

## HENDERSON CITY-COUNTY PLANNING COMMISSION

The Henderson City-County Planning Commission held a Special Called Organizational Meeting January 12, 2015, 6:00 p.m., at the Henderson Municipal Center, third floor assembly room. Members present: Chairman Herb McKee, Bobbie Jarrett, Kevin Richard, David Williams, Gary Gibson, Dickie Johnson, Mac Arnold, Taunya Eyre, David Dixon, Thad McCormic and Rodney Thomas.

Staff present: Director Curt Freese, Brian Bishop, Claudia Wayne, Theresa Curtis, Heather Lauderdale, Chris Raymer and Attorney Tommy Joe Friday.

Chairman McKee: Next on the agenda are the minutes from the last meeting. I would like to ask Commissioner Dixon if he would like to offer up some amendments, corrections.

David Dixon: Yes, just a couple of minor points. I did attend that meeting on December 2<sup>nd</sup> and the motion reference at the bottom of page 18 Rezoning #1042 was made by me.

Chairman McKee: Any other corrections or additions? Chair will entertain a motion to approve the minutes as corrected.

***MOTION WAS MADE BY DAVID WILLIAMS, SECONDED BY GARY GIBSON TO APPROVE THE DECEMBER 2, 2014 MINUTES.***

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: Next on the agenda is the proposal to amend the County Zoning Ordinance. I would like to ask Mr. Freese if he would let us know what is proposed.

Curt Freese: Sure, the proposal before you today is the Amendment to the Agricultural Use definition of Section 2.01 by adding a number of things to it. Also amending the permitted uses section of the Agricultural District, that's

Section 23.02, amending the conditional use section of that Agricultural District that's Section 23.03 and amending the Agricultural Exemption Section 23.04.

Specifically the definition is to include the raising of mice in a confined production facility and the distribution of such mice to zoos and others to feed captive Eagles, Falcons, Hawks and other birds of prey, and to reptiles. Also to add, regardless of the size or tract of land use, small farm wineries licensed under KRS 243.155 and also horse riding and horse related activities, that's seven separate points. In regards to Section 23.02 that's the further definition of the definition I just read in Section 2.01 The Section 23.03 conditional uses and that's more explanation based on the definition so that it not be construed as to require conditional use for agricultural uses and for personal storage facilities or personal use buildings and 23.04 exceptions that is to further define buildings in a flood plain that are exempt and also to further explain that mobile and manufactured homes in the Agricultural District shall require building permits and certificates of occupancy. That is what is on the agenda; those are the listed text amendments proposed.

Chairman McKee: Would counsel like to give us any additional information?

Tommy Jo Fridy: Kentucky statute requires when a Fiscal Court, in this instance, initiates a text amendment to the zoning ordinance and in this case the County Zoning Ordinance. Statute requires us to do a few things: to conduct a public hearing to allow the public to introduce evidence and make comments about the proposed amendment to the zoning ordinance. It requires us, you, the Planning Commission, to make a recommendation back to the County to either approve or disapprove the proposed text amendment and as part of that approval or disapproval you're also authorized to make recommended changes and to recommend that the Zoning Ordinance Amendments be adopted as you proposed that they be changed. No matter what your recommendation we have to state, you, the Planning Commission, have to state the reasons for your recommendation.

David Williams: Would that be in addition to supporting by findings of fact any changes?

Tommy Jo Fridy: Reasons are findings of fact that Statute in this particular paragraph uses the word reasons but it's synonymous with findings of fact. You have to state why you're recommending whatever it is you recommend.

Chairman McKee: Any other Commissioners have questions for staff or council? Hearing none, in lieu of the number of folks that are here to participate in the hearing, we've come up with some points of order for the meeting and I would like to ask Mr. Freese if he would please share those with us.

Curt Freese: Sure. Opponents and Proponents will be given up to 1 hour total for each side to speak. One hour for opponents and another one hour for proponents.

1. Each speaker who signed up at the door earlier will get the shorter of five minutes or the total number who signed up divided by sixty minutes, to speak. So, essentially everyone gets five minutes or sixty minutes total for the entire side essentially. Speakers may give all or part of their allotted time to other speakers. Any attorneys will be allowed to speak first as their presentation may cover all or part of what others may want to say. The Chairman has the discretion to dictate the time for attorney presentations.
2. Speakers will not be allowed to repeat something another speaker has said, but may come up and say they agree with one or more other speaker.
3. Commissioners may ask questions and get responses after each presenter is finished.
4. After the first round by both those for and against, those who signed up may agree or disagree with what the other side said or presented for up to 5 minutes each (not to exceed thirty minutes total, for each side). This is an opportunity to rebut anything the other side said during the original presentation, not a time to repeat or introduce new information (new information may be introduced only to rebut something the other side said). During this time those who signed up may present to the Chairman any questions they would like for the other side to answer.

5. Commissioners, but not participants, may call speakers back to the stand for clarity or further needed information, after both sides are finished.

Chairman McKee: It's important that the Commission approve those rules before we begin. So I'm going to entertain a motion...

***MOTION WAS MADE BY TAUNYA EYRE, SECONDED BY MAC ARNOLD TO APPROVE THE RULES OF CONDUCT FOR HENDERSON CITY-COUNTY PLANNING COMMISSION SPECIAL CALLED MEETING.***

***ALL IN FAVOR: DAVID WILLIAMS, KEVIN RICHARD, BOBBIE JARRETT, GARY GIBSON, MAC ARNOLD, TAUNYA EYRE, RODNEY THOMAS AND DAVID DIXON***

***OPPOSED: THAD MCCORMIC AND DICKIE JOHNSON***

Chairman McKee: We have two in opposition?

Dickie Johnson: To the sixty minute rule, I know we like to get it finished up as soon as possible but there's times that it may take longer than sixty minutes to make a presentation to present all the facts that's needed. That's the reason I'm against the sixty minute rule.

Thad McCormic: Same reason here.

Chairman McKee: How would you propose that be changed?

Dickie Johnson: I have no idea.

Thad McCormic: I have a suggestion. First of all, I would like to know how many people; we have a sign-up sheet...

Curt Freese: We do, Heather...

Thad McCormic: Heather...

Chairman McKee: Actually, I have it.

Thad McCormic: Mr. Chairman could you tell us how many people have signed up to speak for this...

Chairman McKee: First I must ask Mr. Tapp; did you come to speak for or against?

Taunya Eyre: Mr. Chairman, I hate to interrupt you, but we had a motion and a vote and it passed.

Chairman McKee: That's true but we're in discussion stage right now. Did you answer Mr. Tapp? Did you come to speak for or against...?

Tommy Tapp: Against.

Dickie Johnson: Mr. Chairman I do agree with Taunya, we did have a motion and a vote and it stands...

Chairman McKee: I agree but we still need this information. Mr. Smith, did you come to speak for or against? I meant Mr. Newman?

Roger Newman: Against.

Chairman McKee: Miss Tapp, is that correct? Miss Tapp just arrived.

Everly Tapp: Against.

Chairman McKee: Thank you.

Taunya Eyre: Mr. Chairman, can I ask our attorney a question please?

Chairman McKee: Yes ma'am.

Taunya Eyre: Ok, I'm confused because we had a vote and everyone was in favor except for two. Is it not...

Tommy Jo Fridy: It's passed.

Taunya Eyre: It's passed correct?

Chairman McKee: It passed.

Taunya Eyre: So this discussion does not need to...

Chairman McKee: Well we still need it to determine how many were speaking against in order to determine how much time they would be allotted. There

are sixteen, I believe, who are against so when you divide that into the total amount of time.

Curt Freese: Heather, our Clerk, is going to keep the time...

Chairman McKee: So that amounts to how much time? One hour divided by sixteen speakers.

Thad McCormic: Three and a half minutes.

Chairman McKee: Three and a half minutes.

Thad McCormic: And how many for?

Rodney Thomas: Depending on how long their attorney takes.

Chairman McKee: One plus counsel.

Thad McCormic: Therein lays my reason why I opposed this.

Mac Arnold: In reading the, right here, is it saying basically number one there that a minimum of five minutes for anyone?

Chairman McKee: The shorter of five minutes or the one hour divided by the number of speakers.

Mac Arnold: So in this situation when you divide it up it's actually less than five.

Chairman McKee: It is.

Mac Arnold: So does that conflict, you know, I mean, does that say you still have to go a minimum of five minutes?

Chairman McKee: No it says the shorter of, Commissioner.

Mac Arnold: Ok, alright.

Chairman McKee: Commissioner Johnson and Commissioner McCormic, I guess the rules stand, they were passed. Next I would like to ask legal counsel

for the opposition to lead that side of the discussion. Would you please state your name and address for the record?

Chris Hopgood: Chris Hopgood, 318 Second Street, Henderson.

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

Chris Hopgood: I do.

Chairman McKee: Thank you Sir and please proceed.

Chris Hopgood: I will be...

Tommy Jo Fridy: May I ask a question?

Chairman McKee: Yes, counsel.

Tommy Jo Fridy: Are you going to count the time of counsel as part of the hour?

Chairman McKee: No.

Chris Hopgood: I'll be brief. My dad told me a long time ago if you can't say it in ten minutes you can't say it, so. I'm here representing Rick and Marganna Stanley who have property down on D. Fellows Rd. and we understand that there's a proposal, that if this were to be granted, there could be mouse houses placed upon that property and what I understand from reading the amendment, it was put up rather quickly, but this would be a permitted use. That someone could, in an Agricultural Zone, simply apply for a building permit and receive one and of course this Board wouldn't have anything to do with it and it wouldn't go before the Board of Zoning Adjustment because that's for conditional uses and therefore there would be no conditions placed upon it.

I don't know if this Board has had the benefit of the research that I did and I cannot find a case involving Zoning Ordinances on mouse houses. I did find a case in New York that said that mouse houses are not Agricultural when it comes to taxes. Agricultural, as you know, carry a lot of exemptions and in

New York someone that operated something similar to a mouse house, it was an experimental animal production facility, applied for tax exempt status and was denied and the New York state said they're not Agriculture.

By the same token, in Georgia, they were also denied Agricultural exemption under the Fair Labor Standards Act. That they are, Ag is exempt from OSHA Reg's and the courts have held that these type operations are not Agriculture for OSHA purposes.

And then there is the Code of Federal Regulations which is the Federal Governments regulations on OSHA Reg's and they specifically exclude these operations from Agricultural status. 29CFR780.120 states that, in determining what are livestock, it does not include such animals as albino and other rats/mice, guinea pigs and hamsters, which are ordinarily used by laboratories for research purposes.

So, our position is they're not Agriculture, I understand you are here to define what is Agricultural. Then the concern my clients have out of health and safety reasons is the incident in 2012 in Darmstadt (Indiana) where several employees became sick. According to WFIE website they came down with flu and meningeal or meningitis type symptoms. I was in touch with Mr. Hatfield who opposed that over there and he has provided me with some medical information, website citations, about a conditions LCMV and I hope we can just use the initials because there is no way I; it's called Lymphocytic choriomeningitis virus (**Exhibit "A"**). It is a virus transmitted by humans handling rodents. How that came into effect over there was that the people worked at that mouse house in Darmstadt got sick, the Center of Disease Control in Atlanta noticed that in a relatively small county such as Vanderburgh County, there were eight people that had this condition. So, an investigation began it was connected that all those people worked for that mouse house and that's what brought that one into the news. So I would like to introduce into the record the Code of Federal Regulations which excludes these from the definition of livestock and the reporting that I have from the Darmstadt meningitis. I have twenty copies, I think I have enough if everyone would like I tried to keep what I would introduce brief because I know you all

are going to try to read this and listen at the same time. So I will hand a copy to the Clerk and then...

Chairman McKee: Thank you.

Chris Hopgood: In terms of our current Zoning Ordinance, I just want to point out and then just turn to some questions since I'm going first I think it's appropriate that we pose some questions that we hope we can get some answers to.

I think we all understand that mouse houses are not considered permitted uses or conditional uses it's not spelled out in our Zoning Ordinance that those are either permitted or conditional. I would note that in Heavy Industrial, slaughterhouses are conditional uses and our argument is that these are much more akin to slaughterhouses than they are traditional farming. As I said before, the OSHA and tax rulings have been that these are not Agricultural and I could not find a case where this has been litigated but I did find, in Racine County, Wisconsin, that there was an issue over one of these operations whether it would be accepted as a conditional use or not. It was ultimately withdrawn because there was more information needed by the Board that is in the situation as our Board of Zoning Adjustment, they wanted more information.

