutes of the meeting.

### **LETTER FROM GLENN HAWKINS:**

Thank You Letter to the City/County Planning Commission

I am Glenn Hawkins, I live at 3025 Field Stone Drive.

I am writing this letter because MOST good people in our country DON'T get enough recognition for a job well done! Most of the news on TV is BAD news, not good. We work for 30 years and do a good job but VERY LITTLE recognition comes from the public or supervisors. We do the good work for SELF PRIDE, and nothing else!

I've served in the military for over 22 years. I graduated from The Citadel, The Military College of South Carolina, as a 2nd Lt. Then served in the Armor branch of the Army on active duty and reserves. For 15 of those years, my Team had the honor of evaluating battalion size, armor, National Guard units across the United States, to see if they were combat ready for action! My recommendations went to Washington and was one of the final criteria a battalion had to pass, to be qualified for combat readiness. Two failures from me and a battalion could be deactivated from service! I went to Army Posts including Ft. Knox and Ft. Campbell, KY, Cp. Atterbury, Ind., Cp. Grayling, Mich., Ft. Mc Coy, Wis., Cp. Ripley, Min., Ft. Irwin, Cal., Ft. Pickett, Va., Ft. Jackson, S.C., Ft. Stewart, Ga., Cp. Shelby, Ms. and Ft. Hood, TX. Why did I go into the military? Not for money. Not for glory. Because I am proud to be an American!

Several times on maneuvers, when I was freezing cold in zero-degree weather, or in the pouring rain, I would say to myself, "What in the heck am I doing out here"? I rather be at home watching cartoons with my children! But in the military, we have formations every morning to honor and salute The AMERICAN FLAG! And then, I was reminded, WHY I did this job!

I think you feel the same way. You didn't ask to serve on the Commission for the money nor glory. You did it because in your own way you could serve your country. Or in this case, your city and county. And ALL you receive in return for all your hard work, is self-pride!

I've done evaluation of people in the military for 15 years. So, I

hope you will feel my findings to be more relevant than what most citizens would say. So that is why I am here before you tonight. To give you my evaluation of the proceedings of meetings concerning Players Club, which I attended. Not to talk about the final decision.

A common phrase you hear a lot, is "This ain't my first rodeo!" Well, this WAS my first rodeo concerning local government proceedings. I have never been in court. Never attended local government meeting, etc. So, I DIDN'T know what to expect.

First, I'm am VERY pleased on how the meetings were conducted! My main concern was that I would leave the meeting feeling belittled and looking like a "dumb mule"; mule spelled A-S-S! (Ha, Ha.) I feel like I am a "normal" citizen of Henderson. I didn't know the procedures, laws, guidelines, etc., of your job. So, you could have "scowled" me for saying something out of line or saying something stupid. But you DIDN'T. You all conducted yourselves in a very PROFESSIONAL manner. I never felt intimidated by you. No one interrupted me nor criticized me for what I said! In the Army, when you do something very well, you get a medal! So, if I could, I would award all the members of the Commission, the Army Commendation Medal for outstanding service to Henderson!

Second, I will say this next comment, "softly." I even admired the LAWYERS in the meeting! (Ha, Ha.) Mr. Luck and Mr. Shields, also conducted their part in the meetings, in a professional manner and helped "keep the peace" on both sides.

Third, I was very impressed with Mr. Friday. A gentleman, no reason to say his name, made a statement that was wrong. Mr. Friday didn't take off his shoe and pound it on the table in protest, like Russia's, Prime Minister Khrushchev did at the United Nations, in the 60s! Mr. Friday said, " I RESPECTFULLY, DISAGREE, with him!" How better or more professional, can you

be? Mr. Friday kept "his cool" and then went beyond the call of duty! He then worked WITH that gentleman to help everyone understand the situation and got everybody to agree to the right conclusion! The only lawyer I have ever seen in action before, was Perry Mason, back in the 60s, on TV! He NEVER lost a case! (Ha, Ha) But, Mr. Friday tops him!

Fourth, I was also impressed with Commissioner Williams. In his final comment, part of it said, " Ultimately, we protect people " That to me, was the most important statement made during the whole meeting! Here was a government employee saying his main mission as a member of the Commission was to protect the people of Henderson! There is not a more important statement a government official could say!

Fifth, the person that impressed me the most during those 3 nights, was Chairman, McKee. He had the thankless job of being the "Judge" of the meeting. He had the tremendous responsibility of seeing the meeting was conducted CORRECTLY and FAIR, on both sides of the table. He reminded me of the old commercial of E.F. Hutton: "When E.F. Hutton speaks, everyone listens!" At the beginning of the meeting, Mr. McKee asked everybody to be polite and courteous to the speakers, on both sides. Well, EVERYONE in the room, and there was over a 100 people there, must have respected Mr. McKee! Because the proceedings went on almost like a church service. Except he didn't pass the offering plate! (Ha, Ha) The room was quiet and respectable during the entire meeting! His job was to orchestrate the proceedings in the correct and respectful way. While, Mr. Friday, with his expertise in law, provided the legal guidance needed to properly and legally get us through the meeting. The two of them make a great team! And they worked great together to succeed in presenting us a FAIR, JUST and HONORABLE meeting! I lost count of how many times Mr. McKee said, "Does anyone ELSE wish to speak in favor of or against the rezoning!" He gave EVERYBODY ample time, to have a chance to speak.

The meeting was handled in the most professional manner you could have. What else could a citizen of Henderson ask for? It's like that old beer commercial which says, " It doesn't get any better than this!"

So, inclusion, you have shown me, The Planning Commission IS doing a great job for the citizens of Henderson! I have lived in Paducah for 30 years, Louisville for 2 years, Bowling Green for 10 years, Hopkinsville for 2 years and Henderson for 25 years. I worked near Madisonville for 10 years and in Owensboro for 5 years. So, I AM a Kentuckian and proud of it! I have lived and worked all over the state. But WHICH town did I choose to RETIRE in KY. HENDERSON! And THIS Planning Commission has convinced me that I made the RIGHT decision! I salute you for a job well done! (Salute)

Thank you for your service!

I will be sending a copy of this letter to the Mayor and the City Commissioners. Also, a copy will go to the Editor of The Gleaner.

Glenn Hawkins

Lt. Col., USAR, Ret.

Is there anything else to come before the Planning Commission tonight?

The Chair will entertain a motion to adjourn.

***MOTION WAS MADE BY DICKIE JOHNSON SECONDED BY BOBBIE JARRETT TO ADJOURN.***

Chairman McKee: We have a motion and a second, any discussion? All in favor signify by saying aye. Are there any opposed?

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: We are adjourned.

**MEETING ADJOURNED AT 7:05 P.M.**

**CERTIFICATE**

I, HEATHER LAUDERDALE, hereby certify that the foregoing is a true and accurate transcription of the Henderson City-County Planning Commission Meeting of, September 5, 2017, to the best of my ability.



Heather Lauderdale, HCCPC Clerk

X

 10/3/2017

Herb McKee, HCCPC Chairman