

REGULAR SESSION  
of the Daviess County Fiscal Court  
held at the Courthouse in the City of Owensboro,  
County of Daviess, Commonwealth of Kentucky  
on this 19<sup>th</sup> day of July 2012  
Present were Judge/Executive Al Mattingly and  
County Commissioners Jim Lambert,  
George Wathen and Charlie Castlen

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DOCUMENTS RELATED TO TODAY'S DISCUSSION  
ARE FILED IN JULY 19, 2012 FISCAL COURT FILE

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Commissioner Lambert opened the meeting in prayer and led the court in the Pledge of Allegiance to the flag.

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Judge Mattingly presented the 39<sup>th</sup> Annual Dust Bowl Proclamation.

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Minutes of the July 5, 2012 meeting were submitted to fiscal court members for review prior to today's meeting and on a motion of Commissioner Lambert, seconded by Commissioner Castlen, with all the Court concurring said Minutes were approved and signed.

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered approval of all Claims for all Departments.**

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**By a motion of Commissioner Lambert, seconded by Commissioner Castlen, the court considered for approval the 2012-2013 Annual Standing Order to Pre-approve Certain Recurring Expenses.**

County Treasurer Jim Hendrix stated, "This is an annual order that the court approves at the beginning of each fiscal year to pay payroll & utilities when they do not coincide with court dates."

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**By a motion of Commissioner Lambert, seconded by Commissioner Castlen, the court considered for approval the Application for the 2012 Kentucky Spay/Neuter Grant.**

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**By a motion of Commissioner Wathen, seconded by Commissioner Castlen,** the court considered for approval to Advertise for **Bid No. 16-2012 - New Walking Floor Trailer** for the Daviess County Transfer Station.

David Smith said, "This trailer was budgeted. We investigated repairing this trailer, but the repair cost was over fifty percent of the purchase price."

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**By a motion of Commissioner Castlen, seconded by Commissioner Wathen,** the court considered for approval to hire Austin Wedding as a Park Attendant at Yellow Creek Park, subject to successful completion of pre-employment testing; commencing July 23, 2012.

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**By a motion of Commissioner Castlen, seconded by Commissioner Wathen,** the court considered approval to grant the HVAC Service Contract to iBac.

Mr. Brasher stated, "Harshaw Train previously had the service contract, their bid was \$33,276.00, and required a 3-year contract. The iBac quote was \$15,750.00, annually. Local vendor, Harry Roberts Plumbing & Heating was unable to submit a bid."

Judge Mattingly asked why there was no response from local contractors.

Mr. Brashear, stated "The three buildings that would be served in the contract include the Morton J. Holbrook Judicial Center, Daviess County Courthouse, and Daviess County Operations. These facilities have highly sophisticated software for monitoring and programming, and unless a company has specialized training they would have to spend quite a bit of money upfront."

Judge Mattingly "In effect, it is Trane equipment; therefore it takes someone certified on that equipment. That is why Harshaw Trane had the original contract. The iBac group has a gentleman who worked for Harshaw Trane and is very familiar with Trane equipment."

Judge Mattingly asked for the summary of cost from the past.

Mr. Brasher responded "We were about to renew a 3-year contract for \$58,123.68 with Harshaw Trane."

Judge Mattingly stated, "Which is equivalent to \$177,000.00. We will save \$138,000.00 over 3-years by bidding it out and changing the specifications."

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**By a motion of Commissioner Castlen, seconded by Commissioner Wathen,** the court considered for approval the Daviess County Crooked Creek Road Elevation.

Mr. Brashear said, "This Hazard Mitigation Funding is for improvements to Crooked Creek Road in the West District. Nothing has changed except the effective date. We signed the contract two meetings ago, and the paperwork did not make it to Frankfort in time to sign. The date has been changed from June 30 to July 31, 2012."

Judge Mattingly stated, "Will we be able to make that project this year?"

Mr. Brasher stated, "I do not believe so. We have asked for an extension of time."

Judge Mattingly asks Mr. Brasher to explain what the project entails.

Mr. Brasher stated, "The project entails us removing a large diameter, corrugated, metal pipe underneath Crooked Creek Road, replacing it with a larger structure, and then bringing up the road 5-6 feet. The problem with this project is that it is so close to Panther Creek that it gets backwater, and the construction can only be done in a slim window of time. That is during the heat of the year, so we don't have to spend excessive amounts of money."

Judge Mattingly stated, "While I do not wish to berate government agencies, we had to comply with EPA, Division of Water, Corps of Engineers. We originally planned to do this this summer; it will be done next year. The good news is the majority of the money is coming from Federal Hazard Mitigation Funds."

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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**By a motion of Commissioner Castlen, seconded by Commissioner Wathen**, the court considered for approval the **Second Reading of KOC B.48 (2012)** – An Ordinance Relating to the proposed Refunding of Series 2003A and Series 2003B Bonds and to Authorize the Judge/Executive and County Treasurer to sign any and all documents related to same. This ordinance is authorizing the issuance of general obligation refunding bonds, Series 2012A and general obligation refunding bonds, Series 2012B Transient Room Tax supported project in aggregate principle amounts not to exceed \$7,330,000.00 and \$1,910,000.00 respectively, which amount may be decreased as necessary. Approving the forms of bonds authorizing designated officers to execute and deliver the bonds, providing for the payment and security of the bonds, creating bond payment fund, maintaining the hereto for created sinking fund authorizing an escrow trust agreement, authorizing acceptance of the bids of the bonds purchases, for the purchase of the bonds, and repealing inconsistent ordinances.

Treasurer Jim Hendrix stated, "This is a refunding, a refinancing of the current bond holders rate at approximately 4.25%. Our problem was not the difference on interest rate, it was a penalty drop. At this point, we would anticipate selling at 2.5% - 2.75%. It should generate \$970,000.00 in savings by doing this. I recommend approving."

Judge Mattingly "Why did we issue those bonds?"

Treasurer Hendrix stated, "2003A was used to build the Detention Center and Operation Center. The 2003B is the bond in which you pay the Transient Room Tax. Originally, the money was used for the RiverPark Center and the Fine Art Museum.

Judge Mattingly stated, "Are we lengthening the term of the bond?"

Treasurer Hendrix stated, "In a true refunding, you can neither add to the balance nor add to the term."

Judge Mattingly stated, "It will be paid off in the time expected, and net result will save about a million dollars."

Commissioner Castlen stated, "Mr. Hendrix, I believe I heard you mention the rates to be 2.5% - 2.75%. Is that the average rate?"

Mr. Hendrix stated, "The bonds are graduated and will be at a different rate. The true interest rate is 4.25% and it will drop to under 3.0%."

Commissioner Lambert stated, "What assurance do we have regarding the rates?"

Treasurer Hendrix stated, "There are a couple of triggers in place and our financial analyst will contact us."

**Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.**

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Treasurer Hendrix read in summary the **First Reading of KOC A.83 (2012)** – An Ordinance Relating to the Adoption of the 2012 Daviess County Tax Rates.

Treasurer Hendrix stated, "This ordinance is an adoption of 2012 taxes. Even though we are not changing rates, we are required to approve this each year. There are no new taxes or tax increases. The property rate will remain the same, with the exception of the personal property - ones that are functions of assessment and the real estate rate, which were previously 19.46 as these are capped. The real property rate is 13.6 cents, tangible personal property .18 cents, public service company real estate 13.6, public service tangibles .18 cents, distilled spirits .18 cents, motor vehicle .17 cents, watercraft .17 cents, aircraft and recreational non commercial .18 cents, agriculture products 1.5 cents, other agriculture products 4.5 cents, no rate for inventory, and transient bank deposits tax 2.5 cents."

**Comments:**

No comments received.

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County Attorney Claud Porter read in summary the **First Reading of KOC 921.665 (2012)** – An Ordinance Relating to a Zoning Classification Amendment for a 692.303 acre tract of land located at 3100, 3570, 3574, 3580 Girl Scout Rd; 2895, 3031, 3035, 3300, 3484, 3515 Russell Rd; 11300, 11440 US Highway 231 from A-U Urban Agriculture, A-R Rural Agriculture to EX-1 Coal Mining, application filed by Western Kentucky Minerals, Inc. et al.

**Comments:**

(Please note, the following transcript is from Ohio Valley Reporting:)

JUDGE MATTINGLY: WE'RE BACK IN ORDER. I WOULD ASK EACH AND EVERY ONE OF YOU TO CHECK YOUR CELL PHONE, CHECK YOUR PAGER. TURN OFF ANY ELECTRONIC DEVICES. I APPRECIATE YOU REFRAINING FROM USING YOUR CAMERAS WHILE WE ARE GOING ON. SHAKE MY HAND OVER HERE AT THE REPORTER FOR THE MESSENGER, BUT I'M AFRAID IF I GET ON HIM TOO BADLY HE WILL WRITE SOMETHING TERRIBLE ABOUT ME IN THE PAPER. WE ARE BEING TELEVISED BY SEVERAL NEWS AGENCIES. WE HAVE A COURT REPORTER. AGAIN, DR. DARRELL IS HERE. HE'S OUR PARLIAMENTARIAN. I WILL REMIND EVERYONE, AND IN A MINUTE I'M GOING TO HAVE CLAUD PORTER, COUNTY ATTORNEY, READ THE PROCEDURES THAT WE'RE GOING TO GO THROUGH. KIND OF EXPLAIN WHY WE'RE DOING IT, WHAT WE'RE DOING. I ALSO HAVE SOME STAFF FROM PLANNING & ZONING HERE TO ANSWER QUESTIONS THAT WE, AS A COMMISSION, MAY HAVE. THE APPLICANT IS SITTING OVER HERE WITH SOME OF THEIR EXPERTS TO ANSWER SOME QUESTIONS THAT WE MAY HAVE. I SEE SOME OF YOU FOLKS OUT IN THE AUDIENCE THAT, AS I REVIEWED AND THE COMMISSIONERS REVIEWED THE TRANSCRIPTS, THE VIDEOS, THIS MOUNTAIN OF PAPER THAT YOU SAW ME BRING OUT, BROUGHT UP SOME GOOD QUESTIONS THAT I AM GOING TO ASK. PERSONALLY I HAVE SOME QUESTIONS TO ASK AND I THINK THE COMMISSIONERS HAVE SOME QUESTIONS TO ASK. CLAUD, WHAT I WOULD LIKE FOR YOU TO DO IS KIND OF READ THROUGH THAT PROCEDURE, WHAT WE'RE GOING TO DO. I WOULD CAUTION EVERYONE HERE THAT THIS IS NOT A JUDICIAL COURT; IS THAT CORRECT?

MR. PORTER: THAT'S CORRECT, JUDGE.

JUDGE MATTINGLY: THERE ARE SOME OF YOU WHO MAY ARGUE PROCEDURES. YOU MAY ARGUE DUE PROCESS, AS I LOOK AND WITNESSED ON THE DVD'S. THOSE ARE THINGS FOR THE NEXT ROUND TO DECIDE. I AM SURE, I AM ABSOLUTELY SURE TONIGHT THAT IT WON'T MATTER HOW THIS COURT VOTES ON AUGUST 2ND, THAT THIS WILL BE APPEALED TO CIRCUIT COURT. CIRCUIT COURT WILL BE THE TIME TO MAKE THOSE KIND OF ARGUMENTS. TONIGHT WE ARE GOING TO LOOK AT THE PLANNING & ZONING STAFF RECOMMENDATIONS, THE VOTE THAT THE COMMISSION TOOK, BASED ON STAFF RECOMMENDATIONS, BASED ON THE COMPREHENSIVE PLAN, AND BASED ON FINDINGS OF FACT. THAT'S OUR JOB. WE'RE NOT GOING TO HEAR NEW EVIDENCE. WE WILL NOT HEAR FROM PEOPLE WHO DID NOT SPEAK INITIALLY BECAUSE WE DON'T KNOW HOW MANY PEOPLE ARE GOING TO WANT TO SPEAK. YOU SIGNED UP, BUT IF YOU DIDN'T SPEAK AT THAT MAY 10TH MEETING, YOU MAY NOT HAVE AN OPPORTUNITY TO SPEAK. BECAUSE WHAT WE ARE DOING IS REVIEWING THE RECORD. BEFORE I TURN THIS OVER TO MR. PORTER, I WOULD LIKE TO MAKE THIS KIND OF A STATEMENT. I HAD TO WRITE SOME OF THESE THINGS DOWN. I ATTENDED A HEARING THAT PLANNING AND ZONING HAD REGARDING THE COMPREHENSIVE PLAN TUESDAY. SAW MANY OF YOU FOLKS THERE. HAD THE OPPORTUNITY TO TALK TO YOU AFTER THE MEETING. HAD THE OPPORTUNITY TO TALK TO YOU DURING THE MEETING. MR. VANMILLIGAN, WHEREVER YOU MAY BE OUT THERE. MASTER SERGEANT GOODALL, I HAD A GOOD CONVERSATION WITH HIM. UNFORTUNATELY HE'S DOING VETERANS BUSINESS. TRYING TO GET ANOTHER DOCTOR LOCATED HERE. HE SENT ME A LETTER AND I'M GOING TO ASK A QUESTION OR TWO THAT PERTAINS TO THE FINDING OF FACT FOR HIM. LET ME JUST SAY THIS: I HEARD A LOT OF COMPLAINING AND GRIPING ABOUT PLANNING & ZONING. NOW, THOSE TWO FOLKS THAT ARE SITTING OVER THERE CAN TELL YOU THAT I COME INTO THEIR OFFICE QUITE OFTEN COMPLAINING AND GRIPING ABOUT RULINGS BECAUSE ONE OR THE OTHER OF THE COMMISSIONERS OR MYSELF HAVE RECEIVED CALLS FROM PEOPLE. WHEN WE HAVE A VOTER, WHEN WE HAVE A CONSTITUENT RAISE CANE WITH US OVER SOME GOVERNMENT REGULATION, AND WE DON'T FEEL THAT THEY WERE BEING TREATED FAIRLY, WE GET MAD. I CAN TELL YOU THIS FROM PERSONAL FACT, AND I DID THIS PRIOR. I RUN A PLUMBING, HEATING AND COOLING COMPANY AND I DID THIS PRIOR. I SPOKE UP MANY TIMES WHEN THEY HAD HEARINGS. THEY DO LISTEN. THEIR JOB IS THERE TO LISTEN. I'M HAPPY IN DAVIESS COUNTY THAT WE HAVE PLANNING & ZONING BECAUSE IF WE DIDN'T HAVE PLANNING AND ZONING IN DAVIESS COUNTY, YOU WOULD NOT BE AFFORDED THE OPPORTUNITY THAT YOU WERE IN FEBRUARY, THAT WERE IN MAY, THAT YOU ARE TONIGHT. BECAUSE WHERE THERE IS NO ZONING, THERE IS NO HEARING. IF YOU CAN GET THE PERMIT, YOU CAN DO WHAT YOU WANT. WITH PLANNING & ZONING AT LEAST YOU WERE HEARD. REGARDLESS OF HOW THIS COMES OUT, YOU WERE ABLE TO SAY YOUR PEACE. WITH PLANNING AND ZONING THERE WERE CONDITIONS PLACED UPON THAT APPLICATION.

I REMEMBER MR. JARBOE WAS CONCERNED ABOUT BLASTING AND ROCK FALLING ON HIS CHILDREN BECAUSE HE WAS 300 FOOT AWAY. THE CONDITION PLACED WAS, YOU CANNOT BLAST WITHIN 500 FEET OF A RESIDENCE. THAT WOULD NOT HAVE BEEN ON THERE IF YOU WERE IN OHIO COUNTY. MANY OF YOU FROM THE PLEASANT RIDGE AREA KNOW THAT THERE IS A MINE IN THE PROCESS OF BEING PERMITTED IN OHIO COUNTY. I'D SAY YOU DIDN'T HAVE AN OPPORTUNITY TO SPEAK NOR TO HAVE CONDITIONS PLACED. I HEARD THE OTHER NIGHT THAT PLANNING AND ZONING IS PUSHING THIS REZONING. THEY DON'T PUSH ANYTHING. PLANNING AND ZONING REACTS TO AN APPLICATION. WHEN AN APPLICATION COMES TO THEM, THEN THEY LOOK AT IT TO SEE IF IT CONFORMS WITH THE COMPREHENSIVE PLAN, WITH THE LAND USE MAP. THEY LOOK FOR FACTS SO THAT THEY CAN EITHER APPROVE IT OR RECOMMEND IT TO THE PLANNING BOARD, TO THE COMMISSION OR THEY WILL DENY IT. THERE MAY BE FACTS THAT SAYS, THIS IS NOT COMPATIBLE. WE CAN'T RECOMMEND THIS. THEY RECOMMEND DENIAL ON OCCASIONS. I KNOW. I'M A NERD. I WATCH EVERY MEETING THAT THEY HAVE. I CAN RECITE ALMOST VERBATIM WHAT GOES ON THERE. THEY DON'T PUSH ANYTHING. THEY REACT TO AN APPLICATION. THEY HAVE TO BY LAW. IF ANY OF YOU CAME IN AND WANTED TO APPLY FOR A REZONING, THAT IS THEIR JOB. IT IS THEIR JOB BECAUSE WE AS ELECTED OFFICIALS HAVE GIVEN IT TO THEM. I HEARD THE MODERATOR THE OTHER NIGHT TALK ABOUT PLANNING AND ZONING LIKE THEY WERE THE BEAST. WELL, THAT MODERATOR WAS ONE OF THOSE PEOPLE THAT VOTED IN 2007 FOR THE UPDATED COMPREHENSIVE PLAN. I WAS ON THE CITY

COMMISSION IN 2007. I VOTED FOR THE UPDATED COMPREHENSIVE PLAN IN THE CITY. THEY DO NOT DO ANYTHING IN AND OF THEMSELVES. THEY HAVE NO POWER. ALL THE POWER THAT THEY HAVE IS GRANTED TO THEM BY LOCAL GOVERNMENT AS WELL AS KRS 100. AND KRS 100 SAYS, IF YOU DON'T HAVE A COMPREHENSIVE PLAN, YOU DON'T HAVE PLANNING AND ZONING. IF YOU DIDN'T HAVE A COMPREHENSIVE PLAN, WE WOULDN'T HAVEN'T PLANNING AND ZONING AND YOU WOULDN'T BE HERE TONIGHT. YOU WOULD NOT BE HERE TONIGHT. SO IT BOTHERS ME SOMETIMES WHEN I HEAR AN AGENCY WHOSE ONLY JOB IS TO CARRY OUT WHAT THE ELECTED OFFICIALS TELL IT TO CARRY OUT, AND AT THE SAME TIME THOSE ELECTED OFFICIALS ARE THE ONES THAT YOU VOTED FOR OR AGAINST. PLANNING AND ZONING DOES THE JOB. THIS COMMUNITY IN 1978 OR '79, I THINK, GARY.

MR. NOFFSINGER: 1970.

JUDGE MATTINGLY: 1970 I WAS A YOUNG LAD THEN. IN 1970 DECIDED THAT IT WAS GOOD FOR THE ENTIRE COMMUNITY. IT WASN'T GOOD JUST FOR THE RURAL MEMBER OF OUR COMMUNITY. IT WASN'T GOOD JUST FOR THE CITY MEMBERS OF OUR COMMUNITY. I HEARD THAT THE OTHER NIGHT. PEOPLE TALK ABOUT, THOSE CITY FOLKS DON'T KNOW WHAT WE DO OUT IN THE COUNTY. LET ME TELL YOU. THOSE CITY FOLKS ARE COUNTY FOLKS. EVERY ONE OF THE 95,000 CITIZENS IN DAVIESS COUNTY ARE DAVIESS COUNTY FOLKS. THE PLANNING COMMISSION IS BROKEN DOWN. APPROXIMATELY FOUR ARE APPOINTED BY THE COUNTY GOVERNMENT. SIX ARE APPOINTED BY THE MUNICIPALITIES. PEOPLE FORGET. OWENSBORO AND THE CITY OF WHITESVILLE. SIXTY PERCENT OF THE POPULATION LIVES WITHIN THE CORPORATE LIMITS OF THOSE TWO CITIES. ROUGHLY 40 PERCENT, 39 PERCENT LIVE OUTSIDE THE LIMITS. I HAPPEN TO WATCH THAT MEETING. WE HAD A CITY PERSON VOTE FOR THIS REZONING AND WE HAD A COUNTY PERSON VOTE AGAINST IT. I FELT COMPELLED TO SAY THAT TO YOU FOLKS BECAUSE WE DON'T WANT TO CREATE DEMONS IN THIS COMMUNITY. MR. GREGORY, THE VICTIM OF DEMONS IN THIS COMMUNITY. THE DEMONS ARE BLAMED ON REZONING. BY EXTENSION BLAMED ON PLANNING AND ZONING. THERE ARE BAD PEOPLE IN THE WORLD REGARDLESS OF WHAT WENT ON. YOU COULD HAVE WRITTEN AN ARTICLE ABOUT WHY DO YOU THINK WE SHOULD NOT SPAY OR NEUTER CATS, AND SOMEBODY COULD HAVE DONE THAT. I'M SORRY, AND I PUBLICLY APOLOGIZE TO YOU AND YOUR FAMILY BECAUSE THAT HAPPENED. I CERTAINLY HOPE THE SHERIFF AND THE SHERIFF'S DEPARTMENT IS DOING EVERYTHING THEY CAN TO RESOLVE THAT ISSUE. THE POSSIBILITY EXIST, IT WOULDN'T BE IN THIS REZONING. IT COULD HAVE BEEN ANYTHING. GARY, I PUBLICLY WANT TO THANK YOU AND THE PLANNING STAFF AND THE PLANNING COMMISSION, THE COMMISSIONERS, FOR THE HARD JOB THAT THEY HAVE. THINK ABOUT IT. AND, MADAM COURT REPORTER, I REALLY THANK YOU. FOURTEEN HOURS OF TESTIMONY. FOURTEEN HOURS. TONIGHT I HOPE THAT WE CAN HOLD OUR EMOTIONS IN CHECK. BUT YOU KNOW, MR. HESTER, YOU'RE RIGHT. IT'S EMOTIONAL. IT IS ABSOLUTELY EMOTIONAL. MR. AND MRS. WHISTLE, IT IS EMOTIONAL. IT IS EMOTIONAL. THE QUESTIONS THAT YOU ASK, WOULD YOU WANT THE MINE IN YOUR BACKYARD? OF COURSE I WOULDN'T. BUT I KNOW THAT I'M NOT GOING TO HAVE ONE BECAUSE OF WHERE I CHOSE TO LIVE. YOU TALK ABOUT YOU CHOSE TO LIVE THERE. I WOULDN'T WANT A JAIL, BUT WE HAVE ONE ACROSS THE ROAD FROM A SCHOOL. I WOULDN'T WANT A LANDFILL, BUT WE HAVE ONE. THOSE ARE NECESSARY THINGS. SOMEBODY WOULD SAY, COAL MINE IS NOT NECESSARY. IT'S NOT MINE TO JUDGE. SOMEBODY WOULD TELL YOU THAT COAL IS OBSOLETE, AND PERHAPS THESE FOLKS WILL GO BANKRUPT AND LEAVE A HUGE HOLE IN THE GROUND. DO YOU REALLY WANT ME AND THIS COMMISSION, THE MAYOR AND HIS COMMISSION TO LOOK BEHIND THE FINANCIAL STABILITY OF EVERY BUSINESS THAT COMES INTO THE COUNTY TO SEE WHETHER THEY'RE GOING TO MAKE IT OR NOT. I HEARD SO MANY OF YOU FOLKS SAY, GOVERNMENT, GET OUT OF OUR LIVES, BUT AT THE SAME TIME YOU WANT GOVERNMENT IN THEIR LIVES, IN BUSINESS LIVES. IT'S ALL ABOUT BALANCE. TONIGHT I ASK THAT, FOLKS, TRY HOLD YOUR EMOTIONS IN CHECK. I KNOW IT'S HARD, BUT I'M GOING TO ASK YOU TO DO THAT. BE KIND AND GENEROUS AND COURTEOUS TO THE OPPOSITION. I ASK THE OPPOSITION TO DO THE SAME FOR YOU. PLEASE BE GENTLE WITH THE COMMISSION. FOR ONE OF TWO OF US IT'S THE FIRST TIME WE'VE EVER HAD A COURTROOM FULL. ISN'T THAT RIGHT COMMISSIONER WATHEN?

MR. WATHEN: THAT IS CORRECT.

JUDGE MATTINGLY: I CAN GUARANTEE YOU THIS: THAT AS WE STAND HERE TONIGHT, EACH AND EVERY COMMISSIONER HAS VISITED THAT AREA MANY, MANY TIMES. NOT JUST THAT AREA. WE HAVE VISITED KNOTTSVILLE. WE HAVE VISITED ST. JOE. WE HAVE VISITED PANTHER. WE HAVE LOOKED AT STRIP MINES. I CAN GUARANTEE YOU THAT EACH AND EVERY COMMISSIONER HAS REVIEWED THE EIGHT DVD'S THAT WERE SENT TO US. THE ALMOST 600 PAGES OF TRANSCRIPTS FROM THE FEBRUARY MEETING AND THE MAY MEETING, AS WELL AS THE 1986 TRANSCRIPT AND THE 1993 TRANSCRIPT. I CAN GUARANTEE YOU THAT I OPEN EVERY ONE OF THOSE 500 E-MAILS THAT SOMEBODY GOT ON THE INTERNET AND SAID, SEND AN E-MAIL TO THE JUDGE AND TELL HIM NOT TO VOTE FOR THIS. VOTE "NO." I OPENED EVERY ONE OF THEM, EVEN THOUGH SOME OF THEM WHO SENT THEM DIDN'T HAVE THE DECENCY TO REMOVE THE LITTLE "THIS SPACE IS FOR A PERSONAL MESSAGE. DELETE IF YOU DON'T WANT TO SEND IT." FROM ALL OVER THE PLACE. THIS COURT I AM PROUD TO SAY HAS DONE THEIR JOB IN REVIEWING THE RECORD, IN REVIEWING THE TRANSCRIPT, IN REVIEWING THE TWO MEETINGS. THIS COURT TAKES ITS JOB VERY SERIOUSLY. I CAN TELL YOU SOME OF YOU WILL GET MAD AT THIS COURT IN THE POSITION THAT WE'RE GOING TO TAKE, THE POSITION THAT THE COUNTY ATTORNEY, MR. PORTER, WILL TELL YOU HOW WE'RE GOING TO DO THIS. I'M SORRY. IF YOU GET UPSET, IF YOU GET MAD, THEN THE CIRCUIT COURT, HOWEVER IT TURNS OUT, TELL THE JUDGE. THAT'S ALL I CAN SAY. I THINK RIGHT NOW WHAT WE'RE GOING TO LOOK AT WILL BE THE LAW, WILL BE THE RECORDS, WILL BE THE RECOMMENDATIONS, AND WE WILL TRY TO ADD SOME COMMON SENSE. WE WILL TRY. SOMETIMES YOU CAN'T HAVE COMMON SENSE. SOMETIMES, MR. OVERSTREET, AND I HEARD YOU, COMMON SENSE TELLS YOU. BUT YOU BEING AN ATTORNEY KNOW THAT SOMETIMES COMMON SENSE AND THE LAW, THEY DON'T MIX. SOMETIMES WE CAN'T DO THE THINGS WE WOULD LIKE. I HEARD A COMMENT THAT THIS IS POLITICAL. NO. IF IT WERE POLITICAL, WE WOULDN'T EVEN BE HERE. BECAUSE WE WOULD SAY, WE DON'T WANT TO HEAR IT. WE TURN IT DOWN, BECAUSE THAT WOULD MAKE A WHOLE LOT OF PEOPLE HAPPY. IF WE APPROVE IT, WE ONLY MAKE A FEW PEOPLE HAPPY. I HOPE IF WE DON'T DO WHAT YOU THINK WE SHOULD DO THAT THE NEXT TIME ONE OF THESE COMMISSIONERS RUNS FOR RE-ELECTION, IF THEY SO CHOOSE, THAT YOU WILL REMEMBER PERHAPS THEY DIDN'T DO WHAT I WANTED THEM TO DO, BUT THEY HAD THE GUTS TO STAND UP AND DO WHAT THEY THOUGHT WAS RIGHT. BECAUSE AT THE END OF THE DAY THAT'S ALL WE CAN DO. IS DO WHAT WE THINK IS RIGHT. MR. PORTER.

