CAMPBELL COUNTY & MUNICIPAL PLANNING & ZONING COMMISSION
NOVEMBER 13, 2012
7:00 PM
AGENDA

1. Meeting called to order

2. Roll call and determination of quorum

3. Approval of the September 11, 2012 minutes

4. **SUBDIVISION:** 105-12-PPL-03
   APPLICANT: Sisters of Divine Providence of KY
   LOCATION: 1000 Mary Ingles Highway, Melbourne
   REQUEST: To approve a Preliminary Plat consisting of nine lots, with no public improvements.

PUBLIC HEARINGS

5. **CASE:** 112-12-TXA-01
   APPLICANT: Campbell County Planning Department
   REQUEST: Proposed text amendment to the Campbell County Zoning Ordinance Adding Two New Sections: Section 9.30 Application for Temporary Retail Sales Permits and Section 9.31 Application for Temporary Consumer Fireworks Retail Sales Permits

6. **CASE:** 113-12-TXA-01
   APPLICANT: Campbell County Planning Department
   REQUEST: Adoption of revised Fee Schedule relating to the new Sections 9.30 and 9.31 of the Campbell County Zoning Ordinance

7. **CASE:** 114-12-TXA-01
   APPLICANT: Campbell County Planning Department
   REQUEST: Proposed text amendment to the Campbell County Zoning Ordinance Section 10.18 HC Highway Commercial Zone, Deleting Item A. 22 "Tent sales and Rental Services" and Replacing it with a revised Item A. 22 "Equipment sales and Rental Services"

8. Director's Report

9. Adjournment

IF YOU CANNOT ATTEND THE MEETING,
PLEASE CALL THE P&Z OFFICE AT 859-292-3880

The Commission will make every reasonable accommodation to assist qualified persons attending the meeting, if there is a need for the Commission to be aware of, contact the office.

CAMPBELL COUNTY & MUNICIPAL PLANNING & ZONING COMMISSION
MINUTES OF THE NOVEMBER 13, 2012 MEETING

MEMBERS PRESENT:
Ms. Deborah Blake
Mr. Larry Barrow
Mr. Dennis Bass
Ms. Lauri Harding
Mr. Tony Pfeffer
Mr. Edward Stubbs
Mr. Michael Williams, TPO
Mr. Justin Verst, Vice Chair
Ms. Cindy Minter, Chair

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

Ms. Minter called the meeting to order at 7:05 PM at the Campbell County Courthouse at 8352 E. Main Street, Alexandria, Kentucky. Following roll call, a quorum was found to be present. Ms. Minter asked if everyone had reviewed the September 11, 2012 meeting minutes and asked if there were any additions or corrections. There being none, Ms. Minter called for a motion. Mr. Barrow made a motion to approve the September 11th meeting minutes as submitted. Mr. Williams seconded the motion. A roll call vote found Mr. Barrow, Mr. Bass, Mr. Stubbs, Mr. Williams and Mr. Verst in favor of the motion. Ms. Blake, Ms. Harding, Mr. Pfeffer and Ms. Minter abstained. Motion passed.

Ms. Minter introduced case #105-12-PPD-03, Sisters of Divine Providence, with a request to approve a Preliminary Plat consisting of nine lots, with no public improvements and asked Mr. Hutchinson to present the staff report and staff's recommendation to the Commission. Mr. Bass had to step away from the meeting at 7:09 PM and returned at 7:12 PM.

SUBDIVISION:	105-12-PPD-03
APPLICANT:	Sisters of Divine Providence
LOCATION:	A 199.3 acre area along the north & south side of Mary Ingles Highway (Rt. 8), Unincorporated Campbell County.
REQUEST:	To approve a Preliminary Plat consisting of nine lots, with no public improvements.

Considerations:

1. This site is occupied by St Anne's Convent (Sisters of Divine Providence) and fronts Mary Ingles Highway, Four Mile Road, and Anderson Lane. The land uses surrounding the property to the east, west and south is residential and vacant land.

2. The site is located within the City of Melbourne, City of Silver Grove and Unincorporated Campbell County.

3. The Recommended Land Use Map of the 2008 Campbell County Comprehensive Plan identifies the site and surrounding areas for Village Mixed Use.

4. The property is currently zoned Campbell County Residential-Rural Estate (R-RE), City of Silver Grove Residential-1E (R-1E), City of Melbourne River Recreation / Conservation (R/CO) & City

of Melbourne Residential-1A (R-1A). The minimum area and height regulations for conditionally permitted uses are:

Campbell County Zoning R-RE Zone

-	Minimum lot size	1 ac
-	Minimum lot width	100 ft.
-	Minimum front yard	50 feet
-	Minimum side yard	25/10 ft.
-	Minimum rear yard	25 ft.
-	Minimum building height	35 ft.

City of Melbourne Zoning R-1A Zone

-	Minimum lot size	1 ac
-	Minimum lot width	100 ft.
-	Minimum front yard	50 feet
-	Minimum side yard	25 ft.
-	Minimum rear yard	25 ft.
-	Minimum building height	35 ft.

City of Silver Grove Zoning R-1E Zone

-	Minimum lot size	7,500 ac
-	Minimum lot width	50 ft.
-	Minimum front yard	30 feet
-	Minimum side yard	8 & 8 ft.
-	Minimum rear yard	25 ft.
-	Minimum building height	35 ft.

City of Melbourne Zoning R/CO Zone

-	Minimum lot size	1 ac
-	Minimum lot width	150 ft.
-	Minimum front yard	50 feet
-	Minimum side yard	25 ft.
-	Minimum rear yard	50 ft.
-	Minimum building height	25 ft.

5. The submitted drawing indicates the following:

   a. The plat indicates nine land divisions. Parcel I is occupied by the Holy Family building an existing 3 story brick building and 2 residential structures (fronting Mary Ingles Highway). Parcel II is occupied by the Convent and some other outbuildings. Parcel V has a house and garage. Parcel VI has a residence. The remaining parcels are vacant.
   b. The plat shows an existing driveway on Parcel I & II with a proposed 50' foot ingress / egress & utility easement.
   c. The following Parcels are partially or fully located within the 100 year floodplain I, II, III, IV, V, VI, VII, and VIII.
   d. The plat shows the right-of-way (R/W) fronting the proposed lots to be dedicated on the final plat.
   e. Mary Ingles Highway and Four Mile Road are collector roadways. Collector roads require intersections to be spaced 400' feet and driveways to be spaced 200' feet apart.
   f. Note #8 indicates that water main will be extended to serve Parcels I and II.
   g. Parcels I, II, III, IV, and IX have irregular lot designs.
   h. The City of Silver Grove R-1E notation on the plat shows the incorrect side yard requirement for Silver Grove. It is an 8 & 8 ft side yard not 15 & 5 ft.

i. The City of Melbourne R-1A notation on the plat shows the incorrect side yard requirement for Melbourne. It is a 25 ft side yard setback not 10 ft.

j. The plat includes addresses ranging from 1000-2000. This addressing range is incorrect and does not follow the uniform addressing system established for Campbell County in 2003.

Recommendation for Preliminary Plat:

To approve a Preliminary Plat for the Sisters of Divine Providence, subject to the following conditions:

1. That driveway spacing requirements be followed along Four Mile Road and Mary Ingles Highway.
2. That the necessary right of way be dedicated along Four Mile Road and Mary Ingles Highway.
3. That Parcels I, II, III and IV be reconfigured to eliminate its irregular shape.
4. That the two residential structures on Parcel I fronting Mary Ingles Highway be split into their own lots. This would add two more lots to this proposed preliminary plat.
5. That the notation for side yard setbacks in the R-1A and R-1E notations be corrected on the plan.
6. That setbacks be added to the plan on Parcels I and II.
7. The applicant work with staff to bring the addresses into compliance with the uniform addressing system for the County.

Bases for Recommendation for Preliminary Plat:

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

1. CAMPBELL COUNTY SUBDIVISION REGULATIONS SECTION 115 states: "Wherever practicable, such intersections shall be spaced not less than 230 feet apart. In the case of collector streets, intersections with said streets shall be spaced not less than four hundred feet apart and access to driveways shall be spaced at intervals of not less than 175 feet…";

2. CAMPBELL COUNTY SUBDIVISION REGULATIONS SECTION 4.15: "The size, shape, and arrangement of lots in proposed subdivisions or developments shall be such as set forward in the current Zoning Regulations and these subdivision regulations. Rectangular shaped lots shall be encouraged in all commercial, industrial and residential zones. Extremely irregularly shaped lots shall be avoided…"

3. CAMPBELL COUNTY ZONING ORDINANCE SECTION 9.19., K.3., SITE PLAN REQUIREMENTS states: k.3. "Dedication of land to public use or set aside for common ownership."

Mr. Hutchinson concluded his presentation by asking if there were any questions he could answer for the Commission. Ms. Minter asked the Commission if they had questions for staff. Mr. Verst asked for clarification because the staff report states the request is for nine lots with no public improvements, but the plat reflects a public water main. Mr. Hutchinson replied there was a water main, but it is a private improvement. Mr. Hutchinson asked Mr. Klear to confirm this statement which Mr. Klear did so. Mr. Klear advised Mr. Verst to ask that question of the applicant. Mr. Verst stated that on page four of the plat the water main is listed as public. Mr. Verst asked Mr. Hutchinson for the status of lot 8 across the railroad tracks in regards to road frontage. Is Anderson a private or public street? Mr. Hutchinson replied that Anderson is a public street. Mr. Verst continued to ask if the road frontage for that lot was on Anderson. Mr. Hutchinson replied that it was.

Ms. Harding asked, regarding parcel 3, if the only access to the entire proposed parcel is from Mary Ingles Highway or was there an easement across the Sister's property, lot 1, to gain access from Four

Mile Road. Mr. Hutchinson stated that there were no easements shown to be connected to parcel 3. Mr. Hutchinson paused and then asked Ms. Harding to clarify which portion concerned her. Ms. Harding stated the portion that is "hanging out" behind lot 3. Mr. Hutchinson stated he does believe there is an easement that was previously established. Mr. Jay Bayer, engineer and surveyor for the Sisters, started to supplement Mr. Hutchinson's answer, but Ms. Minter reminded him that he would have an opportunity to present information to the Commission once all questions for staff had been answered. Mr. Hutchinson stated that approximately six months ago, the applicant submitted a plat and the easement was created at that time.

Ms. Minter asked if there were any other questions for staff. There being none, Ms. Minter asked the applicant to come forward and state his identity for the record. Mr. Jay Bayer, Bayer & Becker, engineer and surveyor for the applicant stepped forward. Mr. Bayer also asked Sister Alice Gerdeman, St. Anne's Convent, to come forward and give an update on the actions that have taken place since they last appeared before the Commission. Ms. Minter asked Mr. Bayer to identify the third member of their party. Mr. Bayer apologized and introduced Mr. Jim Dressman, the attorney for St. Anne's Convent, as well as, the Diocese of Covington.

Sister Alice Gerdeman presented an overview of what is occurring on the proposed lots. Proposed lots 7 and 8 are under negotiation with the Kentucky Heritage Foundation, as well as proposed lot 3. They are very close to an agreement with them. All three lots will be placed in conservancy. They will be used for research and educational purposes in perpetuity. They will remain as wildlife areas. They will be open to schools. Right now, there are programs going on with NKU, Xavier University and several high school groups that are doing scientific research with animals and plant life, etc. Parts of it, Sister Alice Gerdeman stated, we see at this point would be semi-opened to the public. If any of you have been to parcels 7 and 8, you would know we have trails with a kiosk with information. They would be under the jurisdiction of the Campbell County Conservation Board once the whole plan is put in place. They would be open to the public with some restrictions obviously, but open certainly to schools and at other times of the year to other people.

Parts of section 4 also would be used under the conservancy agreement. It has some specific lay of the land that is considered quite rare. They have told Sister Alice Gerdeman that the Conservancy is quite anxious to have that area remain as is so that it can be studied and available for people to see. In parcel 1, they do have the Holy Family retirement home there. We also are building, and it is coming along quite well, to add on a 6,000 square foot building which will be called St. Ann Providence Center. It will connect and be part of the Holy Family retirement home. It will be the headquarters for the Sisters of Divine Providence, their offices in the United States, as well as a gathering space for the Sisters to have their meetings. The little "dog leg" part up there is our garden and they do have an interest in keeping this area for their own garden area or for others to garden for us whichever may be the case. Mr. Verst asked Sister Alice Gerdeman to confirm on the slide what portion she was calling the "dog leg" which she did. The area where the cemetery is located is oddly shaped because it is on a hill. It has enough space at the present time that we project for the near foreseeable future, we need to keep that size because it has our former members and it has enough space for our present members. In the future, we may need to double bury or whatever, but that is quite a few ways off, but that is why that is the shape it is.

Parcel 5 does have a building on it. It has two little houses. It was meant to be a home and then to have a driveway between them to make the other a gatehouse, but that never did happen. It is two buildings and is inhabited by our own Sisters forming a community there. It houses our water plant – our water treatment. We are currently in the process of working with the Northern Kentucky Water District to be able to put in water service from them, but right now it is a private source. We are negotiating with them to have water from the Water District. That water would go to the big building, which is St. Anne's proper, which you have probably read in the paper has been sold, or rather will be sold, to the Diocese of Covington hopefully sometime in January 2013. It will maintain its present purpose to serve as a retreat center and the land around it, the funny little jog there, is a lawn garden for "retreatants". It has statuary in it and pots with plants in it. It is meant to be a place where people can come and be refreshed.

Parcel 6 has a small house on it. At the present time, it is a chaplain's home. All of the houses we have along Mary Ingles Highway, we believe were there when we purchased the land or took it over in 1919 or 1918. So they have all been there a long period of time. At this point, we do not foresee an expansion of them. We think for the next twenty years we will probably need them for the purpose they serve right now which is as a home for some of our Sisters to be living in them. What happens after that, we don't know, but for the present time, we would like to see them as they are because they meet our needs and we don't see any need for major renovation of them, just routine maintenance as required.

Sister Alice Gerdeman asked if there were any questions she could answer for the Commission. Ms. Minter thanked Sister Alice for her update. There being no other questions or comments for Sister Alice, Mr. Bayer went through the conditions presented in the staff report. As for condition number one, Mr. Bayer stated if the purpose could be that new driveways follow the spacing requirements it would be helpful. Mr. Bayer asked that the word "new" be placed before the word "driveway spacing". They are not proposing any new driveways, but this would clean it up for the applicant. Condition two, that the necessary right of way be dedicated along Four Mile Road and Mary Ingles Highway; we are in full agreement with that. Item three is where Mr. Bayer stated they would like to spend a little time on. Mr. Bayer stated that as Sister Alice alluded with what is happening with the property and what occurred is that Mr. Bayer walked the site with representatives from St. Anne's and the Heritage Council. What the Heritage Council is proposing is to basically leave all of this property as is. It is the most pristine forest you have in all of Campbell County and in Northern Kentucky according to the conservancy agents that walked that line with him. We very carefully went around and picked exactly where every line would be; this is not haphazard. As Sister Alice stated, lots 7 and 8 are going to remain completely undeveloped; they have conditions on them where they cannot be improved. So there will not be any new structures on them already. They have restrictions on the land. Parcel 4 is going to be the same way; parcel 3 is going to be the same way. So really the only parcels that are going to have activity on them is parcel 1 which is in the process of that small addition and parcel 2 which is in this point in time the Diocese is not planning any improvements either. Parcel 5 is the one with two small houses on it which this one has one and this one has two which staff is recommending that we subdivide those which is a later condition and we certainly agree with that. Parcel 6 is just a house that we are subdividing off. Sister Alice also mentioned this area here with the statuary, etc. and they want to keep this with the convent and retreat center. So that is why these lines appear as they do. She mentioned the cemetery so we are carving this area out to keep the cemetery because the Diocese did not want to own the cemetery. Sister Alice mentioned this area which is their farmland.

Mr. Bayer continued on to condition three where there are no proposed improvements, but based upon our requirements we need to provide a flag to get to it that we have verbally agreed and there is probably going to be an easement written and we are actually going to provide access to that property for the once or twice a year that the conservancy district comes out to check on it. But, per your requirement, we have a flag lot so that is why that is an odd shaped lot. So that we would respectfully request that your regulations are really written for a new subdivision that comes on and we would certainly not want to propose a single family subdivision with very irregular lot lines. I think that is the intent of your regulations. This is an existing situation and these lines are very carefully positioned through here to give the Diocese what they want and the sisters to keep what they would like to keep and the other lines were really negotiated with the Heritage Council for what they want to buy. They wanted to keep as many of the pristine trees as they could and then other areas as to the farmland they had no interest in the sisters were going to keep that. So that is the basis for how those lines got to where we are and we would like to respectfully request to keep our lines where they are. They are irregular but the intent of your Subdivision Regulations is for new work.

In regards to condition four, Mr. Bayer stated that I mentioned long ago that we would be happy to subdivide out those two lots along - fronting Mary Ingles Highway. Condition five, the notation on the setbacks, we would be happy to add those to the final plat. Mr. Bayer stated that Mr. Hutchinson mentioned that the setbacks in Silver Grove for the R-1E Zone are eight feet and eight feet, but I checked

it online again today and I don't know if there is something wrong there but online it still stated it was fifteen feet and five feet. Mr. Bayer stated he didn't know if the online version was not official or what, but he did check that. Mr. Klear advised Mr. Bayer and the Commission that the Silver Grove Zoning Ordinance is not available online. Mr. Bayer stated he would be happy to correct it to whatever it is, but he just wanted to point out that there is an issue there. The setbacks for parcels one and two are not a problem. Mr. Bayer stated that as far as condition seven, they have been operating under the address of 1000 St. Ann's Drive for one hundred years. Sister Alice Gerdeman stated they didn't used to have any address at all. Ms. Minter asked Sister Alice to step forward if she wished to address the Commission. Sister Alice Gerdeman came forward and stated that they did not have an address; they were just St. Ann's Convent, Melbourne, KY 41059. Until 2003, or maybe before that when, her understanding is that the fire department asked that there be addresses assigned. We were given and she doesn't remember who decided St. Ann's Drive, but they were given St. Ann's Drive not just our driveway. On one side was 1000 and the other side was 2000 and that is what we have been known by for the past fifteen to twenty years. Mr. Bayer stated they wanted to keep that address if possible. Sister Alice agreed stating that they did want to keep those address and what they wanted to do is to allow the Diocese to use the 1000 St. Ann's Drive while the sisters use the 2000 St. Ann's Drive for the new building they are constructing. Mr. Bayer finished stating that, in regards to the nature of the water main, it is currently private. They are installing the water main and then dedicating it to the water district.