So, I would just pose these questions, and I hope we can get some answers to them. I think Mr. Pritchett has operated where is for some time and one of the questions I have is;

- Why can the expansion, or the new operation, not be at that current site?
- Has there ever been any disease at the current site affecting the people or the mice?
- Would the operators of the house accept an amendment in lieu of this, but an amendment that would make it a conditional use whereas then they would have to apply and go to the Board of Zoning Adjustment for anyone that wanted to establish a mouse house?

- And then, the way I understand our zoning regulation is, would there be any setbacks? Our zoning seems to indicate there would be a two-hundred foot setback for farm buildings in an Agricultural Zone from any residence. Would that apply to this or would there not be any setbacks? I do not know of any state setback for rodent raising. I don't believe there's any Kentucky State Statute for this. So, I would ask that question, is would there be any setbacks or can someone simply, if this is a permitted use, get a building permit and put one of these as close as the, well they would be exempt from variances so as close to the property line as they chose to?

So, I will turn this over to my client. I think I'm the only counsel here opposed to that and I will turn this over, if that's appropriate, to my clients Mr. and Mrs. Stanley.

Chairman McKee: Thank you, thank you. Let's do that, let's ask, are going to present, we only need one of you at a time. Would the first one of you Stanley's please come forward? Everybody knows you but would you please state your name and address for the record?

Marganna Stanley: Marganna Stanley, P.O. Box 275, Corydon, Ky.

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

Marganna Stanley: Yes Sir.

Chairman McKee: Thank you Mrs. Stanley, please proceed.

Marganna Stanley: Good evening, first of all we would like to thank you all for the opportunity to address you tonight on the issue that we would like to talk about. Also I would like to be very specific and let you know that tonight I am here as a citizen of Henderson County that lives at 3335 Corydon D. Fellows Rd. and that is near Corydon.

My husband Rick and I have been property owners for the last twenty years which we initially purchased our six acres from Steve and Leanne Pritchett.

We consider Steve and Leanne Pritchett as friends we don't feel this issue is a personal issue or anything like that.

Prior to purchasing the land, we rented a small house in Corydon, Rick opened his business in Corydon and I taught at Cairo Elementary School. We saved money and were able to buy the land to pay for it and use the land as a down payment to build our home and we have been there since 2000. Our home is of standard means but more importantly something we are very proud of because we worked to build it together.

Our road is considered a back road. It's quiet, our neighbors, who are all here this evening, we get along well and respect each other and actually have a new potential neighbor here this evening that hasn't built yet but they are going to build on that also. We watch out for each other and new neighbors and Rick and I would welcome.

Our concern tonight, obviously, is of course in changing the Ordinance that would allow a mouse house to be erected in an Agricultural Zoned property. We have hundreds of acres around us. Where we sit on a little hill, you can almost see to the college, to the Henderson Community College through the fields so it's just all Agriculture around us.

Here are some of our main personal reasons that we would request your consideration not to include this into the ordinance:

- The piece of the property in question is directly adjacent to our land and the construction site would be less than a quarter of a mile from our home. It's right, just right there.
- We don't want our property value to decrease and we feel like that would be a factor if a mouse house was constructed. We love our home, we're proud of home and we would like, obviously, the property value to enhance and we feel it would decrease.
- We feel like to change the ordinance to permit mouse housing, that's a word in Henderson County, would start with one house as it did on Mr. Pritchett's land years ago and now it's grown to five or six homes.

It's not just.... did I say something wrong?

Chairman McKee: No, just your times up. Could you please summarize?

Marganna Stanley: Sure, sure. We obviously oppose the ordinance and we look at it, against it, for personal reasons and the amount of traffic and decreasing our value, for health reasons and odor.

David Williams: Mr. Chair before she sits down, this is maybe a question. If, should we ask those who are planning to speak against if any of them are willing to give Mrs. Stanley their time at this point?

Chairman McKee: That's appropriate. Would any of you like to give up your time? You would, two of you would? What are your names?

Linda Dixon: Linda Dixon.

Patsy Griggs: Patsy Griggs.

Chairman McKee: Got you, thank you very much. Please continue we have seven minutes.

Marganna Stanley: Thank you. Number two, really I just got to number one actually.

- Number two, a personal concern is extra traffic on the road. We feel like to accommodate workers that would be working at the mouse house, supply vehicles, transportation of the mice to and from the mouse house would cause extra traffic. The kids that live on the road, people that live on the road, we run, we walk, we ride our bikes. We are concerned about extra traffic.
- The odor. The odor of a mouse house is not pleasant. I have experienced that first hand on two different occasions when I was principal at Chandler Elementary, we had parents who worked at the mouse house. There was a time I had to go find a parent that was working at the mouse house because they needed to come to school and get their child. So, we had to go find the parent. It was obvious as you approached the mouse houses that the odor was strong, smelly, wasn't pleasant. That is something that we want to smell every night or every day. We are very much outdoor people. We have a pool, we like to sit

out on the porch and read, we grill out, we see our neighbors in the garden, we see them working and walking and odor is a large concern of ours as well. Another time that I encountered that is when parents would come into the school building to pick their kids up and they had recently been working there and hadn't been home to shower and were able to get the smell off them as well, the reeking smell of the mouse house.

- Seventy percent (70%) of the land in Henderson County, or more, I'm not exactly sure on the statistics is zoned Agriculture. Yes, to us, it's pretty personal to Rick and I, because of where the mouse house is in consideration. However, I'm also concerned about all the citizens in Henderson County because if you change this ordinance, you could put a mouse house just about anywhere in Henderson County. You could put it behind the Wal-Mart, it's zoned Agriculture. You could put it beside the playground at Cairo Elementary, that's zoned Agriculture. You could put it on the backside of Thornridge or next to The Country Club, they're all zoned Agriculture.

So, yes tonight, I'm speaking from a personal point of view but please take that large perspective of all Henderson County into consideration as you work on making your decision. Chris Hopgood already mentioned that Evansville-Vanderburgh County denied their local mouse house owner a building permit due to the virus and the outbreak that was there. The LCVM virus is a type of meningitis and it is an airborne virus. So you can go in and look and it seems pretty clean and might look healthy in the mouse house but it's a type of virus that can be contracted through the air that is a large concern of ours.

We do have a couple of questions too:

- We read in the newspaper, we're not sure how the existing business is considered grandfathered in when raising mice is currently not even permitted use in Henderson County so we are just a little confused there.

- We, too, are concerned about how often a mouse house has had to be shut down in the past because of a disease that comes through and then all the mice need to be euthanized as well.

Those are all of the seven concerns I have and my husband has some concerns also he would like to share. Mr. Chairman, if it's appropriate, I also have a letter I would like to hand each Commissioner at some point this evening as well (**Exhibit "B"**).

Chairman McKee: You may do that right now if you would like.

Marganna Stanley: Thank you.

Chairman McKee: While you're handing those letters out we'll ask Mr. Stanley if he would approach the podium please. Mr. Stanley, would you please state your name and address for the record?

Richard Stanley: Richard Stanley, Corydon D. Fellows Rd, Corydon.

Chairman McKee: Do you swear the statement you are about to make is the truth to the best of your knowledge?

Richard Stanley: Yes sir.

Chairman McKee: Thank you sir, please proceed.

Tommy Jo Fridy: May I interrupt? Do you have a copy of your letter for staff?

Marganna Stanley: We have extra ones, yes sir. I'll give that to you.

Chairman McKee: Now you may proceed.

Richard Stanley: Mine won't be as long as hers. When you look in a dictionary, mice are considered rodents when you look up the definition. I'm fifty-three years old and I've been around farmers, worked on their equipment and several of them have passed through my shop and I've asked them how a mouse is agriculturally sound for them. None of them have an answer for it. They have no reason to believe it's agricultural. So I mean, I, when you say it's going to be an Agricultural use, it's just hard to believe that it is and all of these farmers of all these years can't come up with anything. Other than the

odor and everything else she has already mentioned if it's Agricultural it ought to be, it would have already been around by now. That's about all I can say about it.

Chairman McKee: Commisioners do you have any questions for Mr. or Mrs. Stanley?

David Williams: Mr. Chairman.

Chairman McKee: Yes sir.

David Williams: One question, alright. When you moved there you were aware that it was Agricultural land and the area around you was zoned Agricultural?

Richard Stanley: Yes.

David Williams: And were you fully familiar with what is allowed on Agricultural land, what is permitted?

Richard Stanley: I called myself thinking it would be livestock or anything like that.

David Williams: Ok.

Richard Stanley: And everything I've done in the last three months leading up to this, there is not a defined use for a mouse in Agricultural.

David Williams: Ok. Alright, thank you.

Chairman McKee: Thank you. Next on my list is Mr. Tapp, please come forward. Will you please state your name and address for the record?

Tommy Tapp: Tommy Tapp, 10328 Old Hwy 60.

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

Tommy Tapp: Yes sir.

Chairman McKee: Thank you Mr. Tapp please proceed.

Tommy Tapp: I have lived, practically all my life, about a half of a mile from the existing facility. I've got four pieces of rental property directly across Hwy 60 from the existing facility and I don't think anybody here lives any closer or owns property any closer than I do to the existing facility. I will tell you now; if anybody tells you there is no odor there, they are not being truthful. Every time, not every time, very often when you go to town you can smell it. It smells like a mouse nest that you would find in an old drawer or something, exactly like that. My rental, you can ask my tenants in my rental property the same thing and they have found, they tell me but I haven't seen them, but they say they have found white mice in their houses.

Now, I'm a farmer all my life and I love farm animals. I love horses and cows, pigs though I can't find fondness for a chicken but I do not love mice. Now, I have four cats at home. When they catch a mouse a lot of times they will bring it up and leave it on the step. When I was coming here tonight I looked down and there was a mouse laying there, yuck, just a terrible looking mouse eaten half away and I thought well, I might bring him, then I thought that might not be, trying to do something I shouldn't but when I got here I saw all those boxes of documents and now, if I had have, I think the looks of that mouse would have trumped all of those documents.

This is nothing but respect. Who would, you know, when they call them a mouse house, they're not mouse houses they are mice houses. There are thousands of mice, maybe a million, I don't know. Think of what the number of mice in a house like that and turn them loose in this room, what would it look like? Would you want to lay down and sleep by mice? You couldn't do it. No one would want their house next to something like that. No one, no of you would. This is not about law, this is about respect. This is what a Planning Commission is supposed to do, preserve the quality of life and help all the citizens' respect and get along with each other. You're not going to put this next to a person's house if you have any respect for that person. I think that is the bottom line. I don't know the law, I don't know what's in those boxes, I don't know anything. If you all don't respect the citizens and look out for their benefit, if you all don't do that, who else is going to do it? Thank you.

Chairman McKee: Mr. Tapp, are there any questions for Mr. Tapp? Thank you Mr. Tapp. Next on the list is Mr. Smith. Is it Mr. Smith or Mrs. Smith, Chris Smith? Please come up.

David Williams: Mr. Chairman while he's coming up, just a point of order, is it ok for us to go ahead and read these letters?

Chairman McKee: Do you want to take the time...

David Williams: No, I was just curious, you know, because I just wanted to make sure everything is...

Tommy Jo Fridy: Sure, it's been introduced into evidence.

David Williams: Ok, thank you.

Chairman McKee: Mr. Smith would you please state your name and address for the record?

Chris Smith: Chris Smith and I own property at 3224 Corydon D. Fellows Rd.

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

Chris Smith: I do.

Chairman McKee: Thank you sir, please proceed.

Chris Smith: I have recently purchased property at that address and have the intentions of building a new home there, with not any intentions of this mouse proposal happening at that time. And as looking forward at this point, I don't know if I will build a home on that property or be able to sell it if this would happen and the property value would decline is what I worry about at this point along with the smell and my family's health. I am a younger person, I plan to live at that address for a long time and be at that location the rest of my life and I don't know if I would want any of you all to have that location with a would-be proposed mouse house across the street from it. So, that's all I have.

Chairman McKee: Any questions for Mr. Smith?