MR. PORTER: THANK YOU. LADIES AND GENTLEMEN, TONIGHT WE'LL CONSIDER THE REQUEST BY THE PARTIES WHO AGREED BY THE PLANNING & ZONING COMMISSION FINDING THAT WAS MADE AT PUBLIC HEARING ON MAY 10, 2012, CONCERNING THE WESTERN KENTUCKY MINERALS, AND OTHERS APPLICATION FOR ZONING CHANGE ON GIRL SCOUT, RUSSELL ROAD AND US HIGHWAY 231 FROM A-U URBAN AGRICULTURE AND A-R RURAL AGRICULTURE TO EX-1 COAL MINING. THE HEARING ON MAY 10TH THE COMMISSION HEARD FROM THE APPLICANTS AND RESIDENTS WHO OPPOSED THE APPLICATION FOR ZONING CHANGE. AFTER HEARING THE TESTIMONY OF ALL PARTICIPANTS, THE PLANNING COMMISSION MADE FINDINGS THAT THE APPLICATION COMPLIED WITH THE COMPREHENSIVE PLAN AND FINDING OF FACTS SUPPORTING THIS RECOMMENDATION TO APPROVE THE APPLICATION FOR A ZONING CHANGE TO PERMIT COAL MINING IN THE AREA DESIGNATED. WITHIN THE TIME ALLOWED THERE WERE PERSONS AGREED BY THE PLANNING COMMISSION'S RECOMMENDATIONS TO APPROVE THE APPLICATION PERMITTING COAL MINING BY THE REQUEST OF THE PLANNING COMMISSION FOR THIS HEARING THAT WE'RE HAVING TONIGHT AND FOR THE FISCAL COURT TO MAKE ITS FINAL DECISION ON THAT APPLICATION FOR A CHANGE. THE PROPOSED ORDINANCE THAT WE HAVE PREPARED WILL BE UP FOR ADOPTION. IT'S PREPARED AS IF WE WOULD ADOPT THE PLANNING COMMISSION'S RECOMMENDATIONS BECAUSE BY STATUTE KRS 102.11 SUBSECTION 4 WE ARE REQUIRED TO HAVE MAJORITY OF FISCAL COURT VOTE TO OVERRIDE ANY DECISION THE PLANNING COMMISSION. I WILL READ THE PROPOSED ORDINANCE, AT LEAST NOT IN ITS ENTIRETY, BUT AT LEAST AS TO THE RELATIVE PORTIONS. AFTER HEARING EVIDENCE, THE APPLICATION WAS FILED WITH THE METROPOLITAN PLANNING COMMISSION AND WAS HEARD AT REGULAR HEARING ON MAY 10TH. THE APPLICATION WAS BY WESTERN KENTUCKY MINERALS AND OTHERS. THOSE ARE NAMED TO MAKE THE ZONING CHANGE THAT I

MENTIONED. AFTER HEARING THE EVIDENCE, THE METROPOLITAN PLANNING COMMISSION MADE FINDINGS OF FACTS AND CONCLUSIONS AND RECOMMENDED APPROVAL OF THE ZONING CLASSIFICATION AMENDMENT TO EX-1 COAL MINING, AND A COPY OF THAT TRANSCRIPT WILL BE ATTACHED TO THE ORDINANCE IN THIS PROCEEDING. THEN ON MAY 17TH THERE WAS REQUEST TO FISCAL COURT TO HEAR THE REZONING. THOSE WERE FILED WITH THE PLANNING OFFICE. OFFICIAL TRANSCRIPT OF THOSE PROCEEDINGS AT THE MEETING, INCLUDING THE EVIDENCE PRESENTED, FINDINGS OF FACT AND CONCLUSIONS AND RECOMMENDATIONS OF PLANNING COMMISSION WERE FILED AND CONSIDERED BY THE FISCAL COURT, BE OBTAINED BY FISCAL COURT, DAVIESS COUNTY, COMMONWEALTH OF KENTUCKY THAT PROCEEDING ON THE MAY 10TH MEETING OF THE OWENSBORO METROPOLITAN PLANNING COMMISSION RELATING TO THE ZONING CHANGE OF PROPERTY WAS DESCRIBED IN EXHIBIT A INCLUDED FINDING OF FACTS AND RECOMMENDATIONS OF THE PLANNING COMMISSION ARE CONFIRMED AND APPROVED AND ZONING COMMISSION CLASSIFICATION SUBJECT PROPERTY WHICH DESCRIBED IN THE ATTACHMENT AND INCORPORATED BY REFERENCE IS AMENDED AND CHANGED SO THAT THE PROPERTY WOULD BE ZONED EX-1 COAL MINING, SUBJECT TO THE CONDITIONS PLANNING COMMISSION MADE INCLUDING THE 500 FOOT MINING BUFFER ESTABLISHED FROM ALL OCCUPIED STRUCTURES, UNLESS A WAIVER IS GRANTED BY THE PROPERTY OWNER AND A MINING COMPANY REPRESENTATIVE AND STRUCTURAL ENGINEER THE ADJOINING PROPERTY OWNER FEELS TO BE PART OF ANY PREBLAST SURVEY AT THE EXPENSE OF THE APPLICANT AND THE PROVISION IS JUST APPLICABLE FOR THE PROPERTIES IMMEDIATELY ADJOINING THE PROPOSED MINE BOUNDARY. THE ORDINANCE WILL BECOME EFFECTIVE UPON PASSAGE AND PUBLICATION. THIS IS THE FIRST READING, THE 19TH OF JULY OF 2012. TO CONSIDER THE ORDINANCE TONIGHT FISCAL COURT WILL CONSIDER THE REQUEST BY THE PERSONS WHO FILED OR AGREED PERSONS WHO FILED WITH THE COURT TONIGHT. I'LL OUTLINE BASICALLY THE PROCEDURE THAT WE HAVE. AT THIS HEARING WHAT THE COURT CAN DO, IT HAS A COUPLE OF OPTIONS. IT CAN EITHER ACCEPT THE PLANNING COMMISSION'S RECOMMENDATIONS WITHOUT AN ARGUMENT TYPE HEARING. THAT IS A REVIEW OF THE PLANNING COMMISSION'S RECOMMENDATIONS AND FIND THAT THE PLANNING COMMISSION'S RECOMMENDATIONS COMPLY WITH THE COMPREHENSIVE PLAN. FROM REVIEWING THE RECORD, THEY CAN MAKE NO OTHER FINDINGS OF FACT THAT WOULD SUPPORT AN ALTERNATE FINDING. THEY CAN ACCEPT OR APPROVE THE RECOMMENDATION OF THE PLANNING COMMISSION WITH AN ARGUMENT TYPE HEARING, WHICH IS WHAT WE PLAN TO DO TONIGHT. THE COURT WILL LISTEN TO AND HEAR ARGUMENTS FROM PERSONS. I WILL GO OVER THOSE. IF YOU WERE AT THE HEARING ON MAY 10TH, AT LEAST ALLOW THOSE PERSONS TO MAKE COMMENTS. THE OTHER OPTION THAT THE COURT HAS IS TO REVIEW THE PLANNING COMMISSION'S RECORDS AND DETERMINE FROM THE RECORD OTHER FACTS WHICH WOULD DIFFER FROM THE PLANNING COMMISSION'S FACTS AND WHICH WOULD SUPPORT AN ALTERNATE FINDING. THE THIRD OPTION IS THAT WE COULD HOLD OUR OWN TRIAL TYPE OF HEARING, WHICH THE COURT ELECTED NOT TO DO. JUST SO EVERYONE KNOWS, AND I THINK THE COURT HAS DONE THIS, THAT EACH OF THE MEMBERS OF THE COURT HAVE REVIEWED ALL OF THE DOCUMENTS, ALL OF THE EVIDENCE, ALL OF THE EXHIBITS, ALL OF THE TESTIMONY FROM THE MAY 10TH HEARING AND THE MEETING OF THE PLANNING COMMISSION. TONIGHT WE'LL CONSIDER THAT RECORD, THAT TESTIMONY, THE EXHIBITS OF THAT HEARING AT THE PLANNING COMMISSION MEETING. I KNOW THAT MR. OVERSTREET HAS FILED A DOCUMENT WITH THE COURT THAT'S STYLED BRIEF ON BEHALF OF THE AGREED LANDOWNERS. WE WILL ACCEPT THAT AS PART OF THE COURT'S RECORD. A PART OF THAT INCLUDES SOME LEGAL ARGUMENTS CONCERNING HEARING AND NOTICE AND DUE PROCESS. THOSE WILL NOT BE A PART, THEY'RE NOT TO BE A PART OF THE ARGUMENTS TONIGHT. AS THOSE ARE ADDRESSED TO A LEGAL OR JUDICIAL BODY. THIS IS A LEGISLATIVE BODY. WE WILL ONLY MAKE DECISIONS AND FINDINGS WHETHER THIS COURT CAN MAKE FINDINGS THAT ARE DIFFERENT FROM THE ONES THAT THE PLANNING COMMISSION MAKE TO OVERTURN OR MAKE A DIFFERENT FINDING THAN THE PLANNING COMMISSION. THE COURT WILL ASK QUESTIONS AND MAY ASK QUESTIONS OF THE PLANNING COMMISSION STAFF. THEY MAY ASK QUESTIONS OF THE PARTY WHO COMMENTED AT THE MAY 10TH HEARING, THE PLANNING COMMISSION MEETING. THAT WAS ONE OF THE REASONS WE ASKED THAT EVERYONE SIGN IN. I WOULD ALSO LIKE TO KNOW WHETHER ANY OF THOSE WOULD LIKE TO SPEAK OR MAKE COMMENTS. I DON'T KNOW HOW MANY WE HAVE. I DON'T KNOW THE NUMBERS. THE COURT MAY LIMIT THE



LENGTH OF COMMENTS AND THE COMMENTS IF THEY ARE ALL RELATED TO ONE AREA. THOSE COMMENTS MAY BE GROUPED SO THAT IF THERE ARE A NUMBER OF PEOPLE WHO WISH TO SPEAK ABOUT ONE PARTICULAR ISSUE, WE WOULD NOT ALLOW THOSE TO CONTINUE INTO ADDITIONAL ONES IN THE SAME AREA. FOR INSTANCE, I THINK THE JUDGE MENTIONED BLASTING AND MAYBE QUALITY OR WHATEVER OTHER OF THOSE ARE. PERHAPS VALUE. EACH OF THOSE TO BE CONSIDERED. WE'LL JUST HAVE EVERYONE COME UP AND SAY, YES, I AGREE WITH THAT OR I DISAGREE WITH THAT. WE WOULD ASK THAT WHEN YOU COME SPEAK OR IF YOU SPEAK TO THE COURT THAT YOU IDENTIFY YOURSELF. THAT YOU IDENTIFY YOUR ADDRESS, AND THAT YOU BRIEFLY IDENTIFY THE SUBJECT WHICH YOU ADDRESS, AND THEN ANY OTHER RECOMMENDATIONS OR QUESTIONS THAT THE COURT HAS IN MAKES THOSE SPEAKING OPPORTUNITIES. AT THIS HEARING THE COURT WILL LISTEN TO ALL OF THE ARGUMENTS. WILL ASK QUESTIONS AS I'VE NOTED AGAIN. THERE IS NO VOTE AT THIS MEETING. AT THIS MEETING THE COURT WILL TAKE ALL OF THE COMMENTS AND THE ARGUMENTS. WE'LL CONSIDER THOSE. AT THE END OR CONCLUSION OF THE ARGUMENTS TONIGHT, IT MAY TAKE A MOMENT TO REVIEW AMONGST THEMSELVES. SEE IF THEY HAVE ADDITIONAL QUESTIONS FOR ANY PARTICULAR PERSON OR ANY PARTICULAR MEMBER OF THE AUDIENCE OR PEOPLE WHO SPOKE. THEN IT WILL TAKE ALL OF THOSE UNDER CONSIDERATION AND WE ARE REQUIRED BY LAW TO HAVE A SECOND MEETING TO VOTE ON THE APPROVAL OR DISAPPROVAL OF THE ORDINANCE AS WRITTEN, AND THAT WOULD OCCUR AT THE MEETING ON AUGUST 2ND. THERE WILL BE NO TESTIMONY AT THE MEETING OR NO TESTIMONY OR ARGUMENTS AT THE MEETING ON AUGUST 2ND. I THINK, JUDGE, I HAVE COVERED ALL OF THAT. WE ARE NOT PERMITTING CELL PHONES, RECORDING OR CAMERA DEVICES OR VIDEOS AT THIS POINT. IF YOU'VE NOTICED, I THINK THE JUDGE SAID, WE ARE RECORDING THIS IN TWO WAYS. ONE, THERE IS A VIDEO RECORDING. SO IF ANYONE WANTS TO GET A COPY OF THAT, THAT WILL BE AVAILABLE, AND WE HAVE ASKED AND HAVE A COURT REPORTER WHO WILL TRANSCRIBE ALL THE STATEMENTS THAT ARE MADE. SO THAT TRANSCRIBE WILL BE AVAILABLE AS WELL. JUDGE, I THINK THAT'S WHERE WE ARE.

JUDGE MATTINGLY: THANK YOU, MR. PORTER. ROBERT HUXOL, ARE YOU OUT THERE?

DR. HUXOL: YES, I AM.

JUDGE MATTINGLY: WOULD YOU STAND FOR A SECOND. I HAVE YOU ON THIS LIST AS ASKING TO SPEAK. I DO NOT SHOW YOU ON THE MAY MEETING. WERE YOU AT THE MEETING?

DR. HUXOL: YES, SIR. THAT WAS FOR THE SIMPLE FACT THAT I -- I OWE ALL OF YOU PEOPLE A VOTE OF GRATITUDE BECAUSE AT THAT MEETING I WAS NOT ALLOWED IN THE BUILDING. I WAS ONE OF THOSE INDIVIDUALS WHO FOUND THEMSELVES VIRTUALLY LOCKED OUT OF THAT MEETING AND UNABLE TO ATTEND IT. I'M PARTICULARLY HAPPY THIS EVENING THAT I HAVE AN OPPORTUNITY. I'LL BE BRIEF TO SHOW MY CONCERNS WITH THE FOLKS.

JUDGE MATTINGLY: THANK YOU. DR. DARRELL, I'M GOING TO ALLOW HIM TO SPEAK, IF YOU WILL MAKE THAT NOTE. RONDA VANMILLIGAN.

MS. VANMILLIGAN: I DON'T CARE TO SPEAK. I THOUGHT EVERYONE JUST SIGNED IN.

JUDGE MATTINGLY: THAT'S FINE. SOME OF YOU DO NOT HAVE ANYTHING OUT THERE. MS. VANMILLIGAN WILL NOT SPEAK. MR. FOWLER, WHERE ARE YOU? I DID NOT SEE YOUR NAME ON THE MEETING.

MR. FOWLER: THAT'S CORRECT. I DID NOT SPEAK.

JUDGE MATTINGLY: DR. DARRELL, WOULD YOU STRIKE HIS NAME. WE HAVE APPROXIMATELY 12 PEOPLE WHO HAVE SIGNED TO SPEAK. I'M NOT COUNTING MR. HAYNES OR ANY OF THESE ON THIS SIDE. I THINK PROBABLY, COMMISSIONERS, WE COULD ALLOW UP TO FIVE MINUTES IF THEY WANT TO DO THAT. YOU BE OKAY WITH THAT. MR. OVERSTREET, YOU RAISED YOUR HAND. WOULD YOU LIKE TO --

MR. OVERSTREET: YES. QUESTION JUST REGARDING MR. PORTER'S STATEMENT. AS I UNDERSTOOD IT, ONLY THE MAY 10, 2012 TRANSCRIPT IS GOING TO BE ATTACHED AND TRANSFERRED?

JUDGE MATTINGLY: NO. NO. THE ENTIRE PART OF THE RECORD, THE MAY 10TH INCLUDED THE FEBRUARY MEETING. IT INCLUDED THE 1986 MEETING.

MR. OVERSTREET: I JUST WANTED TO MAKE SURE. I THOUGHT I UNDERSTOOD THAT ONLY THE MAY 10TH.

JUDGE MATTINGLY: NO. IF I'M NOT MISTAKEN –

MR. PORTER: THAT MAY 10TH INCLUDED ALL OF THOSE OTHERS. WE WILL INCLUDE THE MAY 10TH MEETING, BUT THAT INCLUDED EACH OF THOSE OTHERS.

JUDGE MATTINGLY: IT WILL ALL BE PART OF THIS COURT'S RECORD. MR. NOFFSINGER, I'M ASSUMING THAT IS CORRECT. THE WAY I REMEMBER IT, ALL OF THOSE ITEMS WERE MADE A PART OF THE RECORD AT THE MAY 10TH MEETING?

MR. NOFFSINGER: YES, SIR, THAT IS CORRECT.

JUDGE MATTINGLY: COMMISSIONERS, WHAT I WOULD LIKE TO DO, IF IT'S OKAY, WE'RE IN NEW TERRITORY. I WOULD LIKE EITHER MR. NOFFSINGER OR MR. HOWARD TO READ THE OMPC RECOMMENDATIONS, FINDING OF FACT, CONDITIONS, AND THE VOTE. REMEMBER, FOLKS, TONIGHT IF YOU COME TO THE PODIUM AND SPEAK, YOU DON'T HAVE TO RAISE YOUR HAND, YOU DON'T HAVE TO BE SWORN IN BECAUSE THIS IS NOT SWORN TESTIMONY. WE'RE WILLING TO LISTEN TO ANYTHING AND EVERYTHING, IF WAS BROUGHT UP AT THE LAST MEETING.

MR. HOWARD: JUST FOR CLARIFICATION, YOU WANT ME TO READ THE ENTIRE FINDINGS OF FACT?

JUDGE MATTINGLY: NO. WHAT I'D LIKE FOR YOU TO DO IS SIMPLY WHAT WE'RE DOING HERE. THE APPLICANT MADE APPLICATION TO REZONE. THERE WAS A MAY 10TH MEETING. I'M NOT GOING TO READ IT FOR YOU, BRIAN.

MR. HOWARD: YOU WANT ME TO READ THE WHOLE FINDINGS OF FACT?

JUDGE MATTINGLY: YES.

MR. HOWARD: THE FINDINGS OF FACT. WE'VE HEARD NOW ABOUT 12, 13 HOURS OF TESTIMONY, FEBRUARY AND TONIGHT. NOW IT'S TIME TO HEAR FROM PLANNING COMMISSION. WE SERVE THIS COMMUNITY BECAUSE WE BELIEVE IN THE COMMUNITY. WE GET NOT ONE NICKEL FOR OUR TIME. I HAVE SPENT MORE TIME AND MORE THOUGHT ON THIS. I HAVE BEEN ON THE BOARD OF ADJUSTMENT FOR A FEW YEARS. BEEN ON THIS COMMISSION FOR FOUR YEARS NOW. I HAVE SPENT TREMENDOUS TIME --

JUDGE MATTINGLY: MR. HOWARD.

MR. HOWARD: YES.

JUDGE MATTINGLY: I APPRECIATE THAT STATEMENT. I DON'T WANT THAT. I WANT YOU TO READ 101. I WANT YOU TO READ --

MR. HOWARD: LET ME SEE WHICH DOCUMENT THAT IS. THESE WILL BE THE TEN FINDINGS OF FACT THAT WERE A PART OF THE PLANNING COMMISSION RECOMMENDATIONS.

JUDGE MATTINGLY: YES.

MR. HOWARD: OKAY. FINDINGS OF FACT: 1. STAFF RECOMMENDS APPROVAL BECAUSE THE PROPOSAL IS IN COMPLIANCE WITH THE COMMUNITY'S ADOPTED COMPREHENSIVE PLAN; 2. THE MAJORITY OF THE SUBJECT PROPERTY IS LOCATED IN A RURAL MAINTENANCE PLAN AREA WHERE COAL MINING USES ARE APPROPRIATE IN GENERAL LOCATIONS; 3. THE MAJORITY OF THE SUBJECT PROPERTY IS LOCATED IN THE RURAL SERVICE AREA OUTSIDE OF A RURAL COMMUNITY PLAN AREA; 4. THE PORTION WITHIN THE RURAL COMMUNITY PLAN AREA IS A SMALL PORTION OF THE OVERALL REZONING ACREAGE CONSISTING OF THREE TRACTS AND APPROXIMATELY 70 ACRES WHICH IS NOT CONSISTENT WITH THE SMALL LOT SIZE FOUND TYPICALLY WITHIN A RURAL COMMUNITY PLAN AREA; 5. THE APPLICANT'S PROPOSAL COMPLIES WITH A GOAL IN THE COMPREHENSIVE PLAN THAT STATES LAND WITHIN THE RURAL SERVICE AREA SHOULD BE RESERVED PRIMARILY FOR AGRICULTURAL AND OTHER NATURAL RESOURCE USES; 6. THE SUBJECT PROPERTY ADJOINS EXISTING AREAS OF EX-1 COAL MINING ZONING AND ACTIVITY TO THE SOUTH; 7. WITHIN A ONE MILE RADIUS OF THE SUBJECT PROPERTY, THERE IS OVER 300 ACRES OF LAND CURRENTLY ZONED EX-1 COAL MINING; 8. THE PLEASANT RIDGE AND UTICA QUADRANGLE MAPS INDICATE THE PRESENCE OF COAL DEPOSITS ON THE SITE; 9. THE APPLICANT'S PROPOSED STRIP MINING TECHNIQUE AGREES WITH AN OBJECTIVE OF THE COMPREHENSIVE PLAN THAT AGRICULTURAL AND OTHER NATURAL RESOURCE USES SHOULD BE GIVEN WIDER REIGN TO APPLY TRADITIONAL PRODUCTION TECHNIQUES; AND, 10. STATE AND COUNTY ROADS PROPOSED TO BE USED FOR THE TRANSPORTATION OF COAL HAVE BEEN REVIEWED AND APPROVED BY THE APPROPRIATE OFFICIALS.

JUDGE MATTINGLY: THERE WERE SOME CONDITIONS THAT WERE ADDED?

MR. HOWARD: TWO CONDITIONS. CONDITIONS 1. THE 300 FOOT BUFFER AREA WILL BE MOVED OUT TO 500 FEET FROM BUILDINGS, UNLESS IS WAIVED BY PROPERTY OWNER; 2. A REPRESENTATIVE OF THE MINING COMPANY AND A STRUCTURAL ENGINEER REPRESENTING THE ADJOINING PROPERTY OWNERS SHOULD BE PART OF A PREBLAST SURVEY AT THE EXPENSE OF THE APPLICANT. THIS PREVENTION IS JUST FOR PROPERTIES THAT IMMEDIATELY ADJOIN THE PROPOSED MINING BOUNDARY.

JUDGE MATTINGLY: WHAT WAS THE VOTE OF THE PLANNING COMMISSION?

MR. HOWARD: PLANNING COMMISSION VOTED FOR APPROVAL FIVE TO FOUR.

JUDGE MATTINGLY: THE STAFF'S RECOMMENDATIONS WAS.

MR. HOWARD: STAFF RECOMMENDED APPROVAL.

JUDGE MATTINGLY: COMMISSIONERS, I'M GOING TO ASK IF ANY OF YOU HAVE QUESTIONS REGARDING THE FINDINGS OF FACT.

MR. WATHEN: I HAVE A QUESTION. START IF I CAN, ACTUALLY NOT WITH BRIAN, BUT WITH SOMEBODY FROM WESTERN KENTUCKY.

JUDGE MATTINGLY: THIS IS REGARDING THE FINDING OF FACTS. I'M NOT SURE HOW THEY WOULD BE ABLE TO TESTIFY REGARDING THE FINDINGS OF FACT. I'M NOT GOING TO LIMIT YOUR QUESTION, BUT –

MR. WATHEN: I HAVE SOME CLARIFICATION QUESTIONS THAT I WANT TO ASK. I'M NOT ABSOLUTELY –

MR. CASTLEN: I HAVE ONE FOR BRIAN.

JUDGE MATTINGLY: WOULD YOU ALLOW COMMISSIONER CASTLEN TO GO AHEAD?

MR. WATHEN: YES, THAT WILL BE FINE.

JUDGE MATTINGLY: COMMISSIONER CASTLEN.

MR. CASTLEN: I'M CURIOUS. I DON'T KNOW ALL THE RULES. ONE OF THE THINGS THAT I WENT THROUGH, I DID READ THIS AS OUR JUDGE VERY ELOQUENTLY WITH HIS COMMENTS. I'LL TAKE JUST A MOMENT TO SAY, I DID READ AND WATCH ALL OF THESE. I DID GO BACK AND READ THE TRANSCRIPTS AS THEY WERE ENTERED INTO THE RECORD OF THE '83 AND THE '96 MEETINGS. ONE THING THAT I SAW IN SUMMARY, I DON'T KNOW WHICH PLATS, IT SAYS THAT AT SOME POINT IT SAYS THAT, AND THIS IS IN I THINK YOUR ALL'S DOCUMENTS, BRIAN. THAT IT SAYS THAT EX-1, ONCE IT'S MINED IT REVERTS BACK OR GOES BACK TO A-U.

MR. HOWARD: ACTUALLY THE WAY THE ZONING ORDINANCE READS, ONCE PROPERTY HAS BEEN MINED AND RECLAMATION COMPLETE, A NEW APPLICATION WOULD COME BEFORE THE PLANNING COMMISSION TO REVERT IT BACK TO THE ORIGINAL ZONING. IF THE ORIGINAL ZONING WERE A-R, IT WOULD REVERT BACK TO A-R. THERE MIGHT HAVE BEEN EXAMPLES. THE PREVIOUS APPLICATION WHERE THE ORIGINAL ZONING WAS I-1. WELL, IT REVERT BACK TO I-1.

MR. CASTLEN: SO THAT DOES NOT AUTOMATICALLY HAPPEN?

MR. HOWARD: IT DOES NOT AUTOMATICALLY HAPPEN. AN APPLICATION HAS TO BE SUBMITTED AND GOES BEFORE THE PLANNING COMMISSION FOR CONSIDERATION.

MR. CASTLEN: THAT WAS THE ONLY THING DIRECTLY TIED WITH THIS.

JUDGE MATTINGLY: COMMISSIONERS, DO YOU HAVE ANYTHING YOU LIKE TO ASK MR. HOWARD WHILE HE'S UP THERE? DO YOU HAVE ANYTHING THAT DIRECTLY RELATES TO THE FINDINGS OF FACT?

MR. WATHEN: IS THERE CURRENTLY AN ACTIVE COAL MINE ADJACENT TO THIS PROPERTY ON THE SOUTH SIDE?

MR. HOWARD: THERE IS EX-1 ZONING ON THE SOUTH OF THE PROPERTY, YES.

MR. WATHEN: IT'S ZONED. IS IT ACTIVE?

MR. HOWARD: IT HAS BEEN USED FOR MINING IN THE PAST. THE CURRENT USE I'M NOT SURE.

JUDGE MATTINGLY: GO AHEAD, COMMISSIONER.

MR. LAMBERT: MY QUESTION PERTAINS TO THE PROPOSED COAL HAUL ROUTE. I UNDERSTAND THAT'S A STATE AND FEDERAL HIGHWAY. HELP ME WITH THE PROCESS BY GETTING THAT APPROVED AS A HAUL ROAD.

MR. HOWARD: AS FAR AS THE APPROVAL PROCESS FOR A HAUL ROAD, THAT GOES THROUGH THE STATE AND THE STATE WOULD PERMIT THAT. I DON'T KNOW WHAT THEY LOOK AT AND WHAT THEY REQUIRE. AS FAR AS APPLICATION GOES, THE TRANSPORTATION PLAN IS REQUIRED TO BE SUBMITTED. IT'S BEEN REVIEWED BY THE LOCAL ENGINEER, AS WELL AS THE STATE DEPARTMENT OF TRANSPORTATION. THEY SIGN OFF ON IT. WHAT PROCESS THE STATE GOES THROUGH IN ORDER TO DESIGNATE A ROAD AS A HAUL ROAD, I COULDN'T SPEAK FOR THAT.

JUDGE MATTINGLY: SO OUR LOCAL ENGINEER, MARK, YOU SIGNED OFF ON THIS PLAN ALONG WITH THE STATE? KENNY POTTS, KEVIN MCCLAREN?

MR. BRASHER: I BELIEVE IT WAS JASON WARD.

JUDGE MATTINGLY: IS HE THE --

MR. BRASHER: HE'S THE BRANCH MANAGER.

JUDGE MATTINGLY: HE'S THE FELLOW THAT WOULD TYPICALLY GO OUT AND LOOK?

MR. BRASHER: NO. THE LOCAL ENGINEERS ACTUALLY GATHER THE DATA. IT'S SENT TO THE MADISONVILLE DISTRICT OFFICE. FROM THERE IT'S SENT TO FRANKFORT. AT THAT POINT THE ENGINEERS IN FRANKFORT REVIEW ALL OF THE INFORMATION, AS FAR AS BRIDGES, LOADING AND SO FORTH, AND GIVE APPROVAL. WHAT JASON SIGNED OFF ON THE PLAN LOCALLY, BUT THE FRANKFORT ENGINEERS ARE THE ONES THAT APPROVE THE LOADING OF THE BRIDGES AND SO FORTH.

JUDGE MATTINGLY: THE REASON I'M ASKING OUR COUNTY ENGINEER, MR. BRASHER WORKED FOR THE STATE AND IS QUITE FAMILIAR WITH THE PROCESS THAT THE STATE GOES THROUGH. DO THEY LOOK AT THAT HAUL ROAD FROM END TO END, FROM WHERE THEY LOAD THE COAL AND FROM WHERE THEY DUMP IT?

MR. BRASHER: THEY REVIEW FROM THE ACCESS POINT TO THE STATE HIGHWAY OR THE HIGHWAY MAINTAINED BY THE STATE. SO THEY LOOK AT STOPPING SITE DISTANCE WHEN THEY COME OUT ON US 231. THEY'LL LOOK AT IT TO IT'S DESTINATION. THE APPLICANT HAS TO PUT THE ENTIRE ROUTE ON THE APPLICATION TO THE STATE GOVERNMENT.

JUDGE MATTINGLY: DOES THE APPLICANT HAVE TO BOND THAT ROUTE JUST LIKE THEY WOULD BOND ONE OF OUR ROADS?

MR. BRASHER: I BELIEVE THEY DO.

JUDGE MATTINGLY: IS THAT CORRECT, BRIAN, OR DO YOU KNOW?

MR. HOWARD: I'M NOT SURE.

JUDGE MATTINGLY: MR. HAYNES, WOULD YOU STEP UP FOR A SECOND SINCE YOU ARE COUNSEL FOR THE APPLICANT. DO YOU BOND THAT ROUTE.

MR. HAYNES: YES. 231 IS ALREADY ON THE STATE WHAT WE CALL EXTENDED WEIGHT SYSTEM. MEANING THAT IT'S ALREADY APPROVED TO HAUL EXCESS WEIGHT. IT'S ALREADY BEEN DESIGNED AND BUILT THAT WAY AND WIDENED UP AND ALL OF THAT. NOW, THAT DOESN'T MEAN THAT WE DON'T HAVE TO GO THROUGH AND GET IT APPROVED. WE STILL GO THROUGH A PROCESS OF EVERY TRUCK, WHAT TYPE OF TRUCK.

JUDGE MATTINGLY: BUT THE QUESTION IS: YOU HAVE TO POST THE BOND?

MR. HAYNES: WE BOND THE STATE ROAD WITH THE STATE. WE BOND THE COUNTY ROADS WITH THE COUNTY. OF COURSE, ANY HAUL ROAD THAT'S GOING ACROSS A PERSON'S PROPERTY --

JUDGE MATTINGLY: THAT'S GOOD ENOUGH. THANK YOU. MARK, YOU REVIEWED, THERE'S A CROSSING ON RUSSELL ROAD; ISN'T THAT CORRECT?

MR. BRASHER: THAT'S CORRECT.

JUDGE MATTINGLY: IS THAT THE ONLY PART OF COUNTY ROAD THAT THEY BE WILL BE ON?

MR. BRASHER: AS FAR AS I'M AWARE OF, YES.

JUDGE MATTINGLY: WHAT ASSURANCES DO WE HAVE THAT THAT ROAD WOULD NOT TURN TO POTHOLES AND MUSH WHEN WINTERTIME WILL CREATE A HAZARD?

MR. BRASHER: WE'LL REQUIRE THEM TO BOND IT. WE INSPECT IT AND IF WE HAVE ANY ISSUES, WE REQUIRE THEM TO FIX IT.

JUDGE MATTINGLY: SO YOUR DEPARTMENT WILL INSPECT IT ON A PERIODIC BASIS?

MR. BRASHER: YES.

JUDGE MATTINGLY: I KNOW THAT, COMMISSIONER, THE TRANSPORTATION ISSUE WAS BROUGHT UP QUITE OFTEN BY MASTER SERGEANT GOODALL, AND HE'S NOT HERE TONIGHT AS I SAID. THAT WAS ONE OF THOSE ISSUES THAT I'M GLAD THAT YOU BROUGHT IT UP. MARK, FOR SOME REASON I HAVE HEARD THAT IF THERE IS A COAL MINE THEY HAVE TO BE PROVIDED A ROUTE TO HAUL THEIR COAL; IS THAT CORRECT?

MR. BRASHER: I'M NOT FOR SURE IF IT'S A REQUIREMENT.

JUDGE MATTINGLY: COMMISSIONER LAMBERT, I HEARD YOU SAY THAT MANY TIMES.

MR. LAMBERT: I BELIEVE IF A MINE OPERATION IS APPROVED, THAT THE OPERATION, SOME ROUTE HAS TO BE PROVIDED FOR THAT COAL TO GET TO THE MARKET.

JUDGE MATTINGLY: BUT AS IT STANDS, BRIAN, PLANNING & ZONING DOES NOT MAKE THAT CALL?

MR. HOWARD: NO. WE WILL RELY ON THE TRANSPORTATION ENGINEERS TO REVIEW THAT, YES.

JUDGE MATTINGLY: COMMISSIONERS, ANYTHING ELSE?

MR. WATHEN: I HAVE A QUESTION ON THE COAL. I WANTED TO SEE -- THIS IS NOT FOR YOU.

JUDGE MATTINGLY: LET'S KEEP HIM UP HERE WHILE WE'VE GOT HIM UP THERE. BRIAN, AND COMMISSIONERS, PLEASE JUMP IN, BUT I HAVE A CONCERN. THE RURAL COMMUNITY IS SMALL LOTS, HOUSING. RURAL MAINTENANCE IS TYPICALLY LARGE LOTS. PRIMARY USE IS MINERAL EXTRACTION. FORESTRY AND AGRICULTURE AND AGRICULTURE-RELATED; IS THAT CORRECT.

MR. HOWARD: YES.

JUDGE MATTINGLY: THAT'S THE PRIMARY USE. THERE ARE SOME SECONDARY USES AND THEN THERE'S SOME USES IN LIMITED LOCATIONS. HOW IN THE WORLD DO WE MIX RURAL COMMUNITY WITH RURAL MAINTENANCE? BECAUSE THERE'S ABOUT 70 ACRES ON THIS COAL HAUL ROAD WHERE IT COMES OUT ON 231 AND IT ACTUALLY GOES THROUGH 70 ACRES. I KNOW THERE WAS SOME, I THINK MR. HESTER BROUGHT IT UP. I THINK THERE WERE SEVERAL PEOPLE OUT THERE. HOW DO WE SQUARE THAT WITH ALLOWING COAL EXTRACTION? I UNDERSTAND THE ROAD IS THROUGH THERE. HOW DO WE SQUARE THAT WITH COAL EXTRACTION?

MR. HOWARD: THAT'S A GOOD QUESTION. ONE THAT WE ADDRESSED AT THE MEETING IN OUR STAFF REPORT. ABOUT 70 ACRES, AS YOU SAID, IS WITHIN THE RURAL COMMUNITY. IN FACT, MAYBE ABOUT TENTH OF THE TOTAL ACREAGE OF THE REZONING APPLICATION. AS YOU MENTIONED, THE COAL HAUL ROUTE DOES GO THROUGH THAT PROPERTY. IT'S PART OF OUR DUE DILIGENCE IN RESEARCHING THE APPLICATION. I TALKED WITH KEVIN MCCLAREN AND KENNY POTTS WITH THE TRANSPORTATION CABINET ABOUT SITE DISTANCE FOR THEIR ACCESS FOR THE COAL HAUL. THEY WENT OUT, AND WE HAVE A LETTER FROM KEVIN MCCLAREN, WHO IS THE CHIEF TRANSPORTATION ENGINEER FOR DISTRICT 2, THAT THEY WENT OUT AND EVALUATED. THE COAL HAUL ACCESS POINT WAS A GOOD LOCATION AND MET THE STOPPING SITE DISTANCE AND THOSE TYPES OF THINGS. WITH THE FACT THAT IT WAS A GOOD POINT FOR THE ACCESS OF THE COAL HAUL ROUTE, AND THE FACT THAT THERE WAS A SMALLER PORTION OF THE OVERHAUL ACREAGE, YOU KNOW, WE CONSIDER THAT TO BE PART OF THE APPLICATION. IT IS NOT TYPICAL WHAT YOU WOULD FIND IN A NORMAL RURAL COMMUNITY, WHICH HAS THE SMALLER LOTS. THESE ARE THREE TRACTS TOTAL THAT

70 ACRES. SO THEY'RE LARGER TRACTS. THAT HAVE PLAY INTO IT AS WELL. THE COMP PLAN IS DESIGNED TO BE FLEXIBLE. IF IT MEASURES WITH THE LARGER APPLICATION, THAT'S WHAT WE LOOK AT. THIS IS NOT FIRST TIME THAT SOMETHING LIKE THIS HAS COME UP. WE HAD A REZONING APPLICATION I BELIEVE THAT CAME THROUGH IN 2011 IN THE KNOTTSVILLE AREA WHERE, AGAIN, THERE WAS ONE LARGER TRACT THAT WAS IN A RURAL COMMUNITY AT THAT LOCATION. IT WAS PART OF THE LARGER ACREAGE OF THE APPLICATION, AND WE RECOMMENDED THAT THAT BE INCLUDED WITH THE OVERALL APPLICATION.

