

**CAMPBELL COUNTY & MUNICIPAL PLANNING & ZONING COMMISSION
MINUTES OF THE OCTOBER 12, 2010 MEETING**

MEMBERS PRESENT:

Mr. Larry Barrow
Mr. Tony Pfeffer
Mr. Justin Verst
Mr. Michael Williams
Mr. Robert Huck, TPO
Ms. Cindy Minter, Vice-Chair
Ms. Debbie Blake, Chairperson

MEMBERS ABSENT:

Ms. Kay Wright

STAFF PRESENT:

Mr. Peter Klear, AICP, Director of Planning & Zoning
Mr. Ryan Hutchinson, Principal Planner
Mr. Matt Smith, Legal Counsel
Ms. Stephanie Turner, Recording Secretary

Ms. Blake called the meeting to order at 7:00 PM. Ms. Blake asked for a roll call. Following roll call, a quorum was found to be present.

Ms. Blake asked if everyone had reviewed the September 14, 2010 meeting minutes and asked if there were any additions or corrections. There being none, Ms. Blake called for a motion. Mr. Barrows made a motion to approve the September 14th meeting minutes as submitted. Mr. Williams seconded the motion. A roll call vote found Mr. Barrow, Mr. Pfeffer, Mr. Verst, Mr. Williams and Ms. Minter in favor of the motion. Mr. Huck and Ms. Blake abstained. Motion passed.

Ms. Blake introduced case #05-10-SPD-05, Dollar General Store, to the Planning Commission and asked Mr. Hutchinson to present the staff report and staff's recommendation to the Commission.

CASE:	05-10-SPD-05 Dollar General Store
APPLICANT:	Renaissance Design Build, Inc.
LOCATION:	A 1.289 acre area located on Mary Ingles Highway 0.75 miles west of Four Mile Road, City of Silver Grove.
REQUEST:	The submitted request is for approval of a Site Plan for a Dollar General Store located on a 1.289 acre site within the HC Zone.

Considerations:

1. The 2008 Campbell County Comprehensive Plan Update designates the site for Light Industrial use. The City of Silver Grove Zoning Ordinance classifies the plan within the HC (Highway Commercial) Zone. The HC Zone permits automotive uses, financial institutions, bowling alleys, hotels, restaurants, garages, police and fire stations, advertising signs, dry cleaners, and variety stores. Areas to the east and west of the site in question are zoned HC and R-RE. Areas to the south are zoned R-RE and to the north are I-4 (Industrial River) Zone.
2. The site in question was formerly occupied by a driving range and a putt-putt golf course.
3. The Transportation Plan Element of the 2008 Campbell County Comprehensive Plan Update identifies Mary Ingles Highway as a collector roadway.

4. Review of the site plan in accord with the Comprehensive Plan, Zoning Ordinance and Subdivision Regulations results in the following issues:
 - a. The plan indicates a proposal to build a 9,014 square foot Dollar General Store, 18' feet tall, on a 1.289 acre site.
 - b. Access to that site will be from a proposed road, not Mary Ingles Highway (State Route 8).
 - c. The plan indicates the access drive width is 48' feet.
 - d. The plan indicates the parking spaces to be 9' x 18' feet.
 - e. The plan indicates 37 parking spots will be provided. This is not in compliance with the City of Silver Grove parking requirements. The applicant appealed the parking requirements to the City of Silver Grove Board of Adjustments on August 26, 2010. At the Silver Grove Board of Adjustment meeting, they approved 37 parking spaces as being sufficient for this proposed development.
 - f. The plan notation #11 indicates the loading and unloading area is 18' x 53' feet. Per the minimum requirements of the Silver Grove Zoning Ordinance, a 12' x 60' foot is required.
 - g. The plan notation #10 indicates the dumpster screening area is 18' x 18' feet.
 - h. The plan indicates the detail for the sanitary sewer lateral.
 - i. The plan notations #13 match grades & #17 wheel stops are at the terminus of the drive aisle to the site directly to the east. The wheel stops should be removed and the parking lot opened when a development occurs to the east to improve connectivity.
 - j. The plan notation #3 indicates fire flows shall be in accordance with the Southern Campbell Fire District. That note should be changed to the requirements of the Campbell Fire District Number 1.
 - k. The plan notation #1 and site legend #9 is a pole mounted security light. The plan notes lighting shall be designed and installed so that it will not glare from property onto any street or adjacent property.
 - l. The plan shows the building located 50' feet from the rear property line, the minimum rear yard depth is 15' feet.
 - m. The plan site legend #1 shows a lighted 6' x 6' 1" foot pylon sign located in the parking lot.
 - n. The plan does not indicate the height of the pylon sign.
 - o. The plan does not indicate sidewalks to be located along the internal street.
 - p. The plan notation #15 shows handicapped signs fronting the handicapped parking spaces.
 - q. The plan notation #19 the hatched areas on the parking lot are noted as being heavy duty concrete pavement.
 - r. The plan general notes states no outdoor storage of any materials shall be permitted except within enclosed containers.
 - s. The plan indicates drainage along the north-west portion of the parking lot is going out past the light pole and down towards the right-of-way for Mary Ingles Highway.
 - t. The plan indicates a detention basin & easement along the back / southern portion of the property line.
 - u. The plan indicates a 10' foot screening area along the southern property line. This screening is required per Section 10.18 E.4, which says when a property abuts a residential zone a ten foot screening area needs to be provided along the property line.
5. Three previous grading plans for this site have been approved by the Planning Commission. The Planning Commission approved the first case (# 05-07-GRP-SIL-01), a grading plan for Carl J Schwarber Commerce Park, at its regularly scheduled meeting on April 10, 2007 with six conditions. The Planning Commission approved the second case (# 05-08-GRP-SIL-02), a grading plan for Trans Ash, at its regularly scheduled meeting on October 9, 2007 with four conditions. The Planning Commission approved the third case (# 05-08-GRP-03), a grading plan

for Trans Ash, at its regularly scheduled meeting on February 10, 2009 with nine conditions. To date, the applicant has complied with all conditions from the previously approved plans.

6. There is also a recent identification plat for this property (ID-10-10 Trans Ash Inc). Included in that approved identification plat is the note "Access to the 1.289-acres shall be via the 60' access & utility easement shown on the plat and not directly to State Route 8 (Mary Ingles Highway)".

Campbell County Staff Recommendation – Silver Grove Zoning Ordinance:

To approve the proposed development plan subject to the following conditions:

1. That the applicant complies with all applicable building, subdivision and zoning ordinance regulations.
2. That the applicant receives approval from SD1 for a Land Disturbance Permit.
3. That a note be added to the plan "All access points be from the internal street system, not State Route 8."
4. That the pylon sign at its lowest point be a minimum of 10' feet from the ground.
5. That the applicant provides a 12' x 60' foot loading and unloading area, per the Silver Grove Zoning Ordinance.
6. That the applicant complies with the City of Silver Grove, Grading Ordinance NO. 07-0601. Specifically, this ordinance regulates the placement of fill dirt or other material on property within the City of Silver Grove.
7. That the applicant correct notation #3 on the plat to say they will comply with the requirements of the Campbell Fire District Number 1 regarding fire flows.
8. That the parking lot / drive aisle along the east end of the parking lot be opened when a development occurs to improve connectivity.
9. That the applicant submits lighting details that comply with the Silver Grove Zoning Ordinance to staff for review and approval.
10. That the site plan be revised to show sidewalks located along the internal street system.
11. That the applicant continues the sidewalk along the eastern portion of the property to the property line just south of the parking lot connection.
12. That the applicant provides a ten foot screening area along all yards which abut residential zones. These details need to be submitted to staff for review and approval.
13. That the applicant follow the Silver Grove Board of Adjustment ruling that states 37 parking spaces for this development plan are adequate for this use.

Bases for Recommendation:

The proposed subdivision is consistent with the recommendations of the 2008 Campbell County Comprehensive Plan Update, the Campbell County Subdivision Regulations and the City of Silver Grove Zoning Ordinance, except as noted below:

1. CITY OF SILVER GROVE ZONING ORDINANCE, SECTION 12.1 OFF-STREET LOADING AND/OR UNLOADING USE AND BULK REGULATIONS: Off-street loading and/or unloading facilities shall be provided in accordance with the following regulations.

A. Spaces Required: Every building, structure, or part thereof, erected and occupied for manufacturing, storage, warehousing, department stores, wholesale stores, retail stores, market, hotel, hospital, laundry, dry cleaning, dairy, mortuary and other uses similarly involving the receipt or distribution of vehicles, materials, or merchandise and having up to 5,000 square feet of gross floor area shall be provided with at least one loading and/or unloading space. One additional loading and/ or unloading space shall be provided for every additional 10,000 square feet, of fraction thereof, of gross floor area in the building. If sufficient proof can be shown that less than these requirements (only that part which has to do with over five thousand (5,000)

square feet) will be satisfactory for the operation in question, if approved by the Planning and Zoning Commission.

B. Size of Off-Street Loading and/or Unloading Space: Each off-street loading and/or unloading space shall be at least twelve (12) feet in width and at least sixty (60) feet in length, exclusive of aisle and maneuvering spaces and shall have a vertical clearance of at least fourteen (14) feet; provided however, that when it is demonstrated that a particular loading and/or unloading space will be used by shorter trucks, the Zoning Administrator may reduce the minimum length to not less than thirty-five (35) feet.

2. CITY OF SILVER GROVE ZONING ORDINANCE, SECTION 11.1., SPECIFIC OFF-STREET PARKING REQUIREMENTS: The amount of off street parking space required for uses, building, or additions thereto shall be determined according to the following requirements, and the space, so required, shall be stated in the application for a zoning and building permit and shall be reserved for such use. Where more than one use is located in the same building, each individual use shall be in accordance with the off street parking requirements of this section of the Ordinance.

W. Retail and personal service stores: One (1) parking space for each one hundred twenty-five (125) square feet of gross floor area.

3. CAMPBELL COUNTY SUBDIVISION REGULATIONS, SECTION 6.1 Intersections E.2: "In the case of collector streets, intersections with said streets shall be spaced not less than four hundred (400) feet apart..."
4. CITY OF SILVER GROVE ZONING ORDINANCE, SECTION 11.0., E., GENERAL REQUIREMENTS: E. Access: Parking lots or areas adjacent to streets, roads, highways, or deeded rights-of-way shall have driveways or openings not less than twelve (12) feet in width and no more than forty-eight (48) feet in width at the curb, excluding curve radius. These curb cuts shall be so located as to minimize traffic hazards and congestion. All such parking lots or areas shall have a protective wall or bumper block around each parking lot and said parking lots shall be so designed that all vehicles leaving the facility will be traveling forward to approaching traffic.
5. CITY OF SILVER GROVE, KY ORDINANCE NO. 07-0601., An ordinance regulating the placement of fill dirt or other material on property within the City of Silver Grove., States: "That if the applicant desires to raise the level of land above the five hundred four (504) feet mentioned above, then said applicant shall submit an application to the City of Silver Grove explaining the need and the desire to raise the land level above the limit mentioned above..."
6. CAMPBELL COUNTY SUBDIVISION REGULATIONS SECTION 7.2 states: "The design of the (water) system shall also make provision to insure adequate fire flow requirements, including adequate spacing of fire hydrants . . .";
7. CITY OF SILVER GROVE ZONING ORDINANCE, SECTION 10.6., E.3., 3 States: "No lighting shall be permitted which would glare from this zone onto any street, road, highway, deeded right-of-way, or into any adjacent property."
8. CAMPBELL COUNTY SUBDIVISION REGULATIONS SECTION TABLE 2 STATES: With 7-25 lots provided sidewalks along one side of the street."
9. CITY OF SILVER GROVE ZONING ORDINANCE, SECTION 10.18. E.4. States: "Where any yard of any use permitted in this zone abuts a residential zone, a minimum yard requirement of

fifty (50) feet for each side and/or rear yard which abuts said zone shall be provided, ten (10) feet of which shall be maintained by a screening area as regulated by Section 9.17 of this Ordinance.”

10. CITY OF SILVER GROVE ZONING ORDINANCE, SECTION 14.1. I. States: “No pole or hanging sign shall be, at its lowest point less than ten (10) feet from the ground.”

Mr. Hutchinson advised the Commission that from his conversations with the applicant, they appear amenable to all conditions except #8. Mr. Hutchinson stated the applicant does not want to provide connectivity to the proposed future site next door when it becomes developed and that they will address that issue in their presentation. Ms. Blake asked if there were any questions for Staff. Mr. Verst asked Mr. Hutchinson if sidewalks were included in previous versions of the preliminary plat. Mr. Hutchinson stated they were not, but a requirement for internal sidewalks along one side of the street was a condition of the previous approval of the preliminary plat. Mr. Verst wanted to know how we determine which side of the street would have the internal sidewalks. Mr. Hutchinson stated this was the first site development plan and it made sense to include that previous requirement on the first developed lot. Mr. Verst also asked if Mr. Hutchinson was aware of what type of growth was approved for the buffer screening at the rear of the lot. Mr. Hutchinson stated he was not specifically aware, but believes it was white pines staggered. Mr. Verst’s concern is that there may be interference with the sanitary sewer easement reflected on the plans. Mr. Verst asked Mr. Hutchinson if the building density was in conflict with the Zoning Ordinance. Mr. Hutchinson stated it was not in conflict and there were no issues with the building. Ms. Blake asked Mr. Hutchinson what type of issue was associated with the street reflected on the drawing as being behind this site. Mr. Hutchinson stated it was not an issue necessarily, but a concern. Mr. Hutchinson’s concern is that the proposed street is not on property owned by the applicant, but by the developer. When the developer presented their preliminary plat previously, they did not reflect a street in that location. Mr. Hutchinson doesn’t want the street reflected unless the developer agreed with it being presented on the site plan.

Ms. Blake asked if the Commission had any other questions of Staff. There being none, Ms. Blake requested that the applicant come forward to address the Commission. The applicant immediately passed out an updated plan showing revisions that had been requested by staff. Mr. Nathan Grimes introduced himself as the President of Renaissance Design Build Inc., the designer for this site plan. Mr. Grimes began by thanking staff for their recommendation for approval. With that being said, Mr. Grimes stated that the main issue of concern for the applicant is the connectivity to the future site. Mr. Grimes briefly went through the conditions listed in the staff report from his client’s perspective. (The applicant’s replies are in bold italics.)

1. That the applicant complies with all applicable building, subdivision and zoning ordinance regulations. ***The applicant will attempt to comply with this condition.***
2. That the applicant receives approval from SD1 for a Land Disturbance Permit. ***The applicant has submitted the requested plans along with the fees to SD1. They are awaiting their approval.***
3. That a note be added to the plan “All access points be from the internal street system, not State Route 8.” ***This comment was added as Note #4 on the revised plan and it will be changed to state “not Mary Ingles Highway.” instead of “not State Route 8.”.***
4. That the pylon sign at its lowest point be a minimum of 10’ feet from the ground. ***This comment was added on the revised plan.***
5. That the applicant provides a 12’ x 60’ foot loading and unloading area, per the Silver Grove Zoning Ordinance. ***The plan was redesigned to show a 12’ X 64” “L” shaped loading/unloading area with the previous 12’ X 53’ as the stem.***

6. That the applicant complies with the City of Silver Grove, Grading Ordinance NO. 07-0601. Specifically, this ordinance regulates the placement of fill dirt or other material on property within the City of Silver Grove. ***The applicant has no issue with complying with this ordinance and are currently working with the City of Silver Grove to meet this.***
7. That the applicant correct notation #3 on the plat to say they will comply with the requirements of the Campbell Fire District Number 1 regarding fire flows. ***The fire district has been updated on the revised plan.***
8. That the parking lot / drive aisle along the east end of the parking lot be opened when a development occurs to improve connectivity. ***The applicant does have an issue with the connectivity to the future site. Their concern is the maintenance of the parking lot in terms of repair for exacerbated use by future site and trash management. The applicant does not want to be the primary access for that site. The applicant has made no request from the City of Silver Grove to provide maintenance for their site and feel they should not be subject to this additional cost for maintenance.***
9. That the applicant submits lighting details that comply with the Silver Grove Zoning Ordinance to staff for review and approval. ***The applicant will submit a lighting plan to staff.***
10. That the site plan be revised to show sidewalks located along the internal street system. ***This has been added to the revised plan, but notated as the developer's responsibility to install.***
11. That the applicant continues the sidewalk along the eastern portion of the property to the property line just south of the parking lot connection. ***This will be included in the revised plan.***
12. That the applicant provides a ten foot screening area along all yards which abut residential zones. These details need to be submitted to staff for review and approval. ***The applicant will submit a screening plan to staff.***
13. That the applicant follow the Silver Grove Board of Adjustment ruling that states 37 parking spaces for this development plan are adequate for this use. ***The applicant was the one to solicit the 37 parking space requirement from the City of Silver Grove Board of Adjustment. This is not an issue with the applicant.***

Mr. Grimes asked if the Commission had any questions of him. Ms. Minter asked Mr. Grimes how he planned to address the screening by the sanitary sewer easement. Mr. Grimes replied that he was currently redesigning the plan to address that issue, but does not think there will be any conflict. Ms. Minter stated it would not conflict if the statement was made that the screening could not conflict with the sanitary sewer easement. Mr. Verst asked if the easement is a proposed easement or a recorded easement. Mr. Grimes replied it was a proposed easement. Mr. Verst replied then it shouldn't be an issue since it is just a proposed easement at this point. Mr. Williams asked Mr. Grimes what was being placed in the future site. Mr. Grimes replied that he had no idea what offers the developer was currently entertaining if any. However, Mr. Grimes did have an email, which he distributed to the Commission and provided a copy for the official record. The email dated October 12, 2010 at 8:03 AM was from Mr. Joe Kaldmo with Trans Ash, the developer, to Mr. Grimes. The email stated, "The future lot to the east of Dollar General will not have direct access to State Route 8. Access will be provided across the lot to the south of Dollar General. Please let me know if you need further clarification." Mr. Williams stated maybe it was a question for staff if there are any plans for that site. Ms. Blake asked Mr. Grimes how the Commission could be sure that the developer would construct the sidewalks that are reflected on Dollar General's site. Mr. Grimes stated they could make it a term of the sales agreement with Trans Ash that the sidewalks be constructed as drawn. Mr. Verst stated that if the sidewalk is not constructed then a final occupancy permit cannot be issued. It doesn't matter who is supposed to put the sidewalk in. One of them will have to in order to open for business. Mr. Smith added that as we have the original plan that staff has reviewed

intensely and briefed us about. The plan that the applicant passed out at the beginning of our meeting is not the plan before us for review and approval.

Mr. Williams asked if staff would have to approve the site plan for the future site and would any ingress/egress easement that is needed be reflected on that plan. Mr. Smith clarified that there is a difference between connectivity and access. Mr. Grimes stated he and his client's interpretation is that staff is in stating that their entry and driveway was to be the access point of the future site. Mr. Williams clarified that the applicant's believe that staff was really stating that the Dollar General parking lot was to act as a de facto roadway for the future site. Mr. Grimes stated that is his belief. Mr. Williams asked this question to staff. Mr. Hutchinson stated that the previous approval granted on the preliminary plat contained a condition that direct access to each site is granted from an internal street. Ultimately, it is up to the developer to provide direct access to each of those sites from the internal street system and not Mary Ingles Highway. We don't know at this point how that will be done. What we do want, in this case, is a connection through the parking lot to improve the pedestrian and vehicular connectivity. Mr. Williams stated that staff would be acceptable to using the parking lot as a drive thru to obtain entrance to the future site. Mr. Hutchinson stated that would be acceptable to staff. Staff believes that since both sites are in the HC Zone that they will likely have compatible services that would be sharing clientele. It is logical that there be a connection there. For safety purposes, it is a desirable second access point. Mr. Williams asked if there is a similar situation already existing somewhere in Campbell County or Northern Kentucky that he may be aware of just as a point of reference.

Mr. Hutchinson stated that, regardless if the developer is supposed to provide the sites with individual access points, staff desires to see the connectivity between the two sites which does not exclude the future site making use of the Dollar General parking lot as a through lane. Mr. Smith clarified that staff does not see the Dollar General parking lot as the only access point to the future site. Mr. Hutchinson agreed. Ms. Minter asked Mr. Hutchinson to confirm that staff believes the Dollar General parking lot will not be the only access point to this future site. Mr. Hutchinson reiterated that this was correct. Staff has not received any plans showing exactly what access point will be available to the future site, but does believe each lot will have their individual access point pulling from the internal street system. Mr. Klear stated that these questions are great questions, but they are irrelevant. Connectivity is not the same thing as an access point. Connectivity is spelled out in the Comprehensive Plan, the Zoning Ordinance and in the Subdivision Regulations. It says connectivity is to be considered and granted if there is belief that in the future development is likely to occur. Does that mean it is the only access point? We don't know. Does it relieve the developer of their obligation to provide access to the future site? We don't know for certain. It may or may not and it will all depend on the plans the developer submits for that future site. Our objective today is to look into the future and provide for the connectivity of these parcels where it is deemed possible. Mr. Williams stated that connectivity was provided for in the documents we use for planning and zoning of property. Mr. Klear stated that was correct. The Commission has seen this before in the subdivision plans for Parkside and Pond Creek. Mr. Klear stated that we have not seen a lot of this come before the Commission in regards to commercial development, but they have seen it in residential. Mr. Klear also identified for Mr. Williams that the Newport Shopping Center would be an example of connectivity in a commercial setting. You can drive on internal streets from the Bob Evans to the Dollar Store to the laundry/tanning place. If there wasn't connectivity, you would have to exit Bob Evans onto Monmouth Street turn onto Carothers Road and access the laundry on the other side. This is an example of the benefits of connectivity.

Mr. Barrow stated that connectivity will be necessary for the fire and emergency services. With an 18' building, the fire district would have to send fire engine 410 for any emergency. They would want to drive straight through the access to the future site to exit. The truck would not be able to turn around in their driveway. They would have to connect to the future store and go out the other access entry for that future site. Mr. Barrow stated that if they put in the proposed street behind the site it makes it almost like a circular drive so that the emergency vehicles can get out. Mr. Klear stated that was actually part of the confusion. The street reflected behind the rear of the lot does not exist yet. It has not been shown on any other plans and has not been approved by the Commission. It is for conceptual purposes only. Mr.

Barrow stated that the stops would be in place and, if we remove condition #8 as the applicant is asking, we would never be able to go back and make them remove the stops when that site is developed at some time in the future. Mr. Klear agreed that was correct. Mr. Barrow stated that condition #8 needs to stay in the motion. Mr. Pfeffer asked Mr. Klear about the email that Mr. Grimes distributed. Mr. Klear stated that the email is meaningless. Mr. Klear clarified his statement by advising the Commission that there is nothing legally binding about the email; it is proof of intent, but is not an agreement, requirement or obligation holding the developer to any specific act or service. Mr. Grimes stated that the applicant does not want to see connectivity to be required of them, but they also do not want it to be an item that held up their development. If the Commission sees fit to require connectivity, the applicant will comply with this requirement. Mr. Pfeffer also advised Mr. Williams that he thought of another example of connectivity that more closely resembles this situation. The White Castle and Valvoline Oil Change in Cold Springs where US 27 meets AA Highway has the exact same situation. All traffic for the Valvoline shop passes through White Castle's parking lot. Mr. Williams stated he understood exactly what we were talking about.

Mr. Verst stated that connectivity was a good thing and it is important to plan for it whenever possible. Mr. Verst stated that he felt for the developer of the lot as they would potentially incur additional maintenance charges. However, Mr. Verst strongly feels the community's benefit from connectivity is greater than the applicants concerns in this situation and believes it has to be part of the conditions for approval. Ms. Blake asked if there were any additional questions or comments for the applicant. There being none, Ms. Blake opened the floor for discussion among the Commission. There were no comments from the Commission. Ms. Blake called for a motion. Ms. Minter made a motion that the Planning Commission approves case #05-10-SPD-05, Dollar General Store, with the conditions stated in the staff report with one amendment. Ms. Minter would like to add condition #14 to read as follows:

14. Sanitation easements, if required by Sanitation District #1, shall not be in conflict with features of the site including screening.

Mr. Klear clarified that condition #8 was staying in the motion as stated in the staff report. Ms. Minter stated that was correct. Condition #8 stays in the motion as stated in the report and with the addition of condition #14 as stated previously. Ms. Minter cited the following as the bases for his motion: the proposed development plan is consistent with the recommendations of the 2008 Campbell County Comprehensive Plan Update, the Campbell County Subdivision Regulations and City of Silver Grove Zoning Ordinance, except as noted in the staff report.

Mr. Verst seconded the motion. A roll call vote found Mr. Barrow, Mr. Pfeffer, Mr. Verst, Mr. Williams, Mr. Huck and Ms. Minter in favor of the motion. Ms. Blake abstained. Motion passed.

Mr. Williams asked Chair for a five minute recess. Ms. Blake called for a motion to recess the meeting. Ms. Minter made the motion for a short recess. Mr. Barrow seconded the motion. A voice vote found all in favor, none opposed. Meeting was recessed at 8:05 PM. Ms. Blake called the meeting back to order at 8:09 PM. Mr. Klear requested the Commission to entertain a change in the order of the remaining cases to be heard tonight. Ms. Blake stated that was acceptable.

Ms. Blake introduced case #87-10-WAV-01, a request by Michael and Pamela Harris to waive Section 6.6 of the Campbell County Subdivision Regulations and Section 10.2 D.2 of the Campbell County Zoning Ordinance, to the Commission. Mr. Klear presented the staff report.

FILE NUMBER: 87-10-WAV-01
APPLICANT: Michael & Pamela Harris
REQUEST: Waiver of Section 6.6 of the Campbell County Subdivision Regulations and Section 10.2 D.2 of the Campbell County Zoning Ordinance

BACKGROUND:

On August 13, 2010, Mr. Michael Harris submitted an Identification Plat Application for property located at 6482 Four Mile Road (case # ID-15-10). Upon review of the request, staff noted the following:

1. The proposed land addition involves two pre-existing, non-conforming lots of record: a 3.5053 acre tract without road frontage and a 23.2092 acre flag lot that has only 14' of road frontage and a 568.83' flag stem.
2. The Residential Rural Estate (R-RE) Zone requires a minimum of 100' feet of road frontage per lot. The proposed 2.7078 acre tract of land has no road frontage.
3. The Campbell County Subdivision Regulations require a flag lot to have a minimum of 25' feet of road frontage with a maximum 250' foot flag stem.
4. The proposal to take 20.5014 acres and add that to the adjacent 3.5053 tract results in two tracts that do not meet the requirements of the Campbell County Subdivision Regulations or the Campbell County Zoning Ordinance.

Based on this information, staff issued a denial of the proposed land addition. A copy of the staff report is attached.

Michael & Pamela Harris are appealing this decision and requesting a Waiver of Section 6.6 (Lots) of the Campbell County Subdivision Regulations and Section 10.2 D.2 (Minimum Lot Width) of the Campbell County Zoning Ordinance.

CONSIDERATIONS:

Campbell County Subdivision Regulations Section 6.6A requires, in part, that "...all lots shall conform to the requirements of the applicable zoning ordinance...Each lot shall front at least 25 feet onto a deeded and accepted publically dedicated street ...in no case shall the required width of a flag lot be located further than 250 feet from a publically dedicated right-of-way from which the flag lot originates."

Campbell County Zoning Ordinance Section 10.2 R-RE Residential Rural Estates D.2 requires a Minimum Lot Width of the One-hundred (100) feet.

Campbell County Subdivision Regulations, Section 8.5 Modifications/Waivers states that the Planning and Zoning Commission may grant a waiver or modification of these Subdivision Regulations, as specified herein providing that the Commission shall find:

- A. That unusual topographic or exceptional physical conditions exist on the proposed site that are or were not created by actions of the applicant or anyone on his behalf; or
- B. That strict compliance with these regulations would create an extraordinary hardship in the face of exceptional conditions; or
- C. That the modification or waiver will not be detrimental to the public welfare or interests; and
- D. That modification or waiver is not in conflict with the intent and purposes of these (subdivision) regulations and the adopted comprehensive plan as modified; or
- E. That said modification or waiver will provide for an innovative design layout of the subdivision.

As part of their request, the Harris' have included a letter (a copy of the letter is attached) detailing the rationale for their request. In summary, the basis for their request is: to keep the integrity of the land;

disturb the environment as little as possible, and that the request would not have a negative impact on the community.

STAFF RECOMMENDATION:

That the Planning Commission denies the appeal and waiver request.

SUPPORTING INFORMATION/BASES FOR STAFF RECOMMENDATION:

1. The waiver request is not consistent with the general intent of the Campbell County Comprehensive Plan, Campbell County Zoning Ordinance, and Campbell County Subdivision Regulations.
2. The waiver request does not meet the requirements of Section 8.5 of the Campbell County Subdivision Regulations.

- A. That unusual topographic or exceptional physical conditions exist on the proposed site that are or were not created by actions of the applicant or anyone on his behalf; or

There are no unusual topographic or exceptional physical conditions on the site that support granting the requested waivers. The proposed reconfiguration of the two tracts IS the result of actions of the applicant AND/OR someone on his behalf.

- B. That strict compliance with these regulations would create an extraordinary hardship in the face of exceptional conditions; or

Strict compliance of these regulations would NOT create an extraordinary hardship on the applicant. The applicant is able to apply for a building permit for the pre-existing non-conforming lot of record (i.e. the 3.5 acre tract).

- C. That the modification or waiver will not be detrimental to the public welfare or interests; and

Granting the waivers WILL be detrimental to the public welfare or interests. The applicant is requesting that the Planning Commission ignore both the County subdivision regulations and zoning ordinance and approve a subdivision that violates both sets of regulations

- D. That modification or waiver is not in conflict with the intent and purposes of these (subdivision) regulations and the adopted comprehensive plan as modified; or

Granting the waivers IS in conflict with the intent and purposes of the subdivision regulations and comprehensive plan.

- E. That said modification or waiver will provide for an innovative design layout of the subdivision.

Granting of the waiver will NOT provide for an innovative design layout of the subdivision. The proposed layout of the subdivision violates both the county subdivision regulations and zoning ordinance.

- 3A. The waiver request does not meet the minimum requirements of Section 6.6A of the Campbell County Subdivision Regulations. This section of the subdivision regulations requires that all lots shall conform to the requirements of the applicable zoning ordinance. Each lot shall front at least 25 feet onto a deeded and accepted publically dedicated street. One lot has no frontage at all and the other lot has only 14 feet of frontage, *11 feet less than what is required.*

- 3B. The waiver request does not meet the minimum requirements for Flag lots as specified in Section 6.6A of the Campbell County Subdivision Regulations. This section of the subdivision regulations requires that for flag lots ...in no case shall the required width of a flag lot be located further than 250 feet from a publically dedicated right-of-way from which the flag lot originates. *The flag lot is further than 568 feet from the publically dedicated right-of-way.*
4. The waiver request does not meet the minimum requirements of Section 10.2 D.2 of the Campbell County Zoning Ordinance. This section of the ordinance requires a minimum of lot width (along a public right-of-way) 100 feet. *Neither lot has the minimum required lot width.*

ADDITIONAL INFORMATION:

1. A review of public records indicates that the creation of the 'original' two parcels was never submitted as a plat of subdivision to the Planning Commission for review and approval.
2. The pre-existing, non-conforming 3.5053 acre tract does not comply with Section 6.6 C.2 of the subdivision regulations that specify a maximum lot depth no greater than four times the width of the lot.

Mr. Klear began his presentation by advising the Commission that their role for this case is a little different from what they normally would be. In the situation before the Commission tonight, a decision was previously made by staff on behalf of the Commission. The applicant is appealing the decision of staff and requesting a waiver of the Subdivision Regulations. Since the denial was based upon the Subdivision Regulations, the Commission, not the Board of Adjustment, is responsible to hear the appeal.

Mr. Klear provided the Commission with background information regarding this site. Mr. Klear had prepared visual aids showing the status of the lots in question today and what the applicants are hoping to accomplish. Both lots are within the R-RE Zone and are pre-existing, nonconforming lots. The 3.5053 acre tract is completely land-locked. The 23.2092 acre tract is a flag lot that is classified as nonconforming because the flag stem width is only 14' feet when the Subdivision Regulations call for a minimum of 25' feet width. The flag stem is also more than 568' feet in length and the Subdivision Regulations allow for a length of no more than 250' feet. Based upon the Subdivision Regulations, staff denied their request to complete this transaction. Mr. Klear stated that Mr. Harris is requesting an appeal of staff's decision and a waiver of Subdivision Regulations Section 6.6 C.2 and 10.2 D.2.

Mr. Klear stated the applicant must demonstrate that their request meets the requirements of Section 8.5 of the Campbell County Subdivision Regulations. Mr. Klear attached to his staff report, which was mailed to Commission members previously, a copy of the letter from Mr. and Mrs. Harris explaining their circumstances and why they think the waiver should be granted. The information supplied by the applicant does not meet the standards that qualify for a waiver.

Mr. Klear stated that Mr. Harris has expressed a desire to disturb the land as little as possible and has stated in his letter that a waiver would not have a negative impact on the community. Staff's recommendation is for the Commission to deny Mr. Harris' appeal and deny the request for a waiver as a waiver, in this instance, would in fact be detrimental to the community. Mr. Klear started his summary by stating that a waiver request is not consistent with the general intent of the Comprehensive Plan, Zoning Ordinance or the Subdivision Regulations. Basically, the Commission would have to set aside all three documents and ignore them to satisfy this request for a waiver. Secondly, the waiver request does not meet any of the standards set out in Section 8.5 of the Campbell County Subdivision Regulations.

Mr. Klear identified the properties on aerial photos. Mr. Klear pointed out where Mr. Harris wants to build on his property and labeled it as "A" to assist the Commission in their discussions. Mr. Klear next identified where Mr. Harris stated he would be forced to build if the waiver was denied and labeled it as "B" for discussion purposes. Site "B" would require the clearing of over 2 acres of trees and disturb the

site more than Mr. Harris would like. Mr. Klear proposed that the applicant consider a portion of the original site, which he labeled as "C", that has features topographically comparable to site "A" and would not require clearing any trees. Mr. Klear stated that moving the building site to "C" would not require the extensive clearing as proposed by site "B"; would not require a waiver; and would be eligible for a building permit as the sites stand today. There are no unusual topographic or exceptional physical conditions on the site that support granting the requested waivers. Furthermore, the proposed reconfiguration of the two tracts IS the result of actions of the applicant and/or someone on his behalf.

Mr. Klear stated the next criteria for the waiver is that strict compliance with these regulations would create an extraordinary hardship in the face of exceptional conditions for the applicant. Mr. Klear contends that by denying the waiver the Commission would not be creating an extraordinary hardship on the applicant. The applicant is able to apply for a building permit for the pre-existing non-conforming lot of record (i.e. the 3.5 acre tract). Mr. Klear assured the Commission that a building permit could be issued for the site as it stands if the applicant would just submit a completed application.

Mr. Klear believes that granting the waiver will be detrimental to the public welfare or interests. The applicant is requesting that the Planning Commission ignore the Comprehensive Plan, the Subdivision Regulations and the Zoning Ordinance and approve a request that violates both sets of regulations. The Commission uses these documents on a regular basis in fulfilling your duties to the citizens of Campbell County. Setting these documents aside is creating a detrimental impact to the public welfare of Campbell County.

Mr. Klear stated the next criterion to consider is that a modification or waiver is not in conflict with the intent and purposes of these (subdivision) regulations and the adopted comprehensive plan as modified. Mr. Klear apologized for having to hammer home staff's interpretation of the regulations, but a modification or waiver would be in direct conflict with the intent and purposes of the Subdivision Regulations and the adopted Comprehensive Plan.

Mr. Klear identified the final action for approving the waiver would require Mr. and Mrs. Harris prove that said modification or waiver will provide for an innovative design layout of the subdivision. Mr. Klear stated that granting of the waiver will not provide for an innovative design layout of the subdivision. The proposed layout of the subdivision violates both the county subdivision regulations and zoning ordinance. Mr. Klear stated that basically the applicant is taking two nonconforming lots of record and turning them into two new nonconforming lots of record. The applicant has not improved the nonconforming status of either lot.

Mr. Klear stated that the waiver request does not meet the minimum requirements of Section 6.6A of the Campbell County Subdivision Regulations. This section of the subdivision regulations requires that all lots shall conform to the requirements of the applicable zoning ordinance. Each lot shall front at least 25 feet onto a deeded and accepted publically dedicated street. One lot has no frontage at all and the other lot has only 14 feet of frontage, 11 feet less than what is required. When the applicant proposed a new lot configuration, they are supposed to make certain that the configuration becomes compliant with the zoning ordinance in place. This has not been done in this situation.

Mr. Klear stated that this waiver request does not meet the minimum requirements for flag lots as specified in Section 6.6A of the Campbell County Subdivision Regulations. This section of the subdivision regulations requires that for flag lots ...in no case shall the required width of a flag lot be located further than 250 feet from a publically dedicated right-of-way from which the flag lot originates. The flag lot is further than 568 feet from the publically dedicated right-of-way. More than double the allowed flag stem depth.

Mr. Klear stated that finally, the waiver request does not meet the minimum requirements of Section 10.2 D.2 of the Campbell County Zoning Ordinance. This section of the ordinance requires a minimum of lot width (along a public right-of-way) 100 feet. Neither lot has the minimum required lot width. When staff

looked at the records, the plat that created these two lots never came before the Commission for approval. If it had, the lots would not exist as they do today. Mr. Klear stated that, also for the record, the 3.5053 acre tract does not comply with the subdivision regulations Section 6.6 C.2 which states that a lot cannot exceed the maximum ratio of 4 to 1 of lot depth versus lot width.

Mr. Klear concluded his report stating he would be happy to answer any question the Commission may have. Ms. Blake asked the Commission if they had any questions of staff. Mr. Verst asked if the applicant wanted to build on site "A", if the applicant's only option would be to obtain enough land to allow for 100' feet of road frontage. Mr. Klear stated that the applicant cannot build on site "A" as it appears right now because there is already a home on the large parcel. Mr. Verst stated then the only thing the applicant would be capable of building a home on their 3.5053 acre tract on sites "B" or "C". Mr. Klear stated that was correct. Mr. Verst stated if the applicant obtained additional land along the road frontage to allow for 100' feet of road frontage then they could subdivide to get site "A" divided out without having to obtain another 100' feet of road frontage for the nonconforming lot. Mr. Klear stated that if they wanted site "A" and could obtain additional land to obtain the 100' feet road frontage, then, yes, they could divide out site "A" and leave the remainder nonconforming. Any time there are changes proposed to lot lines, the new lot must conform to the zoning ordinance and subdivision regulations.

Mr. Barrow asked if the variance requested was asking the Commission to change the zoning ordinance. Mr. Klear stated that it is not asking for a text change to the zoning ordinance or subdivision regulations, but rather that you ignore those documents altogether and approve their request. Mr. Barrow asked legal counsel that, if this true, then zoning ordinance Section 10.2.4.7 states that variances cannot contradict zoning regulations or possess power to grant a variance permitting a plan, building or structure that is not permitted in the zoning regulations in the zone in question or alter the density requirement in the zone in question. Mr. Smith replied that the case before the Commission tonight is not a variance. It is a request for a waiver of the subdivision regulations. As such, the applicant is held to the standards established in Section 6.6A and 8.5 of the Campbell County Subdivision Regulations as Mr. Klear identified in his staff report. Mr. Barrow asked if the applicant was required to meet all five of the criteria. Mr. Smith stated the applicant must meet only one of the criteria. Mr. Klear stated that actually the applicant has to meet two of the criteria - item A or B or C and item D or E. Mr. Smith stated that legally, he would read it as, meeting either item A or B or C and, if it is C, then also D or E.

Mr. Williams stated he was confused. Mr. Klear provided an analysis of the situation. The applicant wants to build his home on Site "A". If he can't build on Site "A", the applicant claims he'll be forced to build on Site "B" which will cause him to clear the land and endure higher cost for building. Mr. Klear offered that the applicant can build a home right now on Site "C" without having to clear any land or with any additional costs. Site "C" is the same topography as Site "A". Mr. Williams stated he was not sure why the flip-flop of land was going on. Mr. Verst asked for conformation that both lots are pre-existing, nonconforming lots. Mr. Klear agreed that was correct. Mr. Verst continued to ask if there is any modification at all that can be done to these two lots. Mr. Klear replied that the only change that should occur would be to make one of the lots to conform. Mr. Verst questioned if they could change the configuration without making either of them comply. Mr. Klear stated they could not. Mr. Smith supported Mr. Klear's statement adding that the regulations state that no nonconforming lot should be expanded or enlarged. The applicant's proposal is trying to enlarge a nonconforming lot.

Ms. Blake asked if there were any additional questions for staff. There being none, Ms. Blake asked the applicants to come forward and provide their name and address for the record. Mr. Mike Harris, Jr., 1756 Weyer Avenue, Norwood, Ohio came forward and identified himself as the applicant. Mr. Harris said that he agrees with most everything Mr. Klear stated. There are a few facts he disputes though. Mr. Harris advised the Commission his wife was the co-applicant, but couldn't be present because she gave birth that morning to their second child. Mr. Harris stated that they purchased the land specifically to build a home, had they known then that they were nonconforming lots, they probably would not have bought them. Mr. Harris stated he loved the land, the way it slopes and lays, the woods and everything about it. Mr. Harris does not want to disturb the integrity of the land by building a driveway all the way

across the farm in either the existing house's front or rear yard. Mr. Harris stated that he knows the technical term is a subdivision, but they do not intend to create a subdivision setting back there. This is their private land for their private home. Mr. Harris states he knows he wants to change the configuration of the lots, but they weren't the ones who chopped it up as it appears now and he is just trying to make this a better situation than it currently is. Mr. Harris stated that their flag stem has farmland on either side. He tried to buy additional land to get the road frontage, but no one wanted to sell and he couldn't blame them. They are established farms that have been there a long time and have lands on both sides of the road. Mr. Harris stated that the new 2.7 acre tract would not have any road frontage. This shouldn't be a great issue, in his opinion, because he currently has 3.5 acres with no road frontage. Mr. Harris states it just makes sense to have the home near the access point of the property. Mr. Harris stated that if, ten years from now, there is a falling out between him and his parents who own the existing home, it would make better sense to have the home to be closer to the access point and not having to drive across their land and disturb the large parcel any more than would be necessary.

Mr. Harris agrees that he could apply for a building permit today and build on Site "C" as proposed by Mr. Klear, but the site is not comparable to Site "A" in his opinion. The lay of the land is not the same. There would be no yard for his children to play in. It seems to slope right off towards the creek. There is no better location for this house than Site "A". Mr. Harris concedes it can be quite confusing reading and interpreting the sections of the subdivision regulations that lead to a waiver. Mr. Harris stated that he feels the differences between Sites "C" and "A" demonstrate there is some unusual topographic or exceptional physical conditions that exist. He doesn't know how we would interpret "unusual", but he feels there is a difference.

Mr. Harris stated that utilities are already available at Site "A". If he has to build in either Site "B" or "C", he will incur greater financial hardship in the trying to get the utilities to either building site. The cost for the materials for the driveway alone would be extreme. Mr. Harris does not believe that waiver would be detrimental to the public welfare or interests. Mr. Harris stated he does not see what the issue is with moving the home site from one side of the farm to the other side is. It will remain within their family as one farm and is therefore not impacting anyone in the public. Mr. Harris believes this is such a unique situation that he does not feel Mr. Klear could claim it would be detrimental to the public welfare for Mr. Harris to try to make the site a little better than it currently is. Mr. Harris stated it is not his intention to cause contention among the Commission or to ask them to do something they are not supposed to be doing. The main point that Mr. Harris wants to get across is that he just wants to build a site for his home for his family in a site that is conducive to their lifestyle. This is not a situation where he would build a home and then five years from now decide to move back to Ohio. Mr. Harris and his family are moving to this farm to stay for life and leave it as a heritage to their children. Mr. Harris stated that, when they purchased the property, there were 50 plus junk cars left on the property that his family has removed. They are constantly improving the land. Mr. Harris concluded his presentation by asking the Commission if there were any questions that he could answer for them.

Mr. Williams asked who was currently living on the site. Mr. Harris replied that no one was currently residing full time on the property. Mr. Harris is currently residing in Norwood until he can get his family home completed on this site and his parents own the existing home on the site. They currently are living in Norwood next door to his grandparents. A member of the audience spoke up and Ms. Blake asked him to identify himself for the record. He identified himself as Mr. Mike Harris Sr. He stated that he and his wife were currently using their home existing on the property in question as a second home. Mr. Harris Sr. visits the site daily to work on it and will be moving to the site permanently in the future. Mr. Harris Sr. stated it has taken them a long time to locate a farm that was affordable and close enough that it was accessible. The site shown as "A" is the best site to build a new home. Mr. Harris Sr. stated it would face the home, has a nice yard for the kids, would only be visible from the road in the winter and would not be any impact on the neighbors. Mr. Harris Sr. stated the parcel Mr. Harris Jr. currently owns is further back on steeper slopes and just isn't suited for a home and yard for children.

Mr. Williams asked specifically why not build a home on Site "C" where the current home is. Mr. Harris Sr. clarified that there was no structures on Site "C". Site "A" has a home, but it belongs to Mr. Harris Sr. Mr. Williams apologized for his confusion. Mr. Harris Sr. stated that right now they could build on Sites "B" or "C" right now, but they would have to drive all the way across the farm and it would not be the best site to build. Mr. Williams asked what the "white rectangle" on the picture was. Mr. Harris Sr. pointed out one near Site "C" and identified it as an old junked camper left by the previous owner that has since been removed. Mr. Williams clarified and referenced a different item in the photo. Mr. Harris Sr. pointed out to ones near Site "A" and identified them as the house, barn, and smokehouse that existed which are his property. Mr. Harris Jr. clarified that Sites "A", "B" and "C" are not lots, but proposed building sites. Mr. Klear supported Mr. Harris Jr. and showed the slide that reflects the lots as they exist today. Mr. Klear then showed the slide that reflected the changed the Harris' want to make. This information clarified the issue for Mr. Williams.

Mr. Pfeffer asked Mr. Klear to go back to the slide showing the lots as they exist today. Mr. Pfeffer wanted to clarify that he understood the situation. The issue is that these are two nonconforming lots. They want to change these nonconforming lots into two new nonconforming lots so he can get a building permit. Mr. Klear went through the scenario again. The way the lot exists, Mr. Harris Jr. could come into the office and obtain a building permit to build a home on the land locked 3.5 lot today. It wouldn't be what we want to see happening, but we cannot deny Mr. Harris Jr. on an existing nonconforming lot. Mr. Williams asked why he couldn't build a home on the larger parcel. Mr. Klear explained because there was already a home existing on the larger parcel and per the zoning ordinance you can only have one home per lot. The applicants could build another barn, pool or shed, but not a second home on the same lot. Mr. Williams asked if that was because it was nonconforming. Mr. Klear stated no, it is because there was already another home there. Mr. Klear explained that these lots were not created by the applicants. At one time, both lots were land-locked and the larger parcel had a 14' foot easement. Apparently over time, during different transfers, the stem of the flag lot got deeded along with the larger parcel.

Ms. Blake asked the Commission if they had any other questions for the applicant. There being none, Ms. Blake opened the floor for discussion among the Commission. Mr. Verst stated that he is struggling with this request. He understands the needs for rules and everyone knowing what the rules are. Mr. Verst believes what Mr. Harris is proposing is better than what is there. Sure they could build a home on Site "B" or "C", but Site "A" is a better site. It is closer to the access point to the lots, closer to fire and emergency services, and they won't have to drive all the way across the lot disturbing the existing home. Mr. Verst stated that, if he runs through the criteria of what make them eligible for a waiver, he doesn't see any unusual topographic or exceptional physical conditions on the site so that one doesn't fit. If he looks at strict compliance with the regulations would create an extraordinary hardship, Mr. Verst doesn't think this one fits either. Mr. Verst stated he could be persuaded to state that the modification or waiver will not be detrimental to the public welfare or interests; and if he does that then he needs to go further and find that the modification or waiver is not in conflict with the intent and purposes of the subdivision regulations and the adopted comprehensive plan as modified; or that said modification or waiver will provide for an innovative design layout of the subdivision. Mr. Verst doesn't know what qualifies as innovative, but what Mr. Harris is proposing is definitely better than what is there in Mr. Verst's opinion. Mr. Verst asked for opinions from the Commission.

Ms. Minter stated that other land-locked parcels do exist in southern Campbell County. It is unfortunate, but it is not isolated and they do exist. Ms. Minter advised that the Commission needs to be aware that they could be setting a precedent for other land-locked parcels and the impact they could be making by setting aside the subdivision regulations and zoning ordinance in this situation.

Mr. Williams stated he differs with the perspective that, if the waiver is approved, the Commission would be in fact setting aside the subdivision regulations and zoning ordinance. It is Mr. Williams belief that, by writing the specification for a waiver into the rules, it was an admission that there were going to be times that these rules were not warranted and would need to be set aside to correct a situation. The Commission

is in fact following the law if they find that the circumstances here are in fact appropriate for setting aside the rules to correct a situation. Mr. Williams does not like the reference that we are ignoring the comprehensive plan, subdivision regulations or zoning ordinance. Mr. Williams agrees with Mr. Verst in that he does not see how this situation will impact the public welfare with the extraordinary circumstances given. Ms. Minter stated she would challenge what you could call these circumstances as extraordinary, as land-locked parcels exist in southern Campbell County. She disagrees with Mr. Williams and Verst assertion that this situation is extraordinary.

Mr. Verst believes strongly that all cases must be heard from the same platform; however, he thinks if you have an opportunity to make a situation better, you need to take it and in this situation a waiver will make this situation better. Mr. Verst feels what the applicant is asking for is better than the public welfare based upon what is currently there today. Mr. Klear advised that the determination of what is "better" is subjective and not quantitative. Ms. Blake states it all boils down to interpretation. Mr. Williams stated he does not feel this is fair. He stated that if you brought in another flag lot, you might not find buildings Sites "A", "B" or "C". Mr. Williams stated if waivers are not warranted, then why write them into the subdivision regulations. Mr. Williams does not believe they are in conflict with the public welfare and that they are in extraordinary circumstances. Mr. Williams does not want to be concerned with setting precedent when we should limit ourselves to this case and give this man a waiver because it is warranted. We can worry about the next case when it comes before us. Mr. Williams asked for Mr. Smith's input. Mr. Smith stated that a waiver was indeed part of the regulations. The applicant made a request of staff. Upon review of the regulations, staff denied the applicants request and the applicant is now entitled to appeal that decision and request a waiver of the subdivision regulations. As a result, it becomes the Commission's responsibility to determine if the waiver criteria has or has not been met. Mr. Williams stated that what he is hearing is that these two lots as they stand are good for nothing. Ms. Minter begged to differ on this subject. Ms. Minter stated that these two lots currently exist and are capable of being built upon even though one of the lots is currently land-locked. Mr. Williams stated but if they do that the applicant would be forced to tear down the trees and change the existing aesthetics of the property. Mr. Harris Jr. agreed. Ms. Minter and Mr. Klear disagreed with Mr. Williams on this point. Mr. Williams stated he saw trees in the picture. Ms. Minter stated that was subjective. Mr. Williams stated he knew, but he's allowed to be subjective, that's why he's allowed his digression. If it was totally objective, there would be no waiver provisions and everyone would be forced to meet every letter of the law and the Commission would not have any discretion.

Ms. Blake recognized Mr. Klear. Mr. Klear stated there were two parts to his comment. The first being that what was submitted does not meet the regulations. The second that as Mr. Williams pointed out the regulations contain provisions that allow for waivers to be issued. Mr. Klear advised the Commission that the simple act of asking for a waiver does not making things illegal. We are clear on that. What we are saying is that, when you are considering the waiver portion of this request, in order to grant the waiver you have to make all these findings which staff could not. You would have to ignore the subdivision regulations, the comprehensive plan and the zoning ordinance. That is the part that is detrimental to the public welfare.

Mr. Verst stated that obviously at some point in time in the past the regulations were either ignored or not in effect. These lots came to exist as a result of that. Mr. Verst walked to the board to point out that if the applicant builds on Sites "B" or "C" it can create issues in the future. One day neither Mr. Harris will be with us, despite their good intentions for their future heirs to live in harmony, there is no guarantee that they will. If you have one party constantly crossing the other party's front or rear yard to get to their home and there is already bad blood between them, you are going to exacerbate the situation in Mr. Verst's opinion. By allowing this waiver and putting them closing to the access point, it reduces the opportunities for conflict.

Mr. Williams stated that he objected to the use of the word "ignore". He stated that it implies there is a law that we refuse to acknowledge. We are not refusing to acknowledge the regulations; we are demonstrating that by discussing it. Mr. Williams states the regulations allow us to have discretion to

waive the regulations when appropriate. By refusing to consider waivers, you would be ignoring a portion of the regulations. Mr. Verst agreed that by discussing it means we are considering the regulations and are not ignoring it. Mr. Williams stated he feels it would be an abomination to tear down those trees and tear up that land just to try to make it conform when there is a valid and legal way to avoid that. Mr. Williams states that a waiver will allow this to occur. Mr. Huck agreed with Mr. Verst and Mr. Williams in that he thinks each case is different and must be heard on its own merit.

Mr. Verst stated that if these lots were conforming, we would never allow them to do something to make them nonconforming. This is not the case here. These lots are nonconforming lots and there is nothing they can do to conform to the current regulations. Therefore, it stands to reason, that if we could improve their configuration, we should take the opportunity to make them better than they are now using the waiver option available to us. Mr. Verst asserted this is his opinion. He stated the Commission is not ignoring anything, but taking an opportunity to improve this situation. Mr. Williams stated he has not decided yet, but if it were for the trees on "B", he would say build on "C". Ms. Minter and Mr. Klear stated that was their point. The applicant can build on Site "C" today without affecting the landscape. Mr. Verst pointed out the areas "B" and "C" on the slide for Mr. Williams. Mr. Williams asked then what would Mr. Harris have to do to build on Site "C". Mr. Klear stated all he had to do was apply for a building permit. Mr. Verst stated that because of the driveway across the existing home he felt that would lead to tension in the future. Mr. Williams stated that he agreed and that was his point all along. Ms. Blake asked if there were any other comments. Mr. Harris Jr. asked if he could speak. Ms. Blake stated there were not going to be any more comments and called for a motion.

Mr. Williams asked for a break so that the Commission could gather their thoughts. Ms. Blake denied his request. Mr. Verst stated he could make a motion now or we could take the break and he would make his motion after a brief break. Ms. Blake asked if anyone else on the Commission wanted to take a break. Mr. Williams stated he withdrew his request. No one else indicated they wanted a break. Mr. Verst made a motion to approve the waiver request of Section 6.6 of the Subdivision Regulations and Section 10.2 of the Zoning Ordinance for case #87-10-WAV-01, a request by Michael and Pamela Harris, on the basis that Mr. Verst finds that the modification or waiver will not be detrimental to the public welfare or interests; and that said modification or waiver will provide for an innovative design layout of the subdivision. Mr. Klear suggested that the Commission does not have the authority to make a waiver of Section 10.2 of the Zoning Ordinance. Mr. Klear continued that request would have to be granted by the Board of Adjustment. Mr. Smith asked Mr. Klear to confirm that the waiver is actually Section 8.5 (of the subdivision regulations). Mr. Klear stated they are actually approving a waiver of Section 6.6 which is the regulations that pertain to flag lot regulations. Mr. Smith advised Mr. Verst to withdraw his motion and restate it. Mr. Verst withdrew his motion and asked then how does the waiver for the zoning ordinance get granted. Mr. Klear stated that if the Commission approved the waiver request, then they are approved for the subdivision regulation portion of their request. Staff could challenge the Commission's approval through the zoning ordinance elements which would have to go before the Board of Adjustment. The only entity to challenge this would be staff and staff would not challenge it if it were approved by the Commission because the Board would likely side with the Commission. If the waiver is approved, staff would consider the zoning ordinance elements resolved as well. Mr. Verst restated his motion amending it to only reflect the waiver as a waiver of Section 6.6 of the subdivision regulations. Mr. Williams seconded his motion. A roll call vote found Mr. Barrow, Mr. Pfeffer, Mr. Verst, Mr. Williams, and Mr. Huck in favor of the motion. Ms. Minter opposed to the motion. Ms. Blake abstained. Motion passed.

Mr. Klear excused himself from the remainder of the meeting. Ms. Blake introduced case #86-10-SPD-01, Pangallo's 27 Auto Service, to the Planning Commission and asked Mr. Hutchinson to present the staff report and staff's recommendation to the Commission.

CASE: 86-10-SPD-01 Pangallo's 27 Auto Service
APPLICANT: Jim & Steve Pangallo
LOCATION: A 1 acre area located at 2410 Alexandria Pike, City of Southgate.

REQUEST: The submitted request is for approval of a Site Plan for the expansion of the Auto Center.

Considerations:

1. The 2008 Campbell County Comprehensive Plan Update designates the site for Urban Mixed use. The City of Southgate Zoning Ordinance classifies the plan within the General Commercial (GC) Zone. The GC Zone permits automotive uses, financial institutions, antique shops, bakery, billiard or pool hall, bowling alleys, drug stores, food service, furniture stores, etc. Areas to the north and south are also GC, to the west is Residential-One H (R-1H), and to the east is R-1H & Residential-One GH (R-1GH).
2. The site in question was formerly occupied by a gas station / auto repair shop.
3. Review of the site plan in accord with the Comprehensive Plan, Zoning Ordinance and Subdivision Regulations results in the following issues:
 - a. The plan indicates a proposal to build an 8' X 20' foot (160 sq. ft.) addition along the north side of the building to enclose the entrance to the restrooms on the 1 acre site.
 - b. Access to that site will be from the existing entrance along Alexandria Pike (US 27).
 - c. The plan indicates the existing building is 27' X 44' feet.
 - d. The plan indicates the parking spaces to be 9' x 18' feet.
 - e. The plan indicates 8 parking spaces that exist on site. This does comply with the minimum requirements of the Southgate Zoning Ordinance parking regulations.
 - f. The plan indicates a one way drive isle at 14' feet wide along the northwest portion of the parking area. This 14' foot drive isle is the minimum width required.
 - g. The plan indicates the location of the gas pump area in front of the building.
 - h. The plan indicates the location of the gas storage area.
 - i. The plan indicates the location of water, gas, and overhead utilities fronting the lot.
 - j. The plan indicates the area paved with blacktop fronting the building.
 - k. The plan shows the building addition located 43.30' feet from the rear property line, the minimum rear yard depth is 15' feet.
 - l. The plan indicates the south corner of the building is 0.78' feet from the edge of the property. In the GC Zone, there are no side yard width restrictions except when adjacent to a street, road, highway, or other right-of-way. When a side yard setback is required, it shall never be less than 15' feet.
 - m. The plan indicates an existing concrete walk way encroaching along the northwest portion of the property.
 - n. The western property line of this site abuts a residential zone. Per Section 10.9 D.4, a ten foot screening area needs to be provided. The plan indicates existing vegetation along the southwest portion of the property line.
 - o. The plan indicates the location of an existing dumpster in the northwest corner of the property.
4. Previous history for the site in question: On January 27, 1981, a conditional use for a service and gas station was applied for. On February 27, 1981, the Southgate Board of Adjustments approved the plans with the following conditions, no storage or impounding of vehicles be permitted on site.

Campbell County Staff Recommendation – Southgate Zoning Ordinance:

To approve the proposed development plan subject to the following conditions:

1. That the applicant complies with all applicable building, subdivision and zoning ordinance

regulations.

2. That the applicant provides a ten foot screening area along all yards which abut residential zones.

Bases for Recommendation:

The proposed subdivision is consistent with the recommendations of the 2008 Campbell County Comprehensive Plan Update, the Campbell County Subdivision Regulations and the City of Southgate Zoning Ordinance, except as noted below:

1. CITY OF SOUTHGATE ZONING ORDINANCE, SECTION 10.9. D.4. States: “Where land in this zone is abutting a residential zone a minimum yard requirement of thirty-five (35) feet for each side and/or rear yard which abuts said zone shall be provided, ten (10) feet which shall be maintained by a screening area as regulated by Section 9.17 of this Ordinance.”

Mr. Hutchinson began his report by advising the Commission that the applicants could not be present tonight due to a family emergency. Both had received and read a copy of the staff report and agreed with the conditions listed in the report. Mr. Verst asked how many parking spaces they had. Mr. Hutchinson stated eight spaces. Mr. Verst stated he saw only seven. Mr. Hutchinson pointed out the eighth space. Mr. Hutchinson concluded his report by asking the Commission if they had any questions. Mr. Williams asked what was directly across the street. Ms. Turner advised there was a home directly across the street and kitty-corner to “The Cottage”. Mr. Hutchinson stated in was next to the “Sunshine Cleaners”. Mr. Williams stated he was just trying to get some perspective on where this was located. Ms. Blake asked if there were any other questions. There being none, Ms. Blake acknowledged that the applicant was not present. Ms. Blake opened the floor for discussion among the Commission. There being none, Ms. Blake called for a motion. Ms. Minter made a motion to approve case #86-10-SPD-01, Pangallo’s 27 Auto Service, with the conditions as stated in the staff report. Ms. Minter cited that the site development plan is consistent with the recommendations of the 2008 Campbell County Comprehensive Plan Update, the Campbell County Subdivision Regulations and the City of Southgate Zoning Ordinance, except as noted in the staff report. Mr. Huck seconded the motion. A roll call vote found Mr. Barrow, Mr. Pfeffer, Mr. Verst, Mr. Williams, Mr. Huck and Ms. Minter in favor of the motion. Ms. Blake abstained. Motion passed.

There being no other items before the Commission and there was no director’s report to present, Ms. Blake asked if there were any other items for discussion. There being none, Ms. Blake asked for opinion on the website and the minute’s presence thereon. Mr. Barrow really was satisfied with their presentation. Ms. Blake asked for a motion to adjourn. Ms. Minter made a motion to adjourn. Mr. Huck seconded the motion. An oral vote found everyone in favor. None opposed. Motion passed. Meeting adjourned at 9:45 PM.

Respectfully Submitted,

Approved:

Peter Klear, AICP
Director of P&Z

Debbie Blake
Chairperson