David Williams: I have the same question for you Mr. Smith. When you bought the property you realized it was Agricultural land?

Chris Smith: Yes sir.

David Williams: Zoned Agricultural and the property around you was zoned Agricultural? Where you familiar with the uses of Agricultural land, permitted uses and conditional uses and whatever?

Chris Smith: Yes, under the normal Agricultural understanding is of crop ground or livestock.

David Williams: Ok, thank you.

Chris Smith: Thank you.

Chairman McKee: Thank you Mr. Smith. Next on the list is Mrs. Wicker. Mrs. Wicker will you please state your name and address for the record.

Rebecca Wicker: My name is Rebecca Wicker, 3368 Corydon D. Fellows Rd., Corydon, KY

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

Rebecca Wicker: Yes sir.

Chairman McKee: Thank you and please proceed.

Rebecca Wicker: Good evening, my name is Becky Wicker. I have lived on Corydon D. Fellows Road the majority of my life, I'm forty-seven years old and I figured I have lived there about thirty-eight years on that road. I was raised on the road I have raised my family on this road. It is a back-roads kind of road. We feel related to all of our neighbors. Actually, I am related to all of my neighbors except the new one. So, my road is a family road I feel like. If there is trouble in someone's life, we like to share it with each other. We have had losses and contact each other and have a family sharing feeling on our road. We would like to keep our road that way and not have a business grow there. It would cause increased traffic and noise; we like to be outside walking,

gardening, working in the yard, swimming. The building of mouse houses would be a detriment to enjoy these things. Raising mice would increase the reptile presence in our neighborhood, never a good thing. It would cause more traffic and not good safety for the children and ourselves.

The odor would be present; it is not pleasant to have to be treated to bad odors where you live, play and work. I also worry about the pathogens mice have spreading to my animals when their excrement is applied to the ground for fertilizer. What happens when those pathogens become airborne? Is it something I will have to stay indoors to protect myself? That is a definite worry I have for my family.

In closing, please vote against this ordinance for the protection of a neighborhood back road. I also have a statement from my husband who is not able to attend. May I read that also?

Chairman McKee: Sure.

Rebecca Wicker: He says, "Regarding the potential building of mouse houses in our neighborhood on Corydon D. Fellows Rd. We are concerned about the accidental escape of mice from the houses causing increased population of rodents and the subsequent rise and appearance of predatory animals as well as reptiles.

I personally spend a great deal of time outdoors, the odor as well as the much increased volume of traffic would be detrimental to our lifestyle. We worry about the physical safety of our grandchildren of which one lives on this road and the other one visits frequently. I also worry about the airborne bacteria which could affect our breathing and respiratory health for years to come.

The road, as built now, is not wide enough to accommodate the extra amount of heavy volume of vehicles speeding on the road. Also, with a business such as a mouse house, I am also very concerned about the value of my property. I think the value would decrease immensely.

In closing, I ask that you vote against the mouse house ordinance being passed."

Chairman McKee: Mrs. Wicker, Commissioners have any questions for Mrs. Wicker? Thank you very much.

Rebecca Wicker: Thank you.

Chairman McKee: Mrs. Griggs and Mrs. Dixon gave their time so next on the list is Mrs. Griffin. Mrs. Griffin would you please state your name and address for the record?

Anna Griffin: My name is Anna Griffin, 3212 Corydon D. Fellows Rd., Corydon, KY.

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

Anna Griffin: Yes sir.

Chairman McKee: Thank you and please proceed.

Anna Griffin: Thank you for giving us the opportunity to address you tonight. My name is Anna Marie Griffin and as a child I lived on this road for twenty years. It was a safe, quiet, gravel road at the time. In 2008, my husband Chad and I bought our home with 19 acres on 3212 Corydon D. Fellows Rd. and we share this with our eleven year old son and our four year old daughter. We have dogs, cats, chickens and would like to someday have some livestock. A few of my concerns with that is our children ride their bikes on the road, we walk on the road, we play outside and the traffic of the mouse house we may not be able to ride our bikes as well. Our dogs may get hit by more vehicles, the safety of us is one of my big concerns and the bacteria of the mouse house may affect my children through the years of smelling that bacteria day in and day out. That is a big concern of mine and husband Chad has some concerns also.

Chairman McKee: Before you step down, any questions for Mrs. Griffin? Thank you Mrs. Griffin and now Mr. Chad Griffin. Would you please state your name and address sir?

Chad Griffin: Chad Griffin, 3212 Corydon D. Fellows Rd.

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

Chad Griffin: Yes sir.

Chairman McKee: Thank you sir, please proceed.

Chad Griffin: Obviously I have young children and we like playing outside. I worry about having the mouse house having another contamination or release because mice aren't like an agricultural animal that if it gets out you can catch it. If thousands of mice get out, you're not going to pick them up with your hands they are going to be running loose. I don't want to be overrun by that type of vermin in my house I mean, I don't want mouse traps going off twenty-four hours a day.

Also I worry about the smell and being able to enjoy outside with my family because I have young kids and we go outside and feed the chickens, play with the dogs and you know, if you have this bad odor I'm not going to want to go outside. Kind of in closing, me and my wife have worked a long time and our house now is our dream home, it's our dream home and property. It's what we work for and I don't want it ruined by allowing a mouse house to be built so close to our property because it would be right across the road. I mean, Agricultural, I think if Agricultural is anything you eat. Whether you grow it or it's an animal that you eat. Nobody eats mice. Thank you for your time.

Chairman McKee: Questions?

David Williams: Yes sir. So you married into the...

Chad Griffin: Yes, I married into a family that lives on the road.

David Williams: Ok, so I'll just ask you the question that I've been asking others who bought property and since you bought into the property you were aware the Agricultural use and the land around you was Agricultural use?

Chad Griffin: Right, I mean, in my opinion Agriculture would be growing anything that grows out of the ground, corn, wheat, whatever. Then anything,

like anything you eat cattle and like I said, nobody, mice are not for human consumption. So, to me, that is not Agricultural.

David Williams: The, um, you say is right across the road can you give me a distance of how far?

Chad Griffin: I would say half a mile, okay a quarter mile. Probably half a mile from our house to Marganna's house and it would be in between.

David Williams: Ok. Do you know which way the wind is blowing predominantly in relationship to your place?

Chad Griffin: It blows towards; it would be blowing towards my house.

David Williams: Towards your house, ok.

Thad McCormic: Mr. Griffin, I would like to point out the fact that the current Agricultural zoning, as it is, does not include mouse production.

Chad Griffin: Thank you.

Chairman McKee: Thank you sir. Next on the list is Bethany Wicker. Miss Wicker will you please state your name and address for the record.

Bethany Wicker: My name is Bethany Wicker I live at 3368 Corydon D. Fellows Rd.

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

Bethany Wicker: Yes.

Chairman McKee: Thank you, please proceed.

Bethany Wicker: Hello, my name is Bethany Wicker I lived on Corydon D. Fellows Rd. for the past nineteen years, seeing as I'll turn nineteen in February. This is only place I have ever called my home. I have a few concerns of my own as it comes to building a mouse house on our road which would be less than one thousand miles away from my house, or one thousand feet, not miles. I have two nieces, a nephew and two little cousins sitting

behind me that visit frequently at my house. My eleven year old cousin likes to ride his bike down to my house, my nieces and nephews love to play outside so does my little cousin and that is a very big concern of mine because we live not that far away from the road being at my house. We also have six houses on our road, building a mouse house would increase traffic tremendously. As it is now, summer is our high traffic time with trucks and tractors coming to harvest the field, having a mouse house would increase the traffic all year round and that's very dangerous for us because being on a back road they speed as it is. So, having trucks, a lot of trucks, semis come up and down that road would endanger my family and the other neighbors on the road.

We love to be outside. In the summer we have a garden and we like to take our dog on a walk, the smell is a tremendous thing. We have, we're right in the middle of two school districts being in between Cairo and Chandler and that traffic wouldn't just affect our road, it would affect the roads around us and getting to our road you have to either come from Hwy 60 or Hwy 41 A. So that would inhabit the schools too being in the morning the trucks would come in and affect school traffic and other such types of things.

So, those are my main concerns and the reptile population would increase. When mice are around reptiles come. When reptiles come other animals come to eat them. So that would increase the animal population around our area which is another big concern of mine as we have large animals anyway like deer, bobcats and coyotes anyway. That is my piece. Please vote no because I really wouldn't like to have that odor and that traffic on my road, thank you.

Chairman McKee: Thank you Miss Wicker before you step down, are there any questions for Miss Wicker? Thank you very much. Next on the list is Mr. Roger Newman, Mr. Newman. Would you please state your name and address for the record sir?

Roger Newman: My name is Roger Newman and I live at 3348 Corydon D. Fellows Rd.

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

Roger Newman: Yes sir.

Chairman McKee: Thank you sir, please proceed.

Roger Newman: Good evening, as I said, my name is Roger Newman. Me and my family reside on Corydon D. Fellows for twenty-five years at two different addresses, one for twelve years at 3356 and thirteen years at 3348. My wife Cathy and my son Eric and I are concerned about the recent request to change ordinance to allow mouse houses on property zoned for Agriculture use to be built. We request you not to allow this to happen for obvious reasons that everyone has stated. You know talking about property values, the increase traffic because there are a lot of families on that road that come through that road, it's a, the road is used as a cut-thru. A lot of people use it as a short cut between Cairo and Corydon. To top it off, I run into people that work at the mouse houses. They have a unique but very unpleasant smell. I use my yard, of course, other than mowing it when it needs it. We love to grill out, play games in the yard. Horseshoes, you name it. Any and all kids in the neighborhood always welcome at my house, we're one big family out there. During warmer weather the smell would just really, really curb the enjoyment of your family. So, mice are vermin and any extra other than normal, I mean, if you live in the county you've got mice sometimes and sometimes they are hard to control. But can they guarantee they won't get loose? A mouse can escape with less than a quarter inch gap. These creatures, in the Bible, Leviticus 11:29 it says these creatures are unclean for you: a weasel, the mouse and any kind of large lizard.

Health issues are also a concern and be a detriment to any kind of leisurely activity like Marganna runs, I do a lot of walking, always someone bike riding or riding their scooters or just driving through the county and enjoying the evening air. So I ask you not to approve this, thank you for your time.

Chairman McKee: Any questions please?

David Williams: Mr. Newman you bought the property twenty five years ago?

Roger Newman: Yes.

David Williams: Ok, and there again, you were aware of the Agricultural use?

Roger Newman: Under the same pretense livestock is chickens, cows you know whatever you can grow to eat.

David Williams: Ok, thank you.

Chairman McKee: Thank you sir thank you Mr. Newman. Is there a Mr. Tapp that has not spoken that wishes to?

(From the audience): There is a Miss Tapp.

Chairman McKee: I'm sorry I could not ready the writing. Would you please come forward? Will you please state your name and address for the record?

Everly Tapp: Everly Tapp, P.O. Box 614, Henderson.

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

Everly Tapp: Yes sir.

Chairman McKee: Please proceed.

Everly Tapp: I do not live on Corydon Fellows Rd, but I was raised by Mr. Pritchett's mouse house. I was raised in my family's farm and you just heard from Mr. Tommy Tapp, I lived there the majority of my life and there is an order associated with the mouse house there is no doubt. There is an order associated with mouse nests, there's no doubt. Maybe everybody here hasn't smelled a mouse house but everybody has smelled a mouse nest. Mice are not considered Agriculture in Henderson County. I think you would be hard pressed to find anyone in the county that would say that they are. They never have been and I hope Henderson keeps it that way. I would like to ask you tonight to vote in the manner that you would if somebody was asking to put a mouse house on your road, next to your house, by your children or your grandchildren. That's all.

Chairman McKee: Questions for Miss Tapp? Thank you very much, thank you. I believe that concludes those who signed up to speak against. Now I would like to ask counsel...yes sir.

Tommy Jo Fridy: Are there any people that did not use all their time?

Chairman McKee: Do you know, Heather? Did anybody not use all of their time?

Heather Lauderdale: The majority did not use all of their time.

Chairman McKee: The majority did not use all their time.

Tommy Jo Fridy: Would any of those people like to give these two ladies their some of their time?

Chairman McKee: The ones that gave up their time?

Tommy Jo Fridy: Yes.

Chairman McKee: Would any of you, I'm sure you would, I think it's a moot question. Let's, do you want to ask the two ladies? Let's see if first would be Mrs. Griggs. Mrs. Griggs, would you like to come forward and speak? Well, we'll wait for you. Will you please state your name and address for the record Mrs. Griggs?

Patsy Griggs: I am Patsy Griggs I have lived on this road for many years, actually my daughter was born on it when, forty years ago.

Chairman McKee: Your address there?

Patsy Griggs: 3368 right now because I live down the road. At the time I was 48.

Chairman McKee: 3368 and do you swear that the statement you are about to make are the truths to the best of your knowledge?

Patsy Griggs: Yes sir.

Chairman McKee: Thank you and please proceed.

Patsy Griggs: I have lived on this road for many years and actually my husband died while we were living there and when he died I moved down the road. I bought a little house and put it up and lived there for several years and now I am disabled and had to move in with my daughter. So I'm still on the road but I'm still just kind of traveling the road. Now I have a sister that lives on one side of me and I have a grandson that lives on one side and I've got our neighbor next to us is related to my son, his sister married my son. So, like I said then I have another daughter down the road. So we are like you said, all family on that road and we don't want this kind of stuff happening. I've been here for almost seventy-two years and I want to stay there. I have a bad time when I sold my first house and couldn't decide whether to stay there or go to town but I'm not a city person I'm a county person and I want to live in the county. I just don't want to move and if it gets bad then we're going to have contamination of drugs, not drugs, but chemicals that they have and have to take on keeping the smell down and everything like that. So, consequently, I don't want to move. But it could happen because of the health problem so who knows what's going to happen. It's up to you to decide. Thank you.

Chairman McKee: Thank you Mrs. Griggs. Does anybody have questions for Mrs. Griggs? Thank you ma'am, we appreciate you coming. Miss Dixon, would you like to speak? Ma'am will you please state your name and address for the record?

Linda Dixon: Linda Dixon, 3883 State Route 266 which is a corner lot off of Corydon D. Fellows Rd.

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

Linda Dixon: Yes.

Chairman McKee: Thank you Miss Dixon, please proceed.

Linda Dixon: Ok, I've lived there for over, well approximately thirty years. My main problem is I worked at a plastic factory for over twelve years during which time I received some lung damage. The thought of mice being there will the possibility of meningitis it would really make it worse for me. Other than

that, I mean, I like to walk to walk down the road and I really don't want the smell of mice around. But the main problem is I don't want any additional, I guess you would say, the possibility of the mice getting out and causing sickness is my main problem.

Chairman McKee: Is that all?

Linda Dixon: Other than, to me, Agriculture is horses, cows, pigs and chickens it does not include mice. That's it.

Chairman McKee: Any questions for Miss Dixon? Thank you very much for coming. Counsel should we take anything else into consideration before we change?

Tommy Jo Fridy: No.

Chairman McKee: Next I would like to ask the legal counsel for the proponents to approach. Can you please state your name and address for the record?

David Pike: Certainly Mr. Chairman, my name is David Pike, Pike Legal Group, PLLC, and P.O. Box 369 Shepherdsville, Ky.

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

David Pike: I do.

Chairman McKee: Thank you and proceed.

David Pike: I'll try to be expeditious but I've got some material I need to go through and as already been alluded to, I've brought a couple of boxes with me from Shepherdsville and I would like to try to distribute some materials before I get started with your permission.

Chairman McKee: You have it.

David Pike: Good. Mr. Brown, could you give me a hand with those binders and I'll distribute these? Whenever you're ready Mr. Chairman.

Chairman McKee: We are in receipt of two, one notebook and one handout.

David Pike: Yes which I'll be introducing into evidence in the proceeding shortly.

Tommy Jo Fridy: May I interrupt you counselor?

David Pike: Sure.

Tommy Jo Fridy: Do you have a copy of what you passed out for opposing?

David Pike: We may have an extra; I know I've got one of these. Keith, do we have an extra binder?

Chairman McKee: Anything else, housekeeping? Please proceed Mr. Pike.

David Pike: Thank you, it's a pleasure to appear before you all be it on a slightly different subject matter than what I have appeared before this Commission on previously. I'm here this evening representing Steve Pritchett and Pritchett Farms, LLC whose business involves in mouse farming here in Henderson County. As you might suspect, there are kind of three broad areas I would like to try to address during my presentation.

The first one is I want to talk about the law. Because our first obligation here tonight is in fact to follow the law and KRS Chapter 100 is explicit on these issues and I want to spend some time re-iterating those obligations because that's the first job of this Commission and any other Board in the Commonwealth of Kentucky. After that, I want to talk a little bit about the specifics of mouse farming. Finally, I want to try to answer some of the questions that have been posited because that was part of the instructions from the Chairman at the beginning of our process and I think part of the original motion on procedure and I think I can deal with all of those very quickly.

First of all of course, as I think many of the people recognize, Mr. Pritchett has a mouse farm facility here in the county and has been operating that for approximately eighteen years. He also has a more conventional farming operation at that location and other locations throughout the county. He has

thirty-five full time employees as part of that operation, it's a big man-power operation and of course it's important to recognize tonight this is a request for a text amendment. It is not an application for an individual site and in fact one of the answers to one of those questions is there's been absolutely no definitive decision made about any other mouse house location anywhere in this county. So, consideration of those issues is not just premature it's also inappropriate in the context of considering a broader amendment to the counties regulatory structures which is the real legal purpose of this proceeding. Now we appreciate Fiscal Courts understanding and support for agriculture in the community and innovative agriculture in this community by unanimously proposing this text amendment. Of course we also appreciate your legal counsel, staff and in deed your time and efforts in fulfilling your portion of this task which is to hold the necessary public hearing before referring the matter back to Fiscal Court for their final decision. We also particularly appreciate your legal counsel's work on his December 1 opinion letter that we have attached as "Tab A" in the binder that I have distributed for you. We fully agree with that reasoning and applaud its thoroughness. Mr. Chairman, was a copy of that letter distributed previously to members of the Planning Commission?

Chairman McKee: Yes it was.

David Pike: So everybody has had an opportunity to look through that letter and those materials, that makes my job a good bit easier this evening since it does a good job of making many of the legal points that I think are not just salient but are dispositive connection with this proceeding tonight. Ultimately this is a text amendment it's also important to recognize that this is not a quasi-judicial proceeding, this is not like a map amendment case and there is a wide range of law in this Kentucky, in Kentucky, including the very early and pivotal City of Louisville vs. McDonald case which indicates our role here is fact finding largely and recommendation. So, some of normal strictures, dealing with cross examination and the like and other due process criteria simply don't apply in a proceeding of this type since it's legislative. Fiscal Court obviously has ample express authority under KRS Chapter 100 to propose changes in regulations. You're obligated to act upon those proposals

within sixty day making a recommendation but at the end of the day, they can either accept or reject your recommendation and they make the final decision. That's kind of the way of the world and the Legislative bodies make the big regulatory calls in connection with KRS 100 Zoning systems. Now, various other regulatory agencies obviously have important roles to play in dealing with the regulation of Agricultural activities in the Commonwealth of Kentucky and beyond. The Department of Health, the Food and Drug Administration, State Agriculture Department, the State Veterinary. All of those entities are part of regulating agriculture but one of the key messages that I hope this Planning Commission will acknowledge is that frankly, your role is about that thin, it's not much broader than that based on the expressed provisions of KRS Chapter 100 that T.J. Fridy did such a good job dealing with in his legal opinion previously. Ultimately, here in Henderson County as an example, there are no specific rules in your zoning code for what you have to do if you are a cattle farmer, a horse farmer, a pig farmer, a rabbit farmer, a chicken farmer or somebody who simply raises crops. The reason for that is that this is controlled by Kentucky law not by New York, not by Georgia law but by Kentucky law. Here we have an extremely broad, all-encompassing and dispositive exception for agricultural practices. Ultimately, here in Kentucky, unlike Indiana unlike other states, we are referred to as what is referred to as a zoning enabling state. That means that Planning Commissions and local legislative bodies in zoning related issues have only those powers that are expressly granted to them by the General Assembly. In the instance of Kentucky and KRS 100.203 sub 4, we strip that authority largely when it comes to agricultural issues away from Planning Commissions and the express legislative purpose behind that stripping away of authority is that frankly, we want Agriculture to be able to proceed on its own without zoning, "interference". That has been one of the strongest provisions in KRS Chapter 100 it is survived every effort to amend it and restrict at the General Assembly level.

Agricultural use is defined as "a tract for the production of Agricultural or Horticultural crops including, but not limited to, livestock, livestock products, etc." The use of that phrase, including but not limited to, makes it very clear

that every specific Agricultural use such as mouse farming does not have to be listed in that statute in order to be expressly exempt under the terms of the statute itself which governs ahead and overreaching any local regulation that may be adopted. It would come to a shock to farmers throughout Henderson County and throughout this state that there was a restriction as to whether the good was for human consumption. I suspect an awful lot of farmers raising hay throughout the Commonwealth of Kentucky would be surprised to know that because hay is not eaten by people, it was no longer an Agricultural product in this state. There is no restriction based on human consumption, there is also absolutely no restriction based on the size of the livestock, be it really big or be it really small. It's still animals and it's still livestock for the purposes of Agricultural product definitions under KRS Chapter 100 as expressly found by your own legal counsel in his opinion.

Ultimately, that case is dealt, this issue is dealt within its most expansive terms in the case of Grannis vs. Schroder, a copy of which is included at "Tab F" of the binder that I have given you of course also we've included the Agricultural exemption provisions at "Tab E" of the binder that I have distributed to you. At the end of the day, the General Assembly writes the rules and the rules are this is exempt. Now, of course, we applaud the local Fiscal Court for taking the step to eliminate ambiguity that may exist associated with this. Every business owner of any type wants to eliminate ambiguity and potential legal challenges whether they might be successful or not and at the end of the day, that's one of the key purposes of this proposed amendment. Also, as your legal counsel points out in their opinion, a copy of which is included in the first tab of our binder that this helps to bring your definitional structure into better line with the newest version of KRS Chapter 100 because your version dealt with a previous version of Chapter 100 and at the end of the day local regulations always have to comport with the provisions of the enabling statute, if they don't they are simply void. Now it's appropriate, ultimately, to take a look at some other Statutes I think you will find instructive we can also find support for why this is a good idea in your own Comprehensive Plan and in your own regulations. Let's tick through a few of those items if we could.

Kentucky's Right to Farm Act of KRS 413.071 sub 1 provides as pertinent part "It is the declared policy of the Commonwealth to conserve, protect and encourage the development and improvement of its Agriculture land for the production of food, timber and other agricultural products" and that is attached at "Tab G" of the binder that we've distributed to you. This text amendment helps to re-enforce that policy at the local level. The Agricultural nature of mouse farming has been recognized by a variety of Government entities and officials proof of which we've tendered to you and some of which was included in your own legal counsel's opinion letter of December 1.

First, you will find James R. Comer, a letter dated October 22, 2014, and he is of course the current Commissioner of Agriculture for the Commonwealth of Kentucky. He says "Steve's mouse breeding business has contributed greatly to Kentucky Agriculture over the course of eighteen years of operation", that's at "Tab H".

The Executive Director of The Kentucky Agricultural Finance Corporation in a letter dated October 9, 2007 referenced the approval of an Agricultural infrastructure loan of the construction of the buildings that are being used for mouse production, a copy of that is included at "Tab I" of the binder that we have distributed to you.

Retired County Extension Agent Michael Smith as far back as 1998 has recognized the agricultural nature of Mr. Pritchett's operation, a copy of that is included at "Tab J" of the binder that we distributed to you.

The current County Extension Agent Camille Hayden in a letter dated October 15, 2014 described Mr. Pritchett's operation as "alternative agricultural enterprise" a copy of that is included at "Tab K" of the binder that I've distributed to you.

Copies of all those are part of the submission that we made as part of this binder, I'll be introducing them as evidence formally at the conclusion of my presentation. Ultimately, this provides not just my client, but plenty of other people who may be considering this line of work with a clear, definitional structure. Under the terms of the Kentucky Revised Statutes, I don't have any

doubt that is an Agricultural use now and can fully be supported as that. In fact, as Mr. Fridy acknowledges in his own opinion letter to you, arguably this Planning Commission and Planning Authorities locally have already acknowledged that by authorizing building permits for construction of the structures on Agricultural property with no other regulatory steps having been taken in the past and more than thirty days passing since the issuance of those buildings permits without an appeal having been issued. Now we appreciate Fiscal Courts understanding of the issue and applaud it.

Finally, I think it's always useful to consider in any text amendment process how the Comprehensive Plan plays into this. Because, one of the key jobs that any Planning Commission has to do, is to consider Comprehensive Plan interplays. The implementation of the Comprehensive Plan is a cornerstone of KRS Chapter 100 zoning. In this instance, the support always in favor of definitional structure to eliminate ambiguity and we've included all of these provisions at "Tab L" but let me run through some of them.

Under economic development, rural communities "goal to encourage and promote the economic development of Henderson County's rural communities" under that, Objective (1): Support local revitalization, redevelopment and promotional efforts in rural communities. Next, Objective (15): Attract and encourage business development, re-development and expansion within Henderson County's rural communities. Next under Agriculture Objective (3): Promote the diversification of Agricultural economy by encouraging new Agricultural products and industries. And, your own Comprehensive Plan, all of these are your goals that you have expressed in the Comprehensive Plan, nothing in this proposal is inconsistent, in fact, the failure to more expressly deal with this definitional structure is what is inconsistent with your Comprehensive Plan those excepts included at "Tab L".

Also, of course, at "Tab M" as you might expect from us we've tendered proposed findings for you nothing about those is sacred but it is food for thought in your consideration there are plenty of other types of bindings that you could choose to enter in order to support whatever conclusion you reach here this evening. At this juncture, I would like to, just to make sure I don't

forget to do it, introduce this (Exhibit "C") binder, its contents and also an individual sheet that looks like this, that we distributed for inclusion in the record as part of our proceeding as Exhibits.

Now, I think it's worth noting that was my initial primary presentation. There are also a few things I need to say in response to the comments that have been made by opponents up till now with your permission Mr. Chairman.

Chairman McKee: Please proceed.

David Pike: Since I'm the only speaker in opposition, in support this evening. Ultimately, virtually all the opposition we've heard this evening is tied to a specific site location that is not before this board. Let me repeat this, a site location that is not before this board on which there has been no specific decision made by anyone. The recurring question of Mr. Williams was deeply telling in connection with this consideration and that question was, this is Agricultural ground, you knew that right? If I can paraphrase you Mr. Williams? And at the end of the day, that's the case. Nothing would prevent any property owner on agricultural property in this county from raising pigs, cows, and ostriches with no setbacks at all on an intensive basis on the property adjoining Residential properties. That is clearly covered and acknowledged by everyone, this is not a question of whether or not Agricultural property next to Residential property will remain pristine and meet the personal objectives of land owners in those areas. That's not what the law in the Commonwealth of Kentucky is. The law in the Commonwealth of Kentucky is that if you are a farmer, you get to conduct your farming operations period. And that is the expressed will of the General Assembly which means it's the expressed will of the people of this state and it is the enforceable law in this state and I think has to be viewed as such. That may not be popular, it may not be a message that everyone wants to hear but that doesn't alter the fact that it's the rules of the road that we are all obligated to follow. And every effort that has ever been mounted to try to change that has failed miserably in the General Assembly.

I don't want us to be under any misconceptions here. I don't think any farmer is going to conduct mouse farming operations has to have this change in reg's,

however, your Fiscal Court has determined that making that change and eliminating the ambiguities is a good thing. My client applauds them for that because it's a worthwhile activity and a worthwhile decision but all they are really doing is embracing the existing law in the Commonwealth of Kentucky not just my conclusion but conclusions expressed in the opinion letter of Mr. Fridy dated December 1, a copy of which, of course, you have.

Now, let's talk a few minutes about mouse meningitis or the LCMV, there are some strong misconceptions here. First, let's talk reality. Farm animals have diseases period. That happens. Hogs have them, cows have them, and chickens have them. Mice get diseases too sometimes. This is not an airborne disease; I have distributed the kind of loose leaf form documentation I (Exhibit "D") submitted for you, is pulled directly from the Centers of Disease Control. It indicates this is not an airborne disease; you get this by handling mice. About five percent of all household mice if you're unlucky enough to have them in your homes or have them in your barns or see them in the field have this disease, which is why you should not handle them. Now in the event that that occurs, an outbreak occurs at one of the mouse houses it's because there was a contact between wild mice and these domesticated ones. The people who operate these facilities have every incentive in the world to prevent that from happening. Because if it does, what has to occur? You have to kill every mouse and start over which is the loss of an unimaginable amount of money for the people involved. So, they take the greatest of pains in testing and in other steps to try to safeguard their crop and also their employees. As you will note in this CDC article there are virtually no examples in which a person can infect another person with this form of meningitis. The only exceptions to that are organ transplantation and from a mother to a fetus. So if there is a risk, there is a limited risk but that is always the case in farming the risk isn't to people who are outside of this operation it's to the people who choose to work there and best practices call for using gloves all sorts of other protective gear to eliminate that risk if possible but that's part of farming. It's one of the reasons why farming occupations are routinely listed as one of the most dangerous ways to make a living. Again, it's not risk free but whether that's a good idea or not is not the choice of this Commission it is the choice of

the Kentucky General Assembly which is indicated that farming has a right to proceed in the Commonwealth of Kentucky without zoning regulation, that's what the exemption reads.

So, I kind of talked about that airborne since of criteria and the best management practices when appropriate can diminish that. If you walk into a pet store, what will you find being sold? You will find mice and rats being sold that's for people to raise them it's also for people to feed them to other animals and we acknowledge that's perfectly appropriate. These are not inherently dangerous instrumentalities anymore that cows, pigs or chickens are even though all of those can get diseases as well. Now, kind of finally, I think we have to recognize that the arguments that have been made here tonight have an emotional appeal, nobody sitting here wouldn't have been touched by that but it's not the law. And a specific proposal and another location is not up before this Planning Commission and no decision has been made regarding an alternate site. The question is whether the law dictates that this would be an appropriate revision of your local regulations when your Fiscal Court unanimously proposed this change in order to better bring it into line not only with their vision of what Agriculture should be in this community on an innovative basis in compliance with the expressed provisions of your own Comprehensive Plan. That's the issue and it should be the issue here this evening. The consideration of other points frankly is inappropriate.

There were several questions that were raised I'd like to try to dispose of those if I could. First of all is there slaughtering? There is no slaughtering of these animals conducted on site period. That's the short answer.

Second, there are no definitive plans for any other sites at this juncture and no decision has been made for that and we also can't speak to what other people might be considering. Again, it's our view legally that that can proceed legally without this change in regulations. Something that you have tacitly acknowledged in your prior decisions granting building permits for existing sites on Agricultural properties without other regulatory review.

Finally, can setbacks be imposed? That's an expressed provision under the terms of the Agricultural supremacy clause. It indicates that setbacks can be

used and that is an acceptable means of regulation. You have setbacks now and anyone who is going to be developing new structures on Agricultural ground would have to adhere to whatever those are.

It's my hope that you'll give favorable consideration to this proposal on a dispassionate basis, based on what the law calls for. Regardless, your recommendation will ultimately be considered by the Fiscal Court. I thank you for your time and although based on the fancy, new watch I got from fiancée for Christmas it's been twenty-four minutes I think I'm the only speaker in opposition, hopefully that was sufficiently expeditious.

Chairman McKee: Are there any questions for Mr. Pike?

David Dixon: Yes.

Chairman McKee: Please.

David Dixon: Have any Kentucky Courts ruled that mice are an Agricultural product?

David Pike: No.

Rodney Thomas: Have they ruled against it?

David Pike: No, haven't addressed it. They've taken up issues like ostriches before but there has been no mouse case that I'm familiar with and I think we would have found it.

David Williams: Mr. Chair, is there a definitive definition of livestock?

David Pike: Not in Chapter 100. The Grimes case, however, that we distributed is your best source for information on that and you'll see that they expressly indicate that it is not restricted to the items that are in that statute. They place great weight on not restricted to language. That same case is cited by your own legal counsel, in his opinion.

David Dixon: But that case did not refer to mice production.

David Pike: It does not. It does not refer to rats, it doesn't refer to genetically engineered animals, it doesn't refer to rutabagas, it doesn't refer to any number of other agricultural products.

David Dixon: In your view, this amendment is unnecessary?

David Pike: Oh I think it's necessary yeah, right now.

David Dixon: From a legal stance?

David Pike: Let me define; let's make sure we're using the same terminology. It is my view legally; mouse houses can be built on agricultural grounds right now. I think it's important legally for this community to make this change for two reasons. First one is arguably your existing definition is based on an older version of Chapter 100 as pointed out in your legal counsels opinion. So bringing it into sync with that is important. Second, to the extent that it makes sense to provide a level of certainty for this agricultural use and for the others that are listed here, then that's smart but is it necessary legally? I think if the question is can you proceed now without the change in reg's my view is absolutely. And I'm not sure with any more legal authority than what you've got in the existing opinion which we concur in fully.

Taunya Eyre: Currently the Pritchett's have a mouse house on their property?

David Pike: Absolutely, yes and have for eighteen years and received building permits from this Planning authority for the construction of those facilities as was alluded to in your legal counsels opinion.

Chairman McKee: Other questions?

David Pike: Thank you for your time.

Chairman McKee: Please.

Gary Gibson: No, go ahead, go ahead.

Chairman McKee: Mr. Gibson do you have a question?

Gary Gibson: (Inaudible) the Chairman, no.

Chairman McKee: Thank you Mr. Pike will you be available for further consideration if we need? Thank you and nobody else on the “for” side wants to speak? Very Good, yes sir.

David Williams: Mr. Chairman I would like to make clear and Mr. Fridy if I get out of line, jump out real quickly but, I just want to make clear to everyone that the questions I asked are neither for or against any position before us as far as your testimony is concerned. I’m trying to arrive at a clear set of facts and the question about, were you aware of agricultural uses relates back to another decision that this Commission had to make about coal mining which was very hard for us but we had to make it, ok. So, that’s where that question comes from.

Chairman McKee: Thank you Commissioner. At this time I would like to invite the opposition to rebut anything they have heard, presented on the “for” side. Mr. Hopgood you’ve been sworn in earlier, please proceed.

Chris Hopgood: Thank you Mr. Chairman I appreciate the opportunity. I’ve just been handed this today and I did not have the opportunity to see Mr. Fridy’s opinion although it was dated December 1, but I made a quick study of it the best I could and we agree and I think Mr. McCormic asked the question. There has been no mouse case decided in the Commonwealth of Kentucky and my research is pretty thorough. I’m pretty confident I can say I don’t believe there has been a mouse case decided in the free world as to whether a mouse is agricultural or not. We often say, don’t check your common sense at the door. The examples have been given have all been by things that are for human consumption or/and to feed that goes into animals for human consumption. The example given was for hay. Hay goes in cattle, we eat beef. We raise corn, corn fed beef, we eat beef. Ostriches, I was at Jim David Meat and I’ve seen their ostrich, you can buy ostrich down there, people eat ostriches but I don’t think there’s any question that mice are not on the diet for anyone, anywhere at least in this part of the world.

If they are correct as Mr. Pike is and they are that confident in the law then let them apply for a building permit, if it’s denied let them appeal that, let the courts decide that, you don’t need to decide that as Mr. McCormick said I

think, are you saying that we don't even get to decide this? If I were faced with a tough issue that I didn't have to decide, I would let someone else decide that. We didn't hear from the Pritchett's and I want to give them an opportunity, but I did hear Mr. Pike say they are not slaughtering animals out there. Now, I think it's pretty well understood they're euthanizing mice out there. The mice are killed before they're sent out, and I certainly would like them to correct that record if that's the case. I think I know that for a fact, that the mice are euthanized, having spoken with someone that used to work out there, spoke with them today. The important point is that just because something is agriculture doesn't mean you get to do anything you want to on Agriculture property. Farmers are not allowed to have slaughterhouses on farms. You raise cattle, you put them in the truck and you take them to the slaughterhouse. The slaughterhouse in Henderson is a conditional use under Heavy Industrial. So, I believe the fact that these mice are killed on site make a huge distinction in their argument and I don't agree that mice are agriculture, but to the extent once you go to the fact that it's beyond raising them into killing them, then you put them clearly in the same category as a slaughterhouse.

The letters of Mike Smith and Camille Hayden, pay particular attention to those. They state that the current definition of Agriculture Enterprise is any living entity produced in a domesticated environment with controlled production practices and a controlled environment while posing no threat to public health or welfare beyond the traditional Agricultural Enterprise and I think that one thing you will see from the LCVM literature is peculiar to mice, it is not a disease that has anything to do with traditional Agricultural Enterprises.

Mention was made about the fact that there was a loan from the Kentucky Department of Agriculture and last night I was looking at that and if you will look on their website they approve loans for this or that and this they're specified and anything else the Agricultural Commissioner deems is appropriate. Now, let me tell you about the United States Department of Agriculture. Big Rivers, entirely funded by the United States Department of Agriculture, that doesn't mean they're farmers. Kenergy is funded largely by

the United States Department of Agriculture. The Henderson County Water District, the water line in front of you people out in the county is funded by the United States Department of Agriculture. That doesn't make the Henderson County Water District or Kenergy or Big Rivers farmers and it doesn't give them the AG Exemption that AG gets. But what I do hear from Mr. Pike, and what I tried to convey at the beginning is that if you make this a permitted use then there is no control. The Board of Zoning Adjustments would have no control over anything to do with one of these mouse houses. If you make it a conditional use then you do give that control to the Board of Zoning Adjustment and you allow the neighbors to come and speak and say their piece.

It's our understanding that this started because a permit was requested for a site on D. Fellows Road and it was not granted, and so that put the ball in motion to get to where we are here. So, if they're that confident then let them take this to the Court's. If they want you to pass something then make sure that you've got sufficient control on it that it doesn't get out of hand. The best way to test a law is to take it to the extreme. The best way to decide is that a good idea is to see if it works at the extreme. So if there is a mouse house next to every neighbor in Henderson County is that a good law?

Finally, I was on the way to Morganfield this morning and I saw the Rotary, the Rotary Motto and one of them is, when I visit Rotary, they always say "is it beneficial"? They always ask those things, what we're doing, is it good, is it beneficial? Certainly there is downside to some Agricultural operations. We know that anybody that's been out by Tyson, it doesn't smell good but we eat chicken. We all want the fruits that come from Agriculture and so we put up with the down side. There's nothing beneficial to human consumption about these mouse productions. So the question to you I think it, oh, and finally there's one other point that I did want to bring up and it sound like Mr. Pike saying that our entire AG Zoning may be out of whack, maybe inconsistent with KRS 100 and I haven't had time to study that, but it seems to me if I were in your shoes and I were addressing a text amendment then I would want to address the entire AG amendment at one time rather than simply piece-meal it. If the original AG Zoning is out of line then why don't you go back, table this

and look at the entire part of that ordinance. So we submit to you that this is being misstated, overstated, exaggerated as to whether this is considered to be an Agricultural if it were, I think they would have gone a different route and we invite them to go a different route and let them get this on to the courts and let the courts decide that rather than trying to deal with it here out of context from which it should be. Certainly you have the option to table it, look at the entire amendment, make it a conditional use, you have a lot of control but what they are proposing is the least beneficial for the citizens of Henderson.

Chairman McKee: Are there any questions for Mr. Hopgood's rebuttal?

David Williams: Mr. Hopgood, would you agree though that most other acceptable AG practice can be put on this property at any time?

Chris Hopgood: Any traditional AG practice or you could raise chickens, you could put chicken house up...

David Williams: Like one of these large, Tyson-type chicken houses?

Chris Hopgood: Yes, although and I don't want to speak, I don't want to get ahead of my research it's been a long time, but I think there are some requirements as to those at least some, if not regulations, some statutes on those. There were some litigation down in Marion about that and it's been some time ago.

David Williams: Yeah, that's what I'm wondering about.

Curt Freese: The Tyson plant is in a Heavy Industrial District because it's a slaughterhouse.

David Williams: No, what we're talking about is chicken raising operations that are primarily in Webster County but, okay. So, a hog pen can be put at this location or just about any, what would be an odorous operation, could be placed here?

Chris Hopgood: I agree that if someone wanted to build a farm, a traditional farm building, they would be granted a building permit.

David Williams: Alright, okay, thank you.

Chris Hopgood: I think that you raise a good point and that is certainly not against a man making his living and we have county-wide zoning, our neighboring counties do not. So, there is a place to go for these that you don't have this question come up at all. Union and Webster do not have county-wide zoning and certainly this would fit down there because there's nothing to stop it.

David Williams: Alright.

Chris Hopgood: Good question.

Chairman McKee: Thank you Mr. Hopgood. Would the opponents counsel like to rebut the rebuttal?

David Pike: Ever so briefly. First, absolutely no correction is required in my statement regarding slaughtering. Animals are euthanized on site and shipped off site with no slaughtering at all involved and a finding that that constitutes slaughtering then would make it impossible for farmers anywhere in this county to kill an animal, which is nonsense under the Agricultural Exemption.

I want to pick up a couple of key quotes and then I want to harken back to Mr. Fridy's legal opinion one last time. First quote, from KRS 100.211 defines Agricultural use as "A tract for the production of Agricultural or Horticultural crops including but not limited to, livestock, livestock products, etc."

Then let's take a look at the Grimes case. A key quote; "In a few years the owner may decide to cut everything down and raise cattle or even ostriches." The point is that the user of Agricultural land can change one Agricultural use to another with impunity. KRS 413.072 enacted after the Schroder's request guarantees the right to change without being labeled a nuisance, trespass or zoning violation.

Ultimately, your own legal counsel reaches the same conclusion we do. You had access to that opinion; everything else from a legal perspective is wishful thinking. Thank you.

Chairman McKee: Thank you Mr. Pike. Anyone who spoke on behalf of the opposition, do you have remaining questions you would like to get answered? If you do, please raise your hand. Please come up Mr. Tapp. Mr. Tapp you have been duly sworn in, please proceed.

Tommy Tapp: If slaughter is important, I know they bury those, the ones that die by disease. I know they bury those on site, so certainly that...would rather have them slaughtered and shipped than buried on site.

Chairman McKee: Thank you sir, any other questions from those who spoke in opposition? Are there any questions for those who were in favor that would like to ask the opposition? Mr. Hopgood.

Chris Hopgood: Mr. Pike did go through some of my questions, but I never heard the answer to why can't the new operation be at the existing site. I suppose the answer to that is, what they're saying is they haven't selected a site. One question I didn't hear is have there ever been disease at the current site effecting people or mice? I haven't heard the answer to that question.

Chairman McKee: Mr. Pike, can you answer that?

David Pike: Counsel answered his own first question, been no determination and this text amendment isn't just about my client, it's about anyone who wants to enter this business. As for the second one, yeah, there have been disease outbreaks at this location before, they were dealt with, eradicated and all of the necessary requirements were met at both State and Federal level. And he has every right to operate the day after that.

Chairman McKee: Did that answer your question Mr. Hopgood?

Chris Hopgood: Yes, but I have one follow up. Are they in current operation now, is it operating now?

David Pike: Yes.

Chairman McKee: They're currently operating, thank you Mr. Pike. Commissioners do you have any final questions for our legal counsel, or our staff or anyone who has spoken here this evening?

Mac Arnold: I've got a question for our legal counsel. One, are there any parameters or limits as far as in the poultry or swine business in Henderson County right now?

Tommy Jo Fridy: I would like to have the input of Curt but it's my opinion that there's no zoning regulations that would prohibit a cattle feed lot, a contained chicken house or any of those kinds of operations. I'm reasonably sure that there is not, that you could locate one of those on Agricultural ground. Do you agree with that?

Curt Freese: I'm not, without reading sure about the feed lot. It's just the slaughter triggers the Heavy Industrial. Processing and slaughter is what triggers the...

Gary Gibson: Mr. Chairman, now legal counsel they say we don't have control but if they want to come in this county with a turkey farm or a chicken farm, this zoning needs some type of control. I don't want a chicken farm or a turkey farm next to me the same way, like this situation here. We've got to have some type of control. We've got a farm already, we know that, it's been eighteen years, but we should have the right to control where the farm is and not let it go throughout the whole county. The same way with the example of the turkey farm, we have to have control to keep them in a certain location if they do come in the county.

Rodney Thomas: But can we do that legally?

Gary Gibson: Well, we need to have some type of control. We don't need to leave it open.

Taunya Eyre: I don't think the General Assembly allows that.

Rodney Thomas: I don't believe we can make that decision.

Taunya Eyre: Isn't that correct Tommy Jo?

Tommy Jo Fridy: We do not.

David Williams: I remember, it's been about ten years ago that they were wanting to bring in a commercial hog raising operation down at Hopkins

County, I believe around Dawson Springs, and that brought forth a bunch of local opposition based mostly on the possibility of ground water pollution. Now, are we looking at, not that mice would be a danger, necessarily endanger our ground water but do we have any source of control and I could ask counsels from both sides on this, do we have any sort of control of what would be considered a factory farm? Which would be a turkey operation or a large scale chicken operation, mouse farming operation? Would we have any sort of control on that?

Tommy Jo Fridy: Let's limit, let's limit our thoughts to what the Planning Commission can do. What the County or City can do in passing zoning ordinances. We do not have the right to regulate that. Now, does the state regulate it in some fashion or does the Federal Government? We are not here to talk about that.

David Williams: Ok, then let me give you this question then. If we were to, more or less by actions, force this into the courts would we, could we possible get an answer to that kind of question which may result in more local controls of Agricultural practices?

Tommy Jo Fridy: Your question has more than one prong to it. The first one is can you force it into the courts, the second one is might you get more control. I will answer your question as best I can but I, but I would like to encourage you to ask the question, what is the likelihood of us getting more control through court action or actions? The answer to that is extremely unlikely based on all of the cases I've seen and on attempts to tighten things down in the Legislature. This is Agriculture is the broadest exemption from zoning there is, that's why the courts call it the super-priority exemption or the super-exemption.

David Williams: Thank you Mr. Fridy.

Chairman McKee: Other questions?

Mac Arnold: Yes, one more question here I've got as far as the definition of slaughterhouses which is considered to be in an Industrial application. Is

slaughter just the killing of the animal or is it basically separating the parts of the animal?

Curt Freese: I think like all of this it is somewhat undefined and not completely explained. I think we have to go by the Agricultural use and that's the production of Agricultural/Horticultural crops, livestock products that kind of thing. It doesn't state the slaughtering or processing of those things and I think because it doesn't state that I think that's why zoning ordinances like ours have said that is a different thing than the AG exemption and that's they have put them in different zoning districts. That would be my answer I'm going to fall back on Tommy Jo.

Mac Arnold: My question is, then, is what is slaughtering? Is slaughtering the dismemberment or is it the killing of the ...

Curt Freese: That's what I, it's not, it just says slaughterhouses. It doesn't really; it's just like this...

Mac Arnold: It doesn't define it. That is something right there that actually needs to be determined, the definition of a slaughterhouse.

Dickie Johnson: You said just a minute ago in your answer to Tommy Jo's question to you is what triggers it is the processing of an animal.

Curt Freese: Well...

Dickie Johnson: Correct?

Curt Freese: I don't, when I read the definition, I'm assuming the reason that this has stood up and I can fall back on Tommy Jo, is because processing and slaughtering is not excluded in this Agricultural Exemption in the KRS 100.234 so, that's my assumption.

Dickie Johnson: Elaborate on that just...

Curt Freese: With the fact that it hasn't been excluded as a power or an exemption. The definition in the KRS says that we can't regulate these things but it doesn't say slaughter or processing, and I think because it doesn't say that, jurisdictions like our own have created zoning requirements that actually

have restrictions on them because they're allowed to, they are not excluded from doing that. That would be my answer, so I'm going to fall back on Tommy Jo because I'm just a novice on this.

Tommy Jo Fridy: I don't know that I can answer that question any better than Curt did.

Gary Gibson: Well, what I would like to ask Tommy Jo, by looking at that board why did we put raising mice in red and put that in there? Why couldn't we leave it as it was?

Tommy Jo Fridy: We didn't...

Gary Gibson: We are specifying that mice is a farm animal and in my personal opinion I don't believe it. But why do we have to put it in red, and put that in there, we could leave that out. I don't go; I don't think those certain parts need to be put in there. We will ruin the whole county.

Dickie Johnson: I'm not trying to answer your question but the red ink is the new language we have proposed.

Gary Gibson: Yes, I know that...

Dickie Johnson: Am I correct?

Tommy Jo Fridy: That's correct. The county has made these proposed changes and they are sending them. They sent them to us to have this public hearing and make a recommendation back to them.

Taunya Eyre: Can we ask what prompted the county actually ask for the less ambiguous definition.

Tommy Jo Fridy: You can ask but I don't know the answer and I don't see that it makes any difference.

Curt Freese: I can't answer that myself.

Chairman McKee: Any other questions?

Thad McCormic: I would like to ask Mr. Freese, do you have a copy of our Comprehensive Plan?

Curt Freese: I did not bring that with me thinking this was the...

Thad McCormic: Do we not have it on disc?

Herb McKee: It's online.

Thad McCormic: I would like to describe in Chapter One what the mission, or what the objective is as far as our duties and what kind of service are we trying to provide for the citizens of Henderson County according to our objective and our goals as written in the Comprehensive Plan. Do we have a Mission Statement or do we have overall objectives and goals.

Curt Freese: We have a great number of objectives and goals and...

Thad McCormic: I understand that each chapter, do we not have an overall objective?

Curt Freese: Sure.

Thad McCormic: We do.?

Curt Freese: Yes, we do.

Thad McCormic: Could you read it to me please?

Curt Freese: Promote a sustainable, natural and manmade environment that balances environmental protection and perseverance with the physical, social and economic needs of the population for the long term benefit of growth.

Thad McCormic: Thank you.

Chairman McKee: Further questions or comments? Before we proceed I would like to ask for the advice of counsel on his recommendation on how we should proceed.

Tommy Jo Fridy: I think you have more than one choice. Curt has proposed a motion and proposed findings either to recommend approval, or recommend denial, you could use those. David Pike has included in what he filed in the

record proposed findings to support the approval. You could use either one of those and add to them or detract from them as you choose. Another alternative would be to make a motion, discuss it and get a decision whether you are going to recommend approval or disapproval and take a break and allow some of us to do proposed findings for you. I don't know that anyone, neither one of those options is any better than the other. You may get a little better finding if you take a break and let us work on it. I think the ones that Curt has done or the ones that David Pike has proposed are adequate.

Chairman McKee: On that score, does anyone...

Dickie Johnson: Or the approval of the proposed changes.

Tommy Jo Fridy: Yes, and Curt has given you proposed findings for denial and you can add and subtract as you choose. The way he has proposed his motion and the way they are typically made in this Planning Commission, the motion is left open for others to add findings of facts as they choose.

Chairman McKee: Having heard counsels views and comments.

Mac Arnold: I've got one question as far as a comment on it. I'm sitting here and thinking we read the Comp, just a minute ago, and basically to kind of paraphrase that is basically is said need to find a compromise between individual or personal interest in those of industry and for the betterment of everybody concerned and then you come back and you listen to what the definition basically of what AG is. I almost find there is a conflict there because AG says we can do anything we want to do but that doesn't go along with what the Comprehensive Plan is saying, does it?

Tommy Jo Fridy: I don't believe they're in conflict. The goals and objectives, the goal and objective is very broad in nature and must be, and then the Comprehensive Plan the goals and objectives are adopted by the City, the two Cities and the County and then the Planning Commission adopts a Comprehensive Plan in agreement, or under the guidance of those goals and objectives. The State Statute KRS 100 that governs how we do business overrides the Comprehensive Plan. Generally, I don't think the Comprehensive Plan is in disagreement with the statute or Curt doesn't and

those who preceded us didn't or we would have pointed that out. Now, if you have a specific situation maybe we may find a difference sometime, at some point but if we do the Statute controls. Does that help you? The definition and the statute would control over anything that we may have put in the Comprehensive Plan including the goals and objectives that were passed by the County and the two cities.

Taunya Eyre: Tommy Jo can you clarify something for me please? If Mr. Pike had said that something along the lines, and he may clarify this too as well if he would like, that we are trying to bring our zoning regulations in better conformity with KRS 100 by clarifying and taking out the ambiguity, how exactly are we not doing that right now.

Tommy Jo Fridy: Allow me to answer you. If you look at the proposed amendment, amendments, everything that is in this proposed ordinance is to bring the ordinance up to date with Kentucky law.

Taunya Eyre: So is this what Kentucky law says?

Tommy Jo Fridy: Wait, wait, wait a minute. Other than the inclusion of the raising of mice, now let me finish, I expressed an opinion that the raising of mice is included in the included, but not limited to definition that appears both in our ordinance and in the statute. The exemption in our statute had not kept up to date with Kentucky law and the County has sent us a proposed amendment to the zoning ordinance that includes the raising of mice, to make it clear that that is part of the included but not limited to definition, but that did not come out of the statute.

Taunya Eyre: That section in "A" is the only part that is not clearly defined in State Law. The winery, the riding everything else is, that is what is bringing us in conformity with state law, correct?

Tommy Jo Fridy: Correct. This amendment if it were to pass as it was initiated and sent to us by the County would make it clear that you could raise mice. Then if folks that are opposed to that think that is contrary to State Law, then they can take that to court.

Taunya Eyre: Ok, so if this Commission does not feel comfortable including that we can make the recommendation of this text amendment excluding that section in part A. Correct?

Tommy Jo Fridy: That's one of the options the Planning Commission could recommend to Fiscal Court.

David Williams: What would be the wisdom in actually specifying in our ordinance...

Tommy Jo Fridy: David I don't hear perfectly...

David Williams: I'm sorry; I'm getting too relaxed back here.

Tommy Jo Fridy: I heard most of it.

David Williams: What would be the advantage in specifying in mouse farming, well raising mice in our ordinance, could we just say livestock at this point, since there is no definition of livestock and so any live animal raised as a crop would satisfy that definition?

Tommy Jo Fridy: As usual, you put, you put two horns in your question and I may have to have you help me to answer both of them. First, it doesn't have to be livestock in order for it to be Agricultural. The State Statute says Agriculture including but not limited to all of these things, livestock being one of them and only a court can decide if the raising of mice is included in that included but not limited to. This ordinance as presented, and I'm not taking a position for or against it, this ordinance as presented will make it clear that you can and give the people against it a chance to have it determined in court. If you take it out, then you don't have that clarity that you suggested earlier that you seek court approval on. If it's in there, it can be clearly sent to court to determine that issue.

David Williams: Ok.

Tommy Jo Fridy: Could you get there a different way? Probably but that's what leaving it in there will do.

David Williams: That answered my question and anticipated my intentions so, thank you.

Tommy Jo Fridy: Well, it seemed like that's what you were asking.

Mac Arnold: Tommy Jo...

Tommy Jo Fridy: Yes.

Mac Arnold: In the way it is worded and this is basically so if a person is going to see Randy out there to get a permit to build, that this gives an okay to do it or allows it. So, if a person came back in and said ok, we are going to start raising hamsters. Does Randy have to say, uh oh, that's not listed there that one doesn't work or does...do you see where I'm trying to come with this? Are we going this one thing, but not necessarily everything? Where do we say is AG or how do we define that livestock?

Tommy Jo Fridy: Hamsters haven't been presented and it isn't before you tonight but I think it's appropriate to answer your question. If that comes to Randy then, and it's not clearly defined, it would be up to him to seek advice of whether that is part of the included but not limited to provision of both our ordinance and the staff. The ordinance he was working from earlier was much different when you take the definition and try to apply it to the exception over in Section 23.04. As 23.04 was written, it used to say, it says right now even though it would be overridden by Kentucky Law but Randy looks at the ordinance I presume. "Land which is used solely for agricultural purposes farming, dairying, stock raising or similar purposes". Now, if he looked at that and didn't go look at the statute the exemption would be very limited. The Kentucky Legislature changed this wording. This was the wording back in, my opinion tells you '68 or sometime and the statute has been changed and the wording that's in red is the current statute as it would be changed by those strike-outs and red underlined add-ins, that's what the statute is now. Randy could go look at the statute because the statute controls over the ordinance, but in case he didn't he might feel limited by that solely language and what follows it. Does that help you?

Mac Arnold: A little bit.

Chairman McKee: Any other questions? Because of the nature of this proposed amendment, I'm going to ask you how you would like to proceed before you vote. I would like to know if you would like to vote on the direction of the Commission, take a break and concentrate on the findings of fact. So let's vote on that first.

Taunya Eyre: I think we have findings of fact and we can proceed.

Chairman McKee: We have, does anyone disagree? You think we have all the findings of fact available to us that we need? In that case, let's entertain a motion.

David Williams: *I'm going to suggest a motion in the wording as presented by our staff to approve this, these changes to our zoning ordinance. The reasons for recommending that the County approve the text amendments to the definition of Agriculture use; Section 2.01 by adding mouse production, wineries and activities such as horse riding lessons and horse shows permitted uses Sections 23.02 related to Agricultural uses, Conditional uses Section 23.03 and Agricultural Exemption Section 23.04 to the County Zoning Ordinance. Finding in support of this is the proposed amendments to Section 2.01 in Article 13 of the Henderson County Zoning Ordinance provide transparency on previously approved but undefined uses for both staff and general public. These amendments clarify KRS 100.203(4) the Agricultural supremacy cause which exempts Agricultural relates uses from local zoning regulations which states that a wide range of Agricultural uses all of which are not possible to define are intended to be exempt from local zoning restrictions by stating included but not limited to when defining the Agricultural uses. The State Commission of Agriculture has written a letter in support of mice raising as a valid Agriculture business, the same Agricultural statutes were updated in 1986 but the County Zoning Ordinance did not keep pace and has retained the old statutory language and proposed regulations would bring the ordinance into compliance with the current KRS statutes. The ordinance also better clarifies the Agriculture exemption as it pertains to mobile homes placed in Agricultural zones as a conditional use and private non-residential structures and the existing mouse*

*raising facilities already exist in Henderson County within the Agricultural zoning classification.*

Chairman McKee: Commissioner Williams will you entertain additional findings of facts to your motion?

David Williams: I would entertain additional findings of fact.

Chairman McKee: Are there any who would like to add?

Taunya Eyre: *I'll second the motion and add that the Comprehensive Plan states under Agriculture objectives promote the diversification of the Agriculture economy by encouraging new Agricultural products and industries.*

Chairman McKee: Would anyone else like to add findings of fact to support the motion and the second? None, Madame Clerk will you please call the roll?

***MOTION WAS MADE BY DAVID WILLIAMS, SECONDED BY TAUNYA EYRE TO APPROVE THE TEXT AMENDMENTS TO THE DEFINITION OF AGRICULTURAL USE SECTION 2.01 BY ADDING MOUSE PRODUCTION, WINERIES, AND ACTIVITIES SUCH AS HORSE RIDING LESSONS AND HORSE SHOWS; PERMITTED USES SECTION 23.02 RELATED TO AGRICULTURAL USES; CONDITIONAL USES SECTION 23.03; AND AGRICULTURAL EXEMPTIONS SECTION 23.04 TO THE COUNTY ZONING ORDINANCE AND THAT THE COMPREHENSIVE PLAN STATE UNDER AGRICULTURAL OBJECTIVES PROMOTE THE DIVERSIFICATION OF THE AGRICULTURE ECONOMY BY ENCOURAGING NEW AGRICULTURAL PRODUCTS AND INDUSTRIES.***

***ALL IN FAVOR: TAUNYA EYRE, DICKIE JOHNSON, DAVID WILLIAMS, RODNEY THOMAS, AND KEVIN RICHARD***

***OPPOSED: MAC ARNOLD, BOBBIE JARRETT, GARY GIBSON, DAVID DIXON, AND THAD MCCORMIC***

Chairman McKee: It is a rare occasion, it's a tie vote. That means the chair has to break the tie and I vote yes. Anything else that we need to do before we

close the public hearing? Chair will entertain a motion to close the public hearing.

***MOTION WAS MADE BY TAUNYA EYRE, SECONDED BY KEVIN RICHARD TO CLOSE THE PUBLIC HEARING.***

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: The Planning Commission meeting is back in session and this is the start of the organizational meeting. First thing on the agenda is the election of officers. Are there any nominations for Chair?

Gary Gibson: Mr. Chair, I would like to appoint Herb McKee to be chair.

Chairman McKee: Are there any other nominations? Is there a motion that the nominations cease for Chair?

***MOTION WAS MADE BY DAVID WILLIAMS, SECONDED BY KEVIN RICHARD TO CLOSE NOMINATIONS FOR CHAIR.***

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

***MOTION WAS MADE BY KEVIN RICHARD, SECONDED BY BOBBIE JARRETT TO ELECT HERB MCKEE BY ACCLAMATION FOR CHAIRMAN.***

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

Chairman McKee: Now move to Vice Chair?

***MOTION WAS MADE BY KEVIN RICHARD, SECONDED BY TAUNYA EYRE TO NOMINATE DAVID WILLIAMS FOR VICE CHAIRMAN.***

***ALL IN FAVOR: AYE***

***OPPOSED: NONE***

**MOTION WAS MADE BY RODNEY THOMAS, SECONDED BY TAUNYA EYRE TO CLOSE NOMINATIONS FOR VICE CHAIRMAN.**

**ALL IN FAVOR: AYE**

**OPPOSED: NONE**

**MOTION WAS MADE BY BOBBIE JARRETT, SECONDED BY TAUNYA EYRE TO ELECT DAVID WILLIAMS BY ACCLAMATION FOR VICE CHAIRMAN.**

**ALL IN FAVOR: AYE**

**OPPOSED: NONE**

Chairman McKee: Treasurer.

**MOTION WAS MADE BY GARY GIBSON, SECONDED BY RODNEY THOMAS TO NOMINATE BOBBIE JARRETT FOR TREASURER.**

**ALL IN FAVOR: AYE**

**OPPOSED: NONE**

**MOTION WAS MADE BY RODNEY THOMAS, SECONDED BY KEVIN RICHARD TO CLOSE NOMINATIONS FOR TREASURER.**

**ALL IN FAVOR: AYE**

**OPPOSED: NONE**

**MOTION WAS MADE BY DAVID WILLIAMS, SECONDED BY TAUNYA EYRE TO ELECT BOBBIE JARRETT BY ACCLAMATION FOR TREASURER.**

**ALL IN FAVOR: AYE**

**OPPOSED: NONE**

Chairman McKee: Next is the presentation of the 2014 Annual Report, Mr. Freese.

Curt Freese: I think this has kind of taken a back seat today, usually this is the Annual Meeting but I'll try to make this very brief.

I just kind of have the general; we all know we have gone thru a lot this last year. We've added a number of new districts, Kathy retired and Karen retired due to health reasons, hopefully they are enjoying their retirements. Brian was hired as Assistant Director and I was hired as Director.

We have also been making some technology changes which I have described we are really trying to make things more user friendly, put out all of our information on the web hopefully so, like say, Mr. Hobgood since he was not an actual applicant at this meeting because there was no named applicants in anything we did, he would at least know if this information gets out that he would go to our website and he could pull up the packet for this meeting and have all the information before he came in here. So, that's the kind of thing we're trying to do, hopefully word gets out.

We've obviously re-done the whole zoning ordinance and created a number of new districts and I think that has been very positive. I think we got a lot of good input on that and the community has been very supportive so far and it will obviously take some time for things to happen with development, but at least the infrastructure, the foundation is there for that to go forward.

We have also been making some other technological advancement as well. Heather has been hired and she has been a great asset with her previous knowledge from the PVA. I think she knows every single road, every single house in the entire county. You can ask her. She not only knows who lives there but who used to live there. So, she has been a great addition.

Also, we have had another flawless audit from Claudia, not a single problem or a single recommendation, that's how good the audit was. Brian passed AICP exam, which is quite an accomplishment, on his first try. I think only fifty percent (50%) of people do that, so that is great.

There was a remarkable increase on everything this year from last year. Rezonings, we went from thirteen (13) last year to sixteen (16). Amendments, we had four (4) major amendments but we did the entire Zoning Ordinance, that's a very major amendment. Our site plans went up from two (2) I believe up to six(6), our meeting times went way up as you can tell from the amount

of hours we spent in meetings from last year, and I think this year is maybe not a good omen for that, they might be going up some more. Our Minor Subdivisions went from forty-three (43) in 2013 to fifty-six (56) this year. Lots went from fifty-seven (57) last year to eighty-two (82) well, I should say 2014, I keep saying this year but it's 2014. There were more appeals this year, more addresses issued this year as well. Bonding, which is another testament to Claudia and her good work, we went from \$573,000 in bonds under thirteen (13) bonds to just nine (9) for \$397,000 so a full \$200,000 in bond reduction.

Looking at our budgets, things like that. We gave about a few thousand dollars more in 2014 back to the City and the County than we did before in 2013. Going forward, next year we will, obviously, be requesting less money from the City and the County because we will have one less position and there are really no plans to hire that position. Right now we're running really efficiently with the staff we have and so that should be a benefit to the City and the County going forward. Again, they will have to see the whole budget as GIS and Planning as one, so hopefully they won't get a sticker shock with that but it will save us some additional money.

Our fees are way up from last year. I believe it went up a number of thousands of dollars and that's indicative of the cell tower application and additional re-zonings and site plan applications and that's the reason why. Again, all that money is transferred back over to the City and the County.

We've got a list of all the committees and there's no reason to go into all that. There were quite a few of them last year and the projects that are on-going. Some of these are carrying over and I'll let Chris talk about some of the GIS things that he is proposing in the future. But the big thing right now for Planning is going to be the Comp Plan and they are having a kick-off session on January 26, a Monday night. There are supposed to be refreshments, I think everybody has the hand out, Theresa handed that out. They're supposed to be working closely with us on that. That's really the main thing for the Planning Commission to be looking at. Essentially the Comp Plan that we're referring to hasn't been updated since 2006. It was updated in 2011 but no

substantial changes were actually made in that update and pretty much just re-adopted 2006 plans. Its ten (10) years old so it needs some change.

I guess looking at our ongoing activities for the Planning Commission and then I'll let Chris speak on the GIS portion, just stated the Comp Plan update. We are having, the Thursday meetings have really been and continue to be a positive thing and we actually have had more meetings this year again than last year, I think they are really well regarded by the development community and by everyone that attends them. Everyone's welcome, any of the Commission is welcome to attend one anytime you like. We will continue to do that and be business friendly.

The County Street Addressing Ordinance, the County has had a lot of things on their plate right now so we will try to start that up again and now with Heather on staff and she is comfortable she can really assist with that.

We will start on the budget preparation very soon again and it will be lower than this years. There will be some Subdivision Regulation updates, I expect to see a few next month and that is to address some errors and issues as they come up. Obviously, there will be more Zoning Ordinances update as they come up and as it's necessary, as the community, development community finds it also and staff as we research, we will present more. We would like, Brian and I, would like to do a little more community outreach, join more organizations, just getting out there a little more about the Planning Commission and so there is a positive image of the Planning Commission in the community we think that is very important. We are going to do training sessions starting in March that will be the first training session an hour before the Planning Commission meeting. We want to continue innovating and streamlining that's good for everyone, saves everyone time and money and continue to have an efficient office. With that, I'll turn it over to Chris.

Chris Raymer: The past year is a year with technology upgrades and GIS it's going to be more the same this year. Expand the use of web technology; promote the use of GIS throughout the City and County. There a lot of exciting tools coming out from ESRI and I have spent a lot time seeing what fits for different organizations, departments. If you have any questions, I'll be happy

to answer them in regards to this. Our main goal is to continue the community outreach and promote the use of GIS in the community.

Chairman McKee: Thank you Chris. Good job, be brief brother, be brief.  
(laughter) Any questions for staff?

David Williams: The visioning process that's going on now, when do we as a Commission get into that, after this?

Curt Freese: Right now they're completing a draft of the vision plan which is just for the City's vision but the Comprehensive Plan will kick off on the 26<sup>th</sup>. They have been doing, obviously I think they have been collecting data about Henderson while they're doing the Vision Plan that will probably be used also in the Comp Plan but the Comp Plan hasn't actually been formally started and won't be until the 26<sup>th</sup>.

Chairman McKee: Would you add some clarity to this process with the Comprehensive Plan? My understanding in the past has been that the City, the County and Corydon vote on the goals and objectives. The Comp Plan is the purview of the Planning Commission.

Curt Freese: Well, they have to vote on it but, I think we actually are responsible for the content of those goals and objectives. It's just like the Text Amendment we did tonight, well, I guess it's not just like that but say the City Zoning Ordinance, we can come up and develop that document and recommend it to Fiscal Court and the City to vote on it...

Chairman McKee: So, once we get this document, the Vision document, what do we do with it, what does the Planning Commission do with it?

Curt Freese: We need to approve it and recommend the goals and objectives to the City and the County.

Chairman McKee: That's it? Just goals and objectives?

Curt Freese: You would adopt it. The rest of it would be adopted and then the goals and objectives would be approved by the City and County.

Chairman McKee: So it will be a Comprehensive Plan like we have done in the past?

Curt Freese: Well we're, since I wasn't here I don't know how it was done in the past but we're required statutorily to do it that way that the City and County has to approve the goals and objectives.

David Dixon: Ok, now I'm confused. They approve the goals and objectives, what else is in the Comprehensive Plan?

Curt Freese: Well, there are a number of things...

David Dixon: There's some nuts and bolts...

Curt Freese: Future land use, all of those things. So we're still developing the goals and objectives, we're recommending them to approve them.

David Dixon: They only vote on those goals and objectives, we vote on the nuts and bolts as part of this document?

Curt Freese: That's correct and the major thing you're going to do is the future land use plan. That's pretty much the teeth of the Comp Plan because as you see from the goals and objectives they are very general and they can be used to support almost, can be very generally applied.

Chairman McKee: Will we receive a document that's fleshed out, like the current Comprehensive Plan?

Curt Freese: Yes. I fully intend to keep everyone involved as much as possible and to make sure the consultant keeps us involved with that process.

Chairman McKee: I'm not sure I asked my question correctly. Are they going to prepare, the consultants, are they going to prepare a document that's similar to our current Comprehensive Plan with all the issues having been dealt with in the document?

Curt Freese: Do you mean are they going to base it off our current Comprehensive Plan?

Chairman McKee: No, no, no. Well, I mean, yes sir...

Tommy Jo Fridy: The statute sets out various things that have to be in the Comprehensive Plan and if the consultant doesn't address all of those then we will have to. I have not gone to the meetings, I am going to try to go to the one on the 26<sup>th</sup> and hopefully we will find out some of that. I'm wondering, maybe, our first training session should be about the Comprehensive Plan. Do we already have something scheduled?

Curt Freese: No, we can definitely do it on that.

Tommy Jo Fridy: Maybe invite the consultants and staff and myself can contribute as we go along, not stand up and make a presentation, but...

David Dixon: Curt, what are your expectations? Do you expect the consultants to deliver a finished product?

Curt Freese: I really haven't dealt with them too closely yet, they were hire by the City so, I, they seem very professional and capable so I think we have to have that first meeting, really sit down and tell them what we want. I think that's the most important thing. If anyone has any issues or input feel free to give it at any time.

Chairman McKee: Let me ask a question and then I would like to introduce, re-introduce somebody to you. Would anybody like a different committee assignment than they currently have? With the exception of Jesse, who of course is no longer with us. Everybody is ok with the current committee assignments? Very good, I believe, there's a new face, not a new face an old face is going to become a new face again joining the Planning Commission. Kevin Herron do you know everybody up here? Anybody you don't know? I believe it's the Mayors intention to get that done tomorrow night, correct?

Kevin Herron: Yes.

Chairman McKee: Short of a failure to do so you'll be joining the Commission at our meeting in February, is that pretty accurate?

Kevin Herron: Yes.

Chairman McKee: Good deal.

Thad McCormic: Welcome back.

Chairman McKee: Anyone else have anything to offer for the good of the County...

David Williams: Or the City, I motion to adjourn. (Laughter)

***MOTION WAS MADE BY DAVID WILLIAMS, SECONDED BY TAUNYA EYRE TO  
ADJOURN AT 8:45 P.M.***