

**MURRAY PLANNING COMMISSION MINUTES
REGULAR MEETING
TUESDAY, JULY 21, 2020
4:30 P.M.**

The Murray Planning Commission met in regular session on Tuesday, July 21, 2020 at 4:30 p.m. in the council chambers of City Hall.

Commissioners Present: Tom Kind, John Krieb, Robin Zhang, Jim Foster, Martin Milkman, Marc Peebles and Bobby Deitz

Commissioners Absent: none

Also Present: Maurice Thomas, Justin Smith, Attorney David Perlow, Zach Warren, Jim Osborne, David Pike, Sherry Lewis, William Grigsby and wife, Troy Stovall, Teresa Perkins, Helen Spann, Clint McCoy, Brenda Solomito-Basar, Kenneth Wayne Maynard, Jason Morris, Ken Andrus, Norma Sue Smith and public audience

Chairman Tom Kind called the meeting to order and welcomed all guests. He then asked Maurice Thomas to call the roll. At this time the Chairman asked if there were any changes to the minutes from the regular Planning Commission meeting on June 16, 2020.

John Krieb made a motion to approve the minutes from the regular Planning Commission Meeting on June 16, 2020 as presented. Martin Milkman seconded the motion and the motion carried unanimously.

Public Hearing: Uniform Application Review for a new cellular antenna tower to be located at 1725 Lowes Drive – Applicant: AT&T Mobility: Justin Smith said that David Pike with Pike Legal was there to represent AT&T Mobility. Mr. Pike came forward to make the presentation and he introduced the team that was there with him. (Keith Brown, Sherry Lewis, Glen Katz, Bill Grigsby and wife, Marshall Slagle [was not in attendance because of his vulnerability to Covid-19, but he had submitted a report and was available by telephone if needed], and property owner Troy Stovall.) He explained that all of his team were professionals in their field and gave some of their credentials. Mr. Pike thanked Candace and Justin for the numerous phone conversations they had concerning the zoning regulations. He then handed out reference materials (Exhibit A) to the Commissioners, Planning Staff and Attorney Perlow. Mr. Pike was sworn in at this time.

Mr. Pike explained the reference material section by section. He stated that it is their goal to meet local regulations. They have met them with this proposal as the setbacks far exceed the required setbacks for the B-2 (Highway Business) Zone. The site plan was shown. The tower is engineered as a four-carrier tower which maximizes the potential for future carriers to place their antennas on this tower eliminating the need for new towers in the immediate vicinity. The proposal is a 170-foot total height tower that is engineered to bend over without breaking in the case of a catastrophic event. That is a tall structure; however, it is one of the shortest towers in

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the entire county. The average height of FCC registered towers in this county is over 325 feet. The tower will be over 200 feet from the nearest structure and approximately 375 feet from the nearest residence. Cell towers are placed in a pre-prescribed search area because of the need to integrate with their existing network. There are no registered towers within this search area and the property they have chosen is Commercial. Mr. Slagle's report indicated that this proposal meets all of the City's regulatory requirements; meets the terms of the Comprehensive Plan; meets preferences in terms of real estate selection and states that any denial would be in violation of both State and Federal law. Mr. Pike then summarized Mr. Katz's report. Mr. Katz found that this proposal will have no adverse effect on the real estate valuation. Mr. Grigsby's report stated that the proposed tower will be built to all of the state and national design criteria and indicated that if the structure ever suffered a direct hit from a tornado, it would be the last thing standing because it is built to a higher structural set of requirements than other conventional types of buildings located here in the county. Federal Telecommunications Law was addressed. Mr. Pike explained that an application can only be denied based on substantial evidence. Not meeting the City's requirements would be substantial evidence. He reiterated that they not only meet those requirements, they exceed them. The applicant is registered with the Kentucky Public Service Commission because they have a mandate to provide ever improving service not only at the Federal level but requirements from the Kentucky Public Service Commission. Today over half of all homes only have a wireless phone. 70 percent of emergency calls are made through wireless devices. This is why it is so critical that they provide high quality wireless service that works first time and every time. That is their mission. This tower will feature a key new development which is called FirstNet. After 9/11 when the Presidential Commissions Report came out it was recommended that there should be an independent scalable set of band width for emergency responders to use during emergencies because of what happened during 9/11 when everyone was trying to use their phones simultaneously and as a result, emergency personnel could not place calls and couldn't transmit data effectively. Within the last two years the Federal Government adopted a standard that is called FirstNet and AT&T is the provider of that. Kentucky is opted into the system. This will allow them to immediately dedicate enough band width out of each individual site or combination of sites, state wide or nationwide so that emergency responders will not be locked out of the system based on capacity overloads. Mr. Pike concluded that he would like to enter everything that was filed prior to today as exhibits (including the binder). This is important stuff and they have a mission to serve our community as a whole. It is their hope to receive the Commission's approval because they already have every other approval that is required. Mr. Pike thanked the Commissioners for their consideration in this matter.

At this time, Chairman Kind asked if the Commissioners had any questions for Mr. Pike or his group. Questions were asked by the Commissioners on clarification and how the decision was made on the proposed location for the tower.

Sherry Lewis came forward and was sworn in. She explained that when the search area is placed, they look at their existing sites, what the need for the new site is, whether it's to cover an area that they don't currently cover, whether it's to help to provide off-load due to sites that they have that are experiencing capacity. They only have so much spectrum to use in a site. Once that's exhausted, they need to have another site to take that capacity so that everyone can make a call. They look at spacing between the existing sites and the new site, where they need to be located to cover where the traffic currently is and if there is a hot spot of traffic in a particular area; then they position the site within that area. The size of the area that they make the circle depends on

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similar rules. She said it's a science of not too far away from where they need to cover or not too close to where they already are to balance the network, traffic and coverage so that everything performs as it should. The service goes well beyond the circle (approximately 2.5 miles from the tower). She then explained the sectors for each section of the tower.

Mr. Grigsby was asked to come forward to answers questions. He was sworn in. Chairman Kind wanted the definition of "lean sandy clay" that was used in his part of the report. Clays are classified as lean clay or fat clay. Lean sandy clay is basically clay with sand in it and is not as sensitive to moisture change. Fat clay is expansive with a higher moisture content; it swells and is not appropriate to build on. Chairman Kind explained that this property is not in a Flood Plain right now; however, before the property was filled in, it did actually lie in a Flood Plain. Mr. Grigsby said that their surveyor has the responsibility to determine if the property is in a Flood Plain or not. Commissioner Milkman asked if earthquakes could affect the tower. Mr. Grigsby replied that the more flexible the structure, the less susceptible it is to earthquakes. The loads due to winds are ten times the load to an earthquake due to the flexibility of the structure.

Troy Stovall was called to answers questions. He was sworn in. Commissioner Krieb said that Mr. Stovall came before the Commissioners for permission to put duplexes in this area at one time and he was curious what the status was on that proposal. Mr. Stovall replied that it had taken him three years to get a permit and by that time, he just didn't want to proceed with it; thus, he has no plans to go through with that proposal. Justin Smith clarified that the time limit had expired from when he first brought the proposal before the Commissioners and if he should decide he wants to follow through with it, he will have to bring it back before the Commissioners at that time.

Chairman Kind opened the public hearing and asked if there was anyone that wished to speak in favor to the request.

Teresa Perkins came forward and was sworn in. She said that she was actually there for another issue but she wished to speak concerning this matter. Ms. Perkins resides at 504 Northwood which is close to the proposed tower site. Her husband is terminally ill and twice she has called 911 and she has been unable to complete her call because her AT&T service would throw her call to a Sprint tower and it would say that she had to call back and make a collect call. She said the service is quite shady and has been a nightmare. Ms. Perkins was not blaming anyone for this; however, with her personal experiences she could see that this proposed tower would be a value to the area.

Chairman Kind asked if there was anyone that wished to speak in opposition to the proposal.

Helen Spann came forward and was sworn in. Ms. Spann said that she thought that everyone that knew anything about telecommunications would be for improved telecommunications and that everything she had heard Mr. Pike say seemed to be okay. She is a resident of Murray and noted that Mr. Pike and his entourage were going to get in their car and they were going to leave here. Ms. Spann owns property in the area and this is important to her and it is important to the other people that she is there to speak for. She passed out material to the Commissioners. (Exhibit B) Ms. Spann thought the Commissioners should have been able to review the original application that had been submitted in addition to the report that Mr. Pike gave. Justin explained that the Commissioners have the information that Pike Legal handed out and the application that

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she spoke of was reviewed by Staff and our attorney David Perlow. The Mayor and Council members were also made aware of the application. Ms. Spann noted that Council does not vote on this; that Planning Commission oversees cell towers. Ms. Spann proceeded. She does not feel that she, other appropriate land owners or the public were properly notified or given adequate information concerning the time and date for the meeting. She referred to certified letters from Pike Legal and advertisements in the Murray Ledger. Ms. Spann reviewed the Comprehensive Plan and the way cell tower requests were to be addressed noting that there is a concern for an environmental and safety viewpoint and Murray will work with the facilities to seek locations where they blend with the surrounding area and address the safety concerns during disasters. B-2 zone restrictions and setbacks were also reviewed. Ms. Spann said that the tower is supposed to be able to withstand windspeeds of up to 106 mph with no ice, but only 30 mph with 1.5 inch of ice. Then she referred back to the winter of 2009 and how many things collapsed during the ice storm that Murray encountered. Ms. Spann is the owner of the Mason Commons property that abuts Mr. Stovall's property. There is a garden area at the end of her building. The fencing has eroded because of the way that Mr. Stovall's property has been dug out 10-15 feet below grade right on their property line. There is a church next door to Mason Commons with an educational building on the property line and a daycare center (The Lily Pad) that is next to the church. There needs to be a retaining wall to protect their property with what has already been done. If they take additional footage and disturb the soil, how much additional erosion and undercut will be taking place? Ms. Spann has spoken with Judge Executive Kenny Imes at length and he has indicated a real possibility of locating the pole on the Transit Authority property, which is very close to the proposed site. Before any action is taken she thinks that that location should be pursued. She does appreciate the appraiser that did the work as she is also a certified appraiser; however, for him to say that this tower installation will have no affect on land value is just wrong. She does not agree with that.

Commissioner Milkman asked if they should table this discussion and take care of the other items of business. Chairman Kind said that they needed to just move along with this item. He called for Mr. Pike's rebuttal.

Mr. Pike reiterated that this request meets all of the City's regulatory requirements and exceeds those requirements when it comes to setbacks. He explained the information included in the letters that went out and that the letters were mandated by State Statute. He then tendered the announcement that came out in the Murray Ledger on July 8th as (Exhibit C). It was passed around for the Commissioners to see. He stated that letters had been mailed to the necessary persons and proof of all that has been filed with the Planning Staff. Aesthetics cannot be considered under Federal Law in this proceeding, so how it looks or how close it is to someone's property is irrelevant. In terms of safety of the structure, they have provided multiple levels of expert opinions. The proposal is over-engineered beyond what the State and Federal requires by engineering it as a zero-foot fall zone tower. Under Federal Law lay testimony cannot be given preference over expert testimony because it cannot be considered substantial evidence. This proceeding is different from other proceedings because it is governed by the Federal Telecommunications Act and the unique KY State Statutes that apply only to cell tower proceedings. The site plan shows the lease area is 25 feet from the property line. The lease area is 75 feet wide. The tower is in the middle of that; therefore, the proposed tower will be 62.5 feet from the lot line. The question was asked if there was a huge wind storm and the tower broke, where would it break. The chief engineer that designed this tower says that the tower will deflect at the point of maximum stress. The maximum stress point will be 53 feet 3 inches above

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the base. It will bend over at that point, not break off. Once it bends over, then the wind load will no longer be on the tower and it will just hang there. It will never touch the ground. There has been a lot of research done on the monopoles on the internet and they have never found where the monopole has failed under a wind load.

Clint McCoy came forward and was sworn in. Mr. McCoy is the Pastor at Emanuel Baptist Church which is on the south end of the proposal. The building that is on the church property is built right on the property line. His concern is the correction of erosion. He wanted to know if the issues of a retaining wall and the control of water to prevent any further erosion would be addressed if the tower is installed. And also, where the land has been dug out, with that large of a drop his concern as a pastor is for the children playing in that area.

Mr. Pike replied that them and their contractors are obligated to adhere to all construction standards and all silting problems and the like. If not, they can be sued.

At this time Chairman Kind closed the public hearing and turned the item over to the Commissioners for additional discussion and a motion.

Commissioner Krieb stated that the erosion that they are concerned with is not in the site that they are proposing the tower be constructed. He did not feel that the erosion was irrelevant to the lease site. Bobby Deitz agreed. Justin explained that erosion concerns can be addressed with our Stormwater Supervisor, James Oakley.

Bobby Deitz made a motion to approve the application for a new cellular antenna tower to be located at 1725 Lowes Drive based on the fact that the application meets the guidelines set forth in the Zoning Ordinance as well as the terms of the Comprehensive Plan. John Krieb seconded the motion. The motion carried with a 7-0 roll call vote.

Public Hearing: Zoning Map Amendment request to rezone 11.024 acres of the property located at 1414 North 12th Street from B-2 (Highway Business District) Zone to R-3A (Multi-Family Residential District) Zone – Applicant: Riviera Courts MHP Murray KY LLC: Justin Smith showed an aerial map of the Riviera Courts property. The property consists of 35.359 acres and is split zoned. 11.024 acres of the property is zoned B-2. The remainder is R-3A. The properties to the north, west and south are B-2 and the properties to the east and south are R-4 (Multi-Family Residential). In 2008, the B-2 portion of the property was rezoned for commercial use. The former developer intended on moving the trailer park out of town and constructing multi-family residential apartments with some commercial businesses on the North 12th Street property. That development fell through. A new investor recently bought Riviera Courts Mobile Home Park and would like to upgrade the entire park with new mobile homes, landscaping, a small children's park, and repave all of the private drives throughout the park. The B-2 zoned part of the property poses a challenge for their immediate overall plan. Approximately 70-80 lots are affected by this zoning change request. The current residential area has approximately 150 lots. If this request is denied, the vacant lots will have to remain vacant (that are in the B-2 Zone) and no additional trailers can be moved in. Justin stated that the Comprehensive Plan Land Use Map and the Future Land Use Map both designate the entire trailer park as Commercial. The reason for the designation by the Comprehensive Plan Committee and Planning Commission was to hopefully see more commercial development in the future along North 12th Street (which is running out of vacant commercial land to develop).

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In order to approve the zoning amendment request, the Commission would need to make one of the two findings:

- The existing zoning classification given to the property is inappropriate and the proposed zoning classification is appropriate.
- There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted Comprehensive Plan and which have substantially altered the basic character of such area.

At this time Chairman Kind opened the public hearing and asked if there was anyone that wished to speak in favor to the request.

Brenda Solomito-Basar came forward and was sworn in. She stated that she was there representing the applicant. Ms. Solomito-Basar thanked Justin with the help and guidance he had provided with the application. The owners purchased the property in 2019. They plan to invest a lot of money into the upgrades for the betterment of the park. It was first brought to their attention that all of the trailer park was not properly zoned when they were unable to get permits to bring in new trailers and make changes to existing ones. They feel like the changes that were made to the zoning in 2008 were a bit arbitrary. They also feel that the 2009 update to the Comprehensive Plan was done because of the existing zoning of the B-2 and the information provided at the time that the trailer park was going to move out of the city limits. The new owners are basically at a standstill in making the improvements that they desire. They do not feel that the B-2 zoning is appropriate for this site in 2020 and that the land use is consistent with the R-3A zoning. Ms. Solomito-Basar added that there have been market conditions, economic factors and a lot of other changes that have happened since then to prove that the B-2 was the appropriate zoning; however, there were no other commercial buyers from 2008 to 2020 for the property that was zoned B-2. She concluded that even though you have it zoned as commercial, it doesn't mean that it will ever develop as commercial.

Chairman Kind asked if there was anyone that wished to speak in opposition to the request.

Kenneth Wayne Maynard came forward and was sworn in. Mr. Maynard resides on North 4th Street behind the park. He was concerned with what could actually go in the trailer park B-2 area if it was rezoned to R-3A. Justin explained that R-3A is set up specifically for trailers only. Mr. Maynard said that he does not see how they can get any additional trailers in there. He said that they are closer than there were to start with. He also wanted to know how this would affect the traffic on North 4th Street. Justin replied that without a proper traffic study they couldn't provide an answer.

Ms. Solomito-Basar came forward to reply to Mr. Maynard's questions. She explained that this request is not to build anything new. It is to simply upgrade and make safe and repair what is existing, but they can't do upgrades until the property is rezoned. She said that this is a low generator of traffic; however, she would be able to discuss this further with Mr. Maynard after the meeting after talking to her client. Residential zoning produces less traffic than an office building, commercial or industrial. She explained that each lot has utility connections, so there will never be an increase in what is constructed today. There is no intention to increase the density of the park.

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Justin said that the manager of the Mobile Home Park was there to answer questions also. Chairman Kind asked him to come forward.

Jason Morris came forward and was sworn in. Mr. Morris said that there are 261 spots in the park. There are 100 new mobile homes that have been put in so far and there are 40 more on order. The lots and driveways are already laid out.

Chairman Kind closed the public hearing and called for a motion. Bobby Deitz said that he was a member of the Comprehensive Plan Committee and noted that we are running out of business property along the 12th Street corridor. We have expanded about as far north as we can go before we are out of sanitary sewer. Hotels have developed in the area and Octane Drive is building up. There is a huge property on the west side of 12th Street that will be available for development, but a strip of property like this particular one along 12th Street does not exist. Bobby said that it's unfortunate that they rezoned the property years ago; however, in his opinion, he thinks it will be a mistake to let the property go back to R-3A. This property is unique in Murray, KY in that it is situated between two highways and it abuts other B-2 zones. If you looked at the entire property being B-2 zone, there is nothing else in Murray like this available. One day, it is possible to see all of this property developed as Commercial. Bobby foresees that as the value of land gets high enough, they will move all the trailers out and sell the property as Commercial. At one time, Riviera Courts was at the edge of town, but it is not at the edge of town today. Commissioner Krieb stated that he was also part of the Comprehensive Plan Committee and he is not sure that it was a good decision on their part to list it as Commercial since it is on the frontage road, but at the same time he understands what Bobby has said. Chairman Kind said that he had a concern about the folks that live in the trailer park now and what they would do if they didn't have a place to live. Jim Foster was concerned about splitting up a piece of property that someone owns into two chunks. You are allowing one type of zone in one piece and one type of zone in the other. He thinks the entire piece of property should be one zone. Bobby Deitz said that the owners purchased the property with it already being zoned B -2 and that most of the clients that has worked for get the zoning changed before they purchase the property. Ms. Solomito-Basar came forward again and reiterated that the owners were unaware of the two different zones until they came in for permits to be able to upgrade. She said that by denying this request, she feels that the owner today cannot maintain the integrity of the property.

Justin explained that if the Commissioners choose to deny the application, the lots that are vacant that have been vacant for over a year have to remain vacant unless utilized for Commercial. The trailers that are there now can be replaced by newer ones as long as they are under the cubic foot print of the trailers that exist there now.

John Krieb made a motion to approve the zone amendment request for the subject property of Riviera Courts MHP Murray KY, LLC located at 1414 North 12th Street for 11.024 acres to be rezoned from B-2 (Highway Business District) to R-3A (Multi-Family Residential District). The testimony presented in this public hearing has shown that the proposed zoning classification is appropriate with the following reasons: the entire tract is a single tract and its design of utilities, the road network and everything related to it is compatible with a single zoning of Residential Trailer Park R-3A. The access to the B-2 portion that exists right now would severely limit the capability of utilizing the road network for the trailer park area which sits to the east of the B-2 zoned portion. The areas to the immediate south are zoned residential and flowing this whole area together will be

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more compatible. The Zoning Map and the Future Land Use Map will need to be amended to reflect that which is restoring to what it was prior to 2008. Robin Zhang seconded the motion. The motion carried with a 4-3 roll call vote. Bobby Deitz, Jim Foster and Martin Milkman voted no.

Public Hearing; Zoning Map Amendment request to rezone a 2.08 acre of land located at 1003 North 4th Street from P.O. (Professional Office District) Zone to B-2 (Highway Business District) Zone – Applicant: James K & Karen Andrus: Justin showed an aerial photograph of the property that Ken and Karen Andrus are requesting to rezone from PO (Professional Office) to B-2 (Highway Business). The zoning to the east of this property is Industrial; R-2 (Single Family Residential) is to the west and south and G (Government) is to the north. Mr. Andrus has plans to sell the property and he feels that by rezoning the property to B-2 will open it up to a more extensive list of allowable businesses to locate on the property. Justin showed the map with the proposed plat rezoning request area. The proposed rezone coincides with our Comprehensive Plan's future land use designation of commercial. The applicant contends that the reason for the request is that most of the area is already zoned or starting to be zoned business.

Chairman Kind opened the public hearing and asked if there was anyone that wished to speak in favor or opposition to the request.

Ken Andrus came forward and was sworn in. Mr. Andrus said that they have a photography studio on the property. They are thinking of retiring and selling the property one day. He feels that by rezoning the property to B-2 will make the property more marketable.

Norma Sue Smith came forward and was sworn in. Ms. Smith spoke in opposition to the request. She explained that the Smith Living Trust owns 11 acres around this property. The home on the property was designed by her in 1960 and it was sold for residences since that time. The Smiths felt it was ok for Mr. Andrus to put professional offices in there; however, they do not want the property to be opened up to road side businesses. She feels that the property needs to zoned like it was years ago (which was single family dwelling) or maybe another residential zone to continue the history of the property. The Smith Living Trust has owned this property since it was land granted to the McKeel family. Their intent is for the Trust to continue after her and her husband's deaths and for the property to remain zoned for family living. They would like for the property to be named McKeel Place in honor of its land grant (which is her husband's grandfather). Mrs. Smith's grandson lives at 403 Bee Creek Drive and will inherit the property when she is gone. The backyard of the Andrus property abuts the Smith property as well as Billy Ray Mitchell's property. Mr. Mitchell has indicated that he would like for the property to go back to single family dwelling as well. When Mrs. Smith originally sold the property to Gene and Jo Brandon, she believes that they sold 1.08 acres to them instead of 2.08 acres and said that someone would have to check the deed for that information to verify what is showing on the plat.

The public hearing was closed and the item turned over to the Commissioners for discussion and a motion.

Justin clarified that 1.60 is the actual acreage of the property and the additional acreage on the plat is for the right-of-way. The property was rezoned by the Planning Commission with a unanimous vote on April 7, 2007. Bobby Deitz said that this shows a progression of growth by

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changing the zoning. He referred to 12th Street that used to be residential and over the years has changed to primarily business. It's inevitable that commercial developments are going to swallow up old residential districts. This property will eventually be a commercial corridor.

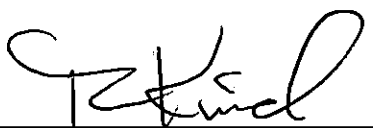
Ken Andrus came forward to speak in rebuttal. Mr. Andrus said that he feels like the whole area has begun to change to Commercial. He's noticed several properties along North 4th Street being sold as commercial and he feels like that's a natural progression. He does not think that having a business there would bother anyone. Mr. Andrus said that he has not been approached by anyone to sell the property for a specific business. He's just been toying with the idea of selling the property. Photography business is getting slow with the Corona Virus situation going on.

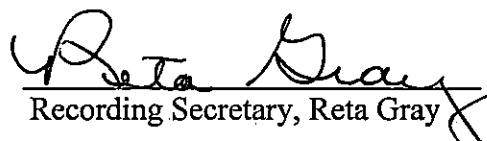
Justin explained that since there is no proposal of what might go there, he wanted to remind the Commissioners that if a commercial business should go there, they will be required to have significant screening between them and any residential property.

Jim Foster made a motion to deny the zone amendment request for the subject property of Ken Andrus located at 1003 North 4th Street as presented for the 2.08 acres to be rezoned from to PO (Professional Office District) to B-2 (Highway Business District). The main reason is that we don't know what "might" go there. John Krieb seconded the motion. The motion carried with a 6-1 roll call vote. Marc Peebles voted no.

Questions/Comments: John Krieb said that Mr. Osborne had sent word to him that the speed limit on west Main Street will be changed. The Commissioners had requested this change some time ago. Mr. Osborne confirmed this decision with the State Highway Engineer in our area. 35 mph will be extended for quite a way (almost to Doran) and 45 mph will pick up and continue almost to Robertson Road. Chairman Kind called for a motion to adjourn.

Jim Foster made a motion to adjourn. Marc Peebles seconded the motion and the motion carried unanimously. The meeting adjourned at 7:06 p.m.


Chairman, Tom Kind


Recording Secretary, Reta Gray