Ms. Minter asked if there were any questions for the applicant. Mr. Verst asked, on parcel 4, it looks like from the map that the first narrow portion along Mary Ingles Highway is in Silver Grove and the larger portion in the Unincorporated Campbell County. It's not technically a flag lot. The portion in Silver Grove meets the fifty feet width. It's a legal lot, but a substandard lot. Can you describe for me a little better the lot lines around the cemetery? There are a lot of irregular lot lines following features out here. When it gets around the cemetery back there it gets a little curvy. Ms. Minter added that, along those lines, please explain the topography for those of us who have not had the benefit of walking the site. Mr. Bayer pointed out the St. Ann's Convent building on a site map board that he brought with him. Mr. Bayer stated that the convent building actually sits on the highest point of the site. He identified the building addition currently under construction and the cemetery which has been there a long, long time. Mr. Bayer stated that the Diocese did not want to own the cemetery so we came in and brought that property line along St. Ann's Drive and they initially held it at that fifty foot easement so that if in the future the Diocese wanted to publicly dedicate that road so we set the radius out at Mary Ingles Highway so that could be dedicated in the future. At this point in time, we don't intend to do that, but the property lines end right in between the existing garage that the Diocese did want to buy and the convent building that is going to stay intact so that property line goes right between to divide it up which the two parties did agree upon.

Mr. Verst asked if it was following driveways or pavement. What is the nature of those curves around the cemetery? Mr. Bayer stated that they were going to stake between the two buildings to get setbacks and then trying to follow the property line the best we can. The beauty of this whole deal is that right now the Diocese is taking over the operation there and the two parties are going to co-exist granting the sisters access to the convent area, but for the most part the Diocese shouldn't need to go into the St. Ann's portion. From a retreat standpoint, all of this public property will be available to foot traffic for retreats. It is a fantastic setting. There are going to be crossings, utilities, parking, etc. Mr. Verst stated that a part of their discussion is going to be the irregular lot line and he appreciated Mr. Bayer clarifying why the lines are there. Mr. Verst asked Mr. Bayer that if the Commission were to approve the lot lines in whatever configuration they are approved that Mr. Bayer was going to place monuments on all corners that could be located in the future. Mr. Bayer agreed. Mr. Bayer stated he did not know if it were critical where these corners are because the people using this facility will also be using the quasi-public property back there and vice-versa so I think it is the sisters were extremely happy to find out that the Diocese was interested in buying this property. Mr. Bayer advised the Commission that they will be setting all the pins, property corners, etc. as required by state law throughout the property.

Mr. Pfeffer stated, on the cemetery, he understood the applicant's position on following the lines and all that, but just behind the new building or just south if you are looking at the map, that curved line on there – why does that just jet off to the left. What is unique about that? Mr. Bayer pointed out on the slide the area Mr. Pfeffer was talking about and Mr. Pfeffer confirmed that was the portion he was inquiring about. Mr. Bayer stated there was a parking lot there that they felt important to go with the convent piece. So we are giving them that whole portion and actually there is an access back there to the cemetery along this line. Mr. Pfeffer asked Mr. Bayer to confirm that the parking lot was why the line jutted out and Mr. Bayer did so.

Mr. Dressman stated he wanted to add on behalf of the Diocese that part of the arrangement between the sisters and the Diocese is that the Diocese is contemplative of whenever the sisters choose to give up the remaining land that the Diocese will acquire that as well. Mr. Dressman stated that he knew the Commission couldn't take his statement to the bank, but that is the long term plan for this. There will always be a retreat center operated by the Diocese. When this became available, or rather when the Bishop became aware that this piece was available, we totally changed course from a retreat center he was going to rebuild in Erlanger and he is now focused that this is going to be the Diocese's retreat center. Mr. Dressman stated that to give the Commission some context that they drew the lines so that the convent could co-exist with existing operations. Long term, he thinks you will see those lines disappear or at least the lines between the sisters lots 1 and 2. For lots 3 and 4, once those lots go to conservancy, those lots will always be that way. Mr. Williams asked Mr. Dressman if the retreat in Erlanger, Kentucky that he referenced was Marydale. Mr. Dressman replied that it was the one he was referring to. Marydale is closed now he believes. If not, it will be closed. Mr. Dressman stated that there was a lot of pull and support for St. Ann's. The Bishop had a lot of people speaking in his ear about this. It was successful. So that is the Diocese's retreat center and will be for hopefully forever.

Ms. Minter asked if there were any additional questions of the applicant. Ms. Harding had a question for Mr. Dressman. Ms. Harding asked if he was free as counsel to discuss the contingency previously referenced. If not, since they are zoned residential, do you have an alternate party or interest with an alternate use to contemplate? Mr. Dressman stated he was not aware of any but the discussions with the conservancy district have been going on for a long time. They have gone through several levels of approval and they have gotten to the point that they have ordered title work and survey work so that is a pretty positive indication that they are going to acquire this property. The sisters really don't have a plan B. This has been the home for so many Sisters. For many Sisters, they have known no other home. They are going to work tirelessly and pray even more that this stays exactly the way it is. And they have. Mr. Dressman stated that he thought they have pulled off a miracle, because when he first got involved with this project, it was like what do you do with this building, this structure, other than as it is which has been a financial drain to the sisters. They get credit for holding it up for so long and now the Bishop gets the financial strain. Mr. Dressman did not see anything happening on this property. He thinks plan B would be twisting the Bishop's arm to acquire it all, to reach out and get contributions to buy and preserve it - that would be the Plan B that he sees. It would not be compatible to have a subdivision there next to a retreat center. That is what makes it so attractive that it is in a very – it is nearby you know, it is fifteen to twenty minutes from everybody, but it is in the middle of nowhere. It is so private out there, if you have seen the sunset out there. There is nothing more spiritually healing than to sit on the St. Ann's and watch the sun set.

Ms. Minter asked if there were any questions for the applicant. Mr. Pfeffer stated he did not know if it was necessarily a question for the applicant, but did the Commission get an answer as to the easement from Four Mile Road resolved. Mr. Verst stated it was an existing easement.

Ms. Minter asked if there were any other questions for the applicant. There being none, Ms. Minter opened the floor for discussion among the Commission. Mr. Verst asked what the other Commissioners opinion was in regards to the irregular lot lines and why they are what they are. How comfortable are they with the lot lines as shown? Mr. Pfeffer stated he thinks the ones that are really ugly is parcel 2 where it was explained that the cemetery and the parking lot is the cause. Furthermore, long term, if they

would see that something would happen with the Holy Family site, the Diocese would purchase that lot anyway making them one. The only other ugliness is right there where that parking lot exists. And if you would reconfigure that, it is honestly going to probably eliminate the parking lot from parcel 2 as far as making it straight if you will. Mr. Pfeffer thinks the intent is good and, for the long term, the indication would be that, if anything, these two lots would become one. Mr. Pfeffer, personally, had no issue with the irregular lots. He thought their intent was positive and, as pointed out, the regulations are aimed more towards residential new subdivision. Mr. Pfeffer thinks they are doing a decent job of outlining it for the use they want and intend.

Ms. Minter asked if there were any other comments. Mr. Williams asked if anyone on the Commission could think of anywhere else in Campbell County comparable to this. He didn't know of any. After a pause, Mr. Williams asked what the Commissions options were. Mr. Verst asked to what he was referring to: the overall plat, the lots or the irregular lines. Mr. Williams stated because of the uniqueness, the irregularity doesn't bother him at all. Mr. Williams stated it's not like if the Commission approves the plat as submitted that they were going to set a precedent or they were going to be unfair to somebody else who encompasses the property. He also didn't have a problem with it. As a whole, he is familiar with the property and didn't want to see anything happen to it. He would like it to remain just as it is. Ms. Minter stated she was reviewing the Subdivision Regulations regarding lot lines.

Mr. Williams asked Sister Alice Gerdeman if parcels 7 and 8 contained wetlands. She stated that they did. Mr. Williams asked how many schools or groups visited the site in the last year. He knew he had seen a number because he has connections down in Melbourne. Sister Alice Gerdeman answered that she does not have an exact number. She knew that they have had several counts where they have opened it for people for public tours. During those tours, they have had lots of people come through and many of them comment that they didn't realize how nice it is. Mr. Williams stated he knows he has seen people visiting the site. Sister Alice Gerdeman stated that they just had a workshop there bringing in the best expert on wetlands in the United States to discuss the conservancy of wetlands and how to bring them back after they have been destroyed in some way. He did a whole study with several different universities using our land as a model on how to restore wetlands when they have not been cared for. They created two brand new spaces that had not been preserved well and they're back now to the way they should be. That's the kind of thing the Sisters expect out there not just school kids.

Ms. Minter asked if there were any other items for discussion. Mr. Barrow stated of all the seven conditions listed in the staff report, and taking into consideration what he has heard from the applicant, the only item he sees as outstanding is condition 3. Mr. Barrow stated the whole site is unique - this is a unique situation on layout and use. Mr. Verst agreed and added that he feels there are very good justifications for the lot lines that are there. The Subdivision Regulation talks about maintaining lot lines that are for organized and uniform development pattern. He thinks that, while we don't have assurances currently of what the other parcels will be there, they are indicated to be for the Heritage Council and the preservation of those lots. Mr. Verst stated he thinks he is a lot more nervous for lots 3 and 4 to remain open for development and interfering with lot lines; but the most irregular lot lines are between lots 1 and 2 which are not really relevant as they don't lend themselves for open development as they have really large structures on them. Mr. Verst thinks this is a pretty unique situation where the lot lines they have shown are justified. We are not creating a typical land development subdivision.

Ms. Minter asked if there were any additional discussions. Mr. Williams asked if the Commission had the authority to waive the irregular lot lines. Mr. Verst stated he did not see this as a requirement, but as a recommendation for organized and uniform development plan. He thinks there is an organized pattern as to why the lots are there and does not think there is a specific section of the Subdivision Regulations that needs to be waived. It is the intent behind the regulation that things be organized. We do have a unique situation where there is a method to the madness. Mr. Verst thinks it is organized even though it is not a typical square lot subdivision. The cemetery is there; it's going to be there. Mr. Williams stated his opinion was to leave it as it is. He didn't see any need to change it. Mr. Verst asked Mr. Williams to clarify that he wanted to leave the lot line as they were submitted on the preliminary plat. Mr. Williams

stated that was correct. Ms. Harding agreed and continued that if the use were to be changed in the future or that the contingent plan fell through at some time in the future, and some other development plan were to be submitted in the future, it could be addressed at that time. It could be a condition at that time to reconfigure the lot lines. At this point in time, it is kind of moot. Ms. Harding asked for confirmation that her belief was correct. Mr. Verst agreed and stated that the Commission would have the ability to, if lots 1 and 2 were to be developed internally, request that those lot lines be addressed at that time. Ms. Blake asked about lot 3. Mr. Verst stated it does somewhat follow topography. Ms. Minter asked how many acres were there. Ms. Harding replied there were 44 acres.

Ms. Minter asked if the Commission had the desire to make a motion. Mr. Verst asked staff about the applicant's request to add text to the proposed condition about driveway spacing on Mary Ingles Highway to state it was only new driveways that must meet the driveway spacing requirement. Mr. Klear answered that the language that was presented is standard language already contained within the Subdivision Regulations. It's always been staff's interpretation that this condition would be applied to new driveways and not to existing driveways. That's the language that the Commission has approved in prior subdivision plats. If the applicant is adamant about that and the Commission is willing to make some adjustment, Mr. Klear stated he might make a suggestion along the following: "That new driveway spacing requirements..." would not be sufficient as the Commission is now creating a new policy towards driveway spacing requirements. Mr. Klear suggested "That driveway spacing requirements for new driveways be followed along Four Mile Road and Mary Ingles Highway." Mr. Verst stated that he recalls they have had this discussion before and thinks we have been pretty clear about staff's interpretation. Mr. Klear stated that this was language that is in the Subdivision Regulations. It has always been staff's interpretation that it was for new driveways. Mr. Williams asked if the applicant's concerns were addressed. Mr. Verst stated we have had this discussion before and in past we have left the language the way it is currently stated and, in his opinion, we have discussed it and made it part of the record so he is ok with leaving it in as is. Mr. Klear stated that on the flip side – there is no condition that states the driveways be moved or relocated to meet the driveway spacing requirements.

Ms. Minter asked if there were any other discussion. There being none, Mr. Verst made a motion to approve the submitted preliminary plat known as case #105-12-PPD-03, Sisters of Divine Providence subject to six conditions. Those being the conditions as suggested by the staff in the staff report numbered as 1, 2, 4, 5, 6, and 7 and omitting staff's condition number 3. The basis for his motion is information provided tonight by staff, by the applicant and discussion held amongst the Commission. Mr. Verst also found that the proposed subdivision is consistent with the recommendations of the 2008 Campbell County Comprehensive Plan Update, the Campbell County Subdivision Regulations and Zoning Ordinance. Mr. Williams seconded the motion. Mr. Hutchinson asked Mr. Verst to confirm he was including in the basis of the motion those bases as listed in the staff report. Mr. Verst stated that he was including the basis listed in the staff report. Ms. Minter asked if there were any additional comments on the motion. Mr. Bayer asked for clarification on the address of the site. Mr. Verst stated that he was including staff condition number 7 and he was leaving this up to the applicant and staff to determine what the address requirements were for the City of Melbourne. Mr. Verst continued that he is aware that some cities did not participate in the readdressing that occurred several years ago. He repeated that he was leaving the issue to staff and applicant to resolve what the correct address should be for this site. Ms. Minter called for a roll call vote. A roll call vote found Mr. Barrow, Mr. Bass, Ms. Blake, Ms. Harding, Mr. Pfeffer, Mr. Stubbs, Mr. Williams and Mr. Verst in favor of the motion. Ms. Minter abstained. Motion passed.

Ms. Minter announced to the audience that the next three cases to be heard are all public hearings and if any member of the audience wanted to speak on either of the cases then they should sign in on the sheets provided. Ms. Minter introduced case #112-12-TXA-01, Campbell County Planning Department, with a proposed text amendment. Ms. Minter asked Mr. Klear to present the staff report and staff's recommendation to the Commission.

FILE NUMBER: 112-12-TXA-01
APPLICANT: Campbell County Planning Department
REQUEST: Proposed text amendment to the Campbell County Zoning Ordinance Article IX General Regulations, Adding Two New Sections: Section 9.30 Application for Temporary Retail Sales Permits and Section 9.31 Application for Temporary Consumer Fireworks Retail Sales Permits

Background:

The current county zoning ordinance does not have explicit regulations governing temporary sales activities. In 2011, the Kentucky General Assembly passed House Bill (HB) 333. HB 333 created a new section of Kentucky Revised Statutes (KRS) Chapter 227 to establish new storage, permitting and licensing requirements for businesses and individuals selling or displaying fireworks. The current county zoning ordinance does not have any provisions to address this new retail category: Temporary Consumer Fireworks Retail Sales.

Staff has prepared two new sections of the zoning ordinance to address the gaps in the zoning ordinance and the new provisions in state law. Given the inherently dangerous nature of fireworks and the fact that the Kentucky legislature has passed additional laws governing fireworks, the sales of fireworks merits its own separate section for zoning regulation.

Proposed Text Amendment:

Per the attachments. (Copy of proposed text amendment to follow the minutes.)

Recommendation:

That the Planning Commission recommends that the Campbell County Fiscal Court adopt the proposed text amendments to the Campbell County Zoning Ordinance.

Supporting Information/Bases for Staff Recommendation:

1. Per Kentucky Revised Statutes (KRS) 100.203, the Campbell County Fiscal Court has the authority to enact zoning regulations within its jurisdiction. This authority includes the provision to amend its zoning classifications, uses, etc.

2. Pursuant to the Campbell County Zoning Ordinance Article XVII AMENDMENT PROCEDURE, the Planning and Zoning Commission has the authority to amend the zoning ordinance.

3. Proper notice has been given in accordance with Article XVII Amendment Procedure of the Campbell County Zoning Ordinance.

Mr. Klear concluded his presentation asking the Commission if they had any questions he could answer for them. Ms. Minter asked if there were any questions of staff. Mr. Williams asked if by "person or entity" you are including corporations. Mr. Klear stated that was correct. Mr. Williams asked what prevents an individual "John Doe" from getting a permit then transferring it to a corporation. How does the liability to collect for any injuries without having to go to federal court or to an out of state court? Mr. Klear asked for a clarification if "John Doe" was the property owner or who? Mr. Williams stated, hypothetically, let's identify me as John Doe and I get a permit then transfer it to a company out of Tennessee. There are no assets in Kentucky. Mr. Klear stated that the permit cannot be transferred and, by attempting to transfer it to another company, the permit can be revoked. Mr. Williams asked if there were any requirements for insurance, or that they maintain insurance. Ms. Harding asked if Mr. Williams was referring to firework sales. Mr. Williams stated that was correct. Mr. Klear answered the question

by stating there was no insurance requirement within our proposed text. Mr. Klear reviewed the information he had on state law to see if they required any insurance. Mr. Williams stated he, in past, had an office next to the Newport Fireworks Company and when he went back to his desk that day his desk was toothpicks because the fireworks next door blew up. Mr. Williams admitted he was a little sensitive to firework sales. Mr. Klear stated he does not specifically see anything calling for an insurance policy, so let him just state that he is not aware of any insurance requirements. Mr. Williams stated he would like to reserve the right to readdress the insurance issue after the public has an opportunity to comment and provide information. Ms. Minter stated that it was certainly possible to do that.

Ms. Minter asked if there were any other comments or questions for staff. Ms. Harding asked if we were treating the temporary retail sales separate from the fireworks. Mr. Klear stated that was definitely an option for the Commission. They are submitted as one case, but they can be separated. Ms. Harding stated she didn't want to keep jumping from fireworks to temporary sales. Ms. Minter asked which section Ms. Harding wanted to talk about right now. Ms. Harding stated she wanted to address temporary retail sales. The most recent example for application to her question is the Herbst Fall Farm Festival. There were probably fifteen to twenty different entities open for public visitation. Almost all of them sold various items. Ms. Harding is certain that eighteen out of the twenty were not highway commercial or neighborhood commercial, but rather residential zones. Ms. Harding stated there are two ways it could be handled, let's say that Neltner Farms, because I'm certain they would be in the highway commercial zone... Mr. Klear advised her Neltner Farms is not in the highway commercial zone. Ms. Harding changed her question to ask then if one entity, representing that entire Herbst Festival congregation, was located in the proper zone, could the permit extend to all those individual properties that sold cakes and cookies in that festival or event. How are you going to handle things like that?

Mr. Klear began that properties that are zoned agricultural are not governed by this section – they are exempt. For example, if you have a farm, and your farm grows tomatoes, and you want to sell tomatoes at that farm, you do not need a permit for that. Ms. Harding stated that took care of Neltner Farms, but what about the historic homes that wanted to sell memorabilia and baked goods. Mr. Klear stated he could not speak to each and every home down there. Generally, there is something agricultural occurring on the property and they would be exempt from this permit requirement. Ms. Blake asked if Mr. Klear was stating that the actual physical location of the sale was the key to rather or not the permit would be required. Mr. Klear answered that was correct.

Mr. Verst asked if Mr. Klear could give an explanation of why certain zones were selected and some were not. Mr. Klear asked which section he wanted to address – the temporary retail sales or the fireworks. Mr. Verst answered both sections. Mr. Klear stated that, for all temporary retail sales, all commercial zones were listed. It makes sense to allow for temporary retail sales in the commercial zones. All the zones listed are all the commercial zones available in Campbell County. It is the fireworks that are restricted to the highway commercial. The nature of firework sales is more of an intense in and out type of activity. Mr. Verst stated there would be more issues for traffic. Mr. Klear agreed and added that when the state legislature passed this new law, he did not anticipate that Campbell County would be experiencing those types of sales. Mr. Klear expected those sales would occur along the interstates and in Campbell County that would be I-471 and I-275. That expectation did not occur. A new facility opened up in Wilder. Mr. Verst asked if it was a temporary sales location. Mr. Klear replied that that the City of Wilder went with a year round sales ordinance. Mr. Verst asked if they required a building permit. Mr. Klear replied yes and continued that the City of Cold Spring went the other way. They went a similar way to what we have proposed and that is where most of the temporary sales occurred. There were a couple that popped up along AA Highway and that is primarily the issue we are trying to address. Mr. Williams asked where in Wilder the fireworks store is located. Mr. Klear replied it was right next to Town and Country off I-275. It used to be a driving range. The driving range is gone and now it is a year round fireworks facility.

Mr. Barrow asked if the fireworks provisions were similar to what other cities already have in place. Mr. Klear advised the Commission that the state law gives two directions. You can allow for year round

sales, which is what Wilder did, or you can allow temporary sales, which is what Cold Spring has done. We went with the temporary sales route. Mr. Klear stated he could not speak of all cities in Campbell County.

Ms. Minter asked if there were any additional questions for staff. Ms. Harding stated what was presented was great, but she is concerned that are: 1) no exceptions or exemptions; and 2) some form or vehicle for a person or entity to establish a temporary permit on an ad hoc basis for some particular purpose. She would like to see a "G." on here addressing either one of those particular circumstances. Ms. Minter stated she was unclear with Ms. Harding's request. Ms. Harding stated that she was going to use the Herbst Fall Farm Festival as an example. Let's say there is a historic house that, during the Herbst Fall Farm Festival occurring one day a year, wants to sell bookmarks that say "Historic Camp Springs Kentucky". It is not a commercial zone, but it is one of the sites on the tour. Ms. Harding would like to see some provision in Section 9.30 for an ad hoc circumstance such as that or an exception meaning the following things are exempt from this regulation.

Ms. Minter asked Mr. Klear to clarify item E. It is talking about how it applies to commercial properties versus agricultural or residential zones. Mr. Klear stated he would start with agriculture. If you are a farmer and you grow tomatoes and you want to sell those tomatoes from your farm, you do not have to comply with Section 9.30. If your property is zoned residential, and you want to sell tomatoes that you have raised on your property, you cannot do that. You have to comply with the ordinance Section 9.30. If your property was zoned commercial and you want to sell tomatoes that you have grown, you can do that, but you have to apply for the permit.

Ms. Harding asked for verification that if individual houses or locations along that tour (Herbst Fall Farm Festival) could not individually sell anything even if one party or entity representing the whole unit of sites on the tour did comply with this and made an application. Ms. Harding stated she would repeat that. Ms. Harding asked that if Neltner Farms which would be agriculturally exempt applied for a permit that included any of the twenty locations participating in the farm tour. She continued that right now she is aware of several entities that participate that would not be eligible to do so under this provision. Ms. Harding asked, could the one entity complying with zoning apply for a permit to represent those twenty individual stops along the tour for that one day…so that is a temporary ad hoc use. Mr. Klear stated that one property owner cannot submit a permit request for another property owner or entity. They would have to be the property owner or the temporary retailer. They cannot do a blanket permit for an area. Ms. Harding asked him to confirm that was correct even for a one day event. Mr. Klear stated that was correct. Ms. Harding stated that is what she has a problem with. She printed off several existing ordinances from other cities with language that allows for ad hoc temporary permits and forgot to bring them with her.

Ms. Blake asked about plant sales that some churches hold in the area. Churches are located in numerous places. Mr. Klear replied that they would not be exempt. Mr. Verst asked if the provisions would apply to yard sales, little Sally's lemonade stands and Ms. Harding added little kids selling Christmas cards to the neighborhood. Ms. Harding stated there were no exemptions, no exceptions, and no ad hoc uses. Mr. Williams stated he guaranteed that would hit the news if it were to be passed.

Mr. Verst asked what for the definition of "retail sales". Mr. Verst stated he was unclear as to what the true scope of retail sales were to include. It is primarily aimed at…for example, you have a hardware store. The hardware store is going to be zoned commercial and you have excess room in your parking lot. A third party would then come to the owner of the hardware store and say they want to set up and sell Christmas trees in the parking lot. That is the type of activity we are trying to regulate. Mr. Verst stated he understood that was the intention, but his concern is how it would be interpreted. If a neighbor has little Billy living next door and Billy has a lemonade stand, the neighbor could call and state that little Billy is bothering him and retail sales are not allowed in a residential zone. That is his concern. In line with that, is a yard sale considered to be retail activity. Mr. Verst stated he is uncertain. He feels like maybe there needs to be a short term day permit for residential zones for those instances that fall outside

the zones. Ms. Harding reiterated that she feels we need an ad hoc temporary sales language. Mr. Verst stated that you wouldn't want a neighbor selling candles in their front lawn all year long, but there may be a use to allow this activity one day a year. Ms. Blake stated that she is aware that some people use the yard sales to make income year round. She is also concerned about the churches that are selling products to raise money.

Ms. Minter recognized Mr. Williams who asked if there were communities surrounding us in Cincinnati that require some kind of permit for yard sales. Mr. Klear replied that they did. Mr. Williams asked if they needed a permit to do that. Mr. Klear stated he could not speak for those other communities in Cincinnati, but he knows there are certain cities in Campbell County that do require you to obtain permits for yard sales. Ms. Blake said she does know the yard sales seem to be everywhere. Ms. Harding stated she does not have a problem with requiring a permit for a yard sale or even for Sally's lemonade stand for that matter. What she doesn't like is the zone restriction which doesn't allow for these items outside of commercial zones.

Mr. Pfeffer stated that, another example in trying to clarify this other than using the Christmas tree sales was what about the hardware store that in August the farmer wants to come up and sell his corn in the parking lot for two to three weekends. Would he fall under this regulation? Mr. Klear replied that yes it would. Mr. Pfeffer restated that suppose he loads up his truck and drives up to the hardware store to sell corn out of the back of his truck on the hardware store property. He would fall under this permit requirement. Mr. Klear replied yes. Mr. Pfeffer stated that we are limiting him to seven calendar days. Mr. Klear replied yes, seven days per permit with the exception of Christmas trees. Mr. Pfeffer verified it was for three permits only, so if he wanted to do this for three weekends, he would need three different permits. Mr. Klear replied that was correct. Mr. Pfeffer confirmed that the farmer would need to go get the permit. Mr. Klear stated either the property owner or the corn salesperson could get the permit. Mr. Pfeffer stated if the farmer had to get three different permits then that would be his limit. Mr. Klear clarified it would be his limit at that location. Ms. Harding made a comment that we may be creating a transient population. Mr. Pfeffer continued with, from a zoning standpoint, what is the objective. What are we trying to achieve here by saying you need a permit to sell corn at the hardware store? Mr. Klear clarified that we are in no way trying to regulate corn, but rather the temporary retail sale process. Mr. Pfeffer stated he understood that, but in fact, you are regulating the sale of the corn. Mr. Klear reiterated that we are trying to regulate a general activity not just one specific issue i.e. corn sales. Mr. Pfeffer accepted that statement. Mr. Klear stated we are trying to propagate uniformity in temporary sales.

Ms. Minter recognized Mr. Williams. Mr. Williams stated he could understand the concern of regulating the parking lot sale of corn, but it is important that we remember that the Kroger store might be next to a shoe store. When you have a customer just pulling up in that parking lot and stopping wherever they want to stop and buy corn, they are going to be taking parking spaces from the neighboring businesses or the businesses across the street. We have to put this in the context of a busy street where people are just stopping and taking parking spots from other businesses where they may actually be interfering with other businesses. Mr. Williams does not have any problem with people setting up corn stands. We have to remember that this is not in the context of somewhere way down 27 where you may set up in the funeral home parking spots where there are no other businesses around, but somewhere else where you may have several businesses. Mr. Williams stated he was not necessarily stating his opinion, but we have to remember context. Ms. Harding stated firmly she was stating her opinion. For example, she has friends on Eight Mile Road who have blackberries and blueberries in their back yard and they sell the excess crop. It is just two weekends a year when the berries are ripe and they have more than they need. We don't have anything to address a temporary ad hoc use unless they are zoned commercial. Mr. Klear stated that they do have other opportunities available to them. Many cities in the area have opportunities for farmer's markets and they could sell them there. Mr. Pfeffer stated but they could sell them right at the end of their driveway. Mr. Klear replied that you are not supposed to have a business in a residential zone. Mr. Pfeffer asked for clarification. Mr. Klear repeated that you are not supposed to have a business in a residential zone and that is essentially what this is.

Mr. Verst stated that he certainly understood staff's concern that you want to regulate a business from popping up in a parking lot or in a residential zone. If someone is out front selling corn every day it gets to be an impediment to the neighborhood and traffic, but we need to be careful about limiting it too much. Some things, like the hardware store selling corn every weekend, maybe the hardware store needs to start selling corn instead of having a guy set up in the parking lot with a trailer. Some short term infrequent use is needed, but I think the language is a little too restrictive at this point. Ms. Harding said she seconded that notion.

Mr. Verst asked, the time frames for temporary sales, what was the motivation behind that time restriction of just three calendar days per year. Mr. Klear corrected it does not state three calendar days per year. Mr. Verst apologized and corrected his question to why just three events per year. Mr. Klear stated he looked at other ordinances in surrounding communities and three was the most common number and seems reasonable. Mr. Klear continued that there is the consideration of at what point does something stop being temporary and becomes more permanent. Mr. Verst stated he understood the seven days, but there is the different limit for Christmas trees and asked for an explanation on the difference. Mr. Klear stated there is a timed season for Christmas trees. Mr. Verst stated there was a season for corn also. Mr. Klear agreed, but distinguished the difference between corn and Christmas trees. People are not going to buy a Christmas tree in March. There is a difference. Mr. Klear stated staff could not write a regulation that is going to allow for the "season" of corn, or blackberries, or blueberries. Ms. Harding interrupted to state that staff could write a regulation allowing for temporary ad hoc sales.

Mr. Williams asked if it would be possible, since we are talking about corn and berries and home grown produce, to write in some kind of exception for perishable goods for thirty days. Mr. Williams stated that he didn't want Kroger coming into Southgate and opening up a produce stand. They would be taking advantage of the regulation. Mr. Williams clarified he was talking about home grown produce, some kid with a lemonade stand, and just whatever produce was in season. Mr. Klear stated he believed he understood what Mr. Williams was stating, but there was no way that he could enforce that the corn being sold was really "home grown" by the seller. Mr. Williams stated he did not know either except that the permit holder under pain of something would have to certify or attest to the fact that he is not a wholesale producer of that product. If you find out different, then the roof comes down.

Mr. Klear stated he understands and appreciates the process that the Commission was going through, but if you look at Campbell County as a whole, there are opportunities for individuals who have an excess of produce. There is a reasonable way to deal with that excess. If they have a farm themselves, they are already exempt and do not have to deal with this zoning regulation. Mr. Williams stated that was true, but only with farm property. Ms. Blake agreed with Mr. Williams. Mr. Klear stated that they could sell to farmers or go to the farmer's markets. There are opportunities to be able to sell that excess if they so choose. The thing is do you want to allow retail uses to occur in residential zones and we are trying to address it. Ms. Harding stated again that she would like to see more and asked Ms. Minter if she could make a motion regarding this issue. Ms. Minter advised Ms. Harding to hold her motion at this time and that this was a public hearing and the public has not had an opportunity to speak yet. Ms. Harding stated she would like to continue this discussion to the next meeting and not to put this item up for a motion at this time. This will allow her the opportunity to bring in the examples of possible language and we could talk about it some more in regards to exceptions, or special permits. Ms. Harding stated that she does like the idea that Campbell County will require temporary retail sales, even temporary ad hoc sales, to obtain a permit. Her resistance is to the fact that they must be a commercial zone property. She just thinks that is way too restrictive for a temporary retail sales permit. Temporary ad hoc events come up for festivals and other things. Ms. Harding would feel better if we waited and allowed her to bring in the other examples from other jurisdictions. Mr. Williams stated he like the idea. The point that he wants to make sure we understand is that, right now, the concept of temporary retail sales prohibits no one and if it isn't in the code then he thinks we need to have it there. We are just dickering over the practical application of this idea.

Ms. Minter stated she wanted to direct their attention now to Section 9.31 on the fireworks. Does the Commission have any questions or comments regarding that section? Mr. Verst asked staff to verify that the fireworks sales would being limited to two permits per year and that they could only occur on these two specific date ranges listed is coming straight from the state's statute. Mr. Klear confirmed that was correct. Mr. Klear stated you could not do fireworks on a temporary basis per State statute outside of those dates. If you wanted a date outside the range given, then you would have to apply to become a permanent fireworks facility. Mr. Verst asked if our zoning regulations have permanent fireworks sales in a facility listed anywhere. Mr. Klear explained that he discussed this issue informally with the County leadership and asked which direction they wanted to go and they suggested the temporary route. Mr. Verst asked if they enacted this section then the County would have provisions for temporary sales, but would not allow permanent sales. Mr. Klear stated that was correct.

Ms. Minter asked if there were any other discussions on Section 9.31. Mr. Verst stated that both sections mention temporary activities would allow for one class 4 sign that is independent of the properties' permanent signage. Mr. Klear stated that was correct and it was just for the temporary sales. If it was in the business zone and already had a sign, it is just a temporary sign for the temporary sales.

Ms. Minter asked again if there were any other questions at this point in time for staff. There being none, Ms. Minter stated we do have a public hearing tonight and officially opened this portion of the meeting. Since there are over ten speakers registered to address the Commission, Ms. Minter asked that each speaker try to be brief. Ms. Minter stated she was not going to put a specific time allotment to each speaker, but if it appeared to be going on too long, she would pause it and the Commission could come back to it in the dialogue.

Ms. Minter recognized Mr. Marvin Record. Mr. Record thanked the Commission for this opportunity. He wanted to ask why we would put these two different issues in the same ballpark. Granted, they are both temporary licensing, but tomatoes and squash are certainly a long, long way from blowing up your hands. Mr. Record also wanted to comment on Ms. Harding's comments. Mr. Record stated he come tonight specifically for the Herbst Fall Farm Festival and the wineries down there and all the kids in the neighborhood that sell tomatoes and cucumbers. A lot of the property adjoining him is agriculture not just farm. A farm is defined as having ten acres in this county. In Campbell County, grandparents who give property to their son/daughter, and then their grandson/granddaughter might get a sliver pushing their land down to an acre. If you have a kid that is going to sell tomatoes, is this agriculture or is it rural? Ms. Minter advised Mr. Record to direct his comments to the Commission and not staff. Mr. Record stated that at this point in time he has no intention of selling tomatoes, corn or Christmas trees or pumpkins. However, he buys a lot of these things from the boys and girls in the neighborhood and doesn't want to make them criminals by participating in these sales. Back to Herbst Fest, that is a thing that brings a lot of people here. Mr. Record stated he knew that the wineries are all regulated by the federal and state government so that is not too much of a concern there. But, he also buys popcorn from the Cub Scouts and Boy Scouts and whoever else. There are a lot of our commercial neighbors that allow these young fellows to sell these on their property. Mr. Record stated he thought it is a hard case to ask these organizations, such as the Cub Scouts, Boy Scouts or whomever, and churches, to buy a $100 dollar permit. Mr. Record just wanted to say he thought maybe we should remember where this kind of community comes from. If you want to encourage growth and you want kids to become entrepreneurs – let's not stifle that initiative by charging them $100 dollars. What are we going to do, limit the pumpkins because you only have so many days? You can sell pumpkins all the way from August through December and people are going to buy them. Mr. Record stated he appreciated the Commission's time. Thank you.

Ms. Minter recognized Mr. Victor Dawn. Mr. Dawn asked that he be allowed to defer to his attorney and that he be able to speak last. Ms. Minter honored his request. Mr. Leonard Rowekamp stepped forward to speak. Mr. Rowekamp wanted to first address to the Commission as to why we need these ordinances. Mr. Rowekamp stated that they are a direct result of a lawsuit that his client brought this summer against the Planning Commission over the fact that he runs the California Market on the AA Highway at the

southern end of the county. They have operated that business for a number of years. They sold fireworks at that location in all of the prior years. They applied to the state of Kentucky again this year and received all of the requisite permits. Mr. Rowekamp stated that to answer Mr. Williams' question, the state requires that with your application that you submit a certificate of liability insurance for at least $1 million dollars in which the Commissioner is named as a named insured on the policy. It has to be maintained throughout the time period of the permit. The fire marshal comes and does an inspection in order to grant the permit and there is a certificate which is issued by the state fire marshal that allows these sales. This is what my client has done in all prior years. He is located in a highway commercial zone which is under section 10.18 of your zoning code. These firework sales took place from a tent. Under the use permitted under the Highway Commercial Zone, "tent sales and rental services" were a specifically listed permitted use. There are specific requirements that the fire marshal imposes. First of all, they do not want any of the sales in his retail grocery store that he operates there. They are not permitted to be stored in there so that is why the fire marshal wants these items outside in a separate tent and then they are locked inside a pod at night to prevent an explosion. We believe that the zoning ordinance as it exists right now is in compliance with what the state has mandated and required through the fire marshal through the insurance requirements and through the fact the applicant has to be at that point an establishment who reports all of the taxes, pays all of these and has a sales permit and all of these sales are reported. When we brought this issue before Judge Ward, in her opinion, in regards to that, she said: "The plain meaning of the permitted use of tent sales suggest that a business can engage in exactly the kind of sale intended by the plaintiff. The court is not convinced that this pertains only to the sale of large tents. Moreover, the court is not persuaded by the defendants argument that plaintiff is bound to follow the approved site plan in such minute detail. Although the site plan does not indicate the plaintiff will engage in an outside tent sale, experience shows that this is a common practice among supermarkets which would have been anticipated when the plan was approved. Moreover, it is overly burdensome to require a party to receive approval of an amended site plan simply to engage in an activity that is already approved by the zoning ordinance."

Mr. Rowekamp stated that those are the words of Judge Ward. That is how she viewed this whole situation. We believe that first of all there is no need for these regulations. We're coming in with a situation where, first of all lets deal with the fireworks, that there are specific requirements under the state law that regulates how these activities are conducted and those activities are regulated by the state fire marshal who is in a far better position, I would propose, to determine the adequacy of the safety regulations and the procedures to be followed than possibly the zoning administrator. That is their job as the state fire marshal. There are provisions in place. There are limitations. We understand those limitations on the time and that's why we don't have any problem following those. We have done it for years, when all of a sudden, this year they have decided they were going to change their definition. That is the deal with the fireworks.

Mr. Rowekamp continued to discuss the overarching problem here which deals with temporary sales. His client operates a grocery store with gas pumps outside under the big canopies. They are, I guess the best word is, a general store. They sell as part of their regular activities for that community mulch, flowering plants, vegetables, pumpkins and Christmas trees. All of which, Mr. Rowekamp stated, would say to you all those sales take place where the items are located outside, but the individual goes inside the store to pay for it. At the hearing, that was the definition of what was an outside sale and what was an inside sale – where do you pay for it. So we came away with the belief that the way we conduct these sales, where the payment is made on the inside, we are in full compliance with the law. When he looks at these proposed regulations, he is not coming away convinced that they are going to have the same definition. We are talking about a situation where, this year alone, his client has generated from those sales and those come from plants and farmers and that, over $100,000 dollars. We are talking about real economic impact for people in the community. Now in addition to the sales we conduct, because there are the community general store, they allow on a regular basis, Boy Scouts, Cub Scouts, Girl Scouts, church groups, athletic teams, schools to sell cookies, popcorn was always the thing with the Cub Scouts when I was there, all those activities. If you enact this ordinance, we are going to have to say to them that we cannot have you there every weekend outside our store. We are only allowed to have you here for three

times a year. We are going to say to those groups that there is a permit fee involved which you are going to have to pay for. We are happy to have you here, but the County is going to force us to get a permit fee for that. Is this really a problem? Is this something that we need to address in this manner?

Mr. Rowekamp stated that it seems to him that the regulations, if you are trying to deal with the fireworks, are already in place. And we are coming up with a situation where we are creating regulations that are not needed. We are putting the County businesses such as my client at a competitive disadvantage against those in Highland Heights and other communities which are not going to propose these types of regulations. We have just, since Friday afternoon, collected 1,555 petitions from our customers in opposition to this proposal. We have them and we would like to make them a part of the record. Mr. Dawn presented the petitions to Ms. Minter. Mr. Rowekamp stated that is where they are and he thinks we need to think about this and ask a question: are we using something that is trying to kill a gnat? Ms. Minter thanked Mr. Rowekamp for his comments.

Ms. Minter recognized Mr. Tony Burns. Mr. Burns identified himself as the owner of the fireworks store that Mr. Klear referenced in Wilder – Tri-State Fireworks. He opened up last year on June 10th. He actually partnered up with Town & Country that owns that sports complex. They said that the golf industry, or rather they said the driving range portion, was kind of going down and not going up so they wanted to reuse the building and we fit the use. That's where we are. Mr. Burns provided a little bit about himself. He was born in Fort Thomas, went to Newport Catholic, went to Northern Kentucky University, spent 22 years as the director of logistic services for the mid-west for the Coca-Cola Company and retired a couple of years ago. He has also been a licensed pyrotechnical engineer for the last 20 years which means that he could work on the crews of like WEBN fireworks if he wanted. He has been doing fireworks for a long time. Mr. Burns stated that, obviously, if you pass an ordinance that allows temporary sales of the connection there to his road, then his opposition to that is rather obvious. He also wanted to make two other points. They pay sales and payroll taxes all year long. They pay property taxes, which this board is well versed of how much that is in the highway commercial zone. They pay for trash collection, Midwest Gas, water, and Duke Energy. They are a permanent store and employ somewhere between ten and fifteen employees during the peak time in the summer. It is essentially run by Mr. Burns, his wife and two sons, but they do a decent payroll over the course of the year. That's something that they are contributing back to the community. Another way is through the residual from their activity in Wilder and in Campbell County. The competition is a $5 billion dollar industry. The competition is not really what the legal competition that causes us grief. Class C fireworks are what we sell. They are very regulated. The wicks themselves are covered to guard against accidental ignition. The time that they burn is very regulated. It is very strict regulation on what is manufactured and what is imported into the country. The wick burns at a certain speed to allow the person to light the wick and then get away in a time to be safe. But in Class B fireworks, things are not in this way. Class B fireworks are designed totally different. The normal average Class B firework contains multiple wicks. It has a primary wick, a secondary wick and most of them have an ignition port where they would plug in an electronic igniter in there and light it. There is also a large percentage of the fireworks have quick match or quick wicks and they are designed to burn across this room in less than a second. That allows for, in such case as the WEBN fireworks, they have canisters stacked on top of each other, it allows for very rapid ignition of the fireworks. If you sell to a normal consumer and they light it while they are bending over the firework and it goes off immediately. If they are lucky enough to have it miss their head, then they will not be able to hear for a couple of weeks and then will likely be fine. On the flip side, M-80's and cherry bombs have been banned since 1966. They don't sell that kind of stuff. But they are being sold in Campbell County on a regular basis.

Mr. Burns continued that when you allow for temporary sales, it becomes very difficult to regulate. If you look at Wilder, the Wilder fire department, for example, they helped in the construction of their business. They set down what they wanted in our storage facility. They approved the fire suppression equipment. The fire suppression system is monitored. Chief Profit has two guys who are quickly becoming experts at Class C fireworks because they are aware of the liability. When you have someone come into town for two weeks during the 4th of July, we don't know who that is. Mr. Burns stated he

would give you two examples of things he witnessed this year. He came back from a three week trip to the South where he visited fifteen fireworks location. He had never seen a brick and mortar store, to the best of his knowledge, sell anything illegal. But this summer, he went to two competitors selling fireworks. One was a tent, the tent was not certified – there is a fire proof rating on the tents that they are required to use. It was not ADA compliant. It did not have the exits clearly marked. It did appear they were selling only Class C fireworks. The second place he inspected, he was met at the door by a young man that looked to be 12 or 13 years old and who showed him around which is totally unacceptable. He appeared to be very knowledgeable. Mr. Burns asked about M-80's and he was shown some comparable product. He was also shown the whole line of Class B fireworks they sold. This is what happens when it is not property regulated.

Mr. Burns stated that as for competition, his main competition is from people that sell things they shouldn't be. When Kentucky legislation passed the new regulations, there were six states that had total restrictions on fireworks. Prior to June 2011, you couldn't sell anything in Kentucky. Kentucky passed legislation and then Michigan followed quickly thereafter. There are only four states left that ban all types of fireworks. Many states have very different types of regulations, but 46 states now allow for sales of fireworks. If a 15 year old kid gets ahold of one of them M-80's and gets his hand blown off as someone referenced earlier or if someone leans over one of those tubes that are in Class B and it kills them, he has a fear that we are going to go back on the wagon. When you think about this, ask what the best way is to regulate Class C fireworks which the state has said is legal. Mr. Burns assumes in some way, shape or form that the Commission has to figure out how to do that. But Mr. Burns wouldn't have someone show up for two weeks out of the year, as Mr. Williams referenced, and you don't know who they are. They are selling fireworks. You know it is difficult for the local business. Mr. Burns can't see how each little fire department, and eventually they will hit the local police department, will figure out how to best handle this. Thank you.

Ms. Minter recognized Mr. Allan Seiter. Mr. Seiter identified himself as one of the last full time farmers in Campbell County if not the largest farmer. Farming is a tough business and they are always looking to find new ways for income. They have been cleaning and bagging their own corn for a while now – eight or ten years. They sell to local stores in the county, California Marketplace being one of them. It is not a three week deal. They sell year round a good bit of corn. It's not just him. There are several other local farmers that sell produce and pumpkins, firewood, and other different things. If this law goes into effect and they can't sell this stuff outdoors, there is no way they can sell it inside and would lose a good market. There is a big demand for it out there. They sell a lot of it. Mr. Seiter stated that his son sells them straw and corn stalks at the end of the season. It seems like the Commission should be helping us small business people instead of trying to put new laws on us to make it harder for us to make a living. The Campbell County Extension Agent, Donald Sorrell, works all the time trying to find new markets and new ways to produce income on the farm. If this law goes into effect, you are going in the other way. Mr. Seiter stated he didn't know why this was. He agreed with Len (Rowekamp). Is this really necessary? Has there been an outcry from the public on these outdoor sales? He hasn't heard anything. He doesn't think we need any more of these laws. Mr. Seiter stated he was just sitting back here listening to these new laws and the homeowners who want to sell their produce at the end of their driveways. Do we really need laws that say we can't do that? He doesn't think so. He thinks we need less regulation not more. Thank you.

Ms. Minter recognized Mr. Scott Schulties. Mr. Schulties identified himself as one of the owners and the manager of California Marketplace. His question is who benefits from this law if it passes? Everything they do inside and outside of their store is in good taste. They try to buy local items from local people. They buy a lot of product from Mr. Allan Seiter. They buy picnic tables and doghouses from the Mennonites that are local. They buy bedding plants, vegetable plants and flowers from local folks. He ran a report this morning. He didn't know if he should say this, but decided to anyway. Year to date, they have sold $121,000 dollars' worth of product outside. By year end, he thinks they are going to be at $130,000 dollars. There is sales tax on every item sold outside except ice. Kentucky is going to lose this

revenue if this goes into effect. Again, Mr. Schulties asked who is going to benefit if this law passes. In closing, Mr. Schulties would like to ask this Board to not pass this. Thank you.

Ms. Minter recognized Mr. Lloyd Rogers. Mr. Rogers addressed Mr. Williams comment about the fireworks plant that destroyed his office. Mr. Rogers stated that was a relative of his wife – a distant relative. He knows it messed up everything, but anyway, he remembers it. Mr. Rogers stated he used to be County Judge Executive and Chairman of the Planning Commission for Highland Heights and he was a council man in Alexandria. Mr. Rogers stated that he looked up in Alexandria what their ordinance was. In their zoning ordinance, you can sell anything you want at Wal-Mart. Any time of the year, you can put it out, make a display - whatever you want - because the more business they have, the more people come out to Alexandria. Mr. Rogers stated he looked closely and cannot understand, being a former chairman and county judge, why this had the two things mixed. It was the fire departments. Mr. Rogers stated he didn't know why Peter (Klear) mixed in the food and all that stuff. He thinks they are separate articles. He doesn't think this is necessary. Even though the state of Kentucky passed this thing on the fireworks, he has some kind of question as to what the state of Kentucky does. They said you could sell this during the 4th of July and New Year's Eve. Mr. Rogers stated he is going to bet these are the two biggest days of the year where alcohol is consumed. Why you would want fireworks on the days with the most alcohol doesn't make sense to him? This is what Kentucky does. Mr. Rogers would ask the Commission to not pass this. In fact, he would ask that you nip it in the bud now. Have you ever heard of an old rule called local autonomy? He's sure you have and he knows that Peter (Klear) has. This is really local rule even though the state has passed this. It did not mandate in House Bill 333 if we had to do anything with the vegetables or anything like that. We can make whatever rules we want. That is why Alexandria did what they want. So Mr. Rogers is asking at this time, to give the businesses a break, and quit putting regulations on the things that will cost businesses and jobs. Because don't you think they have to have someone outside while they're selling whatever it is. You are costing that person their job. Thank you.

Ms. Minter recognized Mr. John Decker. No one came forward. It was determined that Mr. Decker had already left the meeting. Ms. Minter stated the next name on the list was Mr. Leonard Rowekamp who has already spoken.

Ms. Minter recognized Mr. Jacob Nelson. Mr. Nelson stated he was a full-time student at NKU and he was present tonight because he sells firewood at the California Marketplace and firewood he sold all year long. People have camps during the summer, but mostly during the winter. If they made this, then he could only sell it for three weeks. If he buys the permit, and it turns out to be warm for those three weeks, then he isn't going to be selling firewood. He is paying for most of his college by selling the firewood and it is working out pretty good so far. If this law passes then there pretty much goes his college fund. Thank you.

Ms. Minter recognized Mr. Kevin Gordon. Mr. Gordon stated he lived in Wilder and is a board member of the Independent Business Association of Northern Kentucky, an organization that has been around for almost two years now. Mr. Gordon stated he was looking at these regulations and he always refers to himself as a recovering accountant because he can't seem to get away from the numbers. He can't seem to get away from thinking about problems from all sides. The overarching question that he has is what is the driving need to have these regulations especially concentrating on the retail sales? He's not quite sure what the purpose of the regulation is, what you are trying to control and what type of problems has resulted from these kinds of sales. The first problem he sees is the three temporary retail permits per year. He can think of Christmas trees, winter, summer, spring, fall, and the various things that would be available during these seasons. Right there are four seasons and different things in products could be available. Addressing the problem of congestion and blocking of property, if a particular store is having a sale, if they are a retail strip center, they would have to get permission on that from the owner of the property and the owner of the property would certainly be concerned about blocking access to the shoe store or whatever. Mr. Gordon stated he had only been by the California Market a couple of times. He doesn't get to that end of the county that often. Mr. Gordon would think if a person owned their property,

what they do on that property, what they sell on that property (as long as it is a legal) and where they sell it (as long as it is not some sort of an unattractive nuisances or whatever or creates an eyesore) - he doesn't know that you would even want to regulate that. One of the presences of business is simply that you open an establishment. You always have to be concerned about maximizing your dollar per square foot. You go into any retail establishment and you will notice that certain products are placed on certain shelves, certain visibility, and in certain locations. Vendors will come in and pay top dollar in certain instances to get end caps if they are special products. One of the ways stores can maximize their sales per square foot is being able to use the outside property for sales of these kinds of goods. It speaks well of the community that you can do this because, unfortunately, you do not see these in the urban centers. At night when the stores close, that merchandise disappears. Out in the suburbs in the county, that type of thing, these types of sales are able to be had because of the type of neighborhood they have. Again, it promotes more business, more sales, more sales tax, more employees, etc.

Mr. Gordon, personally, did not see any reason, or lessen to so some problem, trying to be solved by this temporary retail sales ordinance. As far as the fireworks ordinance is concerned, he thinks if you are trying to do any type of ordinance, one of the first things that he hoped would be done is to ask the people that are in that business what would make things easier on them? What would they like to see in terms of an ordinance? Again, one of the people that are in that business is certainly concerned about competition but again he thinks someone in the southern end of the county may not necessarily be competition to someone near the highway and has high traffic visibility and can get a whole lot of business that way. Certainly the Commission is concerned. Obviously you don't want illegal fireworks sold out of a tent or having a problem that way, but if the fire marshal is involved, Mr. Gordon suggest that maybe we get some input from the fire marshals. What would they like to see? Do they see a problem with this? Have we had major problems with this? Then maybe you can craft any type of ordinance that way with input from the people that are in that business. That's the only thing Mr. Gordon saw from a business standpoint that might make some sense. As far as, if somebody owns their property and they want to rent the space or if they want to encourage somebody to come onto their property and they could carve out a portion of their property to have some of these temporary sales, Mr. Gordon doesn't see where interfering with someone's use of their private property is really something our county government ought to be doing. Mr. Gordon didn't really think this is something that should be implemented. Thank you.

Ms. Minter recognized Ms. Tricia Dawn. Ms. Dawn stated her biggest concern is, when she thinks of these issues, her grandma. Her grandmother is ninety years old and lives close to the California Marketplace. When Ms. Dawn pictures her being able to travel that close to her home to get a pumpkin when she wants it or a Christmas tree or firewood, and just having that convenience, that is what goes to her heart. It is just so convenient for her to be able to walk in and get her groceries and get her firewood or anything like that. What are we hurting by offering pumpkins to a person when they are going to the grocery store? What is that going to hurt? If she wants to buy mulch for her garden or a mum or flower, this is what she sees when she sees a topic like this come up. What is the need for this? She has heard this by three or four different people. There are so many other things out there that she believes we should be focusing and worrying about rather than coming up with a permit for something like a Christmas tree or pumpkin. This just seems like nonsense to her. Thank you.

Ms. Minter recognized Mr. Victor Dawn as the final registered speaker. Mr. Dawn stated that he is certain that everyone would rather be popping their popcorn and sitting down to watch Kentucky play Duke right now. As his attorney pointed out, he is the primary reason that we are all here tonight. As the managing owner of the California Marketplace, we did have a run in with Campbell County Planning & Zoning this past summer. First of all, let's address a couple of things. Kentucky never did have a law banning all firework sales. They were not allowed to sell the big things that go way up in the air and go boom and he thinks this is defined as having rapports. All that changed almost two years ago now.

Mr. Dawn stated that, as his attorney pointed out, for years they sold fireworks outside their building in a tent. This year, someone stopped by to see them as we were setting up to stop them. They did go to court. They did win. Mr. Dawn stated that the very idea that someone made them go to court was

disturbing in itself. According to Mr. Dawn, they are out over $10,000 dollars and, while his attorney works cheap, his bill alone was over $3,000 dollars to go litigate this in front of a judge and pay attention to everything. They have over $5,000 dollars in product that did not sell - that's at their cost. The retail value of that product was more like $12,000 dollars. Mr. Dawn stated that they are stuck with that product because they could not sell that product until about a week before July 4th. Speaking to what someone else said, he thinks that the number that floated out about the amount of corn sold last year was over 30,000 pounds. He makes money selling that to us. Again, to address something that someone else said, they only sale Kentucky legal fireworks. They are a legitimate business and do not need the aggravation. Since they operate a grocery store 365 days a year, 24 hours a day, they would not want to get the reputation of selling an M-80 or any other illegal firework to someone who blew their hand off.

Mr. Dawn stated that every supermarket that he knows of displays pumpkins outside during Halloween season. Every supermarket that he knows of in Campbell County, in Kenton County and in Northern Kentucky, for that matter, displays flowers outside during planting season. Mr. Dawn stated that they sell just an unreal amount of plants: bedding plants, tomato plants, cucumber plants, pepper plants, cabbage plants, you name it. Mr. Dawn stated that people start planting their gardens the first of April for those of you that have grown up on a farm. They don't stop planting until sometime in the second, third or fourth week or later in June. Some put out late green beans or late tomato plants. To say you can only have a permit for seven days is a huge detriment to their business. Mr. Dawn stated that they sell a lot of pumpkins, straw, tomato plants and just a tremendous amount of flowers for Mother's Day. Their California store outsold all of their other stores combined every year on Mother's Day. Mr. Dawn stated that now, basically, he is going to have to pick and choose what are the three best things for their customers and then quit selling the remaining items.

Mr. Dawns stated that it makes no sense to put that number out there other than as his attorney pointed out this law is aimed at them. They are going to be at a huge competitive disadvantage with Kroger, Wal-Mart, Meijer, County Market or anyone else that is allowed to sell groceries if we are not allowed to put pumpkins outside, to put tomato plants outside, because each one of those companies mentioned are allowed to do that. So far this year, they have had $120,000 dollars' worth of products sold. His attorney touched on that and his partner Scott touched on that. That equates to two full time jobs and it equates to a lot more than that when you figure that a lot of that was corn that we sell and Mr. Seiter's son is a full time farmer as well. The jobs that are a part of that Mr. Dawn thinks are important to the southern point of Campbell County. When they were in front of Judge Thomas, and this is according to Mr. Klear's testimony, vending machines are an outside sale and would have to be taken away. They would not be legal. So if you have a Coke machine in front of your store, which we don't, but if we did, you would have to take that down. Mr. Dawn stated that they do have propane outside of their store. They sell a ton of propane and that is counted on by a lot of folks who heat their house or do their cooking with propane. That would have to go away. They sell more ice out of that store because of a lot of people do not have city water. We are Dusings' number one customer. There are weeks in that store where they sell well over $1,500 dollars in ice alone. They had to put a second ice storage box outside to keep up with the demand. That will all have to go away. Mr. Dawn repeated that they will not be allowed to sell ice to their customers. The Red Box Videos that is located outside is an outside sale and would have to go away. The ATM for the bank, they aren't selling anything unless you want to say they are selling money, but according to Mr. Klear that would have to go away.

Mr. Dawn stated that at the hearing in front of a judge someone defined tent sales as the sale of tents. That makes no sense to him. They actually defined it as the sale of tents. It's not. Mr. Dawn stated he would ask you then what is a garage sale - the sale of your garage. Is a yard sale the sale of your yard? That person was grasping at straws trying to keep them from selling fireworks because there was a personal reason to not let them sell fireworks. Mr. Dawns stated that this is why we are here tonight and that is why he has to spend a lot of money with his attorney.

Mr. Dawn continued with the third party sales (the Girl Scouts, the Boy Scouts, and everybody like that). Again, his attorney touched upon this, they are going to have to tell them that they have to get a permit

unless of course the Campbell County Planning & Zoning is going to decide who they are going to apply the laws to and who they aren't going to apply them towards. If they are going to apply them to one, they should be applying to all evenly. Mr. Dawn stated that there is no way you can take away the nonprofit sales out there. The California Marketplace is the only place in the southern part of the county where they can actually sell that product. Mr. Dawn stated that they sell more cookies in one day in our parking lot than they sell in two weeks going door to door.

Mr. Dawn stated that his thoughts on this tonight is that if you are going to pass any ordinance, we should all apply good common sense and he don't see the common sense in the ordinance on no outside sales. More importantly, he doesn't think we should make any decisions that are going to place unnecessary burdens on businesses that are really trying to service our community. That is what they do with their outside stuff. They are not trying to sell tractors so they could put extra cash in their pocket. They run everything through the register. They employ over fifty people and pay health insurance on most of them. Mr. Dawn stated that his people make a higher average wage per hour than those, at least according to the paper, paid by Wal-Mart. They pay their people fair. Mr. Dawn stated that he agrees with and supports Section 9.31 that is being brought to you tonight. As a matter of fact, Mr. Dawn stated that he recommended to the mayors of Dayton and Ludlow that they put a large fee on selling fireworks so that vendors would not pop up on every corner because he agree with the gentleman that spoke earlier. It is not about competition. It is about safety in what they are doing. The City of Dayton makes them pay a $1,000 dollar fee to sell fireworks in a tent in their parking lot. The City of Ludlow followed suit and allows us to sell fireworks in a tent in our parking lot and it is also a $1,000 dollar fee. If you wanted to, in Section 9.31, raise the fee to $500 dollars or even $1,000 dollars, Mr. Dawn is still all for it because he doesn't think we should be selling fireworks out the back of an S-10 somewhere with a piece of tarpaulin strapped over it to keep it from getting wet. Section 9.30 is a different story. He thinks it is bad for business, bad for the people in Southern Campbell County, and just bad for everyone.

Mr. Dawn stated there is a third issue that he believes is really bad for everyone and he think it is totally pointed at him. That is that thing where they take the current zoning ordinance and take "tent sales" out. Mr. Dawn stated that he thinks it is line 15. It says "tent sales". Ms. Minter stated she believes that is a different case. Mr. Dawn stated that she was wrong, because if the Commission is trying to take "tent sales" out of there because if you sell fireworks. Ms. Minter corrected Mr. Dawn that he was talking about item seven on the agenda for tonight's meeting. Mr. Dawn asked if he could speak about that case when it came time and Ms. Minter stated that he could. Mr. Dawn stated that other than that, he had nothing else to say other than that he hoped that the Commission did not recommend to the county that Section 9.30 becomes law. Thank you.

Ms. Minter stated that was all the speakers that had registered. Ms. Minter asked if there were anyone else here tonight that wished to speak. A gentleman stated that he wished to address the Commission. Ms. Minter asked him to come forward to state his name and address for the record. Mr. Mitchell Dawn of 8045 Tollgate Road, Alexandria, came forward. Mr. Dawn stated the two biggest things that he wanted people to know about him is that, one, he is a produce manager and two that he goes to Northern Kentucky University. The reason he says he is a produce manager is because in Section 9.30 it says that you are only allowed three temporary sales. As a produce manager, he knows no product is going to last all year long and especially more than three seasons. There is a season for apples and a season for oranges. If you are only allowed three temporary permits, you can only limit yourself to three items because even if the season is only seven days long, which most seasons may not be, you can only sale those three items. It is the same with the Farmer's Market. In the Farmer's Market during the summer, you are going to see tomatoes. You are not going to see pumpkins or Christmas trees. But if you are going to have someone who only goes three times a year, you are going to limit them to only three different crops. The reason he says he is from NKU is Section 9.31. Just today in speech class, they went over something called Monroe's Diagram which is for making a speech which is persuasive, which is what he is trying to do tonight. What's funny about Monroe's is that, first, you have to have your attention getter and, second, you have to state a common problem. Mr. Dawn stated that he doesn't see a common problem with this because nobody here is trying to fight it and it is not as huge to the public.

Kentucky had put it in place for all this and governs this very strictly. Mr. Dawn stated he has worked personally through the summer fireworks for his father and the fire marshal does show up. He showed up twice while Mr. Dawn was working there and there is no problem with what they do. It is by all laws and that is way he is trying to persuade the Commission to not pass it.

Ms. Minter asked if there were anyone else that wanted to speak tonight. An audience member stated she had a question. Ms. Minter asked her to step up to the microphone and state her name and address for the record. The young lady stalled and Ms. Minter advised her that she was more than welcome to speak if she so desired. Ms. Amanda Dawn of 8045 Tollgate Road, Alexandria, made her way to microphone. Ms. Dawn asked if the outside sales included fuel sales. Ms. Minter advised her that at this point in time they were taking this under advisement.

Ms. Minter asked if there were anyone else wishing to speak. There being none, Ms. Minter did ask the final two speakers to sign in to assist with the preparation of the minutes. Ms. Minter closed the public hearing and opened the floor for discussion among the Commission. Ms. Harding stated she wanted to start by saying "Thank you" to the audience for their comments. Ms. Harding stated that if anything her inference is that Planning & Zoning has not done a good enough job, as all of us are contemplating this now, in making the general public understand if this is a revenue generating scheme or rather we really have clear objectives on why we would want to or why Planning & Zoning would want to regulate this. Ms. Harding stated that the general perception is that this was arbitrarily done. Planning & Zoning has not clearly identified their objectives. Is it for safety? Is it to keep out outsiders so they don't come in and sell on someone else's property and then if something goes wrong you don't know where they came from and who gave them permission to sell something. Ms. Harding didn't know if either of these regulations accurately tells the public why there might be a need for them. This is why the public comments are helpful and she appreciated them. In respect to the fireworks, when they do sales on the side of the road, Ms. Harding stated she was getting the feeling from several of the speakers that the fire marshal already looks into these kinds of things. What Ms. Harding is looking at is duplicate, redundant, overlapping services or regulations and Ms. Harding wanted someone to tell her exactly what a fire marshal does. Do they inspect the site? Do they provide a document saying that you are allowed to sell "blah-blah-blah"? Does that document specify you can only sell Class B or C but not E? Is there a limit to the amount of fireworks that you can sell to one entity or customer? Ms. Harding wanted to know what the fire marshal does so she could see where we may be overlapping in our objectives and if rather this would be seen as a revenue generating scheme on the part of the county.

Ms. Minter stated those were very good comments and asked if anyone else had a point for discussion. Mr. Williams asked if there was a definition for "temporary retail sales." Ms. Minter directed the question to staff. Mr. Williams stated it was for anyone who knew the answer. Mr. Klear stated it was a retail sale on a temporary basis. Mr. Williams stated that a previous speaker made a point and he was thinking of this prior to their comments. If Mr. Williams buys ice and propane from a convenience store in Wilder, and those were considered outside sales, Mr. Williams stated that he was under the impression that those items were covered under the purview of this board. Is he wrong? Mr. Klear stated that he could not address Wilder, but could he address the answer in a different way. Mr. Williams stated that, by the way, he was not aware that the Planning Commission got sued so, as far as he is concerned, nothing he has said tonight was directed toward anybody specifically. The first he heard of the lawsuit was here tonight. He just wanted the audience to know that. He has never heard of this location, as he doesn't get down to that end of the county much. Mr. Williams stated that he was never made aware of any lawsuit. Ms. Harding stated that she agreed and hoped the audience understood that their purpose is not to re-litigate the facts of any proceeding. Mr. Williams stated he would remember someone raising the issue does "tent sales" mean the sales of a tent - seems like that would have stuck in his mind.

Mr. Williams asked, as an example, would store "A" somewhere along Route 8 between here and the county line, require a special permit if somebody was selling ice and propane in addition to their grocery store and with propane he could understand why that propane should not be kept inside. Mr. Klear stated he was not speaking of any specific location because that is not appropriate. Mr. Williams stated let's

assume this is all hypothetical. Mr. Klear explained that when you get a submission for a site development plan for a grocery store and that grocery store also has a gas station, on that development plan, they will show the building or the inside sales. They will also show, in that case, the gasoline pumps. Staff reviews that plan in conformance with the zoning regulations to insure that you have all the things necessary to operate that business safely from a zoning standpoint. Mr. Klear continued that staff looks at all of those issues. Yes, you are not going to sell gasoline inside, you are going to have it in that outside facility, but it is shown on a site plan and the Commission reviews that information. If a business anticipates that on a regular basis is going to have some sort of activity, they will show it on that site plan. It is easier to see in a nursery. A nursery is going to store its' materials outside. When a nursery wants to do business, it will submit a plan which shows that activity outside. If you anticipate that you are going to have outside sales on a regular basis, not on a temporary basis, but on a regular basis, you show that on your site plan and accommodate that use. If there is a temporary activity, that's the issue we are trying to address within this ordinance - those temporary activities.

Mr. Williams asked to assume that this hypothetical place never put on its original site plan the sale of ice machines or propane sales. We have within the strict application of the law, if the ice and propane are subsequent to the opening of the store, (that is initializing the sale of these two items on the exterior of the store and not having them listed on the site plan), technically, a violation of the code somehow. Mr. Klear asked to look at that situation separately. Let's look at the ice and then at the propane. The ice cooler would be the physical equivalent that the product of ice is being sold out of the store. Hypothetically, it is operating on a portion of that sidewalk. Does that have an impact on the overall function of the operation? Is that ice box going to generate additional traffic, additional concerns that might impact the public infrastructure or public safety? It is definitely going to impact a person's ability to safely walk along the sidewalk which is one of the reasons why sidewalks are put in. There is potential risk to the public because instead of walking along the sidewalk. They are now walking in the parking area which is definitely risky because they are walking where there is activity and this could be an issue. Does that one ice machine have enough that it tips the scales to make someone submit a revised site plan – no, probably not. Do the ice box and the Red Box Video combined say you now need additional parking spaces or you need additional access – probably not. Cumulatively, where do you draw the line? There will come a point where all those elements add up and there would be the need for additional parking or other additional considerations that the business would have to take into account.

Mr. Williams asked if he had a farm in Campbell County and I wanted to sell his produce out the side of the road - on his property but on the side of the road – do I need a permit for that? No? Mr. Klear was shaking his head no. Mr. Klear added that if you wanted to sell fireworks on your farm at the side of the road, then yes, you would need a permit. Mr. Klear stated that if you wanted to sell corn that you grew on your farm, you can do that without a permit. Mr. Williams asked what if he wanted to sell products that do not grow on my farm, but he wanted to sell them on his farm on the side of the road. Mr. Klear stated it would depend on the nature of the product. Mr. Williams stated this was the point he was trying to make. If someone can operate and sale items along the side of the road on their own property and they can do it without a permit – it bothers him. Somebody who has a store has to have a permit, has to pay the taxes on it and somebody who is selling it on his own property can compete with him and not pay anything. Mr. Klear stated that if that individual was a farm versus a retail establishment then yes, they could. That is state law that a farm that is selling its own agricultural products does not have to abide by the zoning regulations. That is state law.

Ms. Harding asked if there were a guy that took broken lawn mowers and fixed them and then every couple weeks he places one in his front lawn for sale because he has refurbished them and got them running again. He would need a permit, but he couldn't get it because he is not zoned commercial. Mr. Klear replied that, in that instance, she was correct. Mr. Verst asked staff about the commercial zones – does the county zoning ordinance have provisions for outdoor storage and sales – is there a lot of zoning ordinances that allow outdoor storage of materials by that primary business sold inside the store. Mr. Klear stated that the current zoning ordinance covers outdoor storage of materials. Mr. Verst stated that

material was typically screened. Mr. Klear stated it is screened when next to a residential zone and it is stored in appropriate containers and "appropriate containers" depends on the product.

Mr. Klear stated that, while the Commission was deliberating this issue, as a point of information to the audience, whenever you are talking about making amendments to the zoning ordinance, the Commission itself does not have the final authority on zoning. That is why the staff recommendation is to the Commission to recommend their approval to the Fiscal Court to approve. Whatever action they would take this evening, and I don't know what that is, would not be a final action. Mr. Klear was not saying how they were going to act, but let's say the Commission recommends their approval of this text change – it is a recommendation to Fiscal Court to approve. The Commission is not approving this tonight. The text would be forwarded to the Fiscal Court and the Fiscal Court would take final action.

Ms. Minter indicated to the Commission that she was receiving an indication that there were additional comments from the public. She asked the Commission if they were inclined to hear additional comments. The general consensus was that they were interested in hearing the additional comments. Ms. Minter re-opened the floor for comments from the public. Ms. Minter asked the first speaker to restate his name for the record. Mr. Kevin Gordon stated that his point regards the site plan and trying to develop a site plan prior to opening a store. He can see how you would want to make sure that everything is in place, but as things evolve and, as the business evolves, the Commission would be eliminating the business owners' ability to adapt to new things that happen. Ten years ago, Red Box Video was not an option. He thinks it has been fifteen to twenty years ago that the propane tanks exchange program came about. You could not have planned for that. But as the business evolves, they may have a customer come in and say he has had difficulty locating propane tank exchange locations and ask the owner if they have ever looked into that. Well, the store owner would adapt to that. Mr. Gordon stated he could foresee a situation where the business owner puts a picnic table outside where his employees can eat lunch and take breaks and a customer comes in and really likes the picnic table and wants to buy one of those. All of a sudden this store owner has a customer for the guy that made the picnic table and may want to sell a range of the carpenter's products. To do a site plan ahead of time, Mr. Gordon just doesn't see how you can anticipate these things and how it can be done. To try to limit outdoor sales, every time you do that you are eliminating a business's opportunity or ability to adapt to a changing marketplace.

Ms. Minter recognized Mr. Victor Dawn who stated the first year they opened up, they struggled mightily. His partners started question if they were going to make it. They started listening to their customers. They started selling propane a little more than a year after they opened and now they sell an unreal amount of propane. They never had any idea of how much ice they would be selling at that location. If they didn't have the storage space outside, there is no place in their store large enough to store the ice they need. Plants were again where they were reacting to what their customers were asking for. Ms. Minter stated the Commission understood those concepts. Do not go through the list of produce. Mr. Dawn apologized for being redundant and stated that there was no way they could show that on a site plan. Mr. Dawn stated that at no point in their application process were they told to show everything they might possibly do on their site plan.

Ms. Minter asked if there were anyone else wishing to readdress the Commission. Mr. Rowekamp began speaking. Ms. Minter asked him to re-identify himself for the record before speaking. Mr. Leonard Rowekamp stated there was a question before about a fireworks permit from the fire marshal. Mr. Rowekamp submitted a copy to the Commission for the record so the Commission could see what it looked like and the information contained thereon. Ms. Minter thanked him for this information.

Ms. Minter recognized Mr. Tony Burns who stated that the Commission asked about the permits issued by the fire marshal. Mr. Burns stated that the state fire marshal does issue the permit and it is a simple process. You submit the appropriate application with the requested insurance document and pay your fee. You receive a permit back through the mail from the fire marshal. Ms. Harding asked if the fire marshal made a site inspection before issuing the permit. Mr. Burns stated that they do not. Mr. Burns stated that they are one of two new fireworks shops. The fire marshal showed that his store opened up for business

on June 10th and never came to their store until around August 28th. At that time, he had no idea they were there. The fire marshal was driving down I-275 and saw their fireworks store sign. There isn't a fireworks police out there. The state is trying to catch up with everything too because it is a new law.

Ms. Minter asked if there were anyone else wanting to make a comment. There being none, Ms. Minter closed the public comment portion of the hearing. Ms. Minter asked the Commission if they had any questions or comments. Mr. Verst asked staff if a business were to add an ice machine or Red Box Video then they would need to show those items on the site plan so we could evaluate those items impact on zoning. Does our zoning ordinance allow for a business to submit a site plan that shows an outdoor sales area if they are going to sell produce and they are selling it every weekend or through the week then they should have an appropriate space? Does our ordinance allow for the business owner to come in and file for an amended site plan because they are selling a lot of produce and want to have a space in front of their building as long as it works – is that an item that can be approved under the commercial zones in our zoning ordinance? Mr. Klear stated the business can always file an amended site plan. Mr. Verst asked if there were anything in our zoning ordinance that prevents outdoor sales area if it is shown on a site plan - a permanent sales area. Mr. Klear stated that sounds like a simple question but it is not. In order to be able to give an answer, we would have to look at all elements of the zoning ordinance. You can't just say look at one page and tell me the answer. Mr. Verst stated maybe that is something that the Commission needs to look at. Mr. Klear added there are retail sales facilities and uses that contain an outside sales component and we allow for that – yes.

Mr. Verst stated it seems like we are having several different items of discussion here. One of them is that an established business trying to sell products outside their store, they could buy it from the farmer and try to re-sell it themselves versus the farmer pulling up with his tractor trying to sell the items himself. There are several different items here. Mr. Verst does agree that a lot of different businesses have outside displays and retail spaces outdoors that look nice and are not sticking out into the parking lot. We need to make sure we have addressed all the different scenarios. Mr. Klear stated that when the Commission does its review and analysis of a site plan, they look at everything that is going to go on within that site and how it is going to impact not only internally, but the community around. Without going into too many details, the Commission spends a lot of time on that to make sure the activities there are compatible and do make good sense in that area. That review and analysis needs to continue and it will continue. This provision allows for those instances where they haven't gotten to the point that the sale of a certain product is viable. This gives the business an opportunity to explore that without having to file an amended site plan because it may not pan out. If someone is consistently doing it over and over again, it is no longer temporary. It is a part of their regular business and they need to accommodate that. Mr. Verst stated that was good but we need to check our ordinances to make sure that if a marketplace wants to sell produce or plants all through the summer that they have a dedicated space in the parking lot and it is appropriate for the use that's there. That it is not precluded from our ordinance. Mr. Klear stated that if a business is going out on a regular basis and having outside sales and let's say it is some type of material, outside sales and, I know this is an issue of concern of the Planning Commission, if you have things stored outside and they are not properly stored, they have the potential to contaminate the ground water because they aren't stored properly. That would be a consideration that you have addressed on a regular basis. You either have to have covering or you have to have them properly stored. That's something that doesn't occur if the business just kinds of adds things without any overall oversight. On temporary basis, we have a gap and we are trying to address those gaps.

Ms. Minter asked if there were any additional comments or questions. Mr. Williams stated that there are so many different situations and facts that he doesn't even know if the ordinance as drafted might not be overly broad. We have a guy with a pickup truck and then parks in downtown Alexandria, throws down his tailgate and begins selling his corn. Mr. Williams didn't agree that he should be able to operate without a permit if that gentleman or other gentlemen have to pay for a permit to sell something. For other circumstances, the store starts providing ice or propane or allows the boy scouts to sell popcorn that kind of situation on their property with their permission. The thing that disturbs him is that if the law is that if you are changing the exterior use of the property and it was not in your original site plan and if the

law is that you are not supposed to do it without an amended site plan or some procedure that permits you to do that. If that is the law, Mr. Williams doesn't think anybody here can tell him when it is permissible to ignore the law. If it is improper to ignore the law, then you need to come up with some new way or you draft something that provides for these new circumstances. It seems like we are in a real conundrum here because, if it is a violation of the site plan for a store to do something contrary to the site plan and the proper procedure is to ask for a revised site plan, then that seems like a lot of effort under these circumstances, but if that is what we are supposed to do then we need to address it. Like Mr. Verst said, we need to review our ordinances to see if they meet these circumstances brought to our attention tonight by these citizens. They brought up a lot of good points and Mr. Williams was writing feverishly. Mr. Gordon made a great point about that is how a store evolves and it would be grossly unfair and counterproductive to say: Well you can't sell that propane anymore or you can't sell that ice anymore. There has got to be some procedure to meet the needs of a store who is meeting the wishes of his clientele or his customers. Mr. Williams thinks this ordinance, as drafted, is way too broad to cover the circumstances brought to our attention tonight. So what do we do now?

Mr. Verst stated that he thinks we have had a great discussion and had a lot of input and thinks it was good to bring these items forward for public hearing. His opinion or sense is that we don't have enough information or have put enough in this tonight to make a decision tonight, but thinks we did gather a lot of good information. There are a few things we have talked about like looking at the existing ordinances that we may want to consider tabling this item until next month when we can have a little more information and continue the discussion next month and make a decision next month to allow us to process all the information we have. Ms. Minter stated she would like to see it not necessarily tabled until next month, but tabled until we have had the appropriate time to gather this information and not put a time frame on it as we are going into the holiday season. Mr. Smith advised the chair that if you table a text amendment you have to act on the receipt of a proposal for a text amendment according to statute within sixty days. So if you are going to table it, you can only table it until next month at which point in time you would have to make a decision on it. Ms. Minter acknowledged Mr. Smith's advice. Mr. Williams stated he wanted to add he was talking about Section 9.30, but he was not referring to Section 9.31. We need something about fireworks sales. His comments were strictly in relation to temporary retail sales. Ms. Blake asked Mr. Williams if he was saying that his two issues were 1) it is written in too broad of a manner and 2) we need more information. Mr. Williams said he thinks yes to all of the above. He thinks the speakers – the citizens – tonight have brought out or rather has pulled out circumstances that the law as we have it right now may not specifically cover. Mr. Williams thinks there is a legitimate need and obviously a legitimate desire that such things are permitted. Like propane or ice, if that is what the customers want, the store should be allow to do that , but do that in a lawful way. Have a procedure available to that person so that he can expand his business and hire new people and still stay within the law. Mr. Williams just doesn't believe this ordinance as written covers it. He likes the theory. He thinks the theory is good because there are circumstances where you should definitely have to get a permit (as an example the trucker just throwing down the tailgate and parking on Main Street and just selling corn) and he thinks that this is an example of why.

Ms. Harding stated that one of the problems that she has and she mentioned it before is that she doesn't think we have before us language that defines our objectives in getting a permit. Ms. Blake agreed. Ms. Harding continued that she wants to know if it is for safety purposes. Businesses have premises like liability insurance and she doesn't want to get into a position where we are shifting liability to the Commission for things that could happen on the property – that is part of the premises of liability for a store that has unsafe parking or unsafe sidewalks or whatever. There are some zoning things and some requirements that need to be addressed. That's the slippery slope that concerns her. The second thing is that, whenever we say we grant a permit, we are granting it because we are asking the applicant to provide something that satisfies not just us because, as Mr. Klear indicated to everyone, we don't make the decision we just make the recommendation. When you ask an applicant to apply for a permit, the permit is premised on some information that the applicant has provided. What are the objectives that need to be addressed that the applicant has to supply information for us? Ms. Harding wants to know

what the objectives are that the permit application process is addressing, and she doesn't know that we have addressed any of that in some of this language here.

Ms. Minter stated that she needed to ask the general intent among the Commissioners. We have Section 9.30 and 9.31. Do we want to separate those two items into two separate topics or keep them together? Mr. Verst stated he would be in a position to make a motion on Section 9.31 for the fireworks. He has not heard any significant opposition to it. He thinks it is bound by state statute. His personal opinion is that firework sales can be an issue and he thinks this one would be good to get into effect sooner rather than later. If there are any modifications needed further down the road, we can address them at that time. Mr. Williams stated Christmas and New Year's Eve were coming up. Mr. Verst stated he thinks we should separate the two items and act on the fireworks now. Mr. Williams stated he agreed and thought it was a good idea. Mr. Barrow stated he agreed as well and added that he has a problem with 9.30. There are too many legitimate stores that this has become a part of their business and there has to be some way that we can accommodate it. Mr. Barrow stated there isn't a store, a barber shop or beauty parlor that doesn't have a coke machine out in front of it. Ms. Minter asked if there were any other issues. Ms. Blake asked how we would separate the two items. Mr. Smith stated the Commission would only need to take action on each one independently. Several Commissioners began to speak when Ms. Minter recognized Mr. Smith to clarify the issue. Mr. Smith stated the Commission can take action on each item individually and that, in and of itself, separates the two items. Mr. Smith also added that he wanted to clarify something. Neither of these two items originated from the Fiscal Court. They were submitted by the Planning Department so they are not tied to a time limit. If the Fiscal Court or City had submitted the request, we would have been held to a sixty day time limit to review it. Since it was not, we are not limited to a time frame. Ms. Minter commented then the Commission could really take the necessary time to review the topic in full. Mr. Smith agreed.

Ms. Harding stated she would suggest then that we really provide the opportunity for more input from the public and table both of these items. Mr. Williams stated he was sorry, but he feels that we are ready to make a move on the fireworks. Mr. Verst made a motion to table the Section 9.30 text for temporary retail sales until the future date when more information has been gathered. Mr. Williams seconded the motion. Ms. Minter called for a roll call vote. Mr. Klear asked for an idea of when the case was tabled until. Mr. Verst stated until staff has had an opportunity to gather additional information and feels they have the necessary data to put it on the agenda again. Mr. Klear asked what kind of additional information would the Commission like. Mr. Verst stated he would a review of our current commercial zoning ordinance in regard to their applicability to outdoor sales and he would like a little bit of research of communities that may have a temporary day permit. Mr. Klear asked him if he was referring to the ad hoc permit that Ms. Harding referenced. Mr. Verst asked Mr. Smith since this is a public hearing does the public still have an ability to provide information to the staff in the interim that can be entered at the next meeting or can we have a public hearing if we choose. Mr. Smith stated we would have to open a new public hearing at the next meeting. Mr. Klear stated that the public can submit information to staff at any time, but to make it part of their official proceedings, they would have to reopen the public hearing and the information would have to be introduced within that reopened public hearing. Mr. Klear asked Mr. Smith to confirm and he did so.

Ms. Harding stated that before she could respond to the motion she had a question for staff – in the actual application for the fireworks permit what does the applicant have to provide. Ms. Minter stated that right now we are on Section 9.30, not Section 9.31. Ms. Harding apologized. Ms. Minter asked if they were ready for a roll call vote. Mr. Bass asked which one they were voting on. Mr. Klear advised Mr. Verst to repeat his motion. Ms. Minter stated Ms. Turner would repeat the motion. Ms. Harding stated before we repeat the motion she understood that we are separating the items, but she can't say yeah or nay until she found out more on if she wanted to fold on item 9.31 or not. Ms. Minter stated we had not brought up the topic of Section 9.31 yet. Mr. Klear stated the motion was to table the discussion on Section 9.30 which deals with temporary retail sales. That was the extent of the motion. There was no mention of Section 9.31 in that motion. Ms. Harding asked if we were taking them separately rather than do them both at the same time. Ms. Minter agreed that was correct. Ms. Minter stated a motion had been made and seconded

and called for a roll call vote. A roll call vote found Mr. Barrow, Mr. Bass, Ms. Blake, Ms. Harding, Mr. Pfeffer, Mr. Stubbs, Mr. Williams and Mr. Verst in favor of the motion. Ms. Minter abstained. Motion passed.

Ms. Minter stated it was time to discuss Section 9.31. Mr. Verst stated he wanted to make a motion on this section if Ms. Harding was ok with that. Ms. Harding stated that her question is when a person or entity applied for a permit what that person has to provide to apply. Mr. Klear stated that a motion had not been made and asked if they wanted him to answer the question or not. Ms. Minter stated they were still in the discussion stage with this portion so it was ok for him to answer. Mr. Klear replied that there is no application finalized yet, because they had not approved the changes to the zoning ordinance. However, the form would be based on the regulations contained in KRS 227 and information pertaining to details basically of zoning and site issues. Basically, they are going to have to submit a site plan showing where they are going to conduct these sales, identify which area that the temporary sales would occupy, what types of signs; and what types of sales would be occurring. Ms. Harding asked if the local county would in effect become the agent to enforce state law. Mr. Klear answered no, they would not. State law contains in KRS 227, which deals with the retails sales component, an element that the fire marshal looks at for compliance with applicable, for want of a better term, fire code. They are not looking at land use issues, zoning, and at compliance with any local regulations whatsoever. They are not looking to see if the applicant has an occupational license with that local community. They are looking at state rules and regulations. Mr. Klear stated the Ms. Harding previously stated that she was concerned with duplication of efforts. The state review does not look at any local elements. So the application Mr. Klear would draft would be governing the local elements specifically the physical elements. Mr. Verst asked if the zoning related element that you might ask is if they have obtained a fire marshal permit and they could still be up with that. Mr. Klear replied absolutely. We are not going to regulate the terms of the application they submit. Basically, they have to show they have an approved permit from the fire marshal. We are not going to duplicate the elements of the fire marshal. Once they have that permit from the fire marshal that element has been satisfied.

Mr. Williams asked if they can sell to minors. Mr. Klear stated there are prohibitions about who you can sell to. A minor can go in if they are accompanied by an adult. Ms. Harding stated that the truth in the majority of injuries and damage occur at the discharge stage not at the sale stage. People blow off their hands when they are in their backyard lighting the fireworks. Are there any, want to clarify if it is a regulation or an ordinance, are there any that address private residential home shooting off fireworks. Mr. Klear replied yes, but not in the zoning ordinance. There are other regulations covering that element. Mr. Verst asked to make a motion; however, Ms. Minter interrupted and asked if the Commission wanted to open the floor for the public hearing again. Ms. Blake asked if they could open the floor for the public hearing again. Ms. Minter replied that was what she was asking – does anyone object to that. There being no objections, Ms. Minter opened the floor for public comment. Mr. Victor Dawn took the floor again. He stated that the state application process was pretty lengthy, but that Mr. Klear brought up something that he wants to make sure we get it clarified. Mr. Dawn stated Mr. Klear said he wanted to approve the site plan. Mr. Dawn stated that you do submit a site plan to the state for review and the state does that. The state makes sure you are far enough away from things. There are codes that say it has to be so many feet away from the building, so many feet away from a gas pump, so many feet away from such and such that we have to rope off parking spaces to make sure we are far enough away from them. Mr. Dawn really doesn't think that this would belong in any ordinance to pass as the county would be overriding the state on their site plans.

Ms. Minter asked if there were any other comments. Mr. Tony Burns state he thought he heard Mr. Verst state that there was no opposition to the temporary sales motion that is on the docket tonight. He is definitely opposed to it. It is not a matter of competition, because there is going to be competition. Mr. Burns thinks they should be held to the same regulations that he is. Mr. Burns is definitely opposed to people coming in fly-by-night and setting up tents to sell fireworks. Ms. Minter asked if there were anyone else. There being no one, Ms. Minter again closed the floor for public comment.

Mr. Williams asked if he could ask legal counsel a question. Ms. Minter recognized Mr. Williams to do so. Mr. Williams asked Mr. Smith if we have to allow temporary fireworks sales in Campbell County. Or can we say we don't want any sales? Mr. Smith stated he had not independently looked at this issue, but Mr. Klear suggested they had to consider either permanent sales or temporary sales. Mr. Smith offered to perform a review and reply back to the Commission if they desired. Mr. Klear stated that, if you wanted, you could make a regulation where you strictly prohibit all firework sales, but he did not research that issue either. It is possible that you could make a recommendation to prohibit all firework sales. Mr. Williams stated he was not interested in that. The fly-by-night operations bother him. He is certain about those, but if it is all or nothing, he would rather err on the side of caution. Mr. Klear stated that the state has two classifications of firework sales: year round and temporary. Those are the only two classifications for firework sales. Mr. Williams stated he does not have a problem with year round. Mr. Smith stated that he does not feel it was intended that you have to have temporary sales if you decide to go with year round sales. Mr. Klear agreed. Mr. Smith stated that if you wanted to propose having no firework sales then that would require additional research. Mr. Klear stated that when he asked the county for direction it was expressed to him that the preference was for temporary sales and not year round sales. Mr. Williams stated he would not want to prohibit year round sales at all. Mr. Williams stated his question had been answered.

Mr. Verst asked if Mr. Williams was stating that he didn't want to prohibit year round sales. We would be setting up provisions in the ordinance that allows temporary sales, but not the year round sales. Mr. Bass identified Mr. Victor Dawn as having the temporary sales and Mr. Tony Burns as having the year round sales. Mr. Klear stated that just as a clarification Mr. Burns is located in Wilder and we do not have jurisdiction in Wilder. Mr. Williams stated he withdrew his objection to the temporary sale of fireworks and asked Mr. Verst if he were going to make a motion. Mr. Verst stated that if the Commission were in agreement with temporary sales than he was comfortable moving forward with this ordinance, but if we are not comfortable making a recommendation to the fiscal court to allow for temporary sales of fireworks because either we want to consider permanent sales or no sales at all then we don't want to move this forward. Mr. Williams stated that fly-by-nighters are what concern him and we don't have any fly-by-nighters here tonight. Mr. Williams is thinking about the "new guy" that sets up shop in the UDF parking lot and leaves after a week or so. Ms. Blake stated that those of us who live in an area where that would be true – we don't have that. Mr. Williams stated he felt we should just move forward with it then. Mr. Verst stated that his personal opinion was that permanent facilities would be better regulated, but for the current situation we have now, he thinks this would be a good ordinance to start with and see how it goes. Mr. Williams agreed.

Ms. Minter asked if there was a pleasure of a motion. Mr. Verst stated that he wanted to make a motion to make the recommendation to the Campbell County Fiscal Court to adopt Section 9.31 as submitted into the zoning regulations. The bases for his motion is the testimony provided tonight, information in the staff report and discussion among the Commission members. Mr. Williams seconded the motion. Ms. Minter asked if there were any questions or comments. There being none, Ms. Minter called for a roll call vote. A roll call vote found Mr. Barrow, Mr. Bass, Ms. Blake, Ms. Harding, Mr. Pfeffer, Mr. Stubbs, Mr. Williams, and Mr. Verst in favor of the motion. Ms. Minter abstained. Motion passed.

Ms. Minter introduced case #113-12-TXA-01, Campbell County Planning Department, with a proposed text amendment. Ms. Minter asked Mr. Klear to present the staff report and staff's recommendation to the Commission.

FILE NUMBER:	113-12-TXA-01
APPLICANT:	Campbell County Planning & Zoning Department on behalf of the CC&MP&ZC
REQUEST:	Adoption of revised Fee Schedule relating to the new sections (Sections 9.30 and 9.31) of the Campbell County Zoning Ordinance

Background:

Article 11 of the Bylaws of the Campbell County and Municipal Planning and Zoning Commission (CC&MP&ZC) provides that "The requirements for the submission of applications, requests and associated fees are set forth in the Campbell County Zoning Ordinance and the Campbell County Subdivision Regulations."

Per PZ Case 112-12-TXA-01, there is a proposal to adopt new sections (Sections 9.30 and 9.31) of the Campbell County Zoning Ordinance. These new sections of the Zoning Ordinance require amendments and modifications to the fee schedule.

Proposed Text Amendment:

Adding new items "J" and "K" to Section V. Zoning Permit Fees to the Fee Schedule, see attachment.

Staff Recommendation:

To adopt the amendments to the CC&MP&ZC Fee Schedule.

Supporting Information/Bases for Staff Recommendation:

1. Pursuant to KRS 100.203, cities and counties have the authority to adopt zoning regulations.

2. KRS 100.177 states that "Any planning commission shall have the right to receive, hold, and append funds for which it may legally receive from any and every source...for the purpose of carrying out the provisions of this chapter."

3. Proper notice, in accordance with KRS 424, of the public hearing has been given.

Mr. Klear advised that, based on the prior action, you would either table or not take action on component J and that would be the fee schedule component to be applied to temporary retail sales. Item K is for firework sales. Mr. Klear asked if there were any questions he could answer for the Commission. Ms. Minter asked if the Commission had any questions for staff. Mr. Bass asked if they were to vote on all these items; they are voting on all items E through K. Mr. Klear corrected that items E through I already exist and pertain to other areas of the zoning ordinance. Items J and K are the only two newly proposed elements.

Ms. Harding asked item J as listed notes that it is only allowed in the commercial zones which is what we were in discussion about. Mr. Williams asked if we should move to table J. Ms. Minter stated that we do have a public hearing tonight so we need to go through that process, but it could be a recommendation of the Commission to table item J. Mr. Pfeffer asked about the amount of the fee as being rated for item K. How does it compare to other area in Campbell County? Is it more than other cities? Mr. Klear stated that, as it is listed, the amount is lower than the $1,000 dollar fee as charged per permit by the City of Dayton and the City of Ludlow. Boone County charges $300 dollars. Kenton County is a little bit different they charge $161 dollars for the firework permit and they also charge a zoning permit fee. There is a different way to get there but it is $300 dollars as well. The short answer is that the proposed fee is comparable. It is not higher – it is towards the low end.

Ms. Minter asked if there were any other comments or questions for staff. There being none, Ms. Minter opened the floor for the public hearing and began calling the first name on the list of speakers. Ms. Minter recognized Mr. Marvin Record. Mr. Record chose not to speak on this issue. Ms. Minter recognized Mr. Victor Dawn. Mr. Dawn chose not to speak on this issue. Ms. Minter recognized Mr. Kevin Gordon. Mr. Gordon stated that since the previous case tabled a portion of the text he thinks that as far as item J is concerned that would just be postponed until something comes up with the text. Mr. Gordon stated he does not believe anyone has objection to the fee for item K. Mr. Gordon stated his other question is – how will we know that this is coming up. He just got wind of this meeting the other day.

Ms. Minter stated she will make sure that staff addresses that before the meeting ends. Ms. Minter asked if there were any other comments from the audience. There being none, Ms. Minter closed the public hearing portion of the meeting.

Ms. Minter asked staff to address the process of how the public would be notified of future hearings. Mr. Klear stated that the type of notification would be determined by the type of hearing being held. In this instance, we are proposing amendments to the zoning ordinance. We are required to post a legal notice in the paper of record which in this case is the Campbell County Recorder. Once we have done that, we have satisfied the requirements of state law. The Commission has taken the action of tabling a portion of this case. There is no follow up – official – requirement to post another legal notice. Whenever the Commission resumes discussion then that is when the opportunity will be available to be heard. There is no requirement for us to do additional notification. However, if you like, if you know you are going to revisit this issue at the December meeting then we can go ahead and republish the legal notice. Mr. Verst stated he is asking staff to do this – to republish the legal notice whenever it is determined that we will be discussing this issue again. Mr. Klear stated that the only requirement there is that he needs to know when the Commission is going to do so, so that he can add it to the agenda. Ms. Harding asked if there were any pending issues to be discussed in December. Mr. Klear replied that today was the deadline for the December meeting. We did have one submission so we will be having a December meeting. The challenge is getting the legal notice into the paper. Basically, it has to go into the paper about two and a half weeks before the meeting. That is not our deadline, but that of the paper and we have no control over that. If we are going to put it into the paper, we're kind of stuck with that. Mr. Williams stated that he believed that December might be too soon. January might be more like it. Mr. Klear stated that one way to definitively address this is to say as a Commission that it will be revisited at the January meeting. That puts those in attendance tonight on notice as to when you plan to discuss it again. This gives the interested public the opportunity to know. The other thing is, if they are interested, and they must be because they did show up, they can call our office and ask if it is going to be on the agenda without a formal process so you have some options. Mr. Williams stated he thinks we should definitely say the January meeting because it will give staff enough time to research and look into this. January, if we recommend this to the Fiscal Court, there will be a time lapse between that recommendation and the Fiscal Court acting and then we are going to be running into the spring. Mr. Barrow agreed that January would be best and he doesn't want it to go any longer than that – the sooner the better.

Ms. Minter asked if the Commission had any comments and that they were still on item 6 of the agenda. Ms. Minter continued that she assumes the Commission is handling this case in a similar manner to the way they dealt with item 5. Ms. Minter asked if anyone wanted to make a motion. Mr. Verst stated he would be happy to make a motion to table the portion of the fee schedule that pertained to Section 9.30 which is item J of the fee schedule and table that portion until our January meeting. Mr. Bass seconded the motion. Ms. Minter called for a roll call vote. A roll call vote found Mr. Barrow, Mr. Bass, Ms. Blake, Ms. Harding, Mr. Pfeffer, Mr. Stubbs, Mr. Williams, and Mr. Verst in favor of the motion. Ms. Minter abstained. Motion passed.

Mr. Verst stated he wanted to make a motion to approve the fee schedule submitted by staff as relating to Section 9.31 of the zoning ordinance which is listed as item K on the fee schedule for a fee of $300 per temporary firework sales permit. The basis of his motion is based upon information supplied by staff that the fee is equivalent to other jurisdiction and discussion held here tonight. Ms. Minter recognized Mr. Klear who advised that the motion be amended to state that the motion is to approve the fee schedule pending the approval of the Fiscal Court on the prior item because if that doesn't get approved there is no reason to have fee for something that doesn't exist. Mr. Verst agreed and amended his motion to be to approve the fee schedule subject to the Fiscal Court adopting the regulation relating to Section 9.31. Ms. Minter called for a second. Mr. Williams seconded the motion. Ms. Minter called for a roll call vote. A roll call vote found Mr. Barrow, Mr. Bass, Ms. Blake, Ms. Harding, Mr. Pfeffer, Mr. Stubbs, Mr. Williams, and Mr. Verst in favor of the motion. Ms. Minter abstained. Motion passed.

Mr. Smith stated that we advised the public that we would resume discussion on the text amendments at the January meeting and asked Ms. Minter if she wanted to announce that at this time. Ms. Minter agreed and advised the audience that at the normally scheduled January meeting the Commission would resume discussion on the proposed text known as Section 9.30 as well as the resulting fee schedule change to accommodate said section. Mr. Williams added that should the January meeting be cancelled due to inclement weather or such, those discussions will occur at the next regularly scheduled meeting. Mr. Smith agreed that would be the proper procedure. Ms. Minter announced this to the audience.

Ms. Minter introduced case #114-12-TXA-01, Campbell County Planning Department, with a proposed text amendment. Ms. Minter asked Mr. Klear to present the staff report and staff's recommendation to the Commission.

FILE NUMBER:	114-12-TXA-01
APPLICANT:	Campbell County Planning Department
REQUEST:	Proposed text amendment to the Campbell County Zoning Ordinance Article X Zone Regulations, Section 10.18 HC Highway Commercial Zone, Deleting Item A. 22 "Tent sales and Rental Services" and Replacing it with a revised Item A. 22 "Equipment sales and Rental Services"

Background:

In case # PZ-14-97, Planning Department staff initiated a request to amend the text of the HC Commercial Zone "to allow equipment sales and rental services". There is a staff report, dated 2/25/97, from Cardinal Engineering. In the staff report, it was recommended that the text be amended to add a new item in the HC Zone as follows:

22. Tent sales and rental services.

It is uncertain why there was a difference in the language between the initial request and the recommendation in the staff report.

On April 8, 1997, the Campbell County & Municipal Planning & Zoning Commission held a public hearing to modify Campbell County Zoning Ordinance Section 10.18 HC Commercial Zone. The legal notice advertised a proposed change to "..add Equipment Sales, Rental and Service" as a permitted use. During the course of the public hearing, Mr. Hanson read his staff report into the record. As stated above, the language in the staff report was different from the language in the initial request and also the language used in the legal notice of the public hearing.

At the conclusion of the public hearing, the Planning Commission approved a motion to allow "tent sales and rental services" in the Highway Commercial Zone. This item never went before the Campbell County Fiscal Court for final action. Kentucky Revised Statutes (KRS) Section 100.211 provides for a time limit for final action on zoning texts. Essentially per this section of KRS, the text amendment listed above is considered 'approved' even though the Fiscal Court did not officially grant approval of the change through an ordinance.

Staff has come to learn of this discrepancy due to a recent issue involving temporary sales (under a tent) at a property within an HC Zone. The temporary sales issue is being addressed separately. This discrepancy within the HC Zone text needs to be corrected.

Proposed Text Amendment:

Deleting Item A. 22 "Tent sales and rental Services"

Replacing it with a revised Item A. 22 "Equipment sales and rental services"

(Please see attached revisions.)

Recommendation:

That the Planning Commission recommends that the Campbell County Fiscal Court adopt the proposed text amendments to the Campbell County Zoning Ordinance.

Supporting Information/Bases for Staff Recommendation:

1. Per Kentucky Revised Statutes (KRS) 100.203, the Campbell County Fiscal Court has the authority to enact zoning regulations within its jurisdiction. This authority includes the provision to amend its zoning classifications, uses, etc.

2. Pursuant to the Campbell County Zoning Ordinance Article XVII AMENDMENT PROCEDURE, the Planning and Zoning Commission has the authority to amend the zoning ordinance.

3. Proper notice has been given in accordance with Article XVII Amendment Procedure of the Campbell County Zoning Ordinance.

Mr. Klear concluded his report by deferring to legal counsel to address the approval component. Mr. Smith stated that, when the Commission acts on a text amendment, it goes before the legislative body or the Fiscal Court. They have to approve that by a majority vote before that ever becomes law. It is different for a map amendment. In a map amendment, they have to affirmatively override our recommendation by a super-majority – the entire legislative body. If they don't do that within a certain amount of time, our word becomes final. In this case, it was a text amendment, as it was outlined in the packet you have before you. The Planning Commission acted on a text amendment that the Fiscal Court never acted on and which never received Fiscal Court approval then, in Mr. Smith's opinion, it was never approved. It isn't approved by operation of law either as a map amendment would be. Mr. Klear stated that with the information supplied by Mr. Smith the staff report is concluded.

Ms. Minter asked if there were any questions for staff. Mr. Williams asked if the word "equipment" was defined in the zoning ordinance. Mr. Williams stated he knew what the ordinary meaning of the word is. Mr. Klear answered that it was not defined in the zoning ordinance so the normal meaning of the word would apply. There is no way to come up with a definition to accommodate everything. Ms. Minter asked if there were any other questions.

Mr. Pfeffer asked it the meaning of "tent sales" was the sale of tents. Is that what was previously there? Ms. Minter stated she did not know. Mr. Pfeffer stated that we all know the history of why this was changed. He was just trying to understand why we want to go back to the words "equipment sales" – what was the reason for the change to "tent sales"? Ms. Minter stated the change occurred in 1997. Mr. Klear stated that the original text request change was for the addition of "equipment sales and rental services" which he supposed would be an establishment such as Arts Rentals to borrow equipment. How it went from "equipment sales" to "tent sales" – we do not know. Mr. Klear has the case file, but there is no information contained in the staff report or in the minutes as to how it went from "equipment" to "tent". Staff's interpretation was that tent sales would be the big tents that you see at a reception. Mr. Williams added or at the big tent car sales.

Ms. Minter asked if there were any other questions for staff. There being none, Ms. Minter opened the public comment portion of the hearing. Ms. Minter called on Mr. Victor Dawn. Mr. Dawn stated he wanted to defer to his attorney. Mr. Leonard Rowekamp stated that he only had one problem with this change. This was used as a basis for trying to deny their ability to sell fireworks out of the tents. He's afraid of a situation developing where they (Planning & Zoning) are going to say they have changed it to

eliminate tent sales in the highway commercial zone which is where the California Marketplace is located. Therefore, they will say we cannot sell fireworks out of a tent. Mr. Williams commented that would be an act of bad faith. Mr. Williams continued to advise Mr. Rowekamp that was not the reason they were taking this request under advisement. Mr. Rowekamp stated he just wanted to make it very clear in the record that this is not the Planning Commission's intent and he would ask therefore that the Commission would allow "firework sales with approved permits from an approved tent" to be placed in the permitted uses. Mr. Minter thanked him for his comments.

Ms. Minter recognized Mr. Lloyd Rogers. Mr. Rogers had already left the meeting. Ms. Minter recognized Mr. Kevin Gordon. Mr. Gordon stated he had no comments to make on this issue. Ms. Minter thanked him for his participation. Ms. Minter asked if anyone else in the audience wished to speak. There being no one, Ms. Minter closed the public comment portion of this evening. Ms. Minter opened the floor for discussion amongst the Commission.

Mr. Verst stated that looking at the other permitted uses in the Highway Commercial Zone that "equipment sales and rental services" makes complete sense to be in this zone and it makes perfect sense to add it to the permitted uses. Mr. Verst stated that "tent sales and rental services" appears confusing. Are you talking about renting tents or selling tents? He can see keeping it in there if we were talking about selling items out of a tent – that is so vague. He doesn't see that being a permitted use in the Highway Commercial Zone. Temporary sales are the item we are recommending be added to the ordinance. Other than that, Mr. Verst agrees with what has been proposed. Ms. Harding stated she felt the new language is more encompassing. Ms. Blake asked if they felt inserting a word would help solve the confusion such as "tent type sales". Ms. Minter said she found that more confusing and that she also considered "equipment sales" to be clearer.

Ms. Minter asked if there were any other questions or comments. Mr. Barrow stated that, what is being proposed is fine, but he thinks the idea of the "tent sales" needs to be brought back into consideration when the discussion on Section 9.30 continues. Mr. Pfeffer asked if we had any existing businesses that sell tents. Mr. Verst stated there was Dotson's but he doesn't know if they sell or rent. Mr. Pfeffer asked if this affected them. We are changing something that already exists and it may impact existing businesses. Ms. Minter stated that in her mind that tent is just a piece of equipment. Ms. Harding agreed with Ms. Minter. She said that was why she found "equipment" more encompassing. Mr. Bass said when he thinks of "tent sales" he thinks of a big top tent with cars underneath it. It's outside and just a temporary thing. Mr. Pfeffer stated that from that standpoint he thinks this is the point the public was trying to make. They believe that by taking that out that this is going to be misconstrued.

Mr. Verst stated he feels that "tent sales" as it appears in the zoning ordinance is misleading as it is. If you look at tent sales as being sales that occur under a tent then what does that have to do with rental services. Mr. Pfeffer understood his comments. Mr. Verst continued that he does not feel that it was the original intent to allow sales under a tent. Mr. Pfeffer asked him to repeat his position. Mr. Verst stated that, from what the staff report detailed of the original application and the 1997 meeting, it is his personal opinion that it was not the original intention that they add something that allowed sales of something under a tent. "Tent sales" in this meaning would not accompany "and rental services". Mr. Verst doesn't think it was the original intention in 1997 to allow sales to occur under a tent. "Equipment sales and rental services" makes more sense especially since that was how the original application was initiated.

Ms. Minter asked if there were any other comments or questions. Mr. Pfeffer asked if we are changing this and it does not necessarily tie into the details of what is spelled out here but as far as the public comment in regards to selling something under a tent – how do we address that? Mr. Verst stated he thinks we are addressing that separately. He does not think it make sense to consider sales of items under a tent in only one commercial zone. This item is not under any other commercial zone. Mr. Verst asked staff to confirm that it was not listed under any other commercial zone. Mr. Klear asked Mr. Verst to clarify if he was asking about "equipment sales" or "tent sales". Mr. Verst replied "tent sales." Mr. Klear replied "tent sales" was not listed under any other commercial zone. Mr. Verst stated he thought it was

more appropriate to address temporary sales for all commercial zones versus leaving it as an interpretation. Ms. Minter stated that she understood the comment with respect to the sales that occur under a tent, but we also say "barber shop" but we don't get into what the structure of that barber shop is. That's dealt with someplace else. Ms. Minter stated she thinks it is two separate items. We are not getting into the structure of any of these permitted uses. Mr. Verst stated that he understands the concern that the interpretation has been used and that the word "tent sales" means I can sell something under a tent on my property. There is a risk that if we approve this and the other temporary sales thing doesn't get through – I understand their concern that they feel they may lose their right to sell something under a tent as it has been interpreted by a judge.

Ms. Harding advised the Commission that there was a request by the public to provide further comment. Ms. Minter stated they would get there in a moment. Mr. Bass asked if we take out the word "tent" are we telling them that you cannot sale your products under a tent…it is not his intent to do that. Ms. Minter stated that at this point in time we are trying to clarify some language erroneously listed in 1997. Mr. Verst stated that his opinion is that the proposed language is more appropriate for this zone. Mr. Bass understood that and stated that a judge could overrule anything the Commission said anyway.

Ms. Minter asked Mr. Klear if he wanted to provide some clarification. Mr. Klear stated that they were confusing the situation and asked that the Commission not reference a specific case because it muddies the waters. As the ordinance reads now, "tent sales and rental services" are a permitted use within the HC Zone. One interpretation of that use is that, if I am located in the HC Zone, I can erect a tent and sell anything that I want under that tent. He was not asking for the Commission to agree to that it is just one interpretation. What we are suggesting is the elimination of that phrase "tent sales and rental services" and replace it with "equipment sales and rental services." That is what was originally proposed back in 1997. If this were changed, could someone erect a tent and sell something out of it? Staff was never under the interpretation that you could put up a tent on a temporary basis and sell what you want. Staff's interpretation was that it was the big tents, but again, we are going back to what was originally proposed back in 1997. If this were to go through and someone wanted to erect a tent and sell whatever they want under it, that is not explicitly addressed, but staff's interpretation is that if it is not listed as a specific use then that type of sale cannot occur. Now that can be argued, but that would be staff's interpretation.

Ms. Minter asked the pleasure of the Commission as to if they wanted to hear additional public comment. There being no dissention from the Commission, Ms. Minter opened the floor for additional public comment. Mr. Leonard Rowekamp stated that he just wanted to suggest to the Commission that it would be appropriate to consider this language in conjunction with the review being made on all temporary sales at the January meeting. It clearly, as staff has interpreted this, has relevance to the definition of temporary retail sales. Mr. Rowekamp thinks it makes perfect sense and so he would ask that the Commission allow these items be heard together. There is no urgency on this issue.

Ms. Minter thanked Mr. Rowekamp and called the next speaker. Mr. Victor Dawn stated he was not one hundred percent certain. He is certain that, when you apply for the permit, the way that the state permit reads is a "tent sale" which is the only way he would allow someone to sell fireworks on a temporary basis, which, by the way, everything we sell is legitimate and we are as legitimate as someone who sells full time. The only way that he would allow someone to stand outside is if there was protection from the elements. In a fireworks booth, you are probably going to have $15,000 to $20,000 dollars at resale so you need to protect your inventory for one. Secondly, if it is going to rain or storm or something like that, you are going to want to protect the employee selling them. Mr. Dawn stated he believed that, at trial, tent sales were strictly prohibited according to staff at that time. To sit back now and allow the removal of that from the text is a way for them to not allow us to sell fireworks. Ms. Minter stated she appreciated his comments, but he needs to stay focused on what is being heard tonight. The Commission is not re-litigating his case. Mr. Dawn interrupted to state that to not remove "tent sales" is what he is asking Commission to do. Ms. Minter appreciated his comments. Mr. Dawn continued that the judge agreed with him. Ms. Minter again thanked Mr. Dawn for his comments.

Ms. Minter asked if there were any additional comments from the audience. Ms. Minter recognized Mr. Kevin Gordon. Mr. Gordon asked if he heard this correctly that if "tent sales" were removed then any type of sale that would occur underneath a tent would not be allowed. Ms. Minter stated she needs Mr. Gordon to state his comment. Mr. Gordon said his statement would be that if this were in any way used to interpret that someone could not erect a tent to sell a product then he thinks it needs to be held off until the temporary sales issue was resolved because he knows that, living in Wilder, several businesses have tent sales. They are not in the county's jurisdiction but if there were a furniture store that wanted to do that…the tent sale at NKU…or the car dealerships where someone had a big lot and wanted to sell some cars under that. Mr. Gordon added that the text amendment should be held off if there was any way in which it could be interpreted that someone could not have a tent sale.

Ms. Minter asked if there were anyone else who wished to speak. There being no one, Ms. Minter closed the public comment portion and reopened the floor for discussion among the Commission. Mr. Williams asked staff if there were any prohibition that says if he sells lawnmower that he couldn't put up a tent and sell lawnmowers. Is there any prohibition saying that a tent cannot be used to cover equipment that I am selling? Mr. Klear stated that if you are in a retail zone and you are already selling lawnmowers – well that was the whole discussion on temporary sales. You can obviously sell lawnmowers inside your facility, but if your original approval did not include selling those lawnmowers outside, that would require either an amended site plan or a temporary retail sales permit. Mr. Williams stated he is only talking about the structure – is there anything in there that says you cannot put up a tent. Mr. Klear continued that if you are approved to sell your lawnmowers outside, then can you erect a tent over those lawnmowers, yes. If you are a lawnmower salesman and you want to start selling cars, could you erect a tent and sell cars from underneath it – no, you are a lawnmower salesman not a car salesman. Mr. Williams stated that if he was approved to sell lawnmowers outside then he could erect a tent over them – that was the point he was making. Mr. Williams said that is what they do at NKU twice a year. Mr. Klear stated that NKU was outside our jurisdiction and there was a special ordinance passed just for that.

Ms. Minter asked if there were any other questions or comments. Mr. Pfeffer stated that he believed we were changing something that is clearly being identified as going against something that businesses currently do. He is not saying that he is in complete agreement with that, but if they were setting up tents and selling fireworks under that tent, and we are now changing this language, what is our justification for changing this language. If we are saying that tent sales was a tent and it is equipment then he supposes that going forward what he would like to know is if we can add that you can erect a tent to sell something on a temporary basis. Mr. Pfeffer stated the he knew Mr. Verst stated previously that we should address that item when we address the temporary sales permits, but to me you should not address any item until we address the temporary sales permits. Otherwise, you have to come back to the zoning information anyway. Mr. Verst stated that he previously stated that he thinks this language needs to be changed, but he does not have an issue if you want to table this request until after the temporary sales has been resolved. This is not an urgent request. It has been this way for a while. Mr. Pfeffer stated he feels that is what he has been hearing and if we approve this and the Fiscal Court approves it before January and someone wants to set up a tent and sell Christmas trees then we should let them do it. Mr. Williams asked if that was true – if someone wanted to sell Christmas trees they couldn't set up a tent. Mr. Pfeffer stated that was what he was hearing. Mr. Klear stated that you have an interpretation of the zoning ordinance. There is no explicit ordinance that addresses that situation. Right now, on the books, you have "tent sales and rental services." There is one interpretation that says, this is not staff's interpretation, but there is one interpretation that says you can put up a tent and sell anything you want underneath that tent. Mr. Williams stated that is the way he reads it.

Mr. Verst stated there was the issue of whether or not it is really in our zoning ordinance. Mr. Smith stated that the Fiscal Court has never acted on it and it is his opinion that it is not a proper way for people to make use of the zone because the Fiscal Court has never acted. How it got into the permitted uses of the zoning ordinance is more of a mystery. If the Fiscal Court has never adopted a recommendation for approval of a text amendment, it doesn't matter if it is 1997 or sitting here today, it does not get approved and it does not get into the zoning ordinance. The Fiscal Court must act on the text amendment to get

into the zoning ordinance. Mr. Verst stated that if it has never been acted on then item 22 does not exist. Mr. Smith stated that it should not be listed in the zoning ordinance if Fiscal Court never acted on it. Mr. Verst stated maybe it should be tabled until such time as we address the temporary sales first. Ms. Minter asked if there were a motion. Mr. Klear stated that we are confusing two items. He is concerned that if you leave it in that someone could say that since the zoning ordinance says tent sales that they can do whatever they want. Mr. Williams stated that is how he interprets it. Mr. Smith stated that it was listed there in error. If the Fiscal Court never acted then it should never have been added to the zoning ordinance in the first place. Mr. Williams asked Mr. Smith if we had to do anything with it. Mr. Smith stated he felt the Commission was still responsible to clean it up. Mr. Williams stated that you cannot remove something that was never really there. Mr. Smith stated it may not have been there lawfully, but it is appropriate to act now in light of what we are hearing about temporary sales. Whether it should have been there or not, it is still causing confusion. Ms. Harding stated that the Commission can perceive it differently as we are not taking something away because it was never really there.

Ms. Minter asked if there were any other comments. Mr. Williams stated he did not feel he needed additional public comment to resolve this issue. Mr. Williams stated that Mr. Klear was correct in that the way it is written it can be interpreted that you can put up a tent and sell whatever you want. Mr. Klear stated that his was just one interpretation. Mr. Verst stated that any interpretation would have to account for the fact that it says "tent sales and rental services" which does not lead itself to make any sense of the rental service part until it was really supposed to be something else. Mr. Williams agreed.

Mr. Verst made a motion to make a recommendation to the Fiscal Court to make the text amendment as changed item 22 in the Highway Commercial Zone to say "Equipment sales and rental services." as recommended by staff. The basis for his motion was the information submitted by staff, discussion among the Commission and testimony of the public. Mr. Williams seconded. Ms. Minter asked if there were any questions or comments regarding the motion. There being none, Ms. Minter called for a roll call vote. A roll call vote found Mr. Barrow, Ms. Blake, Ms. Harding, Mr. Williams, and Mr. Verst in favor of the motion. Mr. Pfeffer and Mr. Stubbs voted against the motion. Mr. Bass and Ms. Minter abstained. Motion passed.

DIRECTOR'S REPORT

There being no other cases to come before the Planning Commission, Ms. Minter asked if there was a Director's Report this evening. Mr. Klear replied that there was no Director's Report.

Ms. Minter asked if there was any other business to discuss. There being none, Ms. Minter asked for a motion to adjourn. Mr. Verst made a motion to adjourn. Mr. Williams seconded the motion. An oral vote found everyone in favor, none opposed. Motion passed. Meeting adjourned at 11:12 PM.

Respectfully Submitted,

Peter J. Klear, AICP
Director of P&Z

Approved:

Cynthia Minter
Chair

SECTION 9.30 APPLICATION FOR TEMPORARY RETAIL SALES PERMITS

A. Application for a temporary retail sales permit for an outdoor promotional or merchandising activity (e.g. pumpkins, Christmas trees, etc.) shall be made and submitted at the office of the Zoning Administrator on the appropriate forms furnished by said Administrator and in accordance with Article XVI of this ordinance.

B. The application shall be signed by the person(s) or entity requesting the temporary permit and the fee owner of the subject property.

C. There shall be no more than three (3) temporary retail sales permits issued to a property in a calendar year.

D. Temporary retail sales permits shall be issued for a time period not to exceed seven (7) consecutive calendar days, with the exception of Christmas tree sales. Temporary retail sales permits for Christmas tree sales shall be issued for a time period not to exceed thirty (30) consecutive calendar days. Each time period requires a separate permit.

E. Temporary retail sales permits shall only be issued in Highway Commercial (HC), Neighborhood Commercial (NC), Neighborhood Shopping Center (NSC) and Rural Commercial (RC) zones. Temporary Retail Sales are only permitted on hard-surfaced, paved areas.

F. Temporary activities shall utilize only one class 4 sign, as regulated by Article XIV of this ordinance, for advertising purposes.

112-12-TXA-01 Text Amendment
Add Sections 9.30 and 9.31

SECTION 9.31 APPLICATION FOR TEMPORARY CONSUMER FIREWORKS RETAIL SALES PERMIT

A. Application for a temporary consumer fireworks retail sales permit [i.e. to become a "seasonal retailer" per KRS 227.715(3)] shall be made and submitted at the office of the Zoning Administrator on the appropriate forms furnished by said Administrator and in accordance with Article XVI of this ordinance.

B. The application shall be signed by the person(s) or entity requesting the temporary permit and the fee owner of the subject property.

C. There shall be no more than two (2) temporary consumer fireworks retail sales permits issued to a property in a calendar year.

D. Temporary consumer fireworks retail sales permits shall only be issued for one of two time periods: June 10 through July 7 or December 26 through January 4. Each time period requires a separate permit.

E. Temporary permits shall only be issued in the Highway Commercial (HC) zone. Temporary Commercial Displays are only permitted on hard-surfaced, paved areas.

F. Temporary activities shall utilize only one class 4 sign, as regulated by Article XIV of this ordinance, for advertising purposes. This singular sign is in addition to any signage required per KRS 227.

G. The completed application shall be submitted at least fifteen (15) days prior to the opening for sale at the prospective location and shall include a copy of the report submitted to the Kentucky State Fire Marshal [per KRS 227.752(3)] and proof of registration with the Kentucky State Fire Marshall as a Seasonal Retailer (i.e. an approved Fireworks Registration Number).

112-12-TXA-01 Text Amendment
Add Sections 9.30 and 9.31

E. Sign Permit Review

All Classes (1-10)

Rate
$100.00 per sign

F. Swimming Pool Permit (Inground pools also require building permit)

All zones

Rate
$50.00 (flat fee)

G. Fence Permit

All zones

Rate
$50.00 (flat fee)

H. Other Accessory Uses

All zones

Rate
$30.00 (flat fee)

I. Parking and Loading/Unloading areas

Off street parking and loading/unloading areas (when developed separately and not included in listings above) where total area is less than 5,000 square feet.

Item	Rate
0-5,000 square feet	$50.00
Each 1,000 square feet over 5,000 square feet	$5.00

J. Temporary Retail Sales Permit

Only allowed in HC, NC, NCS and RC Zones

Item	Rate
Each permit (see Zoning Ordinance Section 9.30)	$100.00

K. Temporary Consumer Fireworks Retail Sales Permit

Only allowed in HC Zone

Item	Rate
Each permit (see Zoning Ordinance Section 9.31)	$300.00

113-12-TXA-01 Text Amendment
Adjust Fee Schedule for addition of Sections 9.30 and 9.31

SECTION 10.18 HC HIGHWAY COMMERCIAL ZONE:

A. USES PERMITTED: The following retail sales and service businesses:

1. Automobile, motorcycle, and truck sales, new or used.
2. Automotive service and repairs providing that all business activities shall be conducted within a completely enclosed building.
3. Banks and other financial institutions including savings, loan, and finance companies, with drive-in windows.
4. Boat and other marine equipment sales and service, new and used.
5. Bowling alley.
6. Eating and drinking places including drive-ins.
7. Flea market.
8. Hotels and motels.
9. Mobile home and trailer sales, rental and service (new and used).
10. Off-street parking lots and garages.
11. Police and fire stations.
12. Skating rinks, golf driving ranges, miniature and par-3 golf courses.
13. Veterinary clinics and animal hospitals.
14. Theater, drive-in.
15. Service station.
16. Single- and two-family residential uses, provided that such uses occupy the second or third floor or attached to the rear of a commercial use
17. Kennel.
18. Floor covering warehouse and retail sales.
19. Food Stores.
20. Barber shops and beauty shops.
21. News and confectionery stands.
22. ~~Tent sales and rental services.~~
22. Equipment sales and rental services.

B. ACCESSORY USES:

1. Customary accessory buildings and uses.
2. Fences and walls as regulated by Article XIII of this Ordinance.
3. Signs as regulated by Article XIV of this Ordinance.
4. Swimming pools, indoor and outdoor in connection with motel or hotel.

C. AREA AND HEIGHT REGULATIONS: No building shall be erected or structurally altered hereafter, except in accordance with the following regulations:

1. Minimum Lot Area - One (1) acre
2. Minimum Lot Width - One hundred (100) feet
3. Minimum Front Yard Depth - Fifty (50) feet

114-12-TXA-01 Text Amendment
Correcton to HC Zone uses