JUDGE MATTINGLY: YOU RECALL THE ISSUE OUT TOWARD DIAMOND LAKES THAT WE HAD LAST YEAR, COMMISSIONERS, OR THIS YEAR WHERE THERE WAS A PORTION OF THE PROPERTY THAT WAS LOCATED IN THE RURAL MAINTENANCE AREA ADJACENT TO THE RURAL COMMUNITY. WE HAD A CONSTITUENT WHO WAS TRYING TO DO SOMETHING. YOU ACTUALLY LOOKED AT IT AND WAS ABLE TO JUSTIFY MOVING IT BACK. THE LAND USE MAP IS A GUIDE, BUT IT'S NOT A GUIDE THAT SAYS, YOU HAVE TO DO THIS. YOU HAVE TO LOOK AT THIS. IS THAT CORRECT?

MR. HOWARD: THERE WAS FLEXIBILITY BUILT INTO IT, YES, IN THE WHOLE COMP THING.

JUDGE MATTINGLY: THERE WAS SOME QUESTION, I BELIEVE MR. WILSON TALKED IN TERMS, AND I THINK YOU ANSWERED IT, BUT FOR THOSE THAT WEREN'T HERE AND PEOPLE WHO ARE WATCHING ON TV. THERE WAS SOME QUESTION ABOUT USING EX-1 COAL MINING THAT HADN'T BEEN MINED IN 20, 30 YEARS. REPLY TO THAT STATEMENT THAT YOU MADE.

MR. HOWARD: YOU'RE REFERRING TO --

JUDGE MATTINGLY: YOU SAY THERE WAS OVER 300 ACRES OF EX-1 PROPERTY.

MR. HOWARD: IF YOU LOOK IN THE STAFF REPORT, THAT'S JUST A STATEMENT. THERE'S NO CLAIM THAT THAT PROPERTY WAS ACTIVELY MINED. MOST OF IT WAS ZONED BACK IN THE LATE '70S FOR COAL MINING PURPOSES. IT JUST SHOWS THE FACT THAT COAL MINING IS NOT UNIQUE AND NOT NEW TO THIS AREA. CERTAINLY COAL MINING IS TAKING PLACE. THAT WAS JUST A -- IN FACT, I USED THE GIS SYSTEM TO CALCULATE THAT ACREAGE.

JUDGE MATTINGLY: HOW DO YOU DETERMINE COAL DEPOSITS? IT TALKS ABOUT UTICA QUADRANGLE MAPS. QUADRANGLE MAPS I'M THINKING ABOUT THE QUADRANGLE IN COLLEGE WHERE WE USED TO DRINK COKES AND TALK TO THE LADIES.

MR. HOWARD: USGS PREPARES MAPS TO SHOW THEIR POTENTIAL COAL DEPOSITS. IT COULD BE LOCATED AND WE HAVE A SET OF THOSE MAPS IN THE OFFICE.

JUDGE MATTINGLY: BASED ON THE GEOLOGY.

MR. HOWARD: BASED ON THE GEOLOGY OF THE AREA. BASED ON HISTORICAL DRILL SAMPLES AND THINGS LIKE THAT. THE KENTUCKY GEOLOGICAL SURVEY HAS SOME ONLINE MAPPING SYSTEM WHERE YOU CAN ACTUALLY GO ONLINE. IT'S A GIS SYSTEM THAT HAS MANY LAYERS. YOU CAN SELECT POINTS TO SHOW. IT WILL HAVE AREAS THAT'S BEEN DRILLED OR AREAS THAT ARE ANTICIPATED THAT COVER SEAMS OF THE COAL, THINGS LIKE THAT. SO WE RELY ON THAT TYPE OF THING.

JUDGE MATTINGLY: WHEN YOU GET INTO THE APPLICANT'S PROPOSED STRIP MINING TECHNIQUES, YOU GUYS STRIP MINERS? DO YOU KNOW WHAT TECHNIQUES THEY'RE GOING TO USE?

MR. HOWARD: BASED ON THEIR APPLICATION, THEY SAID THEY WOULD BE USING STRIP MINING TECHNIQUES AND THAT'S WHAT WE WERE PRESENTED AT THE PUBLIC HEARING.

JUDGE MATTINGLY: WHAT'S A STRIP MINE TECHNIQUE? TAKE A SHOVEL. BLAST OUT A HOLE. THROW ROCK EVERYWHERE. THROW DUST UP IN THE AIR. YOU DIG IT OUT. YOU REMOVE THE COAL. YOU PUT THE OLD DIRT BACK IN AND YOU RECLAIM IT.

MR. HOWARD: THAT'S A VERY GOOD DESCRIPTION. AS OPPOSED TO THE MORE HISTORICAL UNDERGROUND MINING, WHICH MAY BE MORE COMMON LET'S SAY IN THE EASTERN KENTUCKY AREA WHERE THERE'S A LOT OF COAL.

JUDGE MATTINGLY: I HEAR AND I'M ASKING YOU, AND PERHAPS YOU'D DEFER TO THEM AND PERHAPS THEY WOULD ANSWER. WE HEAR IN TERMS OF UNREGULATED MINING. THERE WAS SOME MENTION OF UNREGULATED MINING. IS THAT WHAT THE APPLICANTS ARE GOING TO BE DOING?

MR. HOWARD: YES, I WOULD PROBABLY DEFER TO THEM. I KNOW THAT THERE ARE SEVERAL STATE AGENCIES THAT THEY HAVE TO GO THROUGH AS FAR AS THE PERMITTING PROCESS.

JUDGE MATTINGLY: MR. HAYNES, COME UP FOR JUST A MINUTE.

MR. HAYNES: TIM.

JUDGE MATTINGLY: I'M SORRY, TIM WRIGHT. IS YOUR MINING TECHNIQUE, IS YOUR MINE GOING TO BE UNREGULATED? IDENTIFY YOURSELF.

MR. WRIGHT: TIMOTHY WRIGHT, 2201 YEWELLS LANDING.

JUDGE MATTINGLY: IS YOUR MINE GOING TO BE UNREGULATED?

MR. WRIGHT: NO.

JUDGE MATTINGLY: HOW MANY PERMITS ARE GOING TO BE REQUIRED?

MR. WRIGHT: SIX DIFFERENT PERMITS REGULATED BY EIGHT DIFFERENT AGENCIES.

JUDGE MATTINGLY: NAME THOSE AGENCIES.

MR. WRIGHT: DEPARTMENT OF SURFACE MINING. MINE RECLAMATION ENFORCEMENT. DIVISION OF PERMITS.

JUDGE MATTINGLY: WHERE IS THEIR HEADQUARTERS FOR THIS PART OF KENTUCKY?

MR. WRIGHT: FRANKFORT.

JUDGE MATTINGLY: FRANKFORT.

MR. WRIGHT: FRANKFORT IS THE HEADQUARTERS. THE REGIONAL OFFICE IS IN MADISONVILLE. MADISONVILLE REGIONAL OFFICE TAKES CARE OF MOST OF OUR AREAS, BUT THE MAIN HEADQUARTERS IS IN FRANKFORT WITH MINE RECLAMATION.

JUDGE MATTINGLY: WHAT ELSE?

MR. WRIGHT: WE HAVE THE DIVISION OF AIR QUALITY, DIVISION OF WATER. WE HAVE MSHA.

JUDGE MATTINGLY: MSHA, DESCRIBE IT.

MR. WRIGHT: MINE SAFETY HEALTH ADMINISTRATION.

JUDGE MATTINGLY: THAT'S THE MINE OSHA, THAT'S THE OSHA COUNTERPART?

MR. WRIGHT: CORRECT. OSHA PART OF SURFACE MINE. RECLAMATION SAFETY ON SITE.

JUDGE MATTINGLY: WHO ELSE?



MR. WRIGHT: ARMY CORP OF ENGINEER.

MR. HAYNES: EPA.

JUDGE MATTINGLY: WE JUST TALKED ABOUT THEM, THE OTHER SECTION OF OUR MEETING.

MR. WRIGHT: FEDERAL SURFACE MINING. THEY REGULATE OVER THE STATE OF KENTUCKY.

JUDGE MATTINGLY: SO YOU'RE HEAVILY REGULATED?

MR. WRIGHT: HEAVILY REGULATED.

JUDGE MATTINGLY: WHAT DOES THIS MEAN? I MEAN I'M HEAVILY REGULATED, BUT A PLUMBER INSPECTOR DOESN'T CATCH MY PLUMBERS OUT THERE DOING SOMETHING WRONG.

MR. WRIGHT: ONCE ZONING IS APPROVED, IT TAKES US TWO YEARS TO GET ALL OF OUR PERMITTING IN PLACE.

JUDGE MATTINGLY: WOULD YOU SAY THAT AGAIN.

MR. WRIGHT: ONCE OUR ZONING IS APPROVED.

JUDGE MATTINGLY: WILL YOU SAY THAT ONE MORE TIME.

MR. WRIGHT: IF ZONING IS APPROVED, IT WILL TAKE US TWO YEARS TO GET ALL THESE PERMITS IN ORDER. THEY'RE VERY COMPLICATED. WHATEVER THE WATER SURFACE MINING DOES.

JUDGE MATTINGLY: IF ZONING WAS APPROVED AND THESE FOLKS, AND I'M SURE THEY WOULD NOT LIKE THAT, STILL DISAGREE, WOULD THEY HAVE A PERIOD TO COMMENT?

MR. WRIGHT: YES. EVERY PERMIT HAS A COMMENT PERIOD. EVERY PERMIT HAS A PUBLIC NOTICE PUT OUT.

JUDGE MATTINGLY: HOW DO THEY COMMENT? IS THAT ONE OF THOSE THINGS THAT'S IN THE BACK OF THE NEWSPAPER AND NOBODY EVERY READS? AS SOME LADY SAID THE OTHER NIGHT, SO THESE FOLKS DON'T KNOW IT. THEY DON'T HAVE AN OPPORTUNITY TO COMMENT.

MR. WRIGHT: IT WILL BE PUBLISHED IN THE LOCAL PAPER WITH AN ORAL CIRCULATION. IT WILL BE IN THE MESSENGER-INQUIRER. WE CURRENTLY HAVE ONE RUNNING IN OHIO COUNTY NOW. THERE'S A PERMIT DOWN THERE THAT'S IN THE TOWN'S NEWSPAPER.

JUDGE MATTINGLY: I'D SAY THAT'S A REQUIREMENT BECAUSE WE HAVE TO PUBLISH ANY AND ALL ORDINANCES IN THE NEWSPAPER THAT HAS ANY CIRCULATION.

MR. WRIGHT: I HAVE A COPY HERE. THIS IS THE ONE IN OHIO COUNTY THAT'S CURRENTLY RUNNING THAT CAME OUT LAST WEEK.

JUDGE MATTINGLY: THEY WOULD HAVE AN OPPORTUNITY AT THAT TIME TO TALK ABOUT -- DIVISION OF WATER I'M ASSUMING THEY WOULD TALK ABOUT WATER QUALITY.

MR. WRIGHT: YES, DIVISION OF WATER DOESN'T DON'T RUN IN THE PAPER. THEY HAVE A WEBSITE THAT THEY PUT THEIRS ON. AIR QUALITY HAS A WEBSITE THEY PUT THEM ON. CORP OF ENGINEERS HAS A WEBSITE. SURFACE MINING IS THE ONLY ONE THAT ACTUALLY PUBLISHES IN THE LOCAL PAPER. IT'S REGULATED ALSO. INTENTION TO MINE, AND AT THE

BOTTOM OF IT, IT SAYS THAT YOU HAVE 30 DAYS TO COMMENT THROUGH THE FRANKFORT OFFICE, SURFACE MINING, WITH ANY COMMENTS THAT YOU HAVE.

MR. CASTLEN: IF I CAN JUST PIGGYBACK WHAT YOU'RE TALKING ABOUT. I THINK IT WAS ON ONE OF THE DVD'S THAT I WATCHED THAT SOMEBODY ASKED THE QUESTION ABOUT, IF I WANTED TO FIND OUT ABOUT YOUR APPLICATION CAN YOU MAKE AVAILABLE ON THE INTERNET OR WHATEVER. YOUR ANSWER WAS, YOU'VE GOT TO GO TO THE OFFICE AND READ IT.

JUDGE MATTINGLY: THAT WAS SARAH KELTY QUESTIONING THE ENVIRONMENTAL PORTION, BEST OF MY MEMORY.

MR. CASTLEN: HE'S A LOT BETTER AT NAMES THAN I AM. EVEN THE ONE THAT POST THE NOTICES ONLINE, THE DOCUMENTS, YOU STILL HAVE TO GO TO --

MR. WRIGHT: THAT'S CORRECT. THIS NEWSPAPER SAYS THAT THIS APPLICATION WILL BE AT THE MADISONVILLE REGIONAL OFFICE. IT GIVES THEIR ADDRESS, PHONE NUMBER AND EVERYTHING. IT'S PUBLIC INFORMATION ACCORDING TO THE FREEDOMS INFORMATION ACT, BUT YOU HAVE TO GO THERE. YOU HAVE TO SIGN IN. YOU HAVE TO STAY THERE AND LOOK AT THE APPLICATION. DOESN'T MAKE COPIES OF ANY OF THE INFORMATION.

MR. CASTLEN: YOU DON'T MAKE ANY COPIES?

MR. WRIGHT: THEY WILL.

MR. CASTLEN: THEY WILL MAKE COPIES FOR YOU?

MR. WRIGHT: THIS IS TOTALLY OUT OF OUR HANDS. THEY'RE GIVING THE PUBLIC A CHANCE TO COMMENT.

JUDGE MATTINGLY: COMMISSIONERS, ANY OTHER QUESTIONS BEFORE I CALL MR. HOWARD BACK. BEFORE I FORGET IT, I'VE GOT SOMETHING THAT I WANT TO ASK HIM, I THINK.

MR. WATHEN: I WANTED TO ASK SOME QUESTIONS ABOUT THE TECHNIQUE.

JUDGE MATTINGLY: LET'S BRING MR. HOWARD BACK AND THEN WE WILL BRING HIM UP HERE TO ADDRESS SOME OF YOUR QUESTIONS. IN THOSE TRADITIONAL, THOSE TECHNIQUES, THERE WAS SOME QUESTION AGAIN, I BELIEVE MR. HESTER BROUGHT UP THE FACT THAT THERE WERE WETLANDS. THE FACT THAT THERE WAS PRIME FARMLAND OR AGRICULTURAL LAND. AS A MATTER OF FACT, SOMEWHERE IN MY RECORD I HAVE A DEPARTMENT OF AGRICULTURAL MAP THAT SHOWS ALL OF THE PRIME CROPLAND THERE. HE TALKED ABOUT HE THOUGHT IT WAS WRONG. THAT THE INTERPRETATION, THAT THE REASON WHEN YOU DID THAT THAT IT WAS TO PRESERVE PRIME AGRICULTURAL LAND. IT WAS TO PRESERVE WETLANDS. GIVE ME YOUR RESPONSE. I REMEMBER YOUR RESPONSE. I'M JUST TRYING TO SEE IF YOU DO.

MR. HOWARD: MY RESPONSE WAS, AND IT WAS ALSO INCORPORATED INTO THE LENGTHY FINDINGS OF FACT THAT WERE ASSOCIATED WITH THE MOTION FOR APPROVAL, INDICATED THAT, YES, THERE IS SOME PRIME AGRICULTURAL FARMLAND AND THERE'S SOME WETLAND AREAS, BUT IT WAS STATED IN THE MEETING THAT THOSE ARE NOT PERMITTED AND REGULATED AND REVIEWED BY THE DIFFERENT GOVERNMENTAL AGENCIES. IF YOU HAVE PRIME AGRICULTURAL FARMLAND, THERE ARE DIFFERENT TECHNIQUES THAT YOU HAVE TO GO THROUGH AS FAR AS THE MINING TECHNIQUE TO MAKE SURE THAT YOU PRESERVE THAT SOIL, TO MAKE SURE THAT IT IS RECLAIMED IN A DIFFERENT WAY OR IN A WAY THAT IS SUITABLE FOR THAT PRIME AGRICULTURAL FARMLAND. AS YOU MENTION, THESE AGENCIES HERE, THAT THROUGH THE PERMITTING PROCESS AND REVIEW THAT IF YOU'RE IN WETLANDS YOU HAVE TO DO MITIGATION. THEY HAVE TO MAKE SURE THAT YOU RECLAIM IT PROPERLY. A LOT OF THAT IS TAKEN CARE OF THROUGH REVIEW AND RECLAMATION.

JUDGE MATTINGLY: WHAT I'M HEARING YOU SAY, I THINK, IS THAT WHILE YOU LOOK AT THOSE ISSUES THE WAY THAT'S HANDLED IS BY ANOTHER AGENCY. THEY MAKE THE RULES. THEY SET THE TECHNIQUE. THEY SET EVERYTHING. IT'S NOT IN THE PURVIEW OF PLANNING & ZONING. IN FACT, YOU MAKE YOUR FINDINGS OF FACT, BUT WHETHER IT'S DONE OR NOT, PLANNING & ZONING DOESN'T GO OUT THERE AND CHECK.

MR. HOWARD: IT'S PART OF THEIR RECLAMATION PROCESS.

JUDGE MATTINGLY: IT'S PART OF THE PERMITTING PROCESS.

MR. HOWARD: THAT'S CORRECT.

JUDGE MATTINGLY: COMMISSIONERS, WHILE I HAVE MR. HOWARD HERE, DO YOU HAVE ANY QUESTIONS FOR HIM?

(NO RESPONSE)

JUDGE MATTINGLY: MR. HOWARD, YOU MAY SIT BACK DOWN. I MAY CALL YOU BACK IF SOME OF THE OTHER FOLKS WOULD HAVE QUESTIONS REGARDING THE FINDINGS OF FACT.

MR. HOWARD: THANK YOU.

JUDGE MATTINGLY: COMMISSIONER WATHEN, YOU SAID THAT YOU HAD SOME QUESTIONS. COMMISSIONERS, WE'VE BEEN AT THIS ABOUT AN HOUR RIGHT NOW. LET'S TAKE A FIVE MINUTE RECESS. - - - - (OFF THE RECORD) - - - - JUDGE MATTINGLY: MR. HOWARD, YOU HAVE BROUGHT TO MY ATTENTION THAT YOU WOULD LIKE TO CORRECT A STATEMENT THAT YOU MADE REGARDING COAL MINING ACTIVITY IN THAT AREA.

MR. HOWARD: WHEN YOU'RE TALKING ABOUT THE COAL MINING PROPERTY TO THE SOUTH AS EX-1, AS PART OF THE RESEARCHING THAT WE DID FOR THE STAFF REPORT, AND I DIDN'T REALLY STATE THIS WELL EARLIER. THE PROPERTY TO THE SOUTH IS IN DAVIESS COUNTY AND IT'S ZONED EX-1. THERE'S PROPERTY ALSO ACROSS THE COUNTY LINE IN OHIO COUNTY THAT HAS BEEN ZONED OR HAS BEEN MINED. BASED ON RESEARCHING THAT WE DID, THE EX-1 PORTION THAT IS IN DAVIESS COUNTY, I BELIEVE A PORTION OF IT WAS MINED IN THE PAST. I WAS LOOKING AT IT FROM A HISTORICAL PERSPECTIVE AS FAR AS THERE HAS BEEN COAL MINING ACTIVITY ON THAT PARTIAL TRACT. A PORTION OF IT WAS MINED IN THE PAST. I BELIEVE THAT IT WAS USED AS A COAL CRUSHING YARD FOR I BELIEVE GREEN RIVER COAL, WHICH WAS OPERATING IN OHIO COUNTY. I BELIEVE THE PROPERTY HAS BEEN RECLAIMED THROUGH THE MINING PROCESS, WHICH IS PART OF THE MINING ACTIVITY. BECAUSE THEY GO THROUGH THE PROCESS OF MINING AND THEN WHEN YOU'RE DONE YOU RECLAIM. SO IT'S BEEN THROUGH THAT ENTIRE PROCESS, BUT THERE HAS BEEN HISTORICAL USE AND ACTIVITY OF COAL MINING AND CRUSHING ON THAT PROPERTY TO THE SOUTH THAT IS IN DAVIESS COUNTY.

JUDGE MATTINGLY: THANK YOU. DR. DARRELL, I KNOW YOU'VE BEEN SITTING OVER THERE WAITING TO DO YOUR JOB. I KNOW YOU TOLD ME TO SHUT UP SO YOU COULD DO YOUR JOB. SO IF I DON'T DO MY JOB, AND YOUR JOB, AND TELL PEOPLE TO COME THE PODIUM, IDENTIFY THEMSELVES, GIVE THEIR ADDRESS AND THOSE KIND OF THINGS.

DR. DARRELL: AND FIVE MINUTES IS THE TIME LIMIT.

JUDGE MATTINGLY: YES. FIVE MINUTES IS THE TIME LIMIT.

MR. WATHEN, WE'LL GO AHEAD WITH YOU NOW BECAUSE YOU HAD SOME QUESTIONS. WHO DO YOU NEED?

MR. WATHEN: WESTERN KENTUCKY. WITH REGARD TO SOME OF THE TECHNIQUES OF MINING, HOW MANY DIFFERENT SEAMS OF COAL ARE THERE ON THIS PROPERTY?

MR. WRIGHT: TWO.

DR. DARRELL: PLEASE IDENTIFY YOURSELF, PLEASE.

MR. WRIGHT: TIMOTHY WRIGHT, 2200 YEWELLS LANDING.

MR. WATHEN: WHEN YOU GO THROUGH, DO YOU GET BOTH SEAMS WHEN YOU GO THROUGH?

MR. WRIGHT: THAT'S CORRECT.

MR. WATHEN: I THINK SOMEBODY SAID THAT WHEN YOU GO THROUGH THERE WERE ONLY ABOUT 10, 15 TO 20 ACRES EXPOSED. THEN ANOTHER TIME I NOTICED IN THERE IT WAS 50 ACRES EXPOSED. SO SOMEWHERE IN-BETWEEN?

MR. WRIGHT: IT'S USUALLY AROUND 30 OR SO. YES, 35. I DON'T KNOW WHERE THE 15 COME FROM.

MR. WATHEN: ONE OF THE QUESTIONS I HAVE, IF YOU GET ONE OF THOSE DEEPER SEAMS, AND I THINK I SAW IN THERE SOME OF THE SEAMS COULD BE 100 FEET DEEP.

MR. WRIGHT: YOU'RE AT THE BOTTOM IF YOU GO 100 FEET.

MR. WATHEN: ARE YOU GOING OVER AQUIFERS WHEN YOU DO THAT?

MR. WRIGHTS: THE ONLY AQUIFERS THAT'S WITHIN THE MINE AREA THAT WE'LL DISTURB IS THE UPPER GROUND.

MR. WATHEN: SO AS YOU ALL GO THROUGH, THEY'LL BE GONE?

MR. WRIGHT: WE WILL MINE THROUGH THAT, YES.

MR. WATHEN: WHAT WILL THAT DO TO -- SOME OF THOSE DIFFERENT PEOPLE TALK ABOUT WELLS. ISN'T THAT'S WHAT FEEDS THEIR WELLS?

MR. WRIGHT: WELL, THERE MAY BE SOME WELLS OUT THERE THAT COULD USE FROM THAT AQUIFER, BUT I DOUBT IT. WE'LL HAVE TO DO A GROUND WATER WELL SURVEY WITH THEIR PERMIT APPLICATION, AND THAT WILL TELL US IF THERE'S ANY WELLS IN THAT AREA. IF THERE IS ANYBODY USING THAT, THEN WE'LL MONITOR IT AND IF THEY HAVE ANY PROBLEMS WE WILL KNOW IT. THAT'S PART OF THE PREBLAST SURVEY.

MR. CASTLEN: LET'S ASSUME THAT SOMEBODY WENT IN THERE THAT HAS A WELL AND THEY'RE USING THAT AQUIFER AND YOU MINE THROUGH. YOU SAY YOU'RE GOING TO MONITOR IT. OBVIOUSLY IF YOU BUST THROUGH, I GUESS IT'S NOT GOING TO BE THERE ANY MORE SINCE IT WENT ALL THE WAY THROUGH THE COAL. ARE YOU ALL GOING TO DRILL A NEW WELL IF THE AQUIFER IS DOWN?

MR. WRIGHT: IF SOMEBODY IS USING A WELL AND WE DO DO DAMAGE, WE HAVE TO REPLACE THEIR WATER SOURCE, YES. MUNICIPAL WATER OR WHATEVER THEY PREFER.

JUDGE MATTINGLY: YOU SAID, WHICHEVER THEY PREFER. WHAT IF THEY PREFER A WELL AND THERE ISN'T NO WATER?

MR. WRIGHT: THERE'S WATER DOWN DEEPER.

JUDGE MATTINGLY: SO IF THEY WERE DRAWING THE WATER FROM 50 FOOT DEEP, IF YOU HAD TO GO 300 FOOT DEEP TO GET THEIR WATER AND YOU WOULD ASSURE THE WATER QUALITY, WHATEVER YOU HAD TO DO?

MR. WRIGHT: YES.

JUDGE MATTINGLY: I KNOW THEY DON'T WANT IT. I KNOW. SOME OF THE PEOPLE I HEARD TESTIFY, THEY DON'T WANT MUNICIPAL WATER. THEY GET WELL WATER THAT'S WHY LIVE IN THE COUNTRY. SO YOU WOULD GO DOWN AS DEEP AS YOU HAD TO GO?

MR. WRIGHT: THAT'S CORRECT.

JUDGE MATTINGLY: DEFINE AQUIFER FOR ME.

MR. WRIGHT: WATER TRANSMITTING ZONE.

JUDGE MATTINGLY: SAY IT AGAIN.

MR. WRIGHT: WATER TRANSMITTING ZONE. ANY ROCK THAT WILL TRANSMIT WATER.

JUDGE MATTINGLY: SO WHAT YOU'RE TALKING ABOUT IN AFFECT, IF I WAS DRILLING A WELL I COULD GO DOWN TO GRAVEL BEARING WATER.

MR. WRIGHT: SANDSTONE.

JUDGE MATTINGLY: SANDSTONE OR WHATEVER, WHATEVER PORUS ROCK WOULD ALLOW WATER TO TRAVEL. WATER TRAVELS IN THAT COAL?

MR. WRIGHT: YES.

JUDGE MATTINGLY: SO WATER CAN TRAVEL THROUGH THE COAL SEAMS?

MR. WRIGHT: IT JUST ABOUT ALWAYS DOES, YES.

JUDGE MATTINGLY: SO COAL IS NOT IMPERVIOUS?

MR. WRIGHT: NO. IT'S GENERALLY THE EASIEST ROCK FOR THE WATER TO FLOW THROUGH.

JUDGE MATTINGLY: AND THAT BEING WHY? I KNOW YOU'RE NOT A GEOLOGIST.

MR. WRIGHT: I'VE DEALT WITH IT FOR A LONG TIME. THE COAL IS USUALLY FRACTURED AND LOOSE TO A CERTAIN EXTENT. IT'S GOT PORES IN IT TO WHERE WATER HAS RUN THROUGH THERE FOR MANY, MANY YEARS. ONCE IT FEEDS THROUGH THERE, IT'S FAIRLY SOFT TO A CERTAIN EXTENT, BUT IT BREAKS LIKE --

JUDGE MATTINGLY: YOU'LL DO A WATER SURVEY. YOU'LL SURVEY EACH AND EVERY PERSON WITHIN?

MR. WRIGHT: A HALF MILE.

JUDGE MATTINGLY: WITHIN A HALF MILE. I THOUGHT I HEARD A GENTLEMAN, AND THIS MAY NOT HAVE BEEN IN THE MAY MEETING. I THINK IT WAS IN THE FEBRUARY MEETING. HE CAME IN AND HE HAD REAL CONCERN. HE RAN CATTLE A OPERATION. I THINK IT WAS OVER ON 140, OUT TOWARD UTICA. HE WAS REAL CONCERNED ABOUT WHAT YOU WERE GOING TO DO TO THAT OPERATION.

MR. WRIGHT: I BELIEVE IT WAS ON 140. IF HE'S LISTENING, PLEASE CONTACT ME. I DID TELL HIM THAT WE WOULD TAKE A LOOK AT HIS WELL PRIOR TO MINING.

JUDGE MATTINGLY: DO YOU HAVE HIS NAME AND ADDRESS?

MR. WRIGHT: NO. HE NEVER DID GET BACK WITH ME BECAUSE HE NEVER DID GET BACK WITH ME AFTER THAT FIRST MEETING. IT WAS ACTUALLY AT THE CHURCH MEETING.

JUDGE MATTINGLY: YES, I THINK YOU'RE EXACTLY RIGHT.

MR. WRIGHT: HE WOULD LET US SURVEY THE WELL FIRST. CHECK THE WATER LEVEL. GET A SAMPLE OUT, THEN IF EVERYTHING IS --

JUDGE MATTINGLY: HOW DO YOU GET CHECK IT? DO YOU GET SOME DRILLER OUT THERE? A LONG TIME AGO YOU DELVED WELLS TO SEE HOW MUCH WATER CAPACITY IT HAS.

MR. WRIGHT: WE HAVE A SMALL PLASTIC ROD THAT WE DOWN AND TAKE SAMPLES. WE ACTUALLY HAVE A LABORATORY IN BEAVER DAM THAT TAKES CARE OF THAT FOR US. THEY GO OUT THERE AND THEY'LL TAKE A SAMPLE. IT ACTUALLY HAS A WATER LEVEL INDICATOR.

MR. CASTLEN: IF I CAN JUMP IN REAL QUICK. WHEN YOU SAY YOU REPLACE IT, IF THEY WANT MUNICIPAL, YOU'LL DO MUNICIPAL.

MR. WRIGHT: CORRECT.

MR. CASTLEN: OBVIOUSLY A WELL IS FREE, YOU KNOW, UNLESS THEY HAVE PROBLEMS AND HAVE TO MAINTAIN IT. MUNICIPAL IS NOT. HOW LONG DO YOU PAY FOR THEIR MUNICIPAL WATER SUPPLY?

MR. WRIGHT: THAT'S NOT IN REGULATION FOR US TO HELP THEM PAY FOR THE WATER. WE HAVE TO REPLACE THE SOURCE.

JUDGE MATTINGLY: I STARTED TO SAY, COMMISSIONER, I DIDN'T HEAR HIM SAY HE'D PAY FOR THE WATER. HE'D PAY FOR THE INFRASTRUCTURE. BUT I'M GOING TO TELL YOU, IF I WAS SOMEONE AND LOST MY WELL I WOULD NEGOTIATE A HARD DEAL.

MR. CASTLEN: AS I WOULD. OBVIOUSLY YOU DIG A DEEPER WELL AT COST.

MR. WRIGHT: MOST PEOPLE THAT STILL USE --

JUDGE MATTINGLY: I HEARD YOU SAY THAT WE WOULD EITHER GIVE THEM A MUNICIPAL WATER SOURCE OR WELL, WHICHEVER THEY PREFER.

MR. WRIGHT: THAT'S CORRECT.

JUDGE MATTINGLY: WHICHEVER THEY PREFER. DOESN'T MATTER. COST ME \$1,000 TO BRING MUNICIPAL WATER OR \$10,000 TO PUT A WELL IN, YOU PUT THE WELL IN?

MR. WRIGHT: THAT'S CORRECT. THAT'S IN THE REGULATIONS. SURFACE MINING REGULATION.

JUDGE MATTINGLY: WHAT REGULATION IS THAT?

MR. WRIGHT: KRS 350.

JUDGE MATTINGLY: KRS 350.405.

MR. WRIGHT: RIGHT.

JUDGE MATTINGLY: GO AHEAD, COMMISSIONER WATHEN.

MR. WATHEN: GOING BACK TO THE WATER. THERE IS A CLAIM, MY UNDERSTANDING CLAIM THAT THE COAL. WHENEVER YOU WASH THE COAL, YOU PUT THE SLURRY BACK IN THE PIT FROM WHERE YOU WASH THE COAL. ARE YOU GOING TO BE WASHING THE COAL THERE AT THIS STATION? FROM MY UNDERSTANDING, YOU'RE GOING TO MINE SOME COAL SOUTH OF

THIS PROPERTY ALSO. ARE YOU GOING TO BE WASHING AT ONE STATION FOR BOTH LOCATIONS?

MR. WRIGHT: WE WILL NOT BE BRINGING COAL FROM OHIO COUNTY TO DAVIESS COUNTY TO WASH, NO.

MR. WATHEN: SO IF YOU WASH COAL AND PUT THE SLURRY BACK IN, IT'LL GO BACK EXACTLY WHERE THE PIT THAT YOU GOT IT FROM?

MR. WRIGHT: THAT'S CORRECT, AND WE HAVE TO SPECIFY THAT IN THE PERMIT ALSO.

MR. WATHEN: THERE WERE CONCERNS ABOUT FLY ROCK. I THINK MR. JARBOE BROUGHT THAT UP. WHEN YOU'RE CLOSE TO A PROPERTY, WHAT IS THE PROCEDURE WHENEVER YOU'RE GETTING READY TO SHOOT, I GUESS YOU CALL IT? WHAT'S THE PROCEDURE TO NOTIFY THE HOMEOWNER LET'S SAY WITHIN 100 FEET? WHAT DO YOU DO TO NOTIFY THEM THAT IT'S GETTING READY TO HAPPEN?

MR. WRIGHT: OUR APPLICATION WITH DEPARTMENT OF SURFACE MINING REQUIRES A BLAST PLAN TO BE PUT IN. THE BLAST PLAN IS HELPED SET UP BY MENSICO. IT HAS A PUBLIC NOTICE IN OUR BLASTING SCHEDULE WE CALL IT. WE RUN IT IN THE PAPER BEFORE WE START BLASTING ON THE SITE. WE HAVE TO RENEW IT EVERY YEAR. WE HAVE TO SEND A COPY OF THAT TO EVERY HOMEOWNER WITHIN A HALF MILE. THAT STATES IN THERE WHAT THE BLASTING SIGNALS ARE, THE TIMES WE BLAST, WHICH IS SUNRISE TO SUNSET MONDAY THROUGH SATURDAY. IT HAS A BLASTING SIGNAL POSTED IN THERE, HOW THE SIRENS WILL BE SOUNDED ONCE WE GET READY TO BLAST.

MR. WATHEN: SO THAT'S HOW YOU WARN THAT IT'S ABOUT TO GO OFF IS THE SIREN?

MR. WRIGHT: THAT'S CORRECT, YES.

JUDGE MATTINGLY: WHAT IF THEY HAVE A HEARING IMPAIRMENT?

MR. WRIGHT: IF WE HAVE SOMEBODY THAT HAD A HEARING IMPAIRMENT AND WE KNEW IT, WE WOULD CALL THEM, CONTACT THEM, GO UP THERE. WE ALSO HAVE GUYS --

JUDGE MATTINGLY: DO YOU MAKE A CONCENTRATED EFFORT TO FIND THAT OUT?

MR. WRIGHT: NO.

JUDGE MATTINGLY: WOULDN'T YOU WANT TO MAKE SURE?

MR. WRIGHT: IF THEY LIVE CLOSE TO THE MINE SITE, WE WOULD KNOW. MOST OF THE TIME WE KNOW THOSE PEOPLE.

JUDGE MATTINGLY: I THOUGHT YOU SURVEYED, YOU'RE GOING TO SURVEY EVERY HOME WITHIN A HALF MILE; IS THAT CORRECT?

MR. WRIGHT: YES.

JUDGE MATTINGLY: WHY WOULDN'T YOU ASK THAT PERSON THAT DOES THE SURVEY TO SEE IF THERE IS ANY HEARING IMPAIRMENT, ANY DISABILITY THAT WOULD CAUSE AN EXTRA HAZARD FOR SOMEONE WHO LIVES THERE?

MR. WRIGHT: THAT WOULD BE SOMETHING THAT WOULD COME UP IN THAT SURVEY BY VIBRONICS AND VIBRONICS WOULD CONTACT US, YOU KNOW.

JUDGE MATTINGLY: WHEN THAT SURVEY IS DONE, THAT QUESTION IS ASKED OR ARE YOU TELLING ME THAT YOU WOULD INCLUDE THAT IN YOUR SURVEY?

MR. WRIGHT: NO, THE QUESTION IS NOT ASKED, BUT THE VIBRONICS PEOPLE ARE IN DIRECT CONTACT WITH THE HOMEOWNERS. THEY WOULD REALIZE IF THERE'S A HEARING IMPAIRED OR BLIND OR ANYTHING LIKE THAT, OR HANDICAPPED. THEY WOULD CONTACT US AND MAKE US DO A SPECIAL CAUTIOUS --

MR. WATHEN: HOW LONG, IN TERMS OF DAYS OR WEEKS, WILL YOU BE BY ONE OF THESE CLOSE HOMES? IN OTHER WORDS, ONCE YOU APPROACH THEM, HOW LONG BEFORE YOU'RE MOVING BACK AWAY? IS IT 180 DAYS?

MR. WRIGHT: NO. THE 180 DAYS APPLIES TO OUR RECLAMATION. IT WOULD VARY ACCORDING TO THE COAL SEAMS IN THE AREA, WHETHER THERE'S ONE COAL SEAM. AT THE MOST IN THE RANGE OF SIX MONTHS.

MR. WATHEN: HOW LONG WOULD YOU BE BLASTING?

MR. WRIGHT: IN THAT RANGE OF SIX MONTHS.

MR. WATHEN: I THOUGHT YOU HAD TO BE IN AND OUT IN SIX MONTHS.

MR. WRIGHT: NO. THAT HAS NOTHING TO DO WITH THE BLASTING.

MR. WATHEN: I THOUGHT ONCE YOU STARTED A PIT, YOU HAD TO BE FINISHED AND RECLAIMED WITHIN 180 DAYS.

MR. WRIGHT: THE 180 DAYS APPLIES WITH, WE CANNOT LEAVE A HIGH WALL SITTING FOR MORE THAN 180 DAYS WITHOUT DOING RECLAMATION TO AN OPEN PIT. WE HAVE TO KEEP OUR RECLAMATION CAUGHT UP BEHIND THAT WITHIN THAT 180 DAYS ALSO, BUT IT'S MORE DEFINED THAN JUST --

JUDGE MATTINGLY: WHAT'S A HIGH WALL?

MR. WRIGHT: A HIGH WALL IS THE EXPOSED WALL THAT WE GET THROUGH BLASTING ONCE WE GET THROUGH THE ROCK.

JUDGE MATTINGLY: THAT'S WHERE THE COAL SEAM IS AND YOU GO IN AND YOU'RE SCOOPING IT OUT AND YOU'RE MOVING THAT WALL FORWARD?

MR. WRIGHT: THAT'S CORRECT.

MR. WATHEN: ONE MORE. AS I WAS READING THROUGH THIS READING MATERIAL THAT WE HAVE, I FOUND I THINK IT'S ABOUT TEN DIFFERENT NAMES FOR DUST. THERE'S FUGITIVE DUST, NUISANCE DUST, MIGRATING DUST, COAL DUST, RESPIRABLE DUST, CRYSTALLINE AND SILVER DUST, QUARTZ DUST, CONTROLLABLE DUST, SURFACE DUST, AND ROCK SHELL DUST. JUST FOR MY OWN BENEFIT, DON'T DEFINE ANY OF THOSE. WHICH ONES ARE HARMFUL?

MR. WRIGHT: THE COAL DUST IS HARMFUL. THE ROCK DUST THAT WE DIG UP CAN BE HARMFUL. WHEN YOU GET INTO FUGITIVE DUST, THAT'S WHAT WE HAVE TO CONTROL IN OUR HAUL ROADS AND IN OUR PITS, SO ON AND SO FORTH, WITH THE WATER TRUCKS, THINGS LIKE THAT. THE RESPIRABLE DUST IS WHAT THEY TEST INSIDE THE CAB WITH THE OPERATORS. THEY HAVE MONITORS THAT THEY PUT AND THEY COME OUT PERIODICALLY.

JUDGE MATTINGLY: SO RESPIRABLE DUST CAN BE ANY OF THE DUST THAT HE JUST NAMED?

MR. WRIGHT: YES.

JUDGE MATTINGLY: IT'S RESPIRABLE BY CONSUMING BREATHABLE DUST THAT WOULD LODGE IN LUNG TISSUE.



MR. WRIGHT: THAT OPERATOR MAY INGEST.

JUDGE MATTINGLY: ONE OF THEM ARE REGULATED?

MR. WRIGHT: THE ACTUAL REGULATIONS FOR AIR QUALITY IS OUR COAL DUST AND ROCK DUST WITH OUR HAUL ROADS AND STUFF LIKE THAT.

MR. WATHEN: SO THEY'RE REGULATED IN THE MINE?

MR. WRIGHT: YES.

MR. WATHEN: FOR YOUR?

MR. WRIGHT: FOR OUR DISTURBANCE AREA.

MR. WATHEN: FOR YOUR EMPLOYEES.

MR. WRIGHT: YES.

MR. WATHEN: THEN WHAT'S REGULATED OUTSIDE OF THE MINE?

MR. WRIGHT: WE CAN'T LET THAT COAL DUST LEAVE OUR PERMITTED AREA. WE HAVE TO KEEP THAT WITHIN THE AREA. ALSO, THE FUGITIVE DUST THAT'S IN THE PIT, THE ROCK DUST, STUFF LIKE THAT. WE HAVE TO KEEP THAT CONTROLLED WITHIN OUR PERMIT.

MR. WATHEN: SO INSIDE THE MINE PERMIT?

MR. WRIGHT: THE RED BOUNDARY. THAT WOULD BE OUR PERMIT AREA. THAT'S SHOWN TO AIR QUALITY EXACTLY WHAT OUR LIMITS ARE.

JUDGE MATTINGLY: SO YOU EXPECT ME TO BELIEVE THAT NO DUST IS GOING TO ESCAPE THAT COAL MINE OR IS IT THAT YOU EXPECT THE EPA TO BELIEVE THAT NO COAL DUST WILL ESCAPE THE MINE?

MR. WRIGHT: COAL DUST IS REALLY NOT A HUGE PROBLEM FOR US. COAL NORMALLY COMES UP IN BIG CHUNKS. IT TAKES A WHILE TO BREAK IT DOWN TO SMALLER CHUNKS TO WHERE IT CAN BECOME AIRBORNE PARTICLES.

JUDGE MATTINGLY: DON'T YOU DO THAT AT YOUR COAL CRUSHING AND WASHING?

MR. WRIGHT: THAT'S THE ONLY PLACE WE REALLY HAVE A TRUE PROBLEM WITH IT IS WITH THE CRUSHER. THAT'S WHAT'S VERY CLOSE BY THE OPERATOR OF OUR CRUSHER.

JUDGE MATTINGLY: WHY WOULDN'T YOU BELIEVE THAT WHEN YOU HAVE COAL TRUCKS GOING UP AND DOWN THAT HIGHWAY AT 55 MILES AN HOUR AND KNOWING THEY DON'T EXCEED THAT SPEED LIMIT. I MEAN WE HAVE LOTS OF PEOPLE WHO APPEALED WHO ARE AFRAID THAT THEY WON'T BE ABLE TO SIT ON THEIR PATIO IN SPRING BANK AND ENJOY IT ANY MORE BECAUSE THESE COAL TRUCKS ARE GOING TO BE SPEWING DUST ALL OVER THE HIGHWAY.

MR. WRIGHT: BY NATURE COAL DUST ISN'T LIKE THAT. LIKE I SAID, WHERE IT BECOMES AIRBORNE –

JUDGE MATTINGLY: WHAT DO YOU DO TO PREVENT THAT?

MR. WRIGHT: WE WATER OUR COAL YARD.

JUDGE MATTINGLY: NO. IN THE TRUCKS. WHAT DO YOU DO TO PREVENT CHUNKS OF COAL FROM HITTING THE ROAD?

MR. WRIGHT: THEY HAVE TO TARP THE TRUCK, AS FAR AS BIG CHUNKS COMING OFF OF THEM, STUFF LIKE THAT.

JUDGE MATTINGLY: THAT CONTROLS THE DUST? IS THE COAL WET WHEN IT LEAVES?

MR. WRIGHT: IT HAS A WET TEXTURE TO IT. WHEN THEY LOAD THEM TRUCKS, IT'S USUALLY LARGER CHUNKS THAT'S COMING OUT OF THAT COAL PILE. WHEN IT GETS GROUND UP ON THE COAL YARD OR IN THE CRUSHER, THAT'S WHEN IT GETS SMALL ENOUGH TO BECOME AIRBORNE.

JUDGE MATTINGLY: SO WHEN YOU'RE CRUSHING IT, THE REAL CHANCE FOR DUST OCCURS AT THE WASH FACILITY, THE CRUSH FACILITY?

MR. WRIGHT: THE CRUSHER. NOT THE WASH FACILITY. THE WASH FACILITY IS A WET PROCESS.

JUDGE MATTINGLY: IT'S GOING TO WET IT DOWN. SO WHERE YOU'RE BREAKING THE BIG CHUNKS INTO SMALLER CHUNKS.

MR. WRIGHT: WE DON'T WASH ALL THE COAL. SOME OF IT JUST GOES THROUGH A CRUSHER OR A BREAKER.

JUDGE MATTINGLY: WHY NOT?

MR. WRIGHT: SOME OF IT IS BETTER QUALITY. SOME OF IT DOESN'T HAVE TO BE WASHED.

JUDGE MATTINGLY: SO WASHING HAS TO DO WITH QUALITY?

MR. WRIGHT: QUALITY.

JUDGE MATTINGLY: WHEN I WAS A LITTLE BOY, AND EVEN INTO THE '80S AND '90S, WHEN YOU DEALT WITH COAL STOKERS AND IF YOU HAD DUST IN THE MIX, IT WOULD BRIDGE OVER. IT WOULDN'T FEED APPROPRIATELY AND FIRE WOULD GO OUT. IF THAT HAPPENED AT OMU BOILER, I WOULD ASSUME YOU WOULD LOSE YOUR CONTRACT?

MR. WRIGHT: YES. POWER PLANTS DON'T WANT DUST. THEY CAN USE THE SMALLER PARTICLES.

JUDGE MATTINGLY: WHAT IF A TRUCK COMES DOWN THROUGH THERE AND THEY'RE NOT TARPED?

MR. WRIGHT: THE DOT WOULD BE AFTER THEM.

JUDGE MATTINGLY: THEY'RE NOT THERE ALL THE TIME. I RUN TRUCKS UP AND DOWN AND I DON'T SEE THEM.

MR. WRIGHT: THE DOT IS WHO REGULATES THAT. THAT WOULD BE WHO IS WATCHING FOR THEM, AND IF THEY CATCH THEM IT WILL BE A PRETTY HEAVY FINE. MR. WATHEN: IS THERE ANYBODY MONITORING THE DUST THAT GETS OFF OF YOUR PERMITTED AREA?

MR. WRIGHT: WE'RE NOT ALLOW TO LET THE COAL DUST LEAVE THE PERMITTED AREA.

JUDGE MATTINGLY: TIME OUT. TIME OUT. THAT'S NOT WHAT HE ASKED.

MR. WATHEN: ARE THERE ANY TESTS DONE TO VERIFY THAT THE DUST DOES NOT LEAVE THE PERMITTED AREA?

MR. WRIGHT: NO. IT'S A VISUAL THING. WE'RE LIMITED TO WHAT THEY CALL A 20 PERCENT OPACITY, WHICH IS BASICALLY VISIBLE DUST.

MR. CASTLEN: IT LOOKED LIKE TO ME, WHEN I REVIEWED SOME OF THE ADDITIONAL DOCUMENTS TODAY ON SOME OF THE -- I DON'T KNOW WHERE IT CAME FROM IN MY STACK OF STUFF HERE, BUT IT LOOKED LIKE THE INSPECTORS CAME. IT LOOKED TO ME MAYBE IT'S A COMPLAINT BECAUSE THE INSPECTORS WERE THERE. IT SAID THAT, YOU KNOW, RECEIVED COMPLAINT FROM NEIGHBOR. IT DIDN'T IDENTIFY THE NEIGHBOR. THEN IT TALKED ABOUT THE INSPECTION AND YOUR PREMISE. ONE OF THE THINGS THAT I WOULD LIKE FOR YOU TO DEFINE, AND I'M AN ACCOUNTANT. I'M KIND OF DETAIL GEEK. I WOULD REALLY LIKE TO KNOW WHAT THIS FUGITIVE DUST IS BECAUSE I KEPT WANTING TO CALL IN, OF COURSE, I WAS WATCHING IT AFTER THE FACT, BUT I NEVER HEARD IT DEFINED. WHAT YOU ALL SAID THAT ALL THAT'S REGULATED IS YOUR FUGITIVE DUST. WHAT IS THAT?

MR. WRIGHT: FUGITIVE DUST IS THE DUST THAT WE'RE CREATING ON SITE WITH THE MINING PROCESS DIRECTLY INSIDE --

MR. WATHEN: ANY DUST THAT'S ON SITE?

MR. WRIGHT: YES. WITH OUR DISTURBANCE AREA.

JUDGE MATTINGLY: DO YOU REMEMBER THE MOVIE "THE FUGITIVE." ESCAPES CONFINEMENT.

MR. WRIGHT: THAT CAN ESCAPE THAT WE HAVE TO CONTROL. THAT'S WHERE YOU GET THE FUGITIVE. IT'S DUST THAT COULD BE HARMFUL IF WE ALLOW IT TO ESCAPE. OUR WATER TRUCKS CONTROL THAT ON THE HAUL ROAD.

MR. CASTLEN: I KNOW YOU ALL ARE NOT AN APPLICANT IN 1993. THE 1993 MINUTES WERE MADE OR THE TRANSCRIPTS WERE MADE A PART OF THE RECORD SO I READ THEM. YOU JUST ANSWERED THAT THERE WERE TWO SEAMS. I KNOW IN THE '93 TRANSCRIPT SAYS THAT THERE'S TWO THROUGHOUT, BUT THERE'S THREE IN PLACES AND THEN THERE'S FOUR IN PLACES. MY QUESTION FOR YOU IS: IS THERE ANY PLACE THAT THERE'S ADDITIONAL SEAMS ON THIS THAT YOU'RE LOOKING TO HAVE PERMITTED BUT YOU'RE JUST NOT GOING THAT FAR SO YOU DON'T HAVE TO TALK ABOUT THEM?

JUDGE MATTINGLY: COMMISSIONER, LET ME TELL YOU THAT IN THAT '93 REZONING THERE WERE MORE THAN 700 ACRES. I THINK THERE WAS APPROXIMATELY 900 ACRES. I WOULD ASSUME THOSE OTHER SEAMS WERE PROBABLY IN SOME OF THAT AREA.

MR. WRIGHT: WE HAVE FOUR SEAMS OUT THERE ON THIS PROJECT. WHEN YOU GET TO THE SOUTHEAST, THE TOP SEAM ACTUALLY SPLITS AND MAKES TWO SEAMS. SO WE STILL CONSIDER THAT THE TOP SEAM. IT'S JUST SPLIT. IT'S THE SAME QUALITY. SO IT'S A SPLIT SEAM. SO WE'RE HAVING THREE THERE. THERE IS ANOTHER SMALLER SEAM DOWN BELOW THE BOTTOM SEAM THAT RUNS 12 TO 14, 15 INCHES, BUT IT'S NOT FEASIBLE FOR US TO GO AFTER IT.

JUDGE MATTINGLY: I RECALL MR. VANMILLIGAN BROUGHT UP SOME ISSUES REGARDING WHERE THE COAL IS LOCATED. HIGH ON THE PROPERTY, LOW ON THE PROPERTY. THE BEST I REMEMBER YOU SAID 70 PERCENT OF IT WAS LOCATED --

MR. WRIGHT: UP IN THE HILLS, YES.

JUDGE MATTINGLY: -- UP IN THE HILLS AND THEN 30 PERCENT DOWN LOW.

MR. WRIGHT: IN THE CREEK BOTTOM. THERE'S A CREEK THAT RUNS UP THROUGH THERE THAT'S A FAIRLY GOOD SIZE. THE BOTTOM WIDENS OUT.

JUDGE MATTINGLY: WHAT ARE YOU GOING TO DO WITH THAT CREEK?

MR. WRIGHT: WE'LL MINE THROUGH IT AND PUT IT BACK.

JUDGE MATTINGLY: WHILE YOU'RE MINING THROUGH IT, DO YOU HAVE ANY RESPONSIBILITY OR OBLIGATION BY THE DIVISION OF WATER TO DO A BYPASS AROUND WHERE YOU'RE MINING SO THAT WATER WILL NOT FLOOD INTO OTHER AREAS AND INTO OTHER PROPERTY?

MR. WRIGHT: THE DIVISION OF WATER ONLY CONTROLS THE DISCHARGE FROM OUR SILT. DIVISION OF PERMITS, MINE ENFORCEMENT RECLAMATION REGULATION CONTROLS THE WATER ON SITE.

JUDGE MATTINGLY: NOT THE CORP?

MR. WRIGHT: THE CORP REGULATES THE DISTURBANCE OF THE CREEKS.

JUDGE MATTINGLY: SO YOU WOULD HAVE TO HAVE A PERMIT FROM THE CORP TO DISTURB THAT CREEK TO MINE THROUGH? YOU WOULD HAVE TO HAVE A REMEDIATION PLAN MITIGATED?

MR. WRIGHT: YES. WE DO HAVE TO HAVE ALL OF THAT APPROVED BEFORE WE CAN TOUCH IT.

JUDGE MATTINGLY: ARE YOU AWAKE?

MR. LAMBERT: I'M WAITING. LET'S GIVE THE PEOPLE AN OPPORTUNITY.

JUDGE MATTINGLY: JUST A FEW MORE QUESTIONS. I THINK I PROBABLY HAVE HAD A LOT OF THE CONCERNS THAT I HAVE TALKED ABOUT.

MR. CASTLEN: WITH REGARD TO THE BLASTING, EVERYTHING I HAVE READ AND HEARD YOU ALL SAY IT SAYS YOU HAVE BLAST AROUND NOON AND THEN SOMEWHERE BETWEEN FOUR AND FIVE.

MR. WRIGHT: THAT'S CORRECT.

MR. CASTLEN: THAT'S ONLY TWICE A DAY.

MR. WRIGHT: THAT'S CORRECT.

MR. CASTLEN: DOES THAT MEAN YOU BLAST ENOUGH STUFF TO WHERE IT'S GOING TO TAKE THE REST OF THE DAY TO MOVE ALL THE BURDEN, I GUESS YOU CALL IT?

MR. WRIGHT: A DAY OR TWO, YES.

MR. CASTLEN: SO LITERALLY THERE'S ONLY TWO BLASTS A DAY?

MR. WRIGHT: THAT'S CORRECT.

MR. CASTLEN: EVEN IF YOU'RE WAY DOWN DEEP?

MR. WRIGHT: SOMETIMES ONLY ONE AND THAT'S CONTROLLED THROUGH OUR MINE SUPERINTENDENT.

JUDGE MATTINGLY: DO YOU BLAST EVERY DAY?

MR. WRIGHT: YES, PRETTY MUCH.

JUDGE MATTINGLY: SATURDAYS?

MR. WRIGHT: WE USUALLY PUT OFF A SHOT IN KNOTTSVILLE ON SATURDAY AROUND NOON AT CLOSING TIME SO THAT WILL BE PREPARED FOR THE MONDAY MORNING WHEN WE COME IN. THAT'S CRUCIAL TO OUR OPERATION, TO BE PREPARED FOR THE NEXT DAY.

MR. CASTLEN: AGAIN, I DON'T REMEMBER WHICH ONE OF THESE MEETINGS I READ, BUT IN ONE OF THE TESTIMONIES FROM THE BLASTING EXPERTS HE SAYS, WELL, I TEACH THESE PEOPLE HOW TO DO THE BLASTING. ESSENTIALLY WITHIN THE RULES. THEN HE GOES AWAY WHILE THEY'RE SETTING IT UP. THE QUESTION WAS ASKED: DO THEY EVER MEDIATE? HIS ANSWER WAS, WELL, THEY CAN. MY QUESTION IS: IT SEEMED, AS I WAS LISTENING TO YOUR ALL'S PRESENTATION OR WATCHING IT, IT SEEMED LIKE YOU HAVE A BLASTING EXPERTS THAT DO ALL THE BLASTING.

JUDGE MATTINGLY: YES. LETS CALL MR. SETH BURNS.

MR. WRIGHT: YES.

JUDGE MATTINGLY: MR. BURNS, COME UP AND IDENTIFY YOURSELF.

MR. WRIGHT: SETH, HE WORKS FOR MENSICO. HE'S OUR BLASTING CONTRACT.

JUDGE MATTINGLY: IDENTIFY WHO YOU WORK FOR. GIVE ME YOUR CREDENTIALS WHY WE SHOULD BELIEVE THAT YOU WON'T BLOW US UP.

MR. BURNS: MY NAME IS SETH BURNS, 2466 UNION DRIVE. I LIVE ACROSS THE RIVER. DON'T HOLD THAT AGAINST ME.

JUDGE MATTINGLY: YOU'RE NOT AN ENGINEER, ARE YOU?

MR. BURNS: BY TITLE MAYBE.

JUDGE MATTINGLY: BY TRAINING?

MR. BURNS: YES.

JUDGE MATTINGLY: WHO DO YOU WORK FOR?

MR. BURNS: I WORK FOR MENSICO. MINE EQUIPMENT MILL SUPPLY COMPANY. WE'RE A SHOT SERVICE PROVIDER AND WE ALSO –

JUDGE MATTINGLY: WHY ARE YOU HERE?

MR. BURNS: TO MAYBE HELP BRING SOME CLARITY.

JUDGE MATTINGLY: WHO DO YOU CONTRACT THROUGH?

MR. BURNS: WE CONTRACT WITH WESTERN KENTUCKY MINERALS.

JUDGE MATTINGLY: THAT'S WHAT I WAS GETTING TO. SO YOU DO THEIR BLASTING?

MR. BURNS: YES, SIR.

MR. CASTLEN: AS I WAS LAYING IT OUT, IT SEEMED LIKE WHEN I WAS LISTENING TO YOUR ALL'S PRESENTATION, THAT YOUR ALL, YOU AND YOUR COMPANY DO 100 PERCENT OF THE BLASTING. IT'S NOT THAT YOU TELL ME. IF I WAS WORKING FOR WESTERN KENTUCKY MINERALS, YOU'RE NOT TELLING ME, CHARLES, BUILD THIS UP, DO THIS, THIS, AND THIS, AND THEN YOU WALK AWAY.

MR. BURNS: NO.

MR. CASTLEN: YOU AND YOUR PEOPLE ARE ACTUALLY DOING IT?

MR. BURNS: YES. OUR COMPANY DOES IT COMPLETELY IN-HOUSE. WE DON'T TELL THE MINE TO DO ANYTHING. OTHER THAN WE STIPULATE HOW THE HOLES ARE DRILLED, THE SPACING. WE'RE IN CONTROL OF OUR GUYS AND WHAT WE DO.

JUDGE MATTINGLY: SO YOU ALL ARE DOING THE BLASTING?

MR. BURNS: YES, SIR.

JUDGE MATTINGLY: YOU HOLD LICENSES?

MR. BURNS: YES.

JUDGE MATTINGLY: WHAT LICENSES?

MR. BURNS: BLASTING CERTIFICATION FOR THE STATE OF KENTUCKY TO SHOOT COAL, AND THE KENTUCKY BLASTER LICENSE AS WELL.

JUDGE MATTINGLY: ARE FEDERAL LICENSES REQUIRED?

MR. BURNS: NO.

JUDGE MATTINGLY: WHAT DO YOU USE WHEN YOU SHOOT?

MR. BURNS: MOST OF IT USUALLY IS AMMONIA NITRATE. BASICALLY THE AMMONIA NITRATE CAN BE USED FROM YOUR GARDEN IF IT DIDN'T HAVE DIESEL FUEL. AMPHO, AMMONIA NITRATE AND FUEL OIL. THEN WE ALSO USE WHAT WE CALL EMULSIONS. IT'S BASICALLY JUST AN AMMONIA NITRATE BASED EXPLOSIVE, BUT IT'S STILL IN SOLUTION SO IT'S MORE LIKE LIQUID. JUDGE MATTINGLY: I KNOW THAT MR. JARBOE, I RECALL HE HAD A LOT OF CONCERNS. HE HAD A LOT OF CONCERNS, AND A COUPLE OF OTHER PEOPLE HAD CONCERNS. I BELIEVE ONE OF THE COMMISSIONERS ASKED IF IT WAS AN EXACT SCIENCE AND YOUR ANSWER WAS, NO.

MR. BURNS: ABSOLUTELY NOT.

JUDGE MATTINGLY: WHAT DO YOU MEAN? AREN'T THERE TABLES?

MR. BURNS: SURE, AND WE FOLLOW THOSE TABLES.

JUDGE MATTINGLY: WHO DEVELOPS THE TABLES?

MR. BURNS: IT WAS DONE THROUGH A LOT OF EXPERIENCE AND HISTORY. THROUGH THE STUDY. THROUGH DIFFERENT ORGANIZATIONS. UNITED STATES DRILL & MINE DONE A LOT OF RESEARCH AND TESTING. COLLEGES AND INSTITUTION.

JUDGE MATTINGLY: BACK IN MY FORMER LIFE WHEN I WAS WORKING ON A HOUSE I WOULD USE A PROGRAM. IT WASN'T EXACT, BUT IT WAS THE BEST THAT WE HAD, BUT AT THE VERY BOTTOM IT SAID, "FUDGE FACTOR." IN OTHER WORDS, JUST TO MAKE SURE THAT WE HAVE ENOUGH COOLING WE WOULD ADD SOME EXTRA. WE WOULD ASK A MARGIN OF SAFETY OR ACCOUNT FOR A MARGIN OF ERROR. DO THOSE TABLE DO THAT.

MR. BURNS: ABSOLUTELY. THE REGULATIONS, WE'VE HEARD AND YOU'VE READ IT IN THE TRANSCRIPTS, BUT WE HOLD TOO ON GROUND VIBRATION AND AIR BLAST. THOSE ARE STRUCTURES.

JUDGE MATTINGLY: SO YOU HAVE A MARGIN OF SAFETY?

MR. BURNS: YES.

JUDGE MATTINGLY: THREE HUNDRED FEET WAS THE ORIGINAL. THE 300 FEET I THINK IS A REQUIREMENT, STATE REQUIREMENT?

MR. BURNS: YES.

JUDGE MATTINGLY: I THINK THE COMMISSION MOVED IT TO 500 FEET. I THINK PROBABLY THEY HEARD MR. JARBOE, PERHAPS MR. SCOTT WHO I SAW COME IN, WHO RECOUNTED ISSUES WITH BLASTING ALONG. SO YOU MOVED IT OUT TO 500 FEET. HOW CAN WE BE SURE THAT THERE'S NOT GOING TO BE AN ISSUE?

MR. BURNS: WELL, AT ANY POINT THERE COULD BE AN ISSUE. WE'RE DEALING WITH EXPLOSIVES. IT'S NOT -- IT IS WHAT IT IS. IT'S EXPLOSIVES.

JUDGE MATTINGLY: BUT YOU'RE TELLING ME THEY DEVELOP THOSE SAFETY STANDARDS BASED ON 300 FEET. I ASSUME THEY SAID 300 FEET BECAUSE THAT WAS ALWAYS SOME STATED VOICE. THAT THAT'S THE MINIMUM DISTANCE, THE MINIMAL DANGER OF SAFETY THAT WE HAVE TO BE. MINIMAL. TAKING INTO ACCOUNT THERE COULD BE SOME ERROR. NOW WE MOVED IT OUT TO 500 FEET. SO WE HAVE ALMOST DOUBLE THAT AMOUNT. SO I WOULD ASSUME WE HAVE INCREASED THE MARGIN OF ERROR. YOU TELL ME THAT IT'S NOT AN EXACT SCIENCE, AND I AGREE. THERE ARE MANY THINGS, YOU KNOW, THE PHYSICAL LAWS, PHYSICS. I CAN PRETTY MUCH REPRODUCE THAT EVERY TIME. BRING DR. HUXOL OUT HERE AND HE'LL TELL YOU. MEDICINE IS AS MUCH AN ART AS A SCIENCE. SO HERE WE ARE. WE WILL ALLOW DR. HUXOL TO WORK ON OUR BODIES WITH NOT QUITE AN EXACT SCIENCE, KNOWING THAT WE ALL REACT DIFFERENTLY. WE TRUST THAT. WHEN WE TALK ABOUT BLASTING AND IT'S NOT AN EXACT SCIENCE, I HAVE SOME CONCERN. BECAUSE ONE OF THE CONCERNS IS THAT IT COULD HURT OTHER PEOPLE. IT CAN INJURE OTHER PEOPLE. IT COULD INJURE ONE OF THOSE THAT WERE NOT PICKED UP IN A SURVEY THAT CAN'T HEAR THE WARNING OR COULDN'T SEE. SO I HAVE REAL CONCERN WHEN YOU PORTRAY IT AS NOT AN EXACT SCIENCE AND TELL ME THAT THERE IS NO MEASURE OF GUARANTEE THAT YOU CAN GIVE SOMEONE, EVEN IF WE MOVED IT OUT TO 1,000 FEET. I DO RECALL THAT YOU SAID THE CLOSER YOU GET TO THE PROPERTY OR TO THE BUILDINGS YOU WILL SHOOT SMALLER SHOTS.

MR. BURNS: YES, SIR.

JUDGE MATTINGLY: YOU CAN MOVE AS MUCH OVER IN THE SMALLER SHOTS AS LONG AS YOU HAVE ENOUGH OF THOSE SMALLER SHOTS.

MR. BURNS: THAT'S RIGHT.

JUDGE MATTINGLY: I ASSUME THAT'S PART OF THAT SAFETY MEASURE AS YOU DO, AS YOU APPROACH THE POPULATION. I CAN TELL YOU, I UNDERSTAND SOME OF THE FOLKS OUT HERE WHO ARE CONCERNED. THERE'S A LOT OF HOMES, RESIDENCES OUT THERE. HAVE YOU MINED COAL IN OTHER PLACES? HAVE YOU BLASTED IN OTHER PLACES THAT HAD THAT SAME DENSITY OF POPULATION?

MR. BURNS: YES, SIR. WE'RE DOING SO CURRENTLY.

JUDGE MATTINGLY: I'M SORRY.

MR. BURNS: WE'RE DOING SO RIGHT NOW.

JUDGE MATTINGLY: WHERE?

MR. BURNS: DOWN IN THE HARTFORD/BEAVER DAM AREA. UP IN THE KNOTTSVILLE AREA. I'VE BEEN IN HENDERSON COUNTY.

JUDGE MATTINGLY: OTHER THAN THE INCIDENT THAT MR. SCOTT RECOUNTED, HAVE THERE BEEN OTHER COMPLAINTS WITH THE DIVISION OF MINING? OTHER COMPLAINTS REGARDING BLASTING OR OTHER INCIDENCES THAT YOU'RE REQUIRED TO REPORT? I ASSUME YOU'RE REQUIRED TO REPORT IT BECAUSE IF YOU DON'T, YOU'RE LIKE ME, I LOSE MY LICENSE. I LOSE MY LICENSE, I LOSE MY LIVELIHOOD. ARE THERE OTHER INCIDENCES THAT HAVE BEEN REPORTED WHERE YOU HAD TO SHUTDOWN THE MINE FOR A WHILE TO ADDRESS THOSE ISSUES?

MR. BURNS: AS FAR AS SHUTTING DOWN MINING, I CAN'T THINK OF -- THE ONE IN HENDERSON WAS DEFINITELY ONE.

JUDGE MATTINGLY: THAT'S THE ONE ON THE AUDUBON BETWEEN OWENSBORO AND HENDERSON?

MR. BURNS: YES, SIR. THAT WAS WHEN THEY CAME IN TO DO AN INVESTIGATION.

JUDGE MATTINGLY: HAVE YOU HAD ANY OF THOSE UP AT KNOTTSVILLE?

MR. BURNS: NO, SIR.

JUDGE MATTINGLY: ANY IN BEAVER DAM?

MR. BURNS: NO, SIR.

JUDGE MATTINGLY: YOU BLAST DOWN IN UNION COUNTY?

MR. BURNS: NO, SIR.

JUDGE MATTINGLY: ACROSS THE RIVER?

MR. BURNS: YES.

JUDGE MATTINGLY: DO THEY STILL MINE COAL IN SOUTHERN INDIANA?

MR. BURNS: YES, SIR.

JUDGE MATTINGLY: YES, SIR.

MR. CASTLEN: I'M GLAD YOU MENTIONED MR. SCOTT'S CONCERNS AND WITH THE FLY ROCK LANDED ON, SOMETHING LAND ON THE ROAD.

MR. BURNS: RIGHT.

MR. CASTLEN: BECAUSE I THOUGHT YOU MADE AN OBSERVATION THAT YOU ALL LOOKED INTO IT AND THERE WAS DISCIPLINE HANDED OUT TO WHOEVER HAD DONE WRONG, BUT THEN IMMEDIATELY AFTER YOU, I DON'T KNOW IF IT'S THE GENTLEMAN THAT'S SITTING RIGHT NEXT TO YOU HERE, JUMPS UP AND SAYS, NOW, WAIT A MINUTE. WAIT A MINUTE. THIS IS MY PROCESS, HOW I PROCESS. BUT YOU JUMP UP, I BELIEVE, AND SAY, WAIT A MINUTE. WE KNEW THERE WAS A PROBLEM BEFORE WE DID THE BLAST. WE CALLED EVERYBODY AND TOLD THEM AND EVERYBODY WAS AWARE. THEY DIDN'T SEEM TO GO TOGETHER TO ME. I WAS THINKING, WELL, IF I COULD CALL SOMEBODY I WOULD ASK WHICH IS THE RIGHT STORY BECAUSE I DON'T THINK THEY WERE THE SAME STORY. AT LEAST I DIDN'T PROCESS THEM AS IDENTICAL. BETWEEN THE TWO OF YOU, DO YOU MIND TELLING ME WHERE I'M WRONG?

MR. BURNS: FROM MY KNOWLEDGE ON THAT SHOT, I WAS NOT THERE THAT DAY. I WAS NOT PART OF THE INVESTIGATION OF THAT INCIDENT. WHEN I SPOKE, I KNEW THAT OUR BLASTER THAT WAS THERE THAT DAY, I KNEW THAT HE HAD, THAT WE HAD TAKEN SOME



ACTION WITH HIM. I THINK THE STATE DID AS WELL. AS FAR AS ANYTHING PAST THAT, I THINK MARTY, ALL HE DID WAS CLARIFY SOME OF THE DETAILS ON THE INCIDENT.

JUDGE MATTINGLY: WHY DON'T WE CALL MR. VINCENT UP. WOULD YOU WANT TO COME UP BECAUSE THAT'S WHAT YOU'RE WANTING TO DO, IS GET CLARIFICATION. WOULD YOU IDENTIFY YOURSELF.

MR. VINCENT: MARTY VINCENT. MIDLAND POWDER COMPANY, MADISONVILLE, KENTUCKY.

MR. CASTLEN: WOULD YOU JUST MIND CLARIFYING FOR ME?

MR. VINCENT: FIRST OF ALL, I USED TO WATCH MATLOCK AND PERRY MASON A LOT SO JUMPING UP COMES FROM THE DEFENSE ATTORNEY'S TACTICS. I DIDN'T MEAN TO BE OUT OF LINE IF IT SEEMED THAT WAY. I WAS INVOLVED IN THE SITUATION ON THE AUDUBON PARKWAY. IT WAS AN AREA WHERE THERE WERE KNOWN MUD SEAMS AND SOFT MATERIAL. THERE WERE ALREADY ALTERNATE BLAST DESIGNS AND BLAST PLANS PUT IN PLACE FOR SITUATIONS THAT MIGHT OCCUR. OBVIOUSLY, WE HAD HOPED THAT WE WOULD NEVER HAVE TO USE THAT, BUT ONCE THE MUD SEAMS WERE DETECTED, THE PROCESS STOPPED. THE MINING COMPANY AND THE BLASTING CONTRACTOR DISCUSSED THE SITUATION. THE AUTHORITIES WERE CONTACTED. THE BLAST WAS ACTUALLY, AND I'M GOING TO BE FEW FEET, WHEN I SAY A "FEW" I MEAN VERY FEW FEET. THERE WAS SOMEWHERE AROUND 310 TO 320 FEET FROM THAT RIGHT-OF-WAY, FROM THAT BLAST TO THAT AUDUBON PARKWAY. THE STATE POLICE, BECAUSE OF A AN AGREEMENT WITH THE TRANSPORTATION CABINET AND THE DEPARTMENT OF SURFACE MINING, THEY WERE ASKED ON ANY OCCASION THAT WE WERE WITHIN A GIVEN DISTANCE TO HELP US STOP THE TRAFFIC. SO WE ALSO EMPLOYED THAT. THE TRAFFIC WAS STOPPED. THERE WAS EQUIPMENT PUT IN PLACE TO WHERE IF THERE WAS MATERIAL THROWN OUT ONTO THE PARKWAY THAT IT WAS CLEANED UP IN AN EXPEDITED FASHION. THE EQUIPMENT AND THE MINE PERSONNEL WAS MOVED BACK TO AN EXTENDED SAFE DISTANCE. THE SHOT WAS PUT OFF. THERE WAS IN FACT SOME MUD THAT WAS CAST ON TO THE RIGHT-OF-WAY AND THE EDGE OF THE PARKWAY. IT WAS CLEANED UP. THE DEPARTMENT OF SURFACE MINE WAS NOTIFIED. OUR OFFICE OF MINE SAFETY & LICENSING WAS NOTIFIED. IT IS THEIR PRACTICE AND THEIR POLICY TO STOP MINING AND BLASTING IN A GIVEN AREA WHEN THAT SORT OF THING HAPPENS. THAT'S EXACTLY WHAT THEY DID.

JUDGE MATTINGLY: IS THAT PART OF THE PUBLIC RECORD? IF I SAID, I DON'T BELIEVE WHAT YOU'RE TELLING ME.

MR. VINCENT: I WOULD ASSUME SO. I WOULD ASSUME THAT IT IS.

JUDGE MATTINGLY: WE DON'T WANT TO MAKE ASSUMPTIONS. WHO WOULD HOLD THAT RECORD?

MR. VINCENT: OFFICE OF MINE SAFETY & LICENSING OR THE DEPARTMENT OF SURFACE MINING IN MADISONVILLE.

JUDGE MATTINGLY: I REMEMBER THE STATEMENT BEING MADE THAT THE BLASTER, THAT PERSON THAT LOADED THAT SHOT WAS DISCIPLINED.

MR. VINCENT: ANY TIME YOU HAVE MATERIAL CAST OFF OF THE PERMITTED AREA, IT IS POLICY FOR THE STATE OF KENTUCKY TO REVIEW. WHAT WAS REQUIRED OF HIM IS THAT HE GO THROUGH ADDITIONAL TRAINING, WHICH WAS DONE, BEFORE HE WAS RELEASED TO GO BACK AND BLAST UNDER NORMAL CIRCUMSTANCES.

JUDGE MATTINGLY: CONCERNS ME THAT HE WOULD HAVE LOADED A SHOT IN A MUD SEAM. WOULDN'T HE HAVE KNOWN THAT? SHOULDN'T HE HAVE KNOWN THAT?

MR. VINCENT: THE DRILLERS DRILL THE MATERIAL AND THEY KEEP A DRILL LOG AS THEY DRILL. SOMETIMES A MUD SEAM IS NOT DETECTABLE, AND ESPECIALLY IN A SITUATION LIKE

THAT WAS BECAUSE THE OVERBURDEN IN THAT AREA WAS UNCONSOLIDATED, IF YOU WILL. THE WAY YOU NORMALLY DETECT A MUD SEAM IN A ROCK AREA OR A HARD FORMATION IS THE PRESSURES FROM THE DRILL VARY OR AS YOU'RE DRILLING THE HOLE.

JUDGE MATTINGLY: YOU'RE GETTING TOO TECHNICAL. YOU'RE SAYING THAT WHEN HE DRILLED IT HE MAY OR MAY NOT HAVE DETECTED IT, THE DRILLER?

MR. VINCENT: CORRECT.

JUDGE MATTINGLY: WHO DOES THE DRILLING? DO YOU HAVE YOUR OWN DRILLERS OR ARE THESE DRILLERS EMPLOYED BY WESTERN KENTUCKY MINERALS?

MR. VINCENT: IN WESTERN KENTUCKY MINERAL'S CASE, THEY HAVE THEIR OWN DRILLS.

JUDGE MATTINGLY: DO THEY GIVE YOU A LOG OF THE RESULTS OF THE DRILL?

MR. VINCENT: ABSOLUTELY.

JUDGE MATTINGLY: YOU HAVE A LOG THAT SHOWED NO MUD SEAM. DO YOU GUYS IN YOUR END OF THE BUSINESS, DO YOU PUT TOGETHER A PROCEDURE FOR THE BLAST? YOU LOOK AT IT. THIS IS WHAT THE DRILL SHOW. WE NEED TO LOAD THIS MUCH MATERIAL TO MOVE THIS MUCH OVERBURDEN. THAT'S ALL THEY NEED. I'M ASSUMING IF YOU'RE REALLY LOADED UP, LIKE SOMEONE SAID YOU CAN BLOW A HOUSE 1,000 FEET, BUT THAT WOULD BE COSTLY. SO THE LESS MATERIAL THAT YOU USE, THE MORE MONEY YOU MAKE I WOULD ASSUME. MR. VINCENT: THAT IS CORRECT. THERE ARE MODIFIED BLAST DESIGNS FOR GIVEN DISTANCES THAT YOU ARE BLASTING FROM.

JUDGE MATTINGLY: WHAT HAPPENS IF YOU HAVE A HANG FIRE? DO YOU KNOW WHAT I'M TALKING ABOUT, HANG FIRE?

MR. VINCENT: WELL, NOT EXACTLY.

JUDGE MATTINGLY: HANG FIRE IS WHERE YOU TRIGGER IT AND IT DON'T GO OFF. IT'S WHERE YOU LIGHT A FIRE CRACKER, THE FUSE BURNS DOWN, AND WHO HAS GOT ENOUGH GUTS TO GO OVER AND PICK THAT FIRE CRACKER UP AND SEE WHY.

MR. VINCENT: THERE ARE PROCEDURES THAT YOU FOLLOW. IN YOUR TERMS, UNLESS YOU WANT ME TO ASSUME, THERE ARE PROCEDURES THAT YOU FOLLOW. THERE ARE WRITTEN PROCEDURES AND THERE ARE PRACTICE THAT WE FOLLOW AS FAR AS CHECKING THE MATERIAL AND PRODUCT BEFORE IT GOES INTO THE BORE HOLE, WHILE IT'S GOING INTO THE BORE HOLE, BEFORE THE HOLES ARE STEMMED OR FILLED BACK WITH SURFACE MATERIAL, BEFORE THEY ARE CONNECTED OR WIRED, AS WE CALL THEM, AND BEFORE THE BLAST IS INITIATED. THOSE ARE PROCEDURES THAT ARE PUT IN PLACE FOR SAFETY AND FOR APPLIANCE, IF YOU WILL, THAT THE SHOT IS GOING TO BE --

JUDGE MATTINGLY: HOW LONG CAN YOU ALLOW A SHOT TO REMAIN IN THE GROUND WITHOUT DETONATION?

MR. VINCENT: IT DEPENDS ON THE TYPE OF MATERIAL THERE ARE OR EXPLOSIVE MATERIAL THAT'S PUT IN THAT BORE HOLE. SOME YOU WOULD WANT TO SHOOT WITHIN 24 HOURS. SOME COULD ACTUALLY, HIS TERMINOLOGY IN OUR INDUSTRY IS SLEEP FOR WEEKS AT A TIME.

JUDGE MATTINGLY: OKAY.

MR. CASTLEN: I'M GOING TO STOP AND DO WHAT JIM SAID. I HAVE SOME MORE. WE CAN COME BACK TO ME.

JUDGE MATTINGLY: MY QUESTION WAS, WE CAN DO THAT, IF YOU HAVE FEW MORE QUESTIONS. WHAT I WOULD PROPOSE IS THAT WE WOULD GO TO ABOUT TEN MINUTES UNTIL EIGHT, TAKE ANOTHER BREAK. WHEN WE COME, THEN WE WILL ASK THOSE WHO HAVE SIGNED UP TO SPEAK TO COME UP.

MR. CASTLEN: THEN I'LL DO ONE MORE THEN. I DON'T KNOW WHICH ONE OF YOU. IT'S A BLASTING QUESTION. MY UNDERSTANDING BETWEEN WHAT COMMISSIONER WATHEN ASKED AND ALSO ABOUT HOW HARD THE GROUND IS UNDER A SEAM OF COAL, AND ALSO I THINK MR. LUDWICZAK'S COMMENTS, THAT APPARENTLY THE RISK OF THE FLY ROCK IS GREATEST WHEN YOU'RE GOING TO THE NEXT SEAM. MAYBE THAT'S A MISUNDERSTANDING ON MY PART, BUT THAT'S HOW I PROCESSED IT. BECAUSE THAT SOIL OR WHATEVER IS UNDER THE COAL IS HARD WHEN YOU'RE TRYING TO GO THROUGH IT TO THE NEXT SEAM. THE REALLY JUICED UP HERE FOR YOUR, YOU KNOW, FOR YOUR NEXT BLAST, IS THAT THE ONE THAT'S GOING TO ROCK PEOPLES' HOMES? I'M GOING TO GO AHEAD AND THROW A SECOND ONE THAT CAME TO MY MIND. ONE OF THESE APPLICATIONS WE WERE TALKING ABOUT, THE PEOPLE WERE TALKING ABOUT THE INSPECTIONS. IF I'VE GOT A ROCK SOLID HOME REALLY WELL-BUILT AND WHATEVER, A BLAST MAY NOT DAMAGE IT, BUT IF FOR WHATEVER REASON IT'S NOT IN AS GOOD OF A SHAPE AS MY NEIGHBORS MAYBE, THEN YOUR BLAST WILL PROBABLY MAKE MY PROBLEMS WORSE. I GUESS MY QUESTION IS: WHEN YOU'RE GOING, DO YOU JUICE UP THE BLAST AS YOU'RE GOING DOWN AND IS THAT A CAUSE FOR CONCERN FOR THE NEIGHBORS HERE? I'M THINKING IT IS, BUT I DON'T KNOW THAT. WHAT'S YOUR RESPONSE TO THAT?

MR. BURNS: I THINK WHAT MR. LUDWICZAK WAS LEANING TOWARDS ON AS WE GO DOWN WAS IT GETS WETTER. THERE'S MORE WATER INVOLVED. WHEN THERE'S WATER INVOLVED, YES, I THINK HE'S LEANING TOWARDS, YOU KNOW, THERE'S MORE FACTORS THAT COME INTO PLAY. YOU HAVE TO DE-WATER THE HOLES. YOU HAVE TO PUT A PRODUCT IN THE HOLE THAT'S NOT GOING TO BE DAMAGED BY THE WATER OR INTRUSIVE OR ANYTHING LIKE THAT. IF YOU USE REGULAR -- WHEN THEY DRILL THE HOLE, IT GRINDS THE ROCK UP AND PUTS A PILE AROUND THE HOLE. WE CALL THAT STEMMING. THAT'S TYPICALLY WHAT WE STEM A HOLE WITH. THE REASON WE STEM THE HOLE IS CONFINE THE EXPLOSIVE IN THE ROCK. SO THAT IT BREAKS ROCK AND IT DOESN'T THROW ROCK. WHEN WE ENCOUNTER WET HOLES, WHEN WE'RE GOING DOWN, IF A SHOCK IS MORE CONFINED, IF THERE'S WET HOLES, WE DE-WATER THE HOLES. WE TAKE THE WATER OUT USING THE PUMP TRUCK. THAT ALLOWS US TO GET THE PRODUCT IN THERE WHERE WE NEED IT. THEN TYPICALLY WHAT WE DO IS WE DON'T USE DRILL CUTTINGS, WHICH WILL TURN TO MUD. WE USE CRUSHED STONE OR ROCK. THEN THAT ROCK IN THE HOLE, THE WATER DOESN'T AFFECT IT AND IT ACTS LIKE A LOCKING MECHANISM. WHEN WE DETONATE THE BLAST, IT CONFINES THE CHARGE. IT'S DEFINITELY, YOU KNOW, IT'S NOT LIKE A DRY HOLE, BUT IF IT'S A WET HOLE WE ENCOUNTER THOSE EVERYDAY AND WE HAVE TO HANDLE THEM.

JUDGE MATTINGLY: WATER IN THAT BLASTING AREA, DOES THAT AMPLIFY THE SHOCK WAVE?

MR. BURNS: WATER CAN TRANSMIT THE ENERGY FROM THE BLAST THAT GETS TURNED INTO VIBRATION. IT TRANSMIT THAT TO FURTHER DISTANCE, SURE.

JUDGE MATTINGLY: I THINK SOMEONE I RECALL, I THINK TALKED ABOUT IF YOU LOOKED AT THE PICTURES THAT YOU GUYS SHOWED THERE WAS WATER IN THAT PIT WHERE YOU WERE BLASTING.

MR. BURNS: WATER, WHEN WE'RE DIGGING A HOLE IN THE GROUND WATER IS PRETTY COMMON.

JUDGE MATTINGLY: THAT'S OF NO CONCERN.

MR. BURNS: NO. WE DEFINITELY ADDRESS IT. WE MAY DRILL A SHOT AND MAJORITY OF IT 80, 90 PERCENT OF IT MAY BE COMPLETELY DRY, AND WE MAY HAVE TWO OR THREE HOLES IN THE SHOT THAT ARE WET.

JUDGE MATTINGLY: WE'RE NOT TALKING ABOUT UNDERGROUND MINING HERE, BUT I KNOW WHEN YOU BLAST UNDERGROUND OF LOOSE ROCK OR THE ROOF COMING DOWN AND THOSE KINDS OF THINGS, I NOTICE IN THE BLAST IF YOU LOOK BACKGROUND AT THE HIGH WALL, I WATCHED THE HIGH WALL AND I DIDN'T SEE ANYTHING COME OFF THAT HIGH WALL. WAS THAT UNUSUAL? DID YOU PICK THAT PICTURE OUT?

MR. BURNS: NO. IT'S NOT UNCOMMON FOR SOMETHING TO COME OFF THE HIGH WALL. WHEN WE BLAST THAT ENERGY BREAKS THE ROCK WITHIN THE PATTERN, WHERE THE HOLES ARE DRILLED OUT AND EXPLOSIVE. IT'S DESIGNED TO BREAK THAT ROCK. IN VERY CLOSE PROXIMITY TO THAT HIGH WALL, THE ROLL AGAINST THE BACK WALL FOR THAT PIT. WHEN WE SHOOT, SOME OF THAT ENERGY DOES BREAK SOME OF THAT ROCK. WHEN THEY MINE THAT MATERIAL OUT, THEY'LL SCALE THAT WALL DOWN AND TRY TO REMOVE SOME LOOSE MATERIAL BECAUSE THEY'RE GOING TO –

JUDGE MATTINGLY: HOW ABOUT MANUFACTURED HOMES, DOUBLE-WIDE MANUFACTURED HOMES THAT ARE NOT ON SOLID FOUNDATIONS, Poured CONCRETE FOUNDATIONS. DO YOU HAVE PARTICULAR ISSUE WITH THOSE?

MR. BURNS: NO, I DON'T FEEL SO. THE REGULATIONS WE GO BY, THEY TAKE THAT INTO CONSIDERATION AS ANY OTHER TYPE OF HOME.

JUDGE MATTINGLY: THE PLEASANT RIDGE AREA THERE ARE A LOT OF HOMES, THERE ARE SOME VERY NICE HOMES THERE THAT ARE WELL-BUILT, BUT A LOT OF THEM ARE 100 YEAR OLD HOMES. I MEAN THAT COMMUNITY HAS BEEN AROUND FOR A LONG TIME. AS WE TOURED THROUGH, FROM DAVIESS COUNTY/PLEASANT RIDGE TO OHIO COUNTY/PLEASANT RIDGE, THERE ARE A LOT OF OLDER HOMES. THERE ARE A LOT OF STICK-BUILT, WHAT I WOULD CALL STICK-BUILT HOMES. FOUNDATION, THE KIND THAT MY GRANDMOTHER LIVED IN WHERE YOU HAD SOME LITTLE QUARRY ROCK SETTING EVERY EIGHT FEET AS A FOUNDATION.

MR. BURNS: HOMES LIKE THAT, A LOT OF TIMES SURPRISINGLY, I'M NOT A BUILDER, BUT A LOT OF TIMES THEY'RE MADE PRETTY WELL. IF THEY'VE BEEN AROUND THAT LONG, THEY'VE BEEN AROUND LONG ENOUGH TO SETTLE AND SINK. THEY'VE BEEN AROUND ENOUGH, YOU KNOW, WEATHERING AND HOT AND DRY SPELLS AND RAINY SEASONS AND THINGS LIKE THAT. A LOT OF THE TYPICAL THINGS YOU GET FROM A NEW HOME FROM SETTLING, THINGS LIKE THAT, HAVE ALREADY TAKEN PLACE.

JUDGE MATTINGLY: COMMISSIONERS, ANY QUESTIONS?

(NO RESPONSE)

JUDGE MATTINGLY: THANK YOU.

MR. CASTLEN: CAN I ASK?

JUDGE MATTINGLY: YES, GO AHEAD.

MR. CASTLEN: I'M NOT SURE, MAYBE I'M JUST DENSE, BUT I'M NOT SURE I GOT AN ANSWER TO MY QUESTION.

MR. BURNS: THE SECOND ONE?

MR. CASTLEN: I KNOW I DIDN'T GET AN ANSWER TO THAT ONE, AS FAR AS THE DAMAGE. WHEN YOU'RE JUICING UP THE SHOT.

MR. BURNS: IF THE HOLES ARE DRY, WE CAN USE -- THE EMULSION IS A HIGHER DENSITY PRODUCT. HIGHER DENSITY MEANS IT WEIGHS MORE. SO WHEN YOU SAY, JUICE IT UP, TYPICALLY WHAT I TAKE THAT AS, AS WE'RE PUTTING MORE POUNDS IN THE SHOT. MORE

EXPLOSIVES. IF WE'RE USING AN AMPHO PRODUCT, THE DENSITY ON THAT IS LOWER. SO WE CAN FILL A HOLE UP WITH AMPHO, DRY PARTICLES OF AMPHO, AND HAVE LESS POUNDS THAN IF WE PUT AMPHO AND EMULSION TOGETHER AND FILLED IT UP WITH THAT, IF WE COULD ADD MORE POUNDS.

JUDGE MATTINGLY: I DON'T THINK THAT THAT ANSWERED HIS QUESTION. HIS QUESTION HAS TO DO WITH SEISMOGRAPHIC, THE SEISMOGRAPHIC WAVES THAT THE WOULD BE PRODUCED BY ONE HOLE THAT WAS BLOWING OFF THE TOP PART OF THE BURDEN AS OPPOSED TO GOING DOWN 50 FEET AND HAVING TO REMOVE. SO IT A MORE POWERFUL SHOT? IT DOESN'T HAVE ANYTHING TO DO WITH MORE WEIGHT.

MR. BURNS: NO, IT'S NOT GOING TO BE MORE POWERFUL. WHEN WE DESIGN OUR SHOTS, THE VIBRATION, THERE'S FACTORS THAT GO INTO HOW MUCH IT SHAKES. A LOT OF THAT HAS TO DO WITH HOW WE USE THE ENERGY FROM THAT EXPLOSIVE. IF WE DON'T PUT ENOUGH IN THE HOLE, THEN WHEN IT TRIES TO BREAK THIS ROCK AND THERE'S TOO MUCH ROCK FOR IT TO BREAK, IT'S GOING TO START BREAKING AND IT'S GOING TO START SHAKING. SO IF THAT ENERGY DOESN'T GET USED TO CRUSH ROCK WITHIN THAT PATTERN, IT'S GOING TO GET TURNED AROUND AND SEND OUT EVERYWHERE IN THE GROUND VIBRATION. SO WHEN WE DESIGN OUR SHOTS, WE DESIGN THEM ON WHAT WE CALL POWDER FACTOR. THE JUICE FACTOR WOULD BE FOR SO MANY POUNDS EXPLOSIVES IN THAT HOLE, WE SPACE THE HOLE SO FAR APART. WE GIVE IT A CERTAIN AMOUNT OF ROCK TO BREAK BASED ON HOW MUCH EXPLOSIVES IS IN THERE. THAT COULD CHANGE BASED ON THE TYPE OF ROCK WE'RE SHOOTING, BASED ON THE DISTANCE OF THE HOUSE.

MR. CASTLEN: THAT'S MY WHOLE POINT. IF I'M 500 FEET AWAY OR HOWEVER FAR --

MR. BURNS: WE'RE NOT GOING TO JUICE IT UP.

MR. CASTLEN: WHETHER YOU'RE BLASTING AT 20 FEET OR WHETHER YOU'RE BLASTING AT 100 FEET, IT SHOULDN'T FEEL A TREMENDOUS DIFFERENCE TO ME.

MR. BURNS: WHEN YOU'RE AT 500 FEET, YOU'RE GOING TO FEEL THAT BLAST MORE THAN YOU WOULD AT 2,000 FEET BECAUSE YOU'RE CLOSER.

MR. CASTLEN: I UNDERSTAND UP AND DOWN, HOW DEEP YOU ARE.

MR. BURNS: UP AND DOWN. ACTUALLY THE DEEPER YOU GO --

MR. CASTLEN: IS IT GOING TO BE DIFFERENT BECAUSE YOU'RE DEEPER?

MR. BURNS: NO. NO.

MR. CASTLEN: NOW, JUMP TO MY SECOND QUESTION ABOUT DAMAGE OF A HOME MAYBE IS NOT AS --

JUDGE MATTINGLY: I THINK HE ANSWERED THAT.

MR. BURNS: THE PREBLAST SURVEYS THAT ARE DONE TO PROTECT ALL THOSE STRUCTURES. THE VIBRATION LIMITS THAT WE'RE HELD TO, IF WE EXCEED THOSE IT'S A VIOLATION. THOSE NUMBERS THAT WE BUILD AND DESIGN OUR ENTIRE SHOT OFF OF ARE BUILT TO PROTECT THAT STRUCTURE, AS LONG AS WE SHOOT UNDER THOSE LIMITED. THAT'S ANY HOME.

JUDGE MATTINGLY: DOES THAT TAKE CARE OF IT? DO YOU HAVE ANYTHING ELSE?

MR. LAMBERT: NO.

JUDGE MATTINGLY: WHAT WE'RE GOING TO DO IS TAKE A BREAK. TAKE ABOUT A FIVE MINUTE BREAK. MASTER SERGEANT GOODALL, I SAW YOU COME IN BACK THERE. DR. DARRELL, WOULD YOU ADD MASTER SERGENT GOODALL'S NAME TO THAT LIST AS PEOPLE,

AS I'M SURE HE WOULD HAVE SIGNED TO SPEAK IF HE HAD BEEN HERE. SO I WILL GIVE HIM THAT COURTESY. WHEN WE COME BACK WE WILL ASK FOR PEOPLE WHO SIGNED TO SPEAK TO COME FORWARD, IDENTIFY YOURSELF, GENERALLY IDENTIFY THE TOPIC THAT YOU'RE WISHING TO SPEAK ON. I'M GOING TO TELL YOU, THERE HAS BEEN SOME CONCERN OR SOME QUESTION ABOUT INTRODUCING NEW FACTS. I'M NOT GOING TO ALLOW THAT. DR. DARRELL IS NOT GOING TO ALLOW THAT. CLAUD PORTER WILL NOT ALLOW THAT. WHAT WE'RE HERE TO CONSIDERING IS INFORMATION THAT WAS PRESENTED ON THE MAY 10TH MEETING, AND BECAUSE THE FEBRUARY MEETING WAS MADE A PART OF THE RECORD WE WILL CONSIDER THAT AS WELL AS THE '86 AND '93. WE WILL CONSIDER THOSE. I WILL NOT ALLOW, WE WILL NOT ALLOW, THE COMMISSION IS DETERMINED NOT TO ALLOW REPETITIVE COMMENTS. I'VE GOT SEVERAL PEOPLE THAT WANT TO SPEAK ON THE COMPREHENSIVE PLAN. IF YOU'RE GOING TO ALL COME UP AND SPEAK REGARDING THE SAME ISSUE ON THE COMPREHENSIVE PLAN, I WISH YOU WOULD PERHAPS GET TOGETHER AND TALK. I WOULD TELL THAT YOU IF THERE WAS ONE PERSON WHO WANTED TO REPRESENT TWO OR THREE PEOPLE, I WILL CONSIDER ALLOWING ADDITIONAL TIME. MR. OVERSTREET, YOU MAY REPRESENT TWO OR THREE PEOPLE HERE. THEY WISH TO GIVE YOU THEIR TIME, I WOULD CONSIDER ALLOWING YOU SOME EXTRA TIME. PERHAPS NOT THE ENTIRE TIME FOR EACH PERSON, BUT I WOULD CONSIDER THAT. THERE IS A COUPLE OF THEM ARE JUST REZONING IN GENERAL. WE'LL HAVE TO SEE WHERE THAT GOES. I THINK DR. HUXOL HAVE SOME ISSUES REGARDING HEALTH AND THOSE KIND OF THINGS. - - - - (OFF THE RECORD) - - - -

JUDGE MATTINGLY: AT THIS TIME WE'RE GOING TO RECEIVE SOME COMMENTS BY THE PUBLIC. DR. DARRELL, YOU'VE GOT THE LIST OF PEOPLE WHO SIGNED UP. HOPEFULLY THEY CAME OVER AND SAID, YES, WE WANT TO SPEAK. NO, WE DON'T WANT TO SPEAK. SO I'M GOING TO LET YOU CALL THE PEOPLE TO THE PODIUM IN HOWEVER ORDER, BUT I WOULD SUGGEST THAT WE DO IT IN THE ORDER THEY SIGNED UP.

DR. DARRELL: THAT'S WHAT I PLANNED TO DO. THANK YOU, JUDGE.

JUDGE MATTINGLY: IF YOU WOULD, AGAIN, COME TO THE PODIUM. MAKE YOUR STATEMENT. YOU MAY HAVE DR. DARRELL OR MYSELF, SAY, TIME OUT. THAT'S NEW. THAT HASN'T BEEN PRESENTED BEFORE. WE'RE NOT HERE TO HEAR THAT OR THAT'S REPETITIVE, CAN YOU MOVE ON. IF YOU THINK I'M BEING UNFAIR, ASK ME FOR SOME LEEWAY. I MAY OR NOT MAY NOT GIVE IT TO YOU. DEPENDING ON HOW LONG THIS THING IS GOING ON. DR. DARRELL.

DR. DARRELL: THANK YOU. TONY ISBILL.

JUDGE MATTINGLY: NAME AND ADDRESS, MR. ISBILL.

MR. ISBILL: MY NAME IS TONY ISBILL. THE ADDRESS IS 3210 GIRL SCOTT ROAD, UTICA, KENTUCKY. JUDGE MATTINGLY, THANK YOU AND WE APPRECIATE THE OPPORTUNITY TO BE HERE. I DO APPRECIATE THE PLANNING & ZONING THAT OUR CITY AND COUNTY HAVE. TONIGHT I WOULD LIKE TO JUST ADDRESS THE VALIDITY OF PART OF THE COMPREHENSIVE PLAN. WHEN I BUILT MY HOME, I WENT AND APPLIED FOR A PERMIT. THAT PERMIT WAS ISSUED TO ME ALONG WITH I HAD TO GET ELECTRICAL, PLUMBING CONTRACT, CONSTRUCTION PERMITS, AND I WAS UNDER AN OBLIGATION TO BUILD THAT HOME EXACTLY THE WAY THAT THE COUNTY SAID. EVEN TO THE POINT THAT MY STEPS HAD TO BE A CERTAIN HEIGHT AND CERTAIN WIDTH. BECAUSE OF THAT HOUSE THAT I BUILT, I AM TAXED ON THAT HOME. THOSE TAXES GO TO THE COUNTY FOR SERVICES THAT ARE RENDERED. THOSE ARE PROVIDED SERVICES LIKE ROAD MAINTENANCE, PROTECTION, POLICE PROTECTION, ANIMAL PROTECTION, ALL OF THOSE THINGS THAT ARE PROVIDED FOR THE TAX PAYERS OF DAVIESS COUNTY. IN ESSENCE WE HAVE AN AGREEMENT. WE ACTUALLY HAVE A CONTRACT. I DO MY PART AND YOU DO YOUR PART AND VICE VERSA. IF I DO NOT DO MY PART, I HAVE RECEIVED FINES, PENALTIES, AND ULTIMATELY COURT ACTION. THE SAME IS TRUE FOR OUR GOVERNMENT. WHEN THEY DO NOT DO THEIR PART, THERE IS A PROCESS THAT DEALS WITH WHEN THE COUNTY FAILS TO MEET THEIR PART OF THE CONTRACT. NOW IT COMES TO PROTECTION. IF I HAVE A THREAT TO BODILY HARM IN MY HOME, YOU IMMEDIATELY SEND OUT THE SHERIFF TO PROTECT ME. IF THERE IS A THREAT OF

PROPERTY DAMAGE, YOU IMMEDIATELY COME OUT TO PROTECT ME. ULTIMATELY, YOU HAVE GIVEN ME THE RIGHT TO ENJOY MY PROPERTY, AS LONG AS I DO NOT INFRINGE UPON OTHER'S RIGHTS. NOT ONLY DO I HAVE THAT RIGHT, THE COUNTY PROTECTS ME BECAUSE I PAY MY PART OF THE CONTRACT. IT ALL WORKS WELL WHEN EVERYONE ELSE DOES THEIR PART. NOW THE PROBLEM. COAL EXTRACTION BY STRIP MINING BECAUSE OF ITS EXTREME ADVERSE INTRUSIVE AFFECTS ON THE ADJACENT LANDOWNERS BEING A PART OF THE COMPREHENSIVE PLAN IN A COUNTY OF 93,000 PEOPLE CREATES CONFLICT WITH THE CITIZENS CONTRACT IN DAVIESS COUNTY AND CREATES A BREACH OF THAT CONTRACT. IT IS IMPORTANT TO PROTECT US; IN FACT, IT'S IMPOSSIBLE FOR YOU TO PROTECT US AND AT THE SAME TIME CREATE A POTENTIAL OF HARM. IT IS IMPOSSIBLE. THEREIN LIES THE CONFLICT WITH COAL AND ITS INTRUSIVE WAY THAT IT IS EXTRACTED AND THE PROTECTION THAT WE PAY FOR AND EXPECT IN OUR CONTRACT. THAT'S WHEN THE PREVIOUS OMPC AND FISCAL COURTS THEY SAW THAT. IN TWO OCCASIONS THEY MADE THE MOTION THAT THE REZONING NOT BE MADE BECAUSE OF COMPREHENSIVE PLAN WAS IN ERROR. IN OTHER WORDS, IT WAS WRONG BECAUSE OF THE SITUATION THAT EXISTED. THEY WERE READING THAT BECAUSE OF THE REZONING REQUIREMENT. BASICALLY ON THE SAME PROPERTY THAT WE ARE TALKING ABOUT. BECAUSE THAT PLAN IS IN ERROR, THE COMPREHENSIVE PLAN TO BE IN ERROR CONCERNING THE MINING IN OUR COMMUNITY THEY SAID, NO. THOSE WANTING COAL ACCEPTED THAT DECISION. THE MINES DID NOT APPEAL IT. THE CITIZENS DID NOT APPEAL IT. THEY ACCEPTED IT. THE FACT THAT THIS COUNTY IS SAYING NO TO THOSE RESIDENT IS NOT NEW. THEY WERE TOLD THAT IN 1986 AND THEY WERE TOLD NO IN 1993, AND YET THEY DID NOT APPEAL IT. BASICALLY WHAT THEY WERE SAYING WAS, THIS COURT AND THIS COUNTY SAID THE TIME TO EXTRACT COAL IN THAT COMMUNITY HAD COME AND GONE. IT'S IMPOSSIBLE TO EXTRACT COAL WITHOUT CREATING A POTENTIAL FOR HARM FOR THE CITIZENS THAT ARE IN CONTRACT WITH YOU TO PROTECT US. 2  
CONSEQUENTLY THE OMPC HAS BREACHED OUR CONTRACT WITH DAVIESS COUNTY. IT IS AT THIS TIME THAT YOU HAVE THE RESPONSIBILITY TO REVERSE THAT DECISION AND TO MAKE US WHOLE AND TO RESTORE OUR CONTRACT. THANK YOU.

JUDGE MATTINGLY: THANK YOU, MR. ISBILL.

DR. DARRELL: CARLIN GREGORY.

MR. GREGORY: I'M CARLIN GREGORY, 2556 RUSSELL ROAD IN UTICA. I WAS GOING TO TALK ABOUT THE COMPREHENSIVE PLAN AND I'M GOING TO PASS ON THAT. I WOULD JUST LIKE TO MAKE ONE COMMENT TO MR. NOFFSINGER, AND THE COUNTY COMMISSION, JUDGE MATTINGLY, YOU, AND THE COMMISSIONERS FOR YOUR APOLOGIES AND CONCERNS ABOUT MY FAMILY. I'D ALSO LIKE WKM, MENSICO, ALL COAL MINERS, LANDOWNERS, I HARBOR NO ILL WILL TOWARDS ANYBODY. WE WENT THROUGH A ROUGH TIME, BUT I DON'T WANT TO GO THROUGH THIS EVER AGAIN. THANK YOU FOR YOUR TIME.

JUDGE MATTINGLY: THANK YOU. AGAIN, I KNOW I SPEAK ON BEHALF OF ALL THE RESIDENTS ACROSS THE COMMUNITY. THAT NONE OF US, ABSOLUTELY NONE OF US, NONE OF US CONDONE WHAT HAPPENED YOU TO YOU AND YOUR FAMILY.

MR. GREGORY: JUST TO MAKE A SIDE NOTE. I KNOW THAT AFTER ALL OF THIS IS DONE, WHETHER YOU VOTE FOR OR AGAINST, WE'RE EITHER GOING TO HAVE TO LIVE TOGETHER OR LIVE NOT TOGETHER. ME AND MY FAMILY, WE'RE GOING TO BACK TO THE WAY OF LIFE WE HAVE OR HAVE TO PUT UP WITH THE COAL MINE. WHOEVER THIS FORTUNATE OR UNFORTUNATE INDIVIDUAL IS, HE'S GOING TO BE LOOKING OVER HIS SHOULDER FOR THE REST OF HIS LIFE.

JUDGE MATTINGLY: THANK YOU.

MR. GREGORY: I'D LIKE TO DONATE THE REST OF MY TIME TO MR. OVERSTREET.

JUDGE MATTINGLY: WE'LL SEE IF WE CAN DO THAT.

DR. DARRELL: SCOTT HESTER.

MR. HESTER: I'M SCOTT HESTER, 2830 RUSSELL ROAD, UTICA. I WOULD LIKE TO THANK THE COURT FOR THEIR ATTENTION TO THIS MATTER. I MET JUDGE MATTINGLY FOR THE FIRST TIME AT THE COMPREHENSIVE LAND USE MEETING THE OTHER NIGHT AND I WAS VERY IMPRESSED THAT HE KNEW WHO I WAS AND KNEW WHAT I HAD SPOKEN TO AT THE PREVIOUS MEETINGS.

JUDGE MATTINGLY: KNEW WHAT YOU LOOKED LIKE.

MR. HESTER: KNEW ME BY FACE. I'M REALLY IMPRESSED WITH THE TIME YOU ALL HAVE TAKEN TO PUT INTO THIS AND WE REALLY APPRECIATE IT; REGARDLESS OF HOW YOU VOTE, BUT I'LL NEVER FORGIVE YOU IF YOU VOTE AGAINST US. I WOULD LIKE TO CALL YOUR ATTENTION TO A COUPLE OF SIGNIFICANT ERRORS I THINK THAT OCCURRED AT THE LAST MEETING OF THE ZONING BOARD. FIRST INVOLVES THE TESTIMONY AT THE BOARD OF COMMISSIONER WARD PEDLEY. AFTER ALL THE PUBLIC COMMENTS WERE COMPLETED, MR. PEDLEY BEGAN TO DECLARE THE RESULTS OF HIS INDEPENDENT INVESTIGATION AND PERSONAL FINDINGS OF FACT, MOSTLY CONTAINED ON PAGES 290 THROUGH 300 OF THE TRANSCRIPT. I HAVE NO INTENTION WHATSOEVER TO IMPUTE MR. PEDLEY'S INTEGRITY AS I BELIEVE HE'S AN HONORABLE MAN. I REALLY DO BELIEVE THAT. THAT SAID, I NOTE PREVIOUSLY HE VOTED AGAINST THIS APPLICATION. ON PAGE 297, MR. PEDLEY STATED THAT HE HAS LEARNED THAT HIS BROTHER, RECENTLY JUST LEARNED THAT HIS BROTHER'S FAMILY EXPECTS TO RECEIVE ABOUT \$850,000 FROM MR. LANHAM'S COAL COMPANY MINING THEIR FARM. THEN HE SPEAKS AT LENGTH IN FAVOR OF THE APPLICATION. MR. PEDLEY ON PAGE 298 OF THE TRANSCRIPT STATES THAT PART OF HIS FINDINGS OF FACT, THAT HE ASSURES THAT THE APPLICANTS HAVE EACH BEEN PAYING THOUSANDS OF DOLLARS IN UNMINED MINERALS. THAT'S GOING BACK 15, 20, 30 YEARS. THE ONLY BASIS FOR HIS ASSERTION IS A BILL HE HAD FROM CURRENT UNMINED MINERAL TAX ON HIS RECENTLY DECEASED BROTHER'S 75 ACRE FARM CURRENTLY BEING MINED AT KNOTTSVILLE. IN ACTUAL FACTS, THERE'S NOT BEEN ONE SHRED OF EVIDENCE OR ANY ASSERTION BY ANY OF THE APPLICANTS THAT THEY'VE PAID EVEN A SINGLE DOLLAR OF UNMINED MINERAL TAX. FURTHER, IT WOULD APPEAR THAT MOST IF NOT ALL THE APPLICANTS WILL CLEARLY BE EXEMPT FROM THE UNMINED MINERAL TAX PURSUANT TO THE STATUTE WHICH IS KRS 132. MY RESEARCHING IN THE PROCESS FOR WHICH THE TAXES IS DETERMINED AND ASSESS HAS CONVINCED ME THAT NO TAX WOULD HAVE BEEN ASSESSED THUS FAR AGAINST ANY OF THESE APPLICANTS IN THIS CASE, AND IN FACT, THEY WOULD BE EXEMPT FROM TAX ACCORDING TO THE WORDING OF THE STATUTE. I TRIED TO VERIFY THAT NONE OF THEM HAD BEEN, INCLUDING THROUGH THE PVA'S OFFICE. I FILED AN OPEN RECORDS REQUEST WITH THE KENTUCKY REVENUE CABINET. THAT WAS TURNED DOWN. I'M SURE YOU ALL HAVE ACCESS TO THAT INFORMATION. THE PVA'S WOULDN'T GIVE IT TO ME. THE REVENUE CABINET WOULDN'T. I DIDN'T WANT ANYBODY'S SPECIFIC INFORMATION. HAS THERE ACTUALLY BEEN AN ASSESSMENT? I DON'T CARE ABOUT THE -- I COULDN'T GET THAT, BUT I'M SURE YOU COULD. ANYWAY, ACCORDING TO THE TESTIMONY OF MR. PEDLEY, HE GAVE CONSIDERABLE WEIGHT IN HIS FINDINGS OF FACT AND HIS DECISION TO THIS PAYMENT OF HUGE AMOUNT, THOUSANDS OF DOLLARS OF UNMINED MINERAL TAX, AND HIS DECISION TO CHANGE HIS VOTE IN FAVOR OF THE APPLICANT. ACCORDING TO THE COMMENT OF MR. REEVES, CONTAINED ON PAGE 303 OF THE TRANSCRIPT, THE ASSERTION BY MR. PEDLEY THAT IT WAS THOUSAND OF DOLLARS IN TAXES WEIGHED HEAVILY ON HIS DECISION TO VOTE IN FAVOR. THE APPROPRIATENESS OF MR. PEDLEY'S INDIVIDUAL INVESTIGATION OF THE MATTER AND HIS TESTIMONY WITHOUT THE OPPORTUNITY OF THE PUBLIC TO CONTEST HIM ON THAT AND POSSIBLE APPEARANCE OF CONFLICT OF INTEREST, THAT COULD ALL BE ARGUED BY A LAWYER. MY POINT IS THAT AT LEAST PART OF MR. PEDLEY'S FINDINGS OF FACT WERE I THINK ERRONEOUS. THE MOTION BY THE BOARD, THE ZONING BOARD TO APPROVE THE MOTION ADOPTED MR. PEDLEY'S FINDINGS OF FACT. PAGES 305, AND AGAIN 308, ADOPTED THE FINDINGS OF FACT OF THE PLANNING COMMISSION --

JUDGE MATTINGLY: MR. HESTER, HOW MUCH MORE DO YOU HAVE?

MR. HESTER: MAYBE A MINUTE.



JUDGE MATTINGLY: WE'LL GIVE HIM A MINUTE. GO AHEAD.

MR. HESTER: THE STAFF RECOMMENDATIONS AND THE BOARD ADOPTION THEREOF FAILED TO PROPERLY ADDRESS SIGNIFICANT ISSUES SUCH AS THE 70 ACRES THAT ARE CONTAINED IN THE RURAL COMMUNITY AREA. MORE IMPORTANTLY I THINK MR. PEDLEY'S INDEPENDENT'S FINDINGS OF FACT, IF THAT'S APPROPRIATE AT ALL, CONTAINED IN ERROR WHICH HAD AN INFLUENCE ON AT LEAST ONE OF THE BOARD MEMBERS, COMBINED WITH HIS ADOPTIONS OF THE ERRONEOUS FINDINGS OF FACT, I THINK IT'S REALLY IMPORTANT THAT THE BOARD NOT ONLY ADOPTED THE FINDINGS OF FACT BY THE PLANNING COMMISSION'S STAFF, BUT IT ADOPTED IN ITS ENTIRETY THE FINDINGS OF FACT OF MR. PEDLEY. HIS INDEPENDENT FINDINGS OF FACT, WHICH I THINK CONTAINED ERROR AND I THINK THAT ALONE REQUIRES THAT THAT FINDING, THAT WHOLE FINDING BY THE BOARD BE SET ASIDE. ANOTHER THING THAT CONCERNS ME ABOUT THIS IS THERE WAS A LEGAL BRIEF FILED BY MR. OVERSTREET AT THIS HEARING, AND IT WAS FILED FOR RECORD AT THE HEARING. WE WEREN'T ALLOWED TO DO A LOT OF SPEAKING AT THAT, AND HE HASN'T EITHER, AND NOBODY LOOKED AT IT. THERE WAS A LEGAL BRIEF FILED. I SKIMMED THROUGH IT MYSELF. I THOUGHT THERE WAS SOME MEAT ON THAT BONE, BUT NOT ONE OF THE COMMISSIONERS -- I WATCHED THAT FILE FROM THE TIME IT LEFT HIS HAND AND LANDED ON THE CLERK'S DESK, AND IT'S IN THE RECORD, I THINK. I SAW IT. I SKIMMED THROUGH IT. I WATCHED IT FROM THE TIME IT HIT THAT TABLE UNTIL THE END OF IT AND NOT THE COUNSEL FOR THE COMMISSION, NOBODY LOOKED AT THAT FILE PERIOD BEFORE THE VOTE WAS TAKEN. SOMETHING WRONG WITH THAT. I'M ASKING THIS COURT TO OVERTURN THE DECISION ON THE MERITS, AND IF NOT AT THE VERY LEAST SET IT ASIDE. START OVER. RECONSTITUTE TO THE COMMISSION AND LET'S START BACK TO SQUARE ONE.

JUDGE MATTINGLY: THANK YOU. LET ME QUICKLY COMMENT ABOUT THE BRIEFS SUBMITTED BY MR. OVERSTREET, AS MR. PORTER SAID ORIGINALLY. THAT WAS A JUDICIAL ARGUMENT PRESENTED TO A LEGISLATIVE BODY. REALLY THAT ARGUMENT SHOULD BE MADE AT THE APPEAL, WHERE I'M SURE THIS IS GOING TO GO ON TO A CIRCUIT COURT.

MR. HESTER: I'M SURE IT WILL AS WELL.

JUDGE MATTINGLY: THANK YOU.

DR. DARRELL: LINDA IVY.

JUDGE MATTINGLY: DID I STATE THAT CORRECTLY, MR. PORTER?

MR. PORTER: I THINK SO, JUDGE. I'M NOT SURE WHETHER WE'RE TALKING ABOUT THE SAME BRIEF.

JUDGE MATTINGLY: IT WAS THE BRIEF, AND IT WAS MADE A PART OF THE RECORD.

MR. PORTER: RIGHT. THE ONE TONIGHT IS THE ONE YOU CORRECTLY STATED, THAT THAT WILL BE INCLUDED IN HERE AND BE MADE A PART OF THE RECORD.

JUDGE MATTINGLY: I'M SORRY, WHO DO I GOT?

DR. DARRELL: LINDA IVY.

MS. IVY: LINDA IVY, 865 CARLIN ROAD, UTICA, KENTUCKY. I ALSO WANTED TO SHOW APPRECIATION FOR THE PLANNING STAFF, MR. HOWARD. I'VE BEEN TO EVERY MEETING. THEY'VE ALWAYS BEEN PROFESSIONAL AND COURTEOUS AND PATIENT WITH ALL OF OUR EMOTIONS. I WAS ALSO AT THE '93 AND SPOKE. I APPRECIATE ALL YOUR SERVICES.

JUDGE MATTINGLY: THIS ISN'T YOUR FIRST RODEO, RIGHT?

MS. IVY: NO. ZONING COMMITTEE, I UNDERSTAND IT'S FOR PROTECTING THE COMMUNITY. THE PLANNING MAP SHOWS THAT THE PLEASANT RIDGE COMMUNITY IS A RURAL

COMMUNITY. THIS HAS ALREADY BEEN ADDRESSED, BUT I WANTED TO ADD SOME COMMENTS TO THAT. THE RURAL COMMUNITY DESIGNATION INCLUDES THE AREA NORTH AND SOUTH OF GIRL SCOUT ROAD AND EAST AND WEST OF HIGHWAY 231. THE LAND USE AS DEFINED BY THE ZONING COMMUNITY FOR A RURAL COMMUNITY IS A RURAL SMALL LOT RESIDENTIAL AND FORESTRY. COAL MINING IS NOT LISTED AS APPROPRIATE IN THESE AREAS. I DO THINK THIS IS -- YOU STATE THAT WE SHOULD HAVE FLEXIBILITY IN DETERMINING. I THINK WE SHOULD HAVE FLEXIBILITY THE OTHER WAY ALSO BECAUSE I THINK THIS IS A COMMUNITY. THERE'S MORE COMMUNITY THAN WHAT'S ACTUALLY SHOWN ON THAT MAP. I THINK THAT SHOULD BE CONSIDERED. ADDITIONALLY, THE ZONING COMMITTEE HAS THE ABILITY TO SET DISCRETIONARY LIMITS ON COAL MINING. ESTABLISHMENT OF LIMITS MAY ARISE IN CONSIDERATION OF SUCH ISSUES AS A PATTERN, DENSITY, DESIGN, NEARBY ESTABLISHED DEVELOPMENT. ALSO, LISTED IN THE STATEMENT GOALS AND OBJECTIVES OF THE COMPREHENSIVE PLAN SECTION UNDER ENVIRONMENT, IT'S A DESIRE TO PRESERVE EXISTING SIGNIFICANT NATURAL FEATURES OF HISTORIC SITES. I ATTENDED CAMP PENNYROYAL IN THE 1950'S. MY CHILDREN ATTENDED CAMP THERE IN THE 1980'S AND '90S, AND MY GRANDCHILDREN ATTEND CAMP THERE NOW. I FREQUENTLY MEET PEOPLE THERE FROM ALL OVER WESTERN KENTUCKY. THE SUMMER STAFF INCLUDES THEY'RE NATIONAL COLLEGE KIDS, AS WELL AS LOCAL CITIZENS. MY FAVORITE ACTIVITY IN ENJOYING THE CAMP FOR THE LAST 50 YEARS, 50 YEARS HAS BEEN HIKING AROUND THE BOUNDARY AREA AND STOPPING TO CLOSE OUR EYES AND LISTEN AND SMELL. THE CITY CHILDREN CAN HEAR THE WIND RUSTLING. WE SMELL PINE NEEDLES, THE LAKE, THE DEAD LEAVES. WE ENJOY SWIMMING IN THE SPRING-FED LAKE. THAT'S GOING TO BE, I THINK, AN IMPACT ALSO, JUST LIKE THE WELLS. AND STUDY THE BUGS AROUND THE WETLANDS. THE PENNYROYAL GIRL SCOUT CAMP HAS BEEN IN EXISTENCE IN THIS AREA FOR OVER 50 YEARS. LONG ENOUGH TO BE CONSIDERED A NATIONAL FEATURE AND HISTORIC SITE AND A PART OF THE ESTABLISHED DEVELOPMENT. I HAVE GREAT EMPATHY FOR THE 13 LANDOWNERS AND THE WESTERN KENTUCKY MINERALS. PERSONALITY SHOULD HAVE NO BEARING ON THIS DECISION. THERE'S A VARIETY OF POLITICAL AND EMOTIONAL OPINIONS FROM BOTH SIDES. I DON'T THINK THAT HAS ANY DECISION ON HOW IT'S CALLED HERE. THIS IS A ZONING ISSUE. I'M ASKING YOU ALL TO IGNORE PERSONALITIES AND TO CONSIDER JUST THE ZONING OF THE COMPREHENSIVE PLAN. WITH THE EXISTENCE OF A RURAL COMMUNITY AS WELL AS THE HISTORICAL CAMP PENNYROYAL, AND THE FACT THAT A MAJORITY OF THE COMMUNITY DOES NOT WANT THE ZONING CHANGE. I FEEL THE COMMISSION RECOMMENDATION FOR ZONING CHANGE WAS IN ERROR. THANK YOU.

JUDGE MATTINGLY: MS. IVY, THANK YOU VERY MUCH FOR THAT WELL THOUGHT OUT AND WELL SAID STATEMENT.

DR. DARRELL: NEAL VANMILLIGAN, PLEASE.

MR. VANMILLIGAN: MY NAME IS NEAL VANMILLIGAN. I LIVE AT 2725 RUSSELL ROAD, UTICA.

JUDGE MATTINGLY: WELCOME.

MR. VANMILLIGAN: JUDGE, THANK YOU. ONE OF THE POINTS THAT WAS BROUGHT UP BY THE STAFF OF THE PLANNING COMMISSION WAS THAT THE COMPREHENSIVE PLAN ALERTS US TO THE ISSUES WE MIGHT FACE SHOULD WE CHOOSE TO BUILD IN A RURAL AREA. WARD PEDLEY STATED THAT SINCE WE CAME TO THE AREA AND THE COAL WAS THERE WHEN WE GOT THERE, THAT WE ARE THE ONES THAT ARE AT RISK. WE SHOULD BE AWARE THAT THAT MINING MIGHT TAKE PLACE. IF YOU LOOK AT THE COMPREHENSIVE PLAN, IT EXHIBITS IN THERE SEVERAL ISSUES THAT WERE PRESENTED TO US WITH SUCH A WARNING. ONE OF THEM IS EXHIBIT 722 T-1 WHICH IS THE ACRES THAT WERE REZONED TO COAL MINE SINCE 1999 48-ACRES; 1998 105-ACRES; 1997 300-ACRES; '96 100-ACRES; '95 ZERO. THEN YOU GO TO 2000, 2001, 2002 142-ACRES. THIS IS AN OLD COUNTY. 2003 ZERO. 2004 ZERO. 2005 ZERO. WHERE WAS THE ALERT THAT WE SHOULD KNOW THAT COAL MINING WAS A LIKELY INTRUSION INTO OUR ANTICIPATED LIFESTYLE IN THAT AREA? THERE HAVEN'T BEEN AS MANY ACRES ZONED FOR COAL MINING SINCE 1995 IN TOTAL AS IS APPLIED FOR IN THIS PERMIT. YOU HEAR MR. WRIGHT FROM WESTERN KENTUCKY MINERAL HAS TESTIFIED HERE OR HAS EXPLAINED HERE THAT THE HAZARD FROM COAL MINING DUST IS FROM THE COAL

DUST ITSELF IS HAZARDOUS HE SAID. THAT IS EXACTLY ONE OF OUR POINTS. THAT IS DEFINITELY AN INTRUSION ON US. WERE THEY PLANNING ON PUTTING A COAL WASHING FACILITY IN THE BACKYARD OF MR. AND MRS. LOVE? NEITHER OF THEM HAVE NORMAL BREATHING. THEY ARE BOTH ELDERLY. BOTH OF THEM ARE ON OXYGEN. MRS. LOVE I DON'T THINK CAN EVEN LEAVE THE HOUSE TO COME HERE TO THIS MEETING. THAT COAL WASHING FACILITY WILL BE EXACTLY IN THEIR BACKYARD. THE CROSSING POINT ACROSS RUSSELL ROAD FROM THE MINE TO THE COAL WASHING PLANT IS THEIR FRONT YARD. I'M SORRY, NEXT-DOOR TO THEM. THAT EFFECTIVELY, THAT'S TRANSFER FROM ONE SIDE OF THE ROAD TO THE OTHER WILL EFFECTIVELY DESTROY THAT PORTION OF RUSSELL ROAD FROM CROSS TRAFFIC. I CAN'T IMAGINE ANY CIRCUMSTANCE TO ALLOW THESE HEAVY TRUCKS TO CROSS THAT HIGHWAY ON AN HOURLY BASIS THAT WOULD NOT BRING MUD AND ROCK TO THAT ROAD THAT COULD OTHERWISE ALLOW US TO TRAVEL ACROSS THAT. I DON'T THINK WE'LL BE ABLE TO TRAVEL EAST ON RUSSELL ROAD ONCE THAT TRAFFIC -- THE GENTLEMAN THAT LIVES ACROSS THE ROAD FROM ME, MR. CHESTER SANDS, HE WANTED TO BE HERE THIS EVENING. HE COULDN'T COME OUT. HIS WIFE IS DYING OF CANCER. HE PUT HIS LAND UP FOR SALE WHEN THIS, AS A COINCIDENCE, WHEN THIS ISSUE FIRST CAME UP BECAUSE HE WANTED TO GET HE AND HIS WIFE CLOSER TO THE HOSPITAL. HE HAD AN OFFER TO BUY HIS PROPERTY. WHEN THE ZONING WAS APPROVED, THE OFFER WAS WITHDRAWN. SO MR. SANDS MAY DIE ON THAT PROPERTY BECAUSE HE CAN'T GET TO THE HOSPITAL, BUT HIS WIFE SURELY WILL. SHE IS NOT GOING TO SURVIVE MUCH LONGER WITHOUT MEDICAL CARE. THE POINT MR. HESTER BROUGHT UP REPEATEDLY, THAT SHOULD WE NEED TO SELL THE PROPERTY OF OURS, WE WILL NOT BE ABLE TO; EXEMPLIFIED BY MR. SANDS CAN'T SELL HIS SO THAT HE COULD MOVE HIS WIFE CLOSER TO MEDICAL CARE. IN THE COMPREHENSIVE PLAN, IT SAYS IN THERE THAT ONE OF THE PURPOSES IN 010, ONE OF THE PURPOSES IS NOISE CONTROL. I DON'T SEE HOW YOU'RE GOING TO MANAGE THAT IF YOU ALLOW A COAL MINE TO RIP UP PART OUR TERRITORY IN WHICH WE LIVE. THERE WAS MINE BLASTING THAT WAS DISCUSSED EARLIER. THE COMPANY READILY ADMITS THAT THEY'RE GOING TO MINE RIGHT THROUGH THE AQUIFER. HOW ARE THEY NOT GOING TO BE BLASTING THE WET AREA IF THEY MINE THROUGH AQUIFER. FROM WHAT I UNDERSTAND FROM MINING TECHNIQUE IS IT'S INTENDED TO BE EMPLOYED, AND I DON'T KNOW THIS FOR CERTAIN, BUT THE WAY I UNDERSTAND IT A HIGH WALL WOULD BLAST IT BACK INTO THE PIT. I FORGET WHAT THAT TECHNIQUE IS CALLED. FALLING OR WHATEVER. IF THAT'S THE OPTION, THAT THAT MINE HIGH WALL WILL BE BLASTED INTO THE PIT TO BE MANAGED ON THE GROUND THERE AND THAT BE AFFECTED THROUGH BLASTING, THERE'S A SIGNIFICANT AMOUNT OF BLASTING THAT'S GOING TO GO ON PROBABLY NOT DISCUSSED. THAT BLASTING REPRESENTS, AND I'M NOT CERTAIN. REQUIREMENT THAT THE HIGHWAY WAS WITHIN I THINK 1,000 FEET HAVE TO BE CLOSED DURING THE PERIOD OF BLASTING, WHICH IS WONDERFUL UNLESS YOU HAPPEN TO HAVE YOUR HOUSE ON FIRE OR YOU'RE GETTING ROBBED OR YOU HAVE A HEART ATTACK AND NEED AN AMBULANCE AND THEY HAVE THE HIGHWAY CLOSED. THEIR STATEMENT THAT THEY INTEND TO BLAST AT THAT MINE BETWEEN EITHER NOON OR FOUR, THAT'S WONDERFUL, BUT THEY ALSO SAID BEFORE THAT THEIR RESTRICTED TO BLASTING ONLY BETWEEN SUNRISE AND THAT'S A LONG PERIOD OF TIME BLAST MIGHT OCCUR.

JUDGE MATTINGLY: DO YOU HAVE ANYTHING ELSE?

MR. VANMILLIGAN: THAT SUMS UP WHAT I HAVE TO SAY.

JUDGE MATTINGLY: THANK YOU.

DR. DARRELL: JAMES LACY KAMUF.

MR. KAMUF: JAMES LACY KAMUF. JUDGE, I THINK THERE'S A LITTLE PROBLEM ABOUT, I REALLY KIND OF SPOKE ON THE ENVIRONMENTAL ISSUES, BUT YOU INFORMED ME SINCE I WROTE DOWN METROPOLITAN PLANNING ISSUE ITSELF, I DON'T KNOW QUITE REALLY WHAT I PREPARED HERE, BUT I WILL TRY TO KEEP IT -- JUDGE MATTINGLY: GO AHEAD. KEEP IT WITHIN THE FIVE MINUTES AND IF YOU GET OUT TOO FAR AWAY I'LL TELL YOU.

MR. KAMUF: I WOULD LIKE TO REMIND THE COURT THAT MR. THOMAS PIERCE SPOKE AND HE WAS AN OFFICIAL REPRESENTATIVE OF THE SIERRA CLUB. I BELIEVE HE SPOKE ABOUT SOME ENVIRONMENTAL ISSUES THAT HIS ORGANIZATION IS CONCERNED.

JUDGE MATTINGLY: HE SPOKE AT THE MAY MEETING.

MR. KAMUF: I BELIEVE HE DID.

JUDGE MATTINGLY: I DON'T RECALL. I DON'T HAVE HIM ON MY LIST AS ONE OF THE SPEAKERS IN THE MAY MEETING.

MR. KAMUF: I BELIEVE HE DID, BUT I WOULDN'T GO ON RECORD FOR THAT. I WILL TRY TO KEEP IT -- I THINK EVERYONE EVERYBODY IN THE ROOM HAS HEARD WHAT I HAVE TO SAY BEFORE ANYWAY. I KNOW YOU HAVE, JUDGE, AND PROBABLY MOST OF THE ROOM HAS. I WOULD LIKE TO KIND OF START OUT WITH MR. PEDLEY AGAIN. HE MENTIONED THAT PEOPLE THAT OWN THESE MINERAL RIGHTS HAVE BEEN ON LAND FOR 200 YEARS. THE GEOLOGICAL TIME FRAME THAT THIS COAL WAS SET THERE, AND I KNOW THESE PEOPLE LAUGH, BUT IT HAS MENTIONED, MR. O'RILEY I BELIEVED MENTIONED HIS WATER HAS FLOWN FOR MANY OF YEARS, KIND OF MENTIONED THAT KIND OF ON THE SIDE. I THINKS IT IS FAIR TO SAY, AND I MENTIONED IT THE LAST TIME, THAT THIS COAL HAS BEEN IN THE GROUND FOR 200 MILLION YEARS OR 300 MILLION YEARS. I REALLY DO THINK THAT THE PEOPLE OF DAVIESS COUNTY ARE GOING TO HAVE TO LIVE WITH THE DECISION MADE BY THIS REZONING FOR ANOTHER 300 MILLION YEARS TO BE HONEST WITH YOU. MAY WELL. GOOD LORD KNOWS. IS IT SUCH AN IMPORTANT DECISION. IT'S NOT LIKE SOMEBODY BUILDING A BUILDING THAT'S GOING TO LAST FOR 50 YEARS. WE WANT TO MAKE SURE THAT IT'S A SAFE PLACE TO LIVE. WHAT THE OWENSBORO METROPOLITAN PLANNING COMMISSION HAS UNDERTAKEN IS REALLY A DECISION THAT ARE GOING TO AFFECT US FOR GEOLOGICAL TIME SCALE IS WHAT I'M TRYING TO SAY. IT'S NOT A 50 YEAR BUILDING OR 100 YEAR BUILDING. I THINK YOU NEED TO TAKE THOSE THINGS INTO CONSIDERATION. I WILL TRY TO PUT IT THIS WAY. I THINK RESIDUAL COAL DUST HAS BEEN MENTIONED. WE ARE LIVING IN ONE OF THE POLLUTED AREAS IN THE ENTIRE NATION. I BELIEVE SPENCER COUNTY IS THE FOURTH MOST POLLUTED COUNTY IN THE NATION. WE HAVE 50 MILLION POUNDS OF POLLUTION JUST DIRECTLY FROM THE POWER PLANTS IN THIS AREA, AND WE HAVE 20 MILLION FROM AK STEEL. COAL IMPLICATION PLANT PROJECTED OR IT'S PROPOSED FOR SPENCER COUNTY AS WELL. WHAT I'M GETTING TO IS SOMEONE LAUGHED WHEN THEY KIND OF MADE A MENTAL NOTE THAT SEEMS LIKE EVERYBODY IN DAVIESS COUNTY HAS ASTHMA. WELL, I DO THINK A LOT OF PEOPLE IN THIS COUNTY HAS RESPIRATORY PROBLEMS ALREADY. I DON'T THINK THIS IS GOING TO DO ANYTHING TO HELP THAT. I THINK ANECDOTALLY, YOU KNOW, JUST DECIDE -- I CAN'T PROVE IT THOUGH. EVERY TIME I LEAVE THE STATE AND GO SOUTH I BEGIN TO BREATHE BETTER. I THINK MOST OF US EXPERIENCE THAT. I DON'T THINK WE REALLY REALIZE HOW POLLUTED WE REALLY ARE HERE COMPARED TO THE REST OF THE NATION. HERE WE ARE, WE'RE GOING TO HAVE MORE COAL DUST IN DAVIESS COUNTY. I THINK IT IS AN IMPORTANT CONSIDERATION. LET ME READ MY NOTES HERE REALLY QUICKLY HERE. WE DO HAVE SOME REAL EXPERTS HERE ABOUT POLLUTION. I THINK MR. BLAIR, I DON'T THINK HE'S GOING TO SPEAK TONIGHT. I'M A LITTLE DISAPPOINTED THAT WE REALLY AREN'T JUST TOTALLY OPEN TO SAY WHAT WE HAVE TO SAY, BUT THAT IS BASICALLY WHAT I WANTED TO SAY TONIGHT. I DON'T WANT TO GET INTO A LONG CONVERSATION ABOUT REALLY ENVIRONMENTAL IMPACTS OF THIS. I DO SAY THOUGH THAT WE REALLY HAVE TO THINK ABOUT THIS. IF YOU WANT TO BE CONSERVATIVE, THIS IS A GOOD PLACE TO START. THIS REALLY IS A GOOD PLACE. WE CAN BE CONSERVATIVE ABOUT MONETARY PROBLEMS OR OUR WELFARE ISSUES OR SOMETHING LIKE THAT. WE ARE GOING TO LIVE WITH THESE CONSEQUENCES FOR A LONG TIME TO COME. THANK YOU VERY MUCH. I THINK YOU'VE DONE A NICE JOB GETTING REALLY THE NUTS AND BOLTS OUT TONIGHT ABOUT HOW THE PROCESS IS GOING TO WORK.

JUDGE MATTINGLY: THANK YOU.

DR. DARRELL: JOANNE SCOTT.

MS. SCOTT: I AM JOANNE SCOTT. I LIVE AT 11851 REDHILL MAXWELL ROAD. COUPLE OF POINTS I WAS INTENDING TO SPEAK ON FORTUNATELY HAS BEEN ADDRESSED. ABOUT MR. PEDLEY'S CLOSING COMMENTS, WHICH WERE SYMPATHETIC TO THOSE WHO HAD COAL ON THEIR PROPERTY AND THE FACT THAT THEY WOULD BE PAYING A COAL TAX. I FELT AS SOMEONE OUT IN THE AUDIENCE THAT WE HAD NO RECOURSE TO COMMENT AT THAT POINT BECAUSE OF HIS POSITION OF AUTHORITY. THIS IS AT THE POINT OF CONCLUSION WHERE HE WAS GIVING HIS STATEMENT. I'M GLAD FOR THE COMMENTS THAT CAME UP THAT POINTED OUT THAT MAY NOT HAVE BEEN APPROPRIATE. I REALLY DON'T KNOW. MY FEELINGS, THE WAY I WAS LOOKING AT IT, IS THAT FOR HIM THE FINDINGS OF FACT WAS NOT THE SAME ORDER, THE WAY WE WERE ALL PRESENTING OUR EVIDENCE. I WASN'T SURE THAT IT WAS RIGHT OR NOT. GLAD THAT WAS BROUGHT UP. I ALSO WANTED TO TALK ABOUT THE DOCUMENTS THAT WERE PRESENTED. MR. MATTINGLY, YOU MENTIONED ONE THAT WASN'T APPROPRIATE TO BE PRESENTED IN THAT SETTING, BUT THERE WERE MANY DOCUMENTS THAT I SAW COME TO THE BOARD. THEY WERE NOT LOOKED AT. THEY WEREN'T PROCESSED, ANALYZING THEM BEFORE MAKING DECISIONS. THEY VOTED DIRECTLY AFTER RECEIVING THIS INFORMATION. SO I WONDER IF THIS INFORMATION WAS EVEN EVALUATED. IT SOUNDS -- I WONDER IF ALL THE DOCUMENTS WILL BE EVALUATED BY THIS BOARD HERE.

JUDGE MATTINGLY: TO ANSWER THAT I WOULD SAY, YES, BECAUSE EACH AND EVERY ONE OF US HAVE READ EVERY PIECE OF LITERATURE THAT WAS PRESENTED.

MS. SCOTT: EVEN THAT WHICH WAS NOT AUDITORIALLY PRESENTED?

JUDGE MATTINGLY: YES.

MS. SCOTT: GOOD. THAT'S GOOD. THAT GIVES ME COMFORT KNOWING THAT.

JUDGE MATTINGLY: I WOULD COMMENT THAT THERE WAS ONE BRIEF OR DOCUMENT PRESENTED BY MR. OVERSTREET THAT WE MADE A PART OF THE RECORD. WE HAVE NOT LOOKED AT IT. WE WILL HAVE AN OPPORTUNITY TO LOOK AT IT BETWEEN NOW AND NEXT TIME.

MS. SCOTT: I APPRECIATE THAT. I WANTED TO ADDRESS MY SAFETY. I MAY RECALL THAT YOU AND MR. CASTLEN CAME OUT TO OUR PROPERTY. I REALLY APPRECIATE THE SHOW OF INTEREST. I WAS ON THE PHONE TO MR. CASTLEN THAT SAME MORNING IN TEARS. I WAS VERY CONCERNED THAT EVERYTHING I OWN COULD BE RUINED THROUGH THE BLAST AND WHAT AFFECTS THEY HAVE ON MY HOME. I HAVE A UNIQUE -- WELL, MAYBE NOT UNIQUE. WELL, UNIQUE SITUATION. I'VE GOT THREE ITEMS THAT ARE SAFETY ISSUES THAT CONCERN ME AND MY HOUSEHOLD AS FAR AS THE STRUCTURES ON OUR PROPERTY. ONE IS WE HAVE A BASEMENT, A GARAGE BASEMENT. THIS BASEMENT, IT'S OUR SHELTER BUT IT'S ALSO MY HUSBAND'S WORKSHOP. WE HAVE ON TOP OF THIS BASEMENT IS A TRUCK, TRUCK AND ALL OF OUR EQUIPMENT. SO IT'S CONCRETE SLAB OVER A BASEMENT AND THAT'S WHERE WE WORK. OUR CONCERN IS WHEN WE HAD THIS ENGINEER TO DETERMINE THE TYPE OF STRUCTURING OF IT, HE DID NOT, AN ENGINEER DID NOT FACTOR IN THAT WE WOULD BE BLASTED. SO WE WORRY ABOUT OUR SAFETY. IF WE WERE TO BE DONE IN THERE, TO BE ABLE TO USE OUR OWN BASEMENT, THAT IT MIGHT COLLAPSE, THE TRUCK THAT SITS OVER US MIGHT COLLAPSE AND KILL US AND OUR KIDS. THERE'S ANOTHER THING AND THAT IS THAT OUR HOME HAD A WELL UNDER IT BEFORE WE BUILT UPON IT. WE TALKED TO AN ENGINEER. WE GOT THE INFORMATION THAT OUR BUILDERS NEEDED TO BE ABLE TO SECURE THIS WELL. WE DID WHAT HE, OUR BUILDERS DID WHAT HE HAD ADVISED SO THAT WE COULD SECURE IT. THE ISSUE IS THERE IS WATER WAYS UNDER OUR HOME. OUR CONCERN IS THAT WITH BLASTING THAT THAT CAN BE BREACHED AND COLLAPSE OF PROPERTY UNDER OUR HOME. SO IT'S ONE MORE SAFETY ISSUE THAT WE'RE QUITE CONCERNED WITH. THIRD IS WE HAVE A FOUR ACRE LAKE. THIS LAKE, IF IT WAS BREACHED, COULD WIPE OUR NEIGHBORS BELOW US, THE SUDDEN GUSH OF WATER. WHEN WE BUILT THAT LAKE, WE WEREN'T ANTICIPATING THAT THERE WOULD BE BLASTING. THIS IS A PUBLIC SAFETY ISSUE. I HOPE THAT YOU ALL CONSIDER OUR LIVES AND SAFETY IN THIS AND I APPRECIATE YOUR CONCERN THAT YOU'VE COME OUT AND LOOK AT OUR PROPERTY. I HOPE YOU'LL CONSIDER

OUR LIVES AND ALL THAT WE OWN. IT'S ALL WE OWN. OUR RETIREMENT. THE VALUE OF THAT PROPERTY IS LOST AND WE DON'T HAVE ANYTHING.

JUDGE MATTINGLY: THANK YOU.

DR. DARRELL: STEVE SCOTT, PLEASE.

MR. SCOTT: I'M GOING TO SURRENDER MY TIME TO

MR. OVERSTREET.

DR. DARRELL: THANK YOU. MR. OVERSTREET, WOULD YOU LIKE TO SPEAK NOW?

MR. OVERSTREET: IF IT'S OKAY, IF I COULD DEFER AND GO AT THE END, PLEASE?

DR. DARRELL: SURE. THAT'S OKAY. THAT'S FINE. T.A. SCOTT.

MR. SCOTT: MY NAME IS T.A. SCOTT. I LIVE AT 2808 HIGHWAY 140 EAST. FIRST OFF LET ME SAY, MR. MATTINGLY AND THE REST OF YOU, I APPRECIATE YOUR ATTENTION TO WHAT'S TAKING PLACE BEFORE US. THE FACT THAT YOU CAN COME UP HERE AND REFERENCE THINGS THAT HAS BEEN SAID AT PAST MEETINGS AND KNOW WHO SAID THEM. THAT IMPRESSES ME GREATLY. I THANK YOU FOR THAT. I DO ALSO APPRECIATE THAT YOU'RE GOING TO WAIT AND NOT VOTE TONIGHT. NOTHING AGAINST THE PLANNING & ZONING COMMITTEE. AS SOME OTHERS HAVE SAID, I DIDN'T THINK IT WAS APPROPRIATE SOME OF THE THINGS SAID AT THAT MEETING BY CERTAIN MEMBERS OF THAT PANEL. THEY WERE ALSO PRESENTED WITH INFORMATION BOTH VERBALLY AND IN WRITTEN STATEMENTS THAT PROBABLY SHOULD HAVE HAD SOME TIME TO BE STUDIED ON AND LOOKED AT. THAT'S ALL WATER UNDER THE BRIDGE. IT'S ALREADY DONE. COUPLE OF THINGS I WOULD LIKE ASK ABOUT, AND I DON'T KNOW IF THIS COMMITTEE HAS THE ABILITY TO DO ANY OF THESE, BUT I'M GOING TO PUT THEM OUT THERE ANYWAY. IN THE ORIGINAL REQUEST, IT WAS GOING TO BE 300 FEET FROM A DWELLING OR 300 FEET FROM A STRUCTURE. THAT GOT CHANGED TO 500 FEET. THE LODGE OUT HERE, THE GIRL SCOUT CAMP IT GETS 2000 FEET. WE ASKED THE QUESTION BEFORE: WHY DOES IT GET 2000 FEET AND THESE OTHERS ONLY GET 300? WELL, WE'RE TOLD IT'S A LARGE STRUCTURE AND A LOT OF CONCRETE. I DON'T KNOW DR. HUXOL AND I DON'T KNOW DR. EGGERS. I'VE NEVER BEEN IN THEIR HOUSES, BUT I'M PRETTY SURE THEY BOTH FEEL LIKE THAT'S A DESCRIPTION OF THEIR HOUSES TOO. I FEEL LIKE ANY STRUCTURE OUT THERE THAT HAS A CONCRETE BASEMENT PROBABLY IS DESERVING OF THE SAME CONSIDERATION. IF YOU DON'T WANT TO GET 2000 FEET OF THE LOT, DON'T GET WITHIN 2000 FEET OF MY STRUCTURE. ONE POINT ON THAT. EARLIER TONIGHT, MR. MATTINGLY, YOU SAID IT WAS 500 FEET FROM AN OCCUPIED BUILDING. I BELIEVE MR. HOWARD SAID 500 FEET FROM A BUILDING. I'M INTERESTED TO KNOW WHICH ONE IT IS SPECIFIED WHETHER A BUILDING IS OCCUPIED OR NOT?

JUDGE MATTINGLY: I BELIEVE IT'S OCCUPIED OR IS AS WITH ANY RESIDENCE, WHICH TO ME IMPLIES SOMEONE LIVING THERE. I MAY BE WRONG.

MR. PORTER: THE CONDITION NUMBER 1 IS THERE'S A 500 FOOT MINING BUFFER ESTABLISHED FROM ALL OCCUPIED STRUCTURES UNLESS A WAIVER IS GRANTED BY THE PROPERTY OWNER.

MR. SCOTT: THERE WAS DISCUSSION TONIGHT ABOUT WHERE THE TRUCKS WILL BE CROSSING THE ROAD, COMING OUT ON THE ROAD. I DO NOT KNOW FOR CERTAIN, BUT I WOULD LIKE SOMEONE TO LOOK INTO WHETHER OR NOT TRANSPORTATION CAN DENY THEM ACCESS TO A HIGHWAY? I KNOW PREVIOUSLY MYSELF, A PIECE OF PROPERTY WE OWN, I CONTACTED THE STATE HIGHWAY DEPARTMENT BECAUSE OUR PROPERTY IS ADJACENT TO THE HIGHWAY. IT'S NOT GOING TO BE A SAFE LOCATION FOR OUR DRIVEWAY TO COME OUT. I QUESTIONED THEM ABOUT THAT. THEY INFORMED ME THAT IF ZONING & PLANNING HAD APPROVED THAT AS A PIECE OF RIGHT-OF-WAY, THEN THEY COULD NOT DENY ACCESS TO THAT HIGHWAY. SO I DON'T KNOW IF THEY HAVE THE ABILITY TO DENY

ACCESS TO THAT ROADWAY. I WILL LEAVE THAT UP TO SOMEONE ELSE TO FIND OUT. I THINK THE THING TO REMEMBER HERE, THIS IS NOT ABOUT THE QUALITY OF THE MINING. IT'S NOT ABOUT THE QUALITY OF THE COMPANY DOING THE MINING OR THE COAL COMING OUT OF THE GROUND OR ANY OF THE REST OF THAT. FOR MOST OF US HERE THIS QUESTION IS ABOUT THE QUALITY OF LIFE. THE LIFE WE ESTABLISHED. THE LIFE WE THOUGHT WE HAD BOUGHT AND PAID FOR. WHERE WE ARE. WE REALLY DIDN'T HAVE ANY REASON TO THINK THAT WOULD BE CHANGED. IN REFERENCE TO THOSE THINGS A COUPLE OF THINGS THAT I HAD ASKED ABOUT BEFORE. THIS IDEA OF A 22-HOUR WORK SCHEDULE. WE WOULDN'T ALLOW CONSTRUCTION GOING ON AT THE NEW HOSPITAL 22-HOURS A DAY. IT WAS CAUSING NOISE AND INTERRUPTION TO HOUSES AROUND THERE. I'M TOLD WE'RE GOING TO ALLOW THE SCHEDULED FROM 6 A.M. TO 4 A.M. WHILE THERE WON'T BE ANY BLASTING AFTER SUNDOWN, THERE WILL BE BULLDOZERS RUNS. I QUESTION THAT. HOW WE ALLOW THAT? I DO REALIZE DURING FARMING SEASON FROM TIME TO TIME SOMEBODY HAS TO FARM LATE. YOU KNOW, THAT'S A COUPLE OF WEEKS OUT OF YEAR. IT'S NOT ALL YEAR LONG. IT'S NOT FOR THE NEXT TEN YEARS. I THINK MAYBE THAT'S SOMETHING THAT YOU ALL NEED TO LOOK AT IS THIS 22-HOUR SCHEDULE.

MR. MATTINGLY, I THINK THIS IS NOT INTENTIONAL ON YOUR PART, BUT EARLIER TONIGHT YOU MADE THE STATEMENT THAT PEOPLE ARE GOING TO BE MAD AT THE POSITION WE'RE GOING TO TAKE. NOW, I THINK WHAT YOU MEAN IS NO MATTER WHAT DECISION THIS ENTITY TAKES, EVERYBODY IS NOT GOING TO BE HAPPY, AND I AGREE WITH YOU. IT'S PROBABLY GOING TO GO TO CIRCUIT COURT. I DO KNOW THERE WILL BE APPEALS. I JUST WANT TO MAKE SURE THAT WE ALL UNDERSTAND THAT THAT WAS NO WAY AN INDICATION THAT THERE'S A FOREGONE CONCLUSION HERE.

JUDGE MATTINGLY: THAT IS ABSOLUTELY CORRECT. I MIGHT GO BACK TO THE COURT REPORTER AND ASK HER IF THAT'S EXACTLY WHAT I SAID.

MR. SCOTT: MY LAST POINT THAT I WOULD MAKE, THAT I THINK YOU ALL HAVE SEEN HERE TONIGHT. I WASN'T AT THE MEETING ABOUT THE COMPREHENSIVE PLAN, BUT I'VE TRIED TO MAKE EVERY ONE OF THESE MEETINGS AND HEARINGS AND SO FORTH. I FEEL LIKE AT TIMES I HAVE ASKED QUESTIONS, OTHERS HAVE ASKED QUESTION, AND WE DIDN'T GET THOSE QUESTIONS ANSWERED. WE GOT OTHER QUESTIONS ANSWERED. WE GOT TOLD THIS COULDN'T HAPPEN BECAUSE IT CAN'T HAPPEN. WELL, THAT CAN'T HAPPEN BECAUSE WE'RE NOT ALLOWED TO LET IT HAPPEN. WELL, IT'S HAPPENED IN THE PAST, BUT WE'RE NOT ALLOWED TO LET IT HAPPEN SO IT CAN'T HAPPEN. I THINK YOU'VE SEEN THAT HERE TONIGHT. THAT CONCERNS ME. IN CLOSING WHAT I'LL SAY ABOUT THAT IS, YOU KNOW, SOME THINGS IN LIFE ARE GIVEN. SOME THINGS IN LIFE HAVE TO BE EARNED. TRUST IS ONE OF THOSE THINGS THAT HAS TO BE EARNED. THE THINGS THAT I'VE SEEN AND THINGS THAT I'VE HEARD, MY TRUST HAS NOT BEEN EARNED HERE YET. I'M HOPING YOU ALL CAN ADDRESS THOSE. THANK YOU, GENTLEMEN.

JUDGE MATTINGLY: THANK YOU.

DR. DARRELL: CURTIS WHISTLE, PLEASE.

MR. WHISTLE: I GIVE MY TIME TO MR. OVERSTREET.

DR. DARRELL: JUDGE, ARE WE ALLOWED TO GIVE, LIKE DOUBLE TIME TO ONE PERSON WHEN THE OTHERS ARE --

JUDGE MATTINGLY: I WILL ALLOW IT TO A CERTAIN POINT. I'M NOT GOING TO GIVE HIM 30 MINUTES OR 40 MINUTES, BUT I'LL GIVE HIM SOME -- HE HAS A PRESENTATION I BELIEVE, MR. OVERSTREET, THAT IS PROBABLY GOING TO TAKE MORE THAN FIVE MINUTES.

MR. OVERSTREET: YES, SIR.

JUDGE MATTINGLY: HE HAS PROMISED TO MOVE THROUGH IT RATHER QUICKLY WHERE THERE ARE ISSUES THAT WERE NOT PART OF THE RECORD. WE WANT TO BE AS ACCOMMODATING AS WE CAN BE.

DR. DARRELL: THANK YOU. BRIAN HAYNES.

JUDGE MATTINGLY: HE IS WITH THE APPLICANT. THEY WILL HAVE AN OPPORTUNITY TO PLEAD THEIR CASE.

DR. DARRELL: JAMES MATTINGLY.

JUDGE MATTINGLY: DID MR. MATTINGLY TELL YOU WHAT HE WANTED TO TALK ABOUT?

DR. DARRELL: NO.

JUDGE MATTINGLY: COME AHEAD.

MR. MATTINGLY: JAMES MATTINGLY, 11881 HIGHWAY 144, PHILPOT.

JUDGE MATTINGLY: WHAT IS IT THAT YOU WANT TO TALK ABOUT, MR. MATTINGLY?

MR. MATTINGLY: I JUST WANTED TO MAKE A CLARIFICATION OF SOME STATEMENTS I MADE AT THE METROPOLITAN PLANNING COMMISSION MEETING.

JUDGE MATTINGLY: ARE YOU WANTING TO CHANGE YOUR TESTIMONY?

MR. MATTINGLY: WELL, I'M JUST TRYING TO IMPROVE IT ACTUALLY.

JUDGE MATTINGLY: OKAY.

MR. MATTINGLY: AT THE TIME I WAS THINKING THAT THE LEGAL, ABOUT THE COAL TRUCK WEIGHTS BEING AROUND, I THOUGHT THEY WERE AROUND 60 TO 65 TON. SINCE THEN I FOUND OUT THAT IN 1986, KENTUCKY COAL INDUSTRY -- LEGAL EXEMPTION THAT ALL OTHER TRUCKS, THE TYPE HAULING TRUCKS, THEIR LIMIT IS 40 TONS. SO THESE COAL TRUCKS ARE ALLOWED TO HAUL 23 EXTRA TONS. COMMON SENSE TELLS US THAT THAT INCREASES THE STOPPING DISTANCE AND THE DRIVER'S ABILITY TO AVOID AN ACCIDENT. PUTS MOTORISTS AT RISK. ALSO REAR ENDING SLOW MOVING -- COAL TRUCKS, WHICH I HAD TALKED ABOUT WHEN I SPOKE AT THAT PLANNING COMMISSION MEETING. ALSO, AS WE KNOW THESE TRUCKS PRODUCE EXCESSIVE DAMAGE TO ROADS AND BRIDGES AND GREATLY INCREASES THE COST OF THE TAX PAYERS. DAVIESS COUNTY I HAS PAID, I THINK, EXTRA TO HAVE OUR HIGHWAYS REPAIRS. THAT'S ALL I HAVE.

JUDGE MATTINGLY: THANK YOU.

DR. DARRELL: I THINK YOU SAID THAT MR. GOODALL CAME IN.

JUDGE MATTINGLY: YES, MR. GOODALL DID COME IN AND I SAID I KNOW THAT HE WOULD HAVE SIGNED UP. HE WAS LATE OR DELAYED DOING OTHER THINGS. I'LL GIVE HIM SOME LEEWAY.

MR. GOODALL: MY NAME IS JAMES GOODALL. I LIVE ON REDHILL MAXWELL ROAD, HIGHWAY 140. I THINK THE QUESTION TONIGHT WE'RE TRYING TO ADDRESS, DID WE GET A FAIR HEARING AT THE LAST BOARD MEETING? I ATTENDED BOTH MEETINGS. BOTH OF THEM WERE REAL LONG. LOT OF TESTIMONY TO AND FROM. FIRST MEETING WAS INTERESTED. EVERYBODY WAS PAYING ATTENTION. EVERYBODY WAS LISTENING TO WHAT WAS BEING SAID. WE GOT UP 1:00 IN THE MORNING. TIRED AND WORN OUT. VOTE WAS FIVE TO FIVE. THE SECOND MEETING I WENT TO, I KNOW IT'S VERY INTERESTING THERE WERE SEVEN MEMBERS OF THE BOARD THAT WERE PRESENT. DURING THE HEARING IT WAS VERY INTERESTING THAT SOME OF THE BOARD MEMBERS WEREN'T PAYING ANY ATTENTION. THEY



WERE DOING OTHER THINGS. I THINK IF YOU LOOK AT THE VIDEO YOU MIGHT SEE THAT. I'M NOT SURE. I WAS CONCERNED -- YOU'VE GOT TO WATCH THE PEOPLE. HOW THEIR BODY LANGUAGE. HOW THEIR EYES ARE. I TALK TO A PERSON I LIKE THEM TO LOOK ME IN THE EYE. YOU CAN TELL IF THEY'RE TELLING THE TRUTH OR IF HE'S LYING. I HAD TALKED TO MR. MATTINGLY OUT IN THE PARKING LOT. HE LOOKED ME RIGHT IN THE EYE AND TOLD ME WHAT HE THOUGHT. I APPRECIATE IT. I RESPECT THAT. I RESPECT ANY POLITICIAN, ANY PERSON SERVE THEIR COUNTRY, ELECTED OR NOT, TO DO THAT. SOMETIMES WE DON'T GET THAT. I NOTICED DURING THAT LAST MEETING WHILE THESE PEOPLE UP HERE, REDHILL, PLEASANT RIDGE, MAKING THEIR TESTIMONY TO THE BOARD MEMBERS ABOUT WHY THEY SHOULDN'T DO THE STRIP MINING. I NOTICED MR. NOFFSINGER AND MR. SILVERT TALKING. WEREN'T PAYING ATTENTION TO WHAT WAS BEING SAID. THEY WEREN'T PAYING ATTENTION. THEY SHOULD PAY ATTENTION. I NOTICED LATER ABOUT 11:30 AT NIGHT, HERE I WAS TIRED AND WORE OUT, STRUNG OUT. GOING THROUGH ALL THIS STUFF THE SECOND TIME. BELIEVE ME, THIS IS DRAGGING ON, HAVE TO GO THROUGH THIS. WE HAVE LIVES. WE'VE GOT KIDS. YOU TAKE CARE OF THOSE THINGS. I'M NOT THROWING NO PUNCHES. MR. WALLY TAYLOR AND MR. REEVES STOOD UP ABOUT 11:30 AND MR. WALLY TAYLOR TALKED TO US ABOUT WHY HE'S GOING TO MAKE HIS DECISION. HE DIDN'T TALK TO US. HE TALKED DOWN TO US. HE WAS SPEAKING THE TRUTH. BACK ME UP ON THAT. THAT WAS DISRESPECT AS FAR AS I'M CONCERNED. MR. TAYLOR ALSO STATED IN THE PAST AND MEMBERS OF HIS FAMILY HAD TIES TO THE COAL MINE. MR. REEVES COMMENTS TO SAME STATEMENT TOO.

JUDGE MATTINGLY: LET ME STOP YOU FOR JUST A SECOND. I BELIEVE YOU HAVE MADE A MISTAKE ON THE NAMES. I DOUBT WHAT YOU'RE TESTIFYING TO, BUT I DON'T BELIEVE MR. TAYLOR MADE THOSE STATEMENTS. I BELIEVE MAYBE YOU'RE REFERRING TO MR. PEDLEY. IS THAT CORRECT?

MR. NOFFSINGER: YES.

MR. GOODALL: CORRECT ME ON THAT. IT WAS VERY DEMEANING TO HAVE THAT POSITION. YOU HAVE A CONFLICT OF INTEREST THE WAY I LOOK AT IT. I NOTICED THAT HE DIDN'T PAY MUCH ATTENTION. HE DIDN'T ASK QUESTIONS. VOTE WAS FIVE TO FOUR. THAT'S STILL A VERY CLOSE MARGIN, FIVE TO FOUR. HAD THE OTHER GUY BEEN THERE, PROBABLY FIVE TO FIVE AGAIN, AND WE'D STILL BE DRAGGING THIS THING OUT. WHEN YOU GENTLEMEN LOOK AT THIS THING, I HOPE YOU HAVE COMMON SENSE AND LOOK AT THE FACTS. WE'RE THE PEOPLE IS WHAT COUNTS. NOT THE STRIP MINING AND ALL THAT. WE THE PEOPLE. WE MAKE THIS COUNTRY. IT'S US WHO TOOK THAT PROPERTY AND MADE SOMETHING OUT OF IT. I'VE GOT TEN KIDS AND SIX GREAT-GRANDKIDS TO GOING ON THE SCHOOL BUS ON THAT ROAD WITH 10-TON COAL TRUCKS EVERY DAY. I UNDERSTAND, I ASKED THE STAFF OVER THERE ABOUT RISK ASSESSMENT WHAT THOSE COAL TRUCK MIGHT DO OVER A PERIOD OF TEN YEARS TO THOSE SCHOOL BUSES. THEY DON'T DO THAT. THAT'S NOT PART OF THEIR AGENDA. I THINK WHEN YOU LOOK AT ANY POSITION YOU NEED TO LOOK AT BOTH SIDES. THE PLUS SIDE AND THE NEGATIVE SIDE, AND YOU MAKE A JUDGMENT ON WAY THE FACTS GO JUST LIKE YOU DO IN YOUR BUSINESS. YOU MAKE A RISK ASSESSMENT. IS THIS POSSIBLE? IS THIS SAFE? IS THIS DANGEROUS? IS THIS GOING TO CAUSE A LONG-TERM PROBLEM? THAT'S WHAT YOU'VE GOT TO DO. THANK YOU.

JUDGE MATTINGLY: THANK YOU.

DR. DARRELL: IS THERE ANYONE WHO HAD SIGNED THE SHEET WHO HAS NOT BEEN GIVEN --

JUDGE MATTINGLY: DR. HUXOL.

DR. DARRELL: DR. HUXOL, YES.

DR. HUXOL: MY NAME IS ROBERT HUXOL. I LIVE AT 3525 GIRL SCOUT ROAD. I CAME OVER HERE FROM THE HOSPITAL TONIGHT AND ON THE WAY OVER I SORT OF STARTED, DECIDE WHETHER I SHOULD CHANGE MY CLOTHS REAL QUICK AND PUT ON CIVIES AND I THOUGHT, NO, I'M NOT GOING TO. THE REASON WHY I'M NOT IS BECAUSE I'M SITTING HERE, I THINK

THE ONLY WHITE COAT IN THE ROOM, TO SORT OF TRY TO BRING HOME WHICH IS CENTRAL POINT. THAT'S REALLY WHY I'M UP HERE. THAT'S THE FACT THAT WHAT'S BEING DISCUSSED HERE HAS A DEFINITIVE RELATIONSHIP TO THE PUBLIC HEALTH. IT IS THE VERY, VERY REAL FACTUAL ISSUE. I'M NOT TALKING ABOUT SOMETHING IN A HYPOTHETICAL. I'M NOT TALKING ABOUT A MAYBE, CAN BE. I'M TALKING ABOUT WHAT HAS BEEN FIRMLY ESTABLISHED. YES, MY BUSINESS, AS MR. MATTINGLY SAID, IS AN ART AND A SCIENCE, AS THESE GENTLEMEN'S BUSINESS ALSO IS AN ART AND A SCIENCE. IF YOU SEE ME IN THE ER AND I DO SOMETHING AND YOU ASK ME ABOUT MY SCIENCE, I TEND TO LITERALLY CARPET THE FLOOR OF THIS CHAMBER WITH FACTUAL DATA THAT BACKS UP EVERYTHING I HAVE DONE, THAT I AM PLANNING TO DO, AND THAT HAS BEEN PART OF MY PROGRAM. I'M AMAZED WHEN I SIT HERE AND I LISTEN TO SOME OF THESE GENTLEMEN TALK ABOUT POTENTIAL HEALTH HAZARDS. THAT WHICH WE CAN'T SEE APPARENTLY DOES NOT BOTHER THEM.

JUDGE MATTINGLY: DOCTOR, I'M SORRY. YOU'RE CLOSE TO THE MIKE A LITTLE. WE'RE GETTING FEEDBACK.

DR. HUXOL: SORRY ABOUT THAT. I THINK IT'S VERY, VERY IMPORTANT THAT NOT JUST FOR THIS SIDE OF THE ROOM, BUT FOR THIS SIDE OF THE ROOM THAT YOU UNDERSTAND AND REALIZE THE REAL POTENTIAL, DETRIMENT TO YOUR HEALTH THAT ENSUES WITH STRIP MINING IN CLOSE PROXIMITY TO YOUR HOME AND WHERE YOUR FAMILY IS, YOUR CHILDREN, YOUR GRANDCHILDREN. I MEAN IT'S A FACT. CALL THE CENTER FOR DISEASE CONTROL. LOOK THEM UP ON GOOGLE. YOU ARE GOING TO FIND THAT THERE'S A 70 PERCENT INCREASE IN PULMONARY PROBLEMS IN PROXIMITY TO COAL SITES. THERE'S A 65 PERCENT INCREASE, THAT'S A BASELINE, INCREASE IN RENAL VASCULAR DISEASE. CARDIOVASCULAR PROBLEMS GOES TO 70 PERCENT. THERE'S NOT A MAN OR A WOMAN AMONGST US THAT CAN REALLY AFFORD TO NOT PAY ATTENTION TO THOSE ODDS. BUT YET AS A CITIZEN, AS I SIT HERE AND I LISTEN TO THESE MEN AND LADIES FROM THE PODIUM, IT DOESN'T SEEM LIKE THEY REALLY CARE ABOUT THAT. WHEN THEY TALK ABOUT HEALTH ISSUES, THEY TALK ABOUT THINGS THEY CAN'T SEE AND THINGS THEY CAN SEE. THESE ARE FACTS. THEY'RE NOT HYPOTHETICALS. I DIDN'T MAKE THEM UP. I DIDN'T DREAM THEM UP. I HAVE NOT VESTED INTEREST OTHER THAN YOUR HEALTH. THAT'S WHY I'M HERE. I'M NOT HERE ABOUT THAT ROOM OR THIS ROOM. I'M HERE ABOUT US ALL. I THINK THESE GENTLEMEN NEED TO SERIOUSLY CONSIDER THAT IN YOUR DELIBERATION. WHAT WE DO HERE IS GOING TO HAVE DEFINITIVE AFFECT ON THE HEALTH AND WELL-BEING OF THE CITIZENS OF DAVIESS COUNTY. THERE'S A HUGE MULTI-MILLION DOLLAR HOSPITAL THAT WE'VE ALL SEEN THAT'S BEING CONSTRUCTED AT THE END OF THE BYPASS. THINK ABOUT THAT FOR A QUICK MINUTE AS A RECTANGULAR FOOTPRINT. ON TWO SIDES OF THAT HAVE, TO THE BEST OF MY KNOWLEDGE, THESE COAL TRUCKS ARE GOING TO BE TRAVELING ON THEIR DAILY RIGHT SOUTH BANK TO DEPOSIT THEIR COAL. WHAT COMES OUT OF THOSE? IT'S NOT GOOD ENOUGH FOR ME TO HAVE A GENTLEMAN TELL ME THAT HE THINKS IT'S GOING TO BE OKAY. I'VE GOT DUST THAT SOMEHOW KNOWS IT'S CONTAINED AND I'VE GOT OTHER DUST THAT SOMEHOW KNOWS IT'S NOT CONTAINED. I DEAL WITH PULMONARY DISEASES EVERY DAY OF MY PRACTICE. CARDIOVASCULAR DISEASE THE SAME. YOU CAN'T AFFORD TO TAKE ON NECESSARY RISKS. YOU CAN'T INTENTIONALLY BRING THAT INTO YOUR LIFE WITHOUT SERIOUSLY CONTEMPLATING THE DAMAGE YOU ARE DOING. NOT JUST TO YOURSELF, BUT TO YOUR NEIGHBORS AND YOUR CHILDREN AND YOUR CHILDREN'S CHILDREN. BEING A PHYSICIAN IN OWENSBORO, KENTUCKY IS AN INTERESTING PHENOMENA. I CAN TELL YOU PART OF THAT INTEREST IS THE FACT THAT IF YOU WANT TO HIRE ANOTHER PHYSICIAN IN OWENSBORO, KENTUCKY, THAT'S NOT A VERY EASY JOB. MY OWN GROUP THAT I JOINED SOME 15 YEARS AGO, WE HAD TO LITERALLY DRIVE TO CALIFORNIA TO FIND A GROUP CALLED HEALTH CALIFORNIA EMERGENCY PHYSICIANS THAT WE THEN JOINED OR BECAME PART OF A MAJOR ORGANIZED EMERGENCY ROOM FOUNDATION AND GROUP. THE PURPOSE BEING THEY HAD THE FACILITY, THEY HAD THE CONTACTS TO BRING MEN AND WOMEN INTO OWENSBORO TO HELP US PROVIDE EMERGENCY CARE IN OUR HOSPITAL. NOBODY AMONGST US WANTS TO GO THERE AND HAVE ANYBODY OTHER THAN THE BEST OF THE BEST CARE FOR THEM, CARE FOR THEIR LOVED ONES, CARE FOR THEIR CHILDREN. I WORK NOW WITH PEOPLE THAT FLY IN FROM PENNSYLVANIA. THEY FLY IN FROM CALIFORNIA. THEY FLY IN FROM NEW YORK. THEY FLY IN FROM FLORIDA. ALL AROUND. SO WHEN I GET A MAN OR A LADY WHO REALLY

LOVES THIS COMMUNITY LIKE WE DO, I SNAG AHOLD OF THEM AND I HOPE THEY'RE GOING TO STAY HERE AND PRACTICE WITH ME. WHEN WE ARE TALKING SERIOUSLY ABOUT DISRUPTING THIS COMMUNITY WITH COAL, WITH ITS POLLUTANTS; AGAIN, DON'T FORGET THOSE CARDIOVASCULAR. DON'T FORGET THE PULMONARY. DON'T THE RENAL VASCULAR DISEASES. THAT'S NOT AN AREA THAT LOOKS REALLY ATTRACTIVE TO A PHYSICIAN. NOT AT ALL. IT'S REALLY HARD TO HAVE A MAN OR A LADY OVERLOOK THAT. THAT'S NOT GOING TO MAKE BRINGING PHYSICIANS INTO THIS AREA AN EASY THING TO DO. QUITE THE CONTRARY. THERE'S DEFINITIVE DAMAGE THAT'S BEEN WELL DOCUMENTED. I'M NOT GOING TO TALK ABOUT THAT. IT'S REALLY NOT DISCREET. IT'S THE LIFE AND THE WELL-BEING OF THE PEOPLE THAT ARE IN THIS ROOM AND IN DAVIESS COUNTY. THAT'S WHERE WE NEED TO FOCUS OUR ATTENTION. THAT'S WHERE WE NEED TO FOCUS OUR PRIORITIES. YOU'VE GOT THE FOLKS YOU LOVE AND YOU'VE GOT YOUR HEALTH. WITHOUT BOTH OF THOSE TOGETHER, A LOT OF US DON'T GO TO BED VERY HAPPY AT NIGHT. WHEN WE'RE SITTING HERE SERIOUSLY CONTEMPLATING ALLOWING AN INDUSTRY TO COME INTO AN AREA AND INVADE IT WITH AREAS OF HEALTH, SPECIFIC DETRIMENT, IT JUST DOESN'T MAKE SENSE FOR SMART MEN AND WOMEN. MR. MATTINGLY NAILED IT. HE STARTED THIS MEETING OUT TONIGHT SAYING WE WERE HERE BECAUSE IT WAS VERY, VERY, VERY IMPORTANT. YOU CAN'T GET ANY MORE IMPORTANT THAN THIS. A GENTLEMAN EARLIER SAID, THIS IS SOMETHING THAT'S GOING TO HAVE CONSEQUENCES FOR YEARS AND YEARS TO COME. LET'S THINK AND BE CONCERNED ABOUT OUR HEALTH AND WELL-BEING AND LET'S PUT THAT AS JOB ONE AND PRIORITY ONE, AND LET'S STAY FOCUSED ON THAT. I WOULD ASK US ALL HERE WHEN YOU REDELIBERATE, WHEN YOU LOOK AT THESE FINDINGS, WHEN YOU GO OVER THE FACTS, DON'T LOSE SITE OF THOSE IMPORTANT GOALS BECAUSE THEY MEAN EVER SO MUCH TO EACH AND EVERY ONE OF US IN THIS ROOM. THANK YOU.

JUDGE MATTINGLY: THANK YOU, DOCTOR.

DR. DARRELL: MR. OVERSTREET.

MR. OVERSTREET: IF I COULD HAVE FIVE MINUTES TO GET SET UP, PLEASE?

JUDGE MATTINGLY: YES. LET'S GO OFF THE RECORD.

- - - - (OFF THE RECORD) - - - -

JUDGE MATTINGLY: WE'RE BACK ON RECORD. MR. OVERSTREET, ONCE YOU'VE FINISHED, THEN WHAT I WILL ASK DR. DARRELL IS WE WILL HAVE THE APPLICANT, WHOEVER THEY HAVE, TO COME UP AND MAKE A STATEMENT. THEN WHAT WE WILL DO IS WE WILL TAKE THIS ALL UNDER ADVISEMENT. WE WILL MEET BACK HERE AGAIN IN TWO WEEKS FROM TONIGHT ON THE 2ND OF AUGUST AT 5:00 P.M. WE WILL HAVE OUR REGULAR MEETING. DURING THE REGULAR MEETING, WE WILL HAVE A SECOND READING OF THE ORDINANCE. IT WILL EITHER RECEIVE A MOTION AND A SECOND. IT MAY DIE FOR A LACK OF A MOTION AND SECOND. DON'T KNOW WHERE IT WILL GO. WE WILL HAVE COMMENTS FROM THE COMMISSION. I WOULD SUGGEST THAT ANYBODY THAT TESTIFIED TONIGHT BE HERE BECAUSE WE WILL ASK, PROBABLY HAVE MORE QUESTIONS TO ASK OF THOSE WHO NOT TESTIFIED, BUT THOSE WHO PRESENTED INFORMATION. WE MIGHT WANT CLARIFICATION.

MR. CASTLEN: ARE WE NOT DOING THAT TONIGHT?

JUDGE MATTINGLY: WE WILL. WE CAN GO AS LONG AS YOU WANT. IT DOESN'T BOTHER ME. I'M IN FOR IT. WE WILL NOT HEAR FROM THE PUBLIC AT THE NEXT MEETING. WE WON'T TAKE TESTIMONY AGAIN. WE WON'T TAKE COMMENTS. WE WON'T TAKE STATEMENTS. WE HAVE ALLOWED EVERYONE THAT WANTED TO SPEAK A CHANCE TONIGHT. WE WILL ALLOW APPLICANTS TO SPEAK. WHAT WE WANT TO DO THE NEXT TIME AROUND WOULD BE TO, I THINK MAYBE TO CLARIFY SOME COMMENTS OR SOME QUESTIONS THAT WE MIGHT HAVE. MR. OVERSTREET, PUT 15 MINUTES ON THE TIMER, DR. DARRELL.

MR. OVERSTREET: THANK YOU, JUDGE. JUST TO START, I HAVE PUT A COMPLETE COPY OF

THE LEGAL BRIEFS, I UNDERSTAND YOUR ALL'S POSITION ON THAT, AND A COPY OF THE EXHIBITS. COMMISSIONER CASTLEN ASKED ME IF WE COULD FORWARD BY E-MAIL THE POWER POINT. I WILL DO THAT TOMORROW, BUT I WILL ALSO GIVE YOU THE THUMB DRIVE TONIGHT.

JUDGE MATTINGLY: DO THAT. WE NEED TO MAKE THAT THUMB DRIVE PROBABLY PART OF OUR COURT RECORDS. WHO IS TAKING CARE OF THAT?

MR. PORTER: RIGHT NOW I HAVE ALL OF THAT, JUDGE.

JUDGE MATTINGLY: WE WANT TO MAKE SURE IT GETS IN THE RECORD. MR. OVERSTREET, I HAVE GIVEN THIS TO THE COUNTY ATTORNEY, MR. PORTER, AND HE'LL MAKE IT A PART OF THE RECORD.

MR. OVERSTREET: THANK YOU, JUDGE. GENTLEMEN, AS YOU KNOW, WE'RE HERE ON A VERY CONTESTED ISSUE. IT'S NOT ABOUT WHO IS RIGHT OR WHO'S WRONG. IT'S ABOUT WHAT'S RIGHT AND WHAT'S WRONG. IT'S ABOUT FAMILIES. IT'S ABOUT THE LIFESTYLE THAT WE WANT, THE LIFESTYLE THAT WE HAVE, AND THE LIFESTYLE THAT WE COULD HAVE. YOU ALL HAVE OBVIOUSLY READ THE RECORD. YOU HAVE OBVIOUSLY MADE A LOT OF NOTES. WE APPRECIATE THAT. YOU HAVE GIVEN IT MORE CONSIDERATION IT APPEARS AT THIS STAGE THAN WE GOT AT THE ORIGINAL. THAT IS PART OF THE BASIS. YOU HAVE THE LEGAL ARGUMENTS IN FRONT OF YOU, BUT I WOULD POINT OUT THAT ABOUT THE LAST HALF OF THAT BRIEF DEALS WITH THE COMPREHENSIVE PLAN, ITS APPLICATION, AND ITS INTERPRETATION. IN THE INSTANT CASE, THE COMPREHENSIVE PLAN HAD THE FINDINGS AND CONCLUSIONS MADE BY THE PLANNING STAFF. IT CONCLUDED THAT THE MAJORITY OF THE HOMES WERE IN THE RURAL LARGE LOT DESIGNATION. IF YOU REVIEW THE PLAN, AND YOU HAVE THE SECTIONS THERE, 430 AND 440, THOSE ARE PRINT OFF THE OMPC WEBSITE. YOU WILL SEE THAT THAT IS THE DESIGNATION THAT ACTUALLY PUTS YOU ON "NOTICE." MR. NOFFSINGER SAID THAT THE COMPREHENSIVE PLAN PUT US ALL ON NOTICE. THAT'S ABSOLUTELY NOT ACCURATE. IF YOU LOOK AT THE DEFINITIONS OF A RURAL RESIDENTIAL FARM USE, IT ABSOLUTELY DOES NOT HAVE CRITERIA THAT RELATES TO MINING IN THE RURAL MAINTENANCE SERVICE AREA. THE RURAL SMALL LOT DOES NOT HAVE A CRITERIA THAT RELATES TO MINING. THE ONLY ONE THAT DOES IS THE ONE THAT THEY ELECTED TO CHOOSE. THE ONLY DEFINITION IS, LARGE LOT NONAGRICULTURAL USE." I WOULD SUBMIT TO THIS COURT THAT THE NONAGRICULTURAL USE HAS ABSOLUTELY NO MEANING IN THIS SITUATION UNDER THE COMPREHENSIVE PLAN. IF YOU LOOK AT THE DEFINITION OF A RURAL RESIDENTIAL FARM USE, IT DOES NOT SAY IN ANY WAY, SHAPE OR FORM THAT THE LAND HAS TO BE IN PRODUCTIVE AGRICULTURAL. IT SAYS THAT IT HAS TO HAVE THE POTENTIAL FOR AGRICULTURAL. I WOULD ALSO NOTE THAT FARM IS NOT DEFINED UNDER THE COMPREHENSIVE PLAN. IT IS DEFINED IN THE STATUTE. THE STATUTE PROVIDES THAT A FARM IS FIVE CONTIGUOUS ACRES WHICH IS USED FOR ANY AGRICULTURAL OR HORTICULTURAL PURPOSE. IT EXTENDS IT TO PLEASURE HORSES, CATTLE, RAISING ANY TYPE OF FARM ANIMAL, PLANTS, FISH. IT'S A VERY, VERY BROAD DEFINITION, AND IT'S FIVE ACRES. THERE WAS ABSOLUTELY NO TESTIMONY THAT ANY CONSIDERATION WAS GIVEN TO THE SIZE OF THE HOMEOWNER LOTS AS THEY CALL THEM. I CALL IT A FARM. THESE FOLKS WOULD CALL IT A FARM. IT HAS THE POTENTIAL TO GROW TIMBER, WHICH IS ALSO AN AGRICULTURAL USE. IT HAS THE POTENTIAL FOR HAY AND PASTURE. THAT WAS DISCOUNTED BY THE PLANNING STAFF. THEY FOCUSED ON THE FACT THAT THERE WAS A FINITE NUMBER OF PRIME AGRICULTURAL LAND. THAT'S NOT THE ONLY DESIGNATION. THE AGRICULTURAL LAND IS OUT THERE. IT EXIST. IT CAN'T BE DENIED. NOW, IN EVALUATING IT, I WOULD SUBMIT TO THIS COURT THAT VERY FEW OF THE GOALS AND OBJECTIVES THAT ARE OUTLINED IN THE 2007 COMPREHENSIVE PLAN WERE ADDRESSED, AND THERE WAS NO INDICATION THEY WERE ACTUALLY CONSIDERED BECAUSE THEY WEREN'T MENTIONED. I WOULD REFERENCE YOU ALL TO THE COMPREHENSIVE PLAN AND VERY BRIEFLY I'LL JUST GO THROUGH THE GOALS AND OBJECTIVES WHICH ARE PERMANENT TO THE CONSIDERATION BEFORE THIS COURT THAT WAS BEFORE OMPC. UNDER THE ECONOMY AND EMPLOYMENT: GOAL: MAINTAIN DAVIESS COUNTY AS A VIABLE ECONOMIC USE. OBJECTIVE: PROMOTE DIVERSITY OF DESIRABLE INDUSTRIAL ACTIVITIES FOR A BROAD AND STABLE ECONOMIC BASE. LAND USE: THE GOAL, ALLOCATE WISELY THE USE OF LAND FOR VARIOUS ACTIVITIES

BY ENCOURAGING SOUND LAND DEVELOPMENT POLICY. OBJECTIVES: USE THE FIXED AMOUNT OF LAND IN DAVIESS COUNTY TO WISELY AND SPARINGLY AS POSSIBLE GROUP ACTIVITIES SO THAT USES OF GREATER INTENSITY, INDUSTRIAL OR COMMERCIAL, DO NOT HARM WEAKER TYPES. RESIDENTIAL AND AGRICULTURAL. I WILL REFER YOU TO SECTIONS 430 AND 440 WHERE COAL MINING IS DESIGNATED "THE MOST INTENSE USE OF LAND." RURAL FARM AND RURAL AGRICULTURAL ARE THE LEAST INTENT. UNDER THE PLAN THAT REQUIRES THE GREATEST BUFFER TO BE UTILIZED. UNDER THE COMPREHENSIVE PLAN, THE GREATEST BUFFER PROVIDES FOR LARGE OPEN AREAS. I WOULD SUBMIT TO YOU ALL THAT 500 FEET IS NOT A LARGE OPEN AREA. GOING BACK TO THE GOALS AND OBJECTIVES. ANOTHER ONE OF THE GOALS UNDER LAND USE IS TO PROTECT OUR RURAL AREAS FROM INTRUSION BY INCOMPATIBLE URBAN ACTIVITIES BY ENCOURAGING GROWTH IN THE URBAN SERVICE AREA AND RURAL COMMUNITY. NOW, OBVIOUSLY THIS ISN'T AN URBAN ACTIVITY, BUT MY POINT BEING THAT IF WE'RE PROTECTED FROM A FACTORY, WHY CAN'T WE PROTECT IT FROM A COAL MINE. UNDER THOSE OBJECTIVES IT PROVIDES, MINIMIZE THE IMPACT ON FRAGILE LAND, PRIME AGRICULTURAL, FLOODPLAINS, ETCETERA, AND MINIMIZE URBAN TRAFFIC CONGESTION ON REMOTE RURAL ROADS. YOU'VE ALREADY HEARD ABOUT THE CONCERNS OF THE TRAFFIC. YOU'VE HEARD ABOUT THE COAL TRUCKS. YOU'VE HEARD ABOUT THE 40 TRIPS A DAY WITH THE COAL TRUCKS ON A TWO-LANE HIGHWAY THAT CARRIES 40, 50 BUS LOADS OF CHILDREN A DAY, WHICH IS THE TESTIMONY BEFORE OMPC. I WOULD ASK JUST THAT YOU CONSIDER IT'S NOT JUST ABOUT GETTING TO WORK FIVE MINUTES LATE. IT'S ABOUT GETTING TO WORK FIVE MINUTES LATE WITH A HOLE IN YOUR WINDSHIELD FROM A PIECE OF COAL THAT BOUNCED OUT OF A TRUCK THAT DIDN'T HAVE A PROPER TARP OR HAD A HOLE IN IT. WE'VE ALL SEEN THOSE. WE'VE ALL BEEN BEHIND THOSE. AGAIN, IT WILL HAVE A SIGN THAT SAYS, REMAIN 500 FEET BACK. WE'RE NOT RESPONSIBLE FOR ANY DAMAGE. ANOTHER OBJECTIVE UNDER HOUSING. IT'S TO PRESERVE EXISTING HOUSING IN NEIGHBORHOODS. NOW, WHILE I KNOW THE COMPREHENSIVE PLAN AND THE PLANNING STAFF DON'T LIKE TO RECOGNIZE THE FACT THAT COUNTRY FOLK CONSIDER THEMSELVES COMMUNITIES, WE ARE. WE ABSOLUTELY ARE. WE ARE NOT NEXT-DOOR NEIGHBORS. WE'RE 25 ACRE AWAY NEIGHBORS, BUT WE'RE STILL NEIGHBORS. WE STILL VISIT. WE HAVE STILL BARBECUES. WE STILL ENJOY TALKING WITH ONE ANOTHER. WE STOP BY. WE'LL TAKE SOMEBODY'S DOG BACK HOME. IT'S A NEIGHBORHOOD. ONE OF THE OBJECTIVES IS TO ENCOURAGE OWNER OCCUPIED HOUSING. I DON'T THINK THERE'S ANY DISPUTE THAT NOBODY WANTS TO BE NEXT TO A BLASTING ZONE. ANOTHER ONE OF THE POINTS THAT I WOULD MAKE IS THAT IN THE COMPREHENSIVE PLAN, THE SUMMARY OF THE LAND DEVELOPMENT POLICIES ARE SUMMARIZED AS "RATHER OUR PUBLIC POLICY SHALL BE TO GUIDE AND MANAGE GROWTH AND DEVELOPMENT IN A MANNER THAT NEW GROWTH IS OF AN EFFICIENT AND QUALITY CHARACTER AND THAT EXISTING URBAN AND NATURAL ENVIRONMENTS ARE PROTECTED AND ENHANCED." I WOULD NOTE THAT IN THE COMPREHENSIVE PLAN THAT'S IN BOLDFACE WRITING. THE ONLY THING IN THAT PARAGRAPH. UNDER THE ENVIRONMENTAL POLICY OF THE COMPREHENSIVE PLAN PROVIDES, AGAIN IN BOLDFACE, "OUR POLICY SHOULD BE THAT OF REVIEWING PROPOSED CHANGES TO DETERMINE THE NATURE OF THEIR IMPACT AND TO TRY TO PREVENT THOSE THAT WOULD SERIOUSLY DETERIORATE ARE BUILT IN NATURAL ENVIRONMENT." OBVIOUSLY, THE COUNTY IS AWARE OF THE EXTRAORDINARY EXPENDITURES THAT WE'RE PUTTING OUT FOR PARKS, CONCRETE TREES, WALKWAYS, BUT YET WE'RE PROPOSING A PLAN THAT WOULD DESTROY THE NATURE THAT WE'RE TRYING TO BUILD OR THE IMITATION OF NATURE THAT WE'RE TRYING TO BUILD. I WOULD SUBMIT TO YOU THAT WE DON'T NEED TO DESTROY WHAT GOD GAVE US. WE NEED TO USE IT, USE IT WISELY AS THE PLAN SAID. WE NEED TO KEEP IN MIND THAT THERE ARE OTHER THINGS THAN ECONOMICS. YOU'VE HEARD A LOT OF TESTIMONY TONIGHT FROM A LOT OF THESE FOLKS. THERE ARE TONS OF QUOTES THAT CAN BE PULLED OUT. THE ONLY THING THAT YOU WILL HEAR FROM THE MINING SIDE IS THAT WE'RE GOING TO GENERATE TAXES. THEY GAVE THE EXAMPLE OF NEW EQUIPMENT. THEY'RE A MINING COMPANY. I THINK THEY ALREADY OWN EQUIPMENT. NOW, THEY DIDN'T SAY HOW MUCH ADDITIONAL EQUIPMENT OR IF ANY ADDITIONAL EQUIPMENT WOULD BE PURCHASED, BUT AS YOU'RE WELL AWARE, THE TAX VALUE ON EQUIPMENT AND VEHICLES AND THINGS OF THAT NATURE GOES DOWN OVER TIME. IF YOU DON'T HAVE A COAL MINE, THE VALUE OF HOMES GOES UP. THE TAX BASE GOES UP. THE WELL-BEING OF THE CITIZENS GOES UP. YOU'VE HEARD DR. HUXOL. MR. NICK HURTER TESTIFIED BEFORE OMPC, A RESPIRATORY THERAPIST. HE SAID, "LARGE PARTICLES RELEASED WILL HAVE HEAVY METALS.

LED, ARSENIC, MERCURY, ETCETERA. THESE ARE WITHIN THE ALLOWABLE LIMITS. SMALLER PARTICLES THREE TO FIVE MICRONS" -- AND I SHOULD BACK UP. HE WAS REFERRING TO LARGER PARTICLE SIZE THAT WILL SETTLE OUT. "SMALLER PARTICLES, THREE TO FIVE MICRONS, WILL TRAVEL FOR MILES, AGGRAVATE SYSTIC FIBROSIS, ASTHMA AND OTHER RESPIRATORY PROBLEMS. STUDY SHOW PARTICLES WILL TRAVEL 10 TO 15 MILES." GOING BACK FOR A MOMENT TO THE ECONOMIC IMPACT. THEY TALK ABOUT THEIR EQUIPMENT. THEY TALK ABOUT ADDING 20 JOBS. TWENTY JOBS WHEN IT'S FULLY OPERATIONAL. NOT 20 IMMEDIATELY. IT'S MOVING PEOPLE FROM KNOTTSVILLE TO PLEASANT RIDGE. THE COAL SEVERANCE TAX, AS YOU'RE AWARE, THERE'S NO GUARANTEE OF WHAT WE'LL GET BECAUSE THERE'S NO GUARANTEE OF WHAT THEY'LL FIND. AND AS WE'VE SEEN ONCE BEFORE, THE PLANNING STAFF HAS RELIED UPON THE FACT THAT SOME OF THAT PLAN WAS PREVIOUSLY REZONED AS MINING TERRITORY, EX-1. THE TESTIMONY AT OMPC, BY THE GENTLEMAN WHO ACTUALLY DID THE BLASTING OUT THERE FOR GREEN COAL COMPANY, WAS THAT THEY COULDN'T DO IT. IT WAS TOO DANGEROUS. IT WASN'T WORTH IT. THEY GAVE UP. SO WE'RE BEING PENALIZED BECAUSE, AS YOU ASKED, MR. MATTINGLY, IT DOESN'T AUTOMATICALLY REVERT TO AGRICULTURAL. SOMEBODY HAD TO GO BACK IN AND REZONE IT. SO THAT BEGS THE QUESTION. IF THAT PERSON HAD KNOWN THAT THEY COULD HAVE HAD THEIR LAND REZONED, WOULD WE EVEN BE HERE TODAY BECAUSE WE WOULDN'T HAVE THIS CONTIGUOUS MINING PERMIT THAT THEY KEEP REFERRING TO. THAT ALSO RAISES THE QUESTION OF REFERRING TO ANOTHER COUNTY THAT WE HAVE ABSOLUTELY NO AUTHORITY OVER THROUGH PLANNING & ZONING OF THIS COMMUNITY AND USING THEIR REZONING, OR LACK OF A PLANNING & ZONING COMMISSION, TO BUTCHERS WHAT THEY WANT TO DO HERE. YOU COUPLE THAT WITH THE FACT THAT THE DEFINITIONS THAT THEY'VE USED BECAUSE THEY'VE OVERLOOKED WHAT THE REAL SITUATION IS. THEY NOTE REPEATEDLY THAT THERE'S 70 ACRES OF RURAL COMMUNITY. SHOULDN'T BE TOUCHED. NOT SUBJECT TO COAL MINE. THE FARMS SHOULDN'T BE TOUCHED. EVEN UNDER THEIR OWN PLAN, IT DOESN'T PROVIDE FOR MINING. BUT IT'S THE DISTINCTION THAT THEY MAKE ON THE RURAL LARGE LOT HOMES. AGAIN, THE PLAN MAKES ABSOLUTELY NO DEFINITION, OTHER THAN A SINGLE-FAMILY DWELLING FOR NONAGRICULTURAL USE. WELL, ANYBODY WHO ON A "LARGE LOT," WHATEVER THