

**MURRAY PLANNING COMMISSION MINUTES  
REGULAR MEETING  
TUESDAY, MARCH 19, 2013  
5:00 P.M.**

The Murray Planning Commission met in regular session on Tuesday, March 19, 2013 at 5:00 p.m. in the council chambers of City Hall located at 104 N. 5<sup>th</sup> Street.

**Commissioners Present:** John Krieb, Marc Peebles, Jeremy Boyd, Ed Davis, Mary Anne Medlock, and Ryan Stanger

**Commissioners Absent:** Loretta Jobs, Tom Kind, Ed Pavlick, and Kevin Perry

Also Present: Candace Dowdy, Justin Crice, Reta Gray, David Roberts, Mike Pitman, Jennifer Tolley, Butch Sergeant, Hawkins Teague, Dale Campbell, Jim Tate, Troy Stovall, Mike Noonan, Bobby Deitz, Rick Johnston, Helen Weaver, Warren Edminster, Sarah Fineman, Eugene M. Schanbacher, Terry Streiter, Linda Grey Houck and public audience

Chairman Davis called the meeting to order. He asked the commissioners if there were any changes, additions or deletions to the minutes from the February 19, 2013 regular meeting.

**John Krieb made a motion to accept the minutes from the February 19, 2013 Planning Commission regular meeting as presented. Marc Peebles seconded the motion and the motion carried unanimously.**

**Final Plat Review: Arbor Creek subdivision located at 1674 State Route 121 North – Ryan Stanger: Ryan Stanger recused himself at 5:03 p.m.** Chairman Davis stated that since there was now a lack of quorum, there would need to be a motion to table this item until the next meeting.

**Mary Anne Medlock made a motion to table the final plat review for Arbor Creek Subdivision located at 1674 State Route 121 North for Ryan Stanger until the next meeting. Jeremy Boyd seconded the motion and the motion carried unanimously. Ryan Stanger re-entered the meeting at 5:04 p.m.**

**Advisory Meeting: Proposed residential PDP east of 1300 North 16<sup>th</sup> Street – Dale Campbell:** Candace Dowdy used a Power Point presentation to show the property that is located to the east of 1300 North 16<sup>th</sup> Street (tract of land behind the former Murray Moose Lodge). The property is owned by Dale Campbell. In 1999 the property was subdivided into two tracts of land. The front tract where the building is located has been sold and Mr. Campbell retained the back tract for future development. The back tract has a restricted approval because it has no road frontage. The property was rezoned from R-4 to B-2 in May of 2004. Recently the property was re-platted and the Planning Commission approved that minor subdivision plat in February of 2013. The new plat created a 40 foot access easement on the front tract allowing access to the back tract where Mr. Campbell is proposing to develop a multi-family housing project. The proposed development will only have one means of ingress/egress and that is off North 16<sup>th</sup>. The site plan shows 70 one bedroom apartments on the remaining 3.38 acre tract of land. Ms. Dowdy stated that there are no density requirements for B-2 zoned property; however, they typically look at the development as if it were being developed in a multi-family zone. The development would be accessed by a 28 foot wide curbed private drive located within the 40 foot access easement. The drive aisles within the development are 25 feet wide and have been approved by the Fire Marshal. The parking spaces are 9 feet x 20 feet. The required parking for this development would be 210 parking spaces with the site plan showing 125 parking spaces. The buildings along the east property line are shown as being

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15 feet off the property line with the one building at the northeast corner of the property being ten feet off the north property line. Sanitation is addressed with a dumpster location shown in the northwest corner of the development. Stormwater detention plans and a landscaping plan will be required through the PDP process. If the developers change the flow of water in any way to the adjoining properties they will be required to get permission from the adjoining property owners. Ms. Dowdy stated that this was an Advisory Meeting for the project and that it would go before the BZA the following night for a Compatibility Hearing. She added that Jim Tate and Dale Campbell were in attendance if the board should have any questions.

Commissioner Krieb said that he had looked back at the proposal in July 2012 when there were 147 bedrooms being proposed. At that time the commissioners were concerned about the density of the project. Currently there are only 70 bedrooms that are being proposed with a significant change in density.

**Final Plat Review: Proposed residential PDP on Lowes Drive – Troy Stovall:** Justin Crice used a Power Point presentation to show the 4.435 acre tract that Troy Stovall purchased on the south side of Lowes Drive, south of The Chase (Murray Place) Apartments. The property was rezoned in February 2008 from R-4 to B-2, which allows residential PDP's as a conditional use. Last month, the project's preliminary plat and conditional use were approved along with a 56 space parking variance. Mr. Stovall plans to develop this property in three phases which are shown on the Final Plat. The Final Plat shows 59 one bedroom units on the lot which is a reduction of one unit from the previous plat. The property has one 30 foot entrance off Lowes Drive with a minimum 24 foot drive aisle that circles around the development. Building setback requirements are being met at this time; however, Mr. Stovall may possibly need a setback variance if he should decide to locate the units in Phase I a little to the north. B-2 zone requires a 50 foot setback on the front. Stormwater detention has yet to be designed and approved by the Planning Department. Landscaping is indicated on the Final Plat with trees and shrubs. Enclosed dumpster areas are shown in three locations on the property and the proposed locations were approved by the Sanitation Department. Fire Marshall Dickie Walls reviewed the site plan for fire access compliance and a fire hydrant will be placed on the property.

Troy Stovall 151 Lake Song Lane, Murray was sworn in. Mr. Stovall stated that they might have to move the three unit building in Phase I to the north, sliding his whole development forward to give more space on the south property line. Mr. Stovall stated that he would like to request a 15 foot front setback variance in case he needs it so he doesn't have to come back later. Ms. Dowdy stated that since the final plat has already been submitted a note could be placed on the final plat with reference to the 15 foot setback variance if approved. Commissioner Peebles asked if there was going to be screening on the east side of the development. Mr. Stovall replied that they could plant bushes or install a fence on that side of the property if that is required.

**Ryan Stanger made a motion to approve the Final Plat for the Residential Planned Development Project on Lowes Drive for Troy Stovall. This approval is contingent upon stormwater detention plans being submitted and approved and the project meeting all other city regulations. In addition he moved to approve a 15 foot front yard setback variance on the north side of the property reducing the front setback from 50 feet to 35 feet if it was deemed necessary. Mr. Stanger also stated that a fence be installed along the east side of the property at some point in the future if there were complaints and/or issues from the adjoining property owners. John Krieb seconded the motion and the motion carried with a 6-0 voice vote.**

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**Public Hearing: Preliminary plat review for commercial PDP located at 201 & 203 North 12<sup>th</sup> Street and 1204 Olive Street – Jimmy John’s Gourmet Sandwiches – Mike Noonan:** Candace Dowdy used a Power Point presentation to show the properties at 201 & 203 North 12<sup>th</sup> Street and 1204 Olive Street that Mr. Mike Noonan is proposing to purchase and construct a 3600 square foot building. The building would consist of two 1800 square foot tenant spaces. This project went through an Advisory Meeting with the Planning Commission in January and was found to be compatible to the area by the BZA in February. This month, Jimmy John’s submitted a preliminary plat for review as a part of the PDP process. The preliminary plat shows a 30 foot access to the property off of 12<sup>th</sup> Street and a 24 foot access off of Olive Street. Traffic would flow in a counter-clockwise manner around the property with drive-thru access on the south side of the building. Ms. Dowdy showed a rendering of the proposed Jimmy John’s. The concrete area in front of the building will be used for outdoor seating. Building setbacks and parking requirements are being met with the parking spaces shown on the perimeters of the drive aisles with 32 (9 foot x 18 foot) spaces and 2 handicap spaces. The plat indicates screening along the west side of the property with a mixture of an eight foot tall privacy fence and Foster Holly trees used as a buffer. Screening is required on the west side because the property does adjoin a residential zone. The enclosed dumpster area is shown in the northwest corner of the lot. This site plan was approved by both the Sanitation Department and the Fire Marshal; however, Ms. Dowdy added that the Fire Marshal has indicated that he would not be in favor of developing this property with only one access.

Chairman Davis opened the public hearing and asked if there was anyone that wished to speak in favor of the project.

John Michael Noonan, 1101 Robinwood Drive, Paducah, Kentucky was sworn in. Mr. Noonan stated that he is the applicant for the project. Mr. Noonan added that he is there to answer any question as were his engineers that were also present. Mr. Noonan addressed the screening and said that he was under the understanding that both the fence and the trees/shrubs were not required; he thought only one was required. The vertical hedge that they are proposing starts out around 6 foot and eventually gets 15-20 feet in height and if it is managed correctly as it grows, it will give a nice tight hedge look. Ms. Dowdy stated that she had misunderstood him in that she thought they were planning on providing both the fence and the evergreens. She added that the Planning Commission and BZA have the right to require both if they see the need for them, but as far as the zoning requirements, an eight foot privacy fence would suffice. Ms. Dowdy read the ordinance in regards to screening and landscaping. Commissioner Krieb said that he was thinking of the difference in an 8 foot privacy fence versus the tree/shrubs in the beginning and added that it would be sometime before the trees/shrubs would be 15-20 feet tall. Commissioner Medlock referred to other projects that were similar to this and made comparisons to the fencing and landscaping at those locations. Commissioner Stanger asked if the landscaping plan is submitted with the final plat approval. Ms. Dowdy replied that typically it is. Mr. Noonan continued that one of their intentions was to not ask for any variances when laying out this project on the property and they haven’t asked for any.

Chairman Davis asked if there was anyone that wished to speak in opposition.

Helen Weaver, 1203 Olive Street, Murray was sworn in. Ms. Weaver stated that she and her husband Max have lived at their address for 50 years. They are directly across the street from the drive-thru and the exit on Olive for this project. She said they have had numerous offers from McDonald’s to buy their property in the past and they have no desire to sell. Ms. Weaver said they were not aware of other meetings before this one. Ms. Weaver added that that area is a very congested area and when the

university lets out, traffic is backed up from 12<sup>th</sup> Street to the Boulevard. Ms. Weaver's concern is having the daily view of a commercial restaurant in front of them.

Warren Edminster, 1308 Olive Boulevard, Murray was sworn in. Mr. Edminster said he objects to having a fast food restaurant located on the corner of 12<sup>th</sup> and Olive with the drive-thru onto Olive, which is a historical neighborhood. He added that Olive is a busy narrow street and agreed with Ms. Weaver that the traffic does back up to the Boulevard from 12<sup>th</sup> Street. Olive Boulevard already has problems with McDonald's trash being thrown in the yards of residents along Olive Boulevard. Mr. Edminster's opinion is that Jimmy John's will triple or quadruple the traffic and trash in the neighborhood. He said that the students would like this restaurant, but there are other places that would be more suitable to this type business. Mr. Edminster said that he does not object to professional office or other businesses going in at that location; however, he does feel that Jimmy John's will irrevocably change the character of the residential neighborhood.

Sara Fineman, 202 North 13<sup>th</sup> Street, Murray was sworn in. Ms. Fineman stated that she is not against businesses; however, she feels that businesses need to be compatible to the area in which they are located. Ms. Fineman does not think that Jimmy John's is a compatible business for their area and suggested that Jimmy John's locate in a more appropriate area. She added that if they did locate on the corner of 12<sup>th</sup> and Olive, she would like for the exit on Olive to be for emergency vehicle access only. Ms. Fineman made suggestions for reducing the parking and adding more green space to the development. Ms. Fineman lives on the back side of Kentucky Fried Chicken and this proposed project. She and her husband have resided in their home for over 25 years and take much pride in it. Ms. Fineman said that these types of developments are forcing the residents to move out of the city. Ms. Fineman brought pictures that she had taken of the drainage situation behind her home and her neighbor's. They are receiving runoff from the businesses on 12<sup>th</sup> Street that have been built up; therefore, they have had to install a French drain system in their backyard. She said that the stormwater is a disaster on the corner of 13<sup>th</sup> & Olive when it rains. The pictures also revealed trash from Kentucky Fried Chicken that had blown into her yard. When she sits in her backyard, she smells KFC and hears the drive-thru speaker. She has complained about the problems with KFC numerous times with no results. They are constantly changing managers and they simply don't care. She stated that there is a big difference in an 8 foot fence and shrubbery. KFC was supposed to plant evergreens along their screening fence 15 years ago and according to the pictures, there are none. Ms. Fineman applauded Mr. Noonan for not asking for any variances to the project; however, she wishes he would rethink this location for his proposed business. *(The pictures were entered as Exhibit A.)*

Eugene M. Schanbacher, 1314 Farris Avenue, Murray was sworn in. Mr. Schanbacher also owns property at 1323 Olive Boulevard. Mr. Schanbacher presented a petition signed by a dozen people from the neighborhood in opposition to the Jimmy John's locating at the proposed location. He said that a lot of people were out of town as it is Spring Break at MSU or he would have had several more signatures. *(The petition was entered as Exhibit B.)* Mr. Schanbacher said that the neighbors are concerned with both the safety of the pedestrians as well as vehicular safety. He added that the value of the residential property would be lowered. He said that he has seen the remnants of trash from KFC and McDonalds and he suspects that there will be additional unsightly appearance of trash scattered about from Jimmy John's. The existing neighboring restaurants have said they will take care of the trash; however, they don't come down the streets and see the debris that is scattered throughout the neighborhood. Mr. Schanbacher stated that Jimmy John's will greatly lower the quality of the neighborhood for which Murray is noted. He said that he could see that there are advantages for the City of Murray to have another business; however, the quality of life in this lovely town is of far more value than the bottom line. Mr. Schanbacher concluded

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that Murray has received several recognitions by taking care of what is really important in the citizen's lives.

Terry Streiter (husband of Sarah Fineman), 202 North 13<sup>th</sup> Street, Murray was sworn in. Mr. Streiter stated that if Jimmy John's is allowed to build on the corner, the fastest way for delivery to the university would be to exit on Olive and go down North 13<sup>th</sup> Street which is the street where he lives. Mr. Streiter stated that he had inquired about installation of speed bumps to North 13<sup>th</sup> and was informed by Ms. Dowdy that speed bumps were not an option. Mr. Streiter concluded that allowing Jimmy John's to locate on the corner of 12<sup>th</sup> and Olive would add a great deal of traffic to Olive and 13<sup>th</sup> Street and that worries him.

Chairman Davis asked if there was any rebuttal.

Mr. Noonan stated when they came to Murray scouting out an area for a location for Jimmy John's, they discovered that many of the areas that were zoned for business were in fact adjacent to residential communities as this one is. He noted that the BZA had already decided that the project was compatible to the area and the reason for this public hearing was to review the preliminary plat and its placement on the property. They have tried to work within the criteria that the city has given them to work with concerning this project. Addressing the drainage, Mr. Noonan said that basically the drainage on the property goes from west to east towards 12<sup>th</sup> Street. They are taking that into consideration and have engineers hired to see that this project does not generate further run-off to the neighboring properties and that it continues to flow in the right direction. Mr. Noonan said that the entrance on Olive is not only critical to emergency personnel, but it is critical to property that sits on a corner lot, that is better for the traffic flow. He reiterated that the proposal is located in a B-4 zone which is compatible to the surrounding businesses.

Mr. Edminster came forward and said that the Commissioners were trying to decide if this proposal was right for the City. Commissioner Medlock advised Mr. Edminster that decision had already been made at the Compatibility Hearing the previous month when the final vote revealed that the project was compatible to the area. Commissioner Krieb explained that one of the key reasons that it was found compatible was that in looking at what could go in the B-4 zone there were a variety of things that the board thought would be more desirable to the residents but a convenience store would probably be less desirable than the Jimmy John's and that was the thought process the board went through in making that decision. It was decided that this proposal would be more desirable to the residents than some of the other possibilities. Mr. Edminster said that if the entrance is allowed on Olive, there would be much more traffic down Olive which would trash the neighborhood. He asked if the board would be "cool" with that. Commissioner Medlock said that she was not "cool" about any of this; however, she did understand and she is trying to work with the developer to put in something that would be respectful of the neighborhood. Through the Planning Commission and BZA she is trying to give voice to what the residents want. She actually has approached the city to see if a stop sign could be put up at 13<sup>th</sup> and Olive to help slow the traffic. Mr. Edminster replied that he appreciated that.

Linda Grey Houck, 800 Sycamore, Murray was sworn in. Ms. Houck stated that she lives four blocks from Huck's and she also picks up trash from their establishment in her yard. She added that Huck's is located in a commercial neighborhood and they have the right to be there. She said that if this proposal is voted down, someday something else will go there because the existing houses are old and will eventually be torn down. If the Fire Marshal said this property is going to have an ingress/egress on both streets, there are always going to be cars using both entrances. Ms. Houck said that if the city doesn't want traffic to go down Olive, they may need to look at rezoning it. Ms. Houck continued that everything on 12<sup>th</sup>

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Street is zoned commercial and sadly the residents that live on streets that back up to 12<sup>th</sup> Street are going to get additional traffic every time something new goes in.

Ms. Fineman began by saying that if this project is inevitable, there are some suggestions that she has for the development. She thinks that the Olive Street entrance should be used for emergency vehicles only. She said the double lane going around the building on the back side could be reduced to one lane and more green space could be added and the existing trees be left. The parking in the rear could be decreased and a 10 foot privacy fence could be used instead of an 8 foot one and certainly the Foster Holly trees should be taller than 5 feet. Sidewalks are needed and curbing. The stormwater detention sounded acceptable that Mr. Noonan had mentioned (if it is true and in place). She asked the Commissioners to be creative in lowering the impact to the people that live in that area.

Ms. Dowdy stated in looking at the Preliminary Plat, the drive aisle on the west side of the building could be reduced to something other than 22 feet. Ms. Dowdy suggested the BZA could grant a small parking variance and angle spaces leaving a little more room for some green space. Commissioner Krieb asked if it would be possible to leave any of the existing trees. Commissioner Stanger said in his experience that this type of construction would damage the root system and the tree would eventually die or fall.

Bobby Deitz, 645 Swift Road, Kirksey, Kentucky was sworn in. Mr. Deitz is the engineer for the project. Mr. Deitz stated that the double arrows shown on the preliminary plat were not necessarily showing a double lane, but to indicate one-way traffic. The allocated 22 feet area in the rear is for people to back out of the parking spaces; however that could be reduced to 18 feet if the spaces were angled. Mr. Deitz continued that angled parking is the most inefficient parking that there is. There is a lot of paving, overhang space because of the angle and not as much usable space. Mr. Deitz said that he did not believe that there could be any existing trees saved in this project. They are a huge liability to a commercial development. They don't typically try to save the trees because most of the time they are going to die within a few years anyway because of the construction. The root system is also detrimental to the paving and curbing. Mr. Deitz said their plan is to help the water situation not only on this property but hopefully the surrounding properties as well by collecting all of the water from the site and piping it to an underground storage. This would require an encroachment permit to make that connection. He added that they can work with authorities in the synchronization of the traffic light to help alleviate the back-up of traffic on Olive. He said that would be to Jimmy John's advantage as well as others. Commissioner Krieb asked if it was practical to have the entrance on Olive used as only an entrance and have the traffic exit off 12<sup>th</sup> Street. Mr. Deitz said that he would rather not comment on that question because he does not know how the business works; therefore, he thought that question should be answered by Mike Noonan.

Chairman Davis closed the public hearing and turned it over to the Commissioners for discussion and a motion.

Commissioner Stanger stated that he had looked over the zoning map and from his observances, all of the property on 12<sup>th</sup> Street abuts residential zoning and all the businesses located on side streets have two entrances, one on 12<sup>th</sup> and one on the side street. Commissioner Krieb asked if Mr. Noonan could comment on using the Olive entrance as only a means of entrance. Mr. Noonan came forward and stated for functionality they would prefer to have both entrances used as ingress/egress. He said they thought they would create more issues on 12<sup>th</sup> Street if their customers were limited to only exiting off 12<sup>th</sup> Street. He added that Mr. Dietz's suggestion of having the KDOT help control this situation with the traffic signal would help. Ms. Dowdy stated that the City Street Department has put a counter strip across Olive to give a more accurate count of current traffic that travels through that area. Commissioner Medlock

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asked if someone could contact the Safety Committee to look into the 13<sup>th</sup> and Olive situation and maybe put up a stop sign at that site. David Roberts said that there are procedures for that and that could be discussed. *Hawkins Teague entered the meeting at 6:30 p.m.*

**John Krieb made a motion to approve the preliminary plat for Jimmy John's commercial Planned Development Project at 201 & 203 North 12<sup>th</sup> Street, and 1204 Olive Street contingent upon the BZA approving the conditional use permit and any necessary variances. Mr. Krieb included that the developers be required to install an 8 foot fence as well as trees/shrubs landscaping on the west property line, landscaping and fencing to the north side of the property and that these items should be shown on the final plat. Ryan Stanger seconded the motion. There was a tie vote of 3-3; therefore, the motion failed. *Jeremy Boyd, Ed Davis and Mary Anne Medlock voted no.***

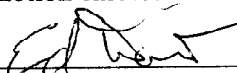
Commissioner Krieb reminded the Commissioners that this project had already passed the Compatibility Hearing and asked if there were issues that could be discussed and resolved to change the outcome of the vote. Commissioner Medlock stated that she had also voted no at the Compatibility Hearing. Commissioner Boyd said that he was in opposition to the project. He added that he had served on this board for a couple of years and couldn't remember very many proposals such as this that had been turned down. He owns two businesses and is very much in favor of business growth to the city; however, he feels it is time to protect the residents that are established and meaningful to the city. Commissioner Krieb asked Attorney Pitman if it was permissible to stop the project at this stage. Attorney Pitman said that it was.


**Questions and Comments:** Commissioner Boyd commented about a project getting to the point that Jimmy John's got to without a lot of public knowledge. He was concerned with the developers spending so much time and money by this point and then getting turned down. Commissioner Boyd said there was obviously a lot of concern with the amount of citizens that turned out for the hearing. He understands that adjoining property owners are contacted and made aware of the hearings; however, he would like to know if there is something to change the order of steps taken to review proposed PDP's in the future to prevent a closure of a project at this point. Commissioner Krieb stated that there was an extremely large turnout at the last BZA meeting concerning this matter. Citizens at this meeting have had the same basic concerns and comments as they had at the previous BZA meeting. Mr. Roberts stated that Planning Staff has had conversation with Mr. Noonan previously and this is not the first time that these issues have been brought to his attention.

Justin Crice informed the Commissioners of a workshop on April 9<sup>th</sup> that will be sponsored by the city. Dinner will be served. The EPA will be coming in to help look at issues with the Zoning Ordinance and the possibility for changes.

Ms. Dowdy made the Commissioners aware of a possible Special Call Planning Commission meeting on April 2<sup>nd</sup> at 5:00 p.m. She said as soon as the Planning Department knows whether the applicant wants to move forward with this meeting they will send out an e-mail to confirm attendance by the Commissioners.

**Adjournment:** Jeremy Boyd made a motion to adjourn. Marc Peebles seconded the motion and the motion carried with a unanimous vote. *The meeting adjourned at 6:43 p.m.*

  
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Vice-Chairman, Ed Davis

  
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Recording Secretary, Reta Gray

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Commissioners Absent: Loretta Jobs, Tom Kind, Ed Pavlick, and Kevin Perry

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Public Hearing: Preliminary plat review for commercial PDP located at 201 & 203 North 12th Street and 1204 Olive Street — Jimmy John's Gourmet Sandwiches — Mike Noonan: Candace Dowdy used a Power Point presentation to show the properties at 201 & 203 North 12th Street and 1204 Olive Street that Mr. Mike Noonan is proposing to purchase and construct a 3600 square foot building. The building would consist of two 1800 square foot tenant spaces. This project went through an Advisory Meeting with the Planning Commission in January and was found to be compatible to the area by the BZA in February. This month, Jimmy John's submitted a preliminary plat for review as a part of the PDP process. The preliminary plat shows a 30 foot access to the property off of 12th Street and a 24 foot access off of Olive Street. Traffic would flow in a counter-clockwise manner around the property with drive-thru access on the south side of the building. Ms. Dowdy showed a rendering of the proposed Jimmy John's. The concrete area in front of the building will be used for outdoor seating. Building setbacks and parking requirements are being met with the parking spaces shown on the perimeters of the drive aisles with 32 (9 foot x 18 foot) spaces and 2 handicap spaces. The plat indicates screening along the west side of the property with a mixture of an eight foot tall privacy fence and Foster Holly trees used as a buffer. Screening is required on the west side because the property does adjoin a residential zone. The enclosed dumpster area is shown in the northwest corner of the lot. This site plan was approved by both the Sanitation Department and the Fire Marshal; however, Ms. Dowdy added that the Fire Marshal has indicated that he would not be in favor of developing this property with only one access. Chairman Davis opened the public hearing and asked if there was anyone that wished to speak in favor of the project.

John Michael Noonan, 1101 Robinwood Drive, Paducah, Kentucky was sworn in. Mr. Noonan stated that he is the applicant for the project. Mr. Noonan added that he is there to answer any question as were his engineers that were also present. Mr. Noonan addressed the screening and said that he was under the understanding that both the fence and the trees/shrubs were not required; he thought only one was required. The vertical hedge that they are proposing starts out around 6 foot and eventually gets 15-20 feet in height and if it is managed correctly as it grows, it will give a nice tight hedge look. Ms. Dowdy stated that she had misunderstood him in that she thought they were planning on providing both the fence and the evergreens. She added that the Planning Commission and BZA have the right to require both if they see the need for them, but as far as the zoning requirements, an eight foot privacy fence would suffice. Ms. Dowdy read the ordinance in regards to screening and landscaping. Commissioner Krieb said that he was thinking of the difference in an 8 foot privacy fence versus the tree/shrubs in the beginning and added that it would be sometime before the trees/shrubs would be 15-20 feet tall. Commissioner Medlock referred to other projects that were similar to this and made comparisons to the fencing and landscaping at those locations. Commissioner Stanger asked if the landscaping plan is submitted with the final plat approval. Ms. Dowdy replied that typically it is. Mr. Noonan continued that one of their intentions was to not ask for any variances when laying out this project on the property and they haven't asked for any. Chairman Davis asked if there was anyone that wished to speak in opposition.

Helen Weaver, 1203 Olive Street, Murray was sworn in. Ms. Weaver stated that she and her husband Max have lived at their address for 50 years. They are directly across the street from the drive-thru and the exit on Olive for this project. She said they have had numerous offers from McDonald's to buy their property in the past and they have no desire to sell. Ms. Weaver said they were not aware of other meetings before this one. Ms. Weaver added that that area is a very congested area and when the

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university lets out, traffic is backed up from 12th Street to the Boulevard. Ms. Weaver's concern is having the daily view of a commercial restaurant in front of them.

Warren Edminster, 1308 Olive Boulevard, Murray was sworn in. Mr. Edminster said he objects to having a fast food restaurant located on the corner of 12th and Olive with the drive-thru onto Olive, which is a historical neighborhood. He added that Olive is a busy narrow street and agreed with Ms. Weaver that the traffic does back up to the Boulevard from 12th Street. Olive Boulevard already has problems with McDonald's trash being thrown in the yards of residents along Olive Boulevard. Mr. Edminster's opinion is that Jimmy John's will triple or quadruple the traffic and trash in the neighborhood. He said that the students would like this restaurant, but there are other places that would be more suitable to this type business. Mr. Edminster said that he does not object to professional office or other businesses going in at that location; however, he does feel that Jimmy John's will irrevocably change the character of the residential neighborhood.

Sara Fineman, 202 North 13th Street, Murray was sworn in. Ms. Fineman stated that she is not against businesses; however, she feels that businesses need to be compatible to the area in which they are located. Ms. Fineman does not think that Jimmy John's is a compatible business for their area and suggested that Jimmy John's locate in a more appropriate area. She added that if they did locate on the corner of 12th and Olive, she would like for the exit on Olive to be for emergency vehicle access only. Ms. Fineman made suggestions for reducing the parking and adding more green space to the development. Ms. Fineman lives on the back side of Kentucky Fried Chicken and this proposed project. She and her husband have resided in their home for over 25 years and take much pride in it. Ms. Fineman said that these types of developments are forcing the residents to move out of the city. Ms. Fineman brought pictures that she had taken of the drainage situation behind her home and her neighbor's. They are receiving runoff from the businesses on 12th Street that have been built up; therefore, they have had to install a French drain system in their backyard. She said that the stormwater is a disaster on the corner of 131h & Olive when it rains. The pictures also revealed trash from Kentucky Fried Chicken that had blown into her yard. When she sits in her backyard, she smells KFC and hears the drive-thru speaker. She has complained about the problems with KFC numerous times with no results. They are constantly changing managers and they simply don't care. She stated that there is a big difference in an 8 foot fence and shrubbery. KFC was supposed to plant evergreens along their screening fence 15 years ago and according to the pictures, there are none. Ms. Fineman applauded Mr. Noonan for not asking for any variances to the project; however, she wishes he would rethink this location for his proposed business. (The pictures were entered as Exhibit A.)

Eugene M. Schanbacher, 1314 Farris Avenue, Murray was sworn in. Mr. Schanbacher also owns property at 1323 Olive Boulevard. Mr. Schanbacher presented a petition signed by a dozen people from the neighborhood in opposition to the Jimmy John's locating at the proposed location. He said that a lot of people were out of town as it is Spring Break at MSU or he would have had several more signatures. (The petition was entered as Exhibit B.) Mr. Schanbacher said that the neighbors are concerned with both the safety of the pedestrians as well as vehicular safety. He added that the value of the residential property would be lowered. He said that he has seen the remnants of trash from KFC and McDonalds and he suspects that there will be additional unsightly appearance of trash scattered about from Jimmy John's. The existing neighboring restaurants have said they will take care of the trash; however, they don't come down the streets and see the debris that is scattered throughout the neighborhood. Mr. Schanbacher stated that Jimmy John's will greatly lower the quality of the neighborhood for which Murray is noted. He said that he could see that there are advantages for the City of Murray to have another business; however, the quality of life in this lovely town is of far more value than the bottom line. Mr. Schanbacher concluded

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that Murray has received several recognitions by taking care of what is really important in the citizen's lives.

Terry Streiter (husband of Sarah Fineman), 202 North 13th Street, Murray was sworn in. Mr. Streiter stated that if Jimmy John's is allowed to build on the corner, the fastest way for delivery to the university would be to exit on Olive and go down North 13th Street which is the street where he lives. Mr. Streiter stated that he had inquired about installation of speed bumps to North 13th and was informed by Ms. Dowdy that speed bumps were not an option. Mr. Streiter concluded that allowing Jimmy John's to locate on the corner of 12th and Olive would add a great deal of traffic to Olive and 13th Street and that worries him. Chairman Davis asked if there was any rebuttal.

Mr. Noonan stated when they came to Murray scouting out an area for a location for Jimmy John's, they discovered that many of the areas that were zoned for business were in fact adjacent to residential communities as this one is. He noted that the BZA had already decided that the project was compatible to the area and the reason for this public hearing was to review the preliminary plat and it's placement on the property. They have tried to work within the criteria that the city has given them to work with concerning this project. Addressing the drainage, Mr. Noonan said that basically the drainage on the property goes from west to east towards 12th Street. They are taking that into consideration and have engineers hired to see that this project does not generate further run-off to the neighboring properties and that it continues to flow in the right direction. Mr. Noonan said that the entrance on Olive is not only critical to emergency personnel, but it is critical to property that sits on a corner lot, that is better for the traffic flow. He reiterated that the proposal is located in a B-4 zone which is compatible to the surrounding businesses.

Mr. Edminster came forward and said that the Commissioners were trying to decide if this proposal was right for the City. Commissioner Medlock advised Mr. Edminster that decision had already been made at the Compatibility Hearing the previous month when the final vote revealed that the project was compatible to the area. Commissioner Krieb explained that one of the key reasons that it was found compatible was that in looking at what could go in the B-4 zone there were a variety of things that the board thought would be more desirable to the residents but a convenience store would probably be less desirable than the Jimmy John's and that was the thought process the board went through in making that decision. It was decided that this proposal would be more desirable to the residents than some of the other possibilities. Mr. Edminster said that if the entrance is allowed on Olive, there would be much more traffic down Olive which would trash the neighborhood. He asked if the board would be "cool" with that. Commissioner Medlock said that she was not "cool" about any of this; however, she did understand and she is trying to work with the developer to put in something that would be respectful of the neighborhood. Through the Planning Commission and BZA she is trying to give voice to what the residents want. She actually has approached the city to see if a stop sign could be put up at 13th and Olive to help slow the traffic. Mr. Edminster replied that he appreciated that.

Linda Grey Houck, 800 Sycamore, Murray was sworn in. Ms. Houck stated that she lives four blocks from Huck's and she also picks up trash from their establishment in her yard. She added that Huck's is located in a commercial neighborhood and they have the right to be there. She said that if this proposal is voted down, someday something else will go there because the existing houses are old and will eventually be torn down. If the Fire Marshal said this property is going to have an ingress/egress on both streets, there are always going to be cars using both entrances. Ms. Houck said that if the city doesn't want traffic to go down Olive, they may need to look at rezoning it. Ms. Houck continued that everything on 12th

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Street is zoned commercial and sadly the residents that live on streets that back up to 12th Street are going to get additional traffic every time something new goes in.

Ms. Fineman began by saying that if this project is inevitable, there are some suggestions that she has for the development. She thinks that the Olive Street entrance should be used for emergency vehicles only. She said the double lane going around the building on the back side could be reduced to one lane and more green space could be added and the existing trees be left. The parking in the rear could be decreased and a 10 foot privacy fence could be used instead of an 8 foot one and certainly the Foster Holly trees should be taller than 5 feet. Sidewalks are needed and curbing. The stormwater detention sounded acceptable that Mr. Noonan had mentioned (if it is true and in place). She asked the Commissioners to be creative in lowering the impact to the people that live in that area.

Ms. Dowdy stated in looking at the Preliminary Plat, the drive aisle on the west side of the building could be reduced to something other than 22 feet. Ms. Dowdy suggested the BZA could grant a small parking variance and angle spaces leaving a little more room for some green space. Commissioner Krieb asked if it would be possible to leave any of the existing trees. Commissioner Stanger said in his experience that this type of construction would damage the root system and the tree would eventually die or fall.

Bobby Deitz, 645 Swift Road, Kirksey, Kentucky was sworn in. Mr. Deitz is the engineer for the project. Mr. Deitz stated that the double arrows shown on the preliminary plat were not necessarily showing a double lane, but to indicate one-way traffic. The allocated 22 feet area in the rear is for people to back out of the parking spaces; however that could be reduced to 18 feet if the spaces were angled. Mr. Deitz continued that angled parking is the most inefficient parking that there is. There is a lot of paving, overhang space because of the angle and not as much usable space. Mr. Deitz said that he did not believe that there could be any

existing trees saved in this project. They are a huge liability to a commercial development. They don't typically try to save the trees because most of the time they are going to die within a few years anyway because of the construction. The root system is also detrimental to the paving and curbing. Mr. Deitz said their plan is to help the water situation not only on this property but hopefully the surrounding properties as well by collecting all of the water from the site and piping it to an underground storage. This would require an encroachment permit to make that connection. He added that they can work with authorities in the synchronization of the traffic light to help alleviate the back-up of traffic on Olive. He said that would be to Jimmy John's advantage as well as others. Commissioner Krieb asked if it was practical to have the entrance on Olive used as only an entrance and have the traffic exit off 12th Street. Mr. Deitz said that he would rather not comment on that question because he does not know how the business works; therefore, he thought that question should be answered by Mike Noonan.

Chairman Davis closed the public hearing and turned it over to the Commissioners for discussion and a motion.

Commissioner Stanger stated that he had looked over the zoning map and from his observations, all of the property on 12th Street abuts residential zoning and all the businesses located on side streets have two entrances, one on 12111 and one on the side street. Commissioner Krieb asked if Mr. Noonan could comment on using the Olive entrance as only a means of entrance. Mr. Noonan came forward and stated for functionality they would prefer to have both entrances used as ingress/egress. He said they thought they would create more issues on 12th Street if their customers were limited to only exiting off 12th Street. He added that Mr. Dietz's suggestion of having the KDOT help control this situation with the traffic signal would help. Ms. Dowdy stated that the City Street Department has put a counter strip across Olive to give a more accurate count of current traffic that travels through that area. Commissioner Medlock

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asked if someone could contact the Safety Committee to look into the 13th and Olive situation and maybe put up a stop sign at that site. David Roberts said that there are procedures for that and that could be discussed. Hawkins Teague entered the meeting at 6:30 p.m.

John Krieb made a motion to approve the preliminary plat for Jimmy John's commercial Planned Development Project at 201 & 203 North 126 Street, and 1204 Olive Street contingent upon the BZA approving the conditional use permit and any necessary variances. Mr. Krieb included that the developers be required to install an 8 foot fence as well as trees/shrubs landscaping on the west property line, landscaping and fencing to the north side of the property and that these items should be shown on the final plat. Ryan Stanger seconded the motion. There was a tie vote of 3-3; therefore, the motion failed. Jeremy Boyd, Ed Davis and Mary Anne Medlock voted no.

Commissioner Krieb reminded the Commissioners that this project had already passed the Compatibility Hearing and asked if there were issues that could be discussed and resolved to change the outcome of the vote. Commissioner Medlock stated that she had also voted no at the Compatibility Hearing. Commissioner Boyd said that he was in opposition to the project. He added that he had served on this board for a couple of years and couldn't remember very many proposals such as this that had been turned down. He owns two businesses and is very much in favor of business growth to the city; however, he feels it is time to protect the residents that are established and meaningful to the city. Commissioner Krieb asked Attorney Pitman if it was permissible to stop the project at this stage. Attorney Pitman said that it was.

Questions and Comments: Commissioner Boyd commented about a project getting to the point that Jimmy John's got to without a lot of public knowledge. He was concerned with the developers spending so much time and money by this point and then getting turned down. Commissioner Boyd said there was obviously a lot of concern with the amount of citizens that turned out for the hearing. He understands that adjoining property owners are contacted and made aware of the hearings; however, he would like to know if there is something to change the order of steps taken to review proposed PDP's in the future to prevent a closure of a project at this point. Commissioner Krieb stated that there was an extremely large turnout at the last BZA meeting concerning this matter. Citizens at this meeting have had the same basic concerns and comments as they had at the previous BZA meeting. Mr. Roberts stated that Planning Staff has had conversation with Mr. Noonan previously and this is not the first time that these issues have been brought to his attention.

Justin Crice informed the Commissioners of a workshop on April 9th that will be sponsored by the city. Dinner will be served. The EPA will be coming in to help look at issues with the Zoning Ordinance and the possibility for changes.

Ms. Dowdy made the Commissioners aware of a possible Special Call Planning Commission meeting on April 2<sup>nd</sup> at 5:00 p.m. She said as soon as the Planning Department knows whether the applicant wants to move forward with this meeting they will send out an e-mail to confirm attendance by the Commissioners.

Adjournment: Jeremy Boyd made a motion to adjourn. Marc Peebles seconded the motion and the motion carried with a unanimous vote. The meeting adjourned at 6:43 p.m.

Vice- chairman, Ed Davis      Recording Secretary, Reta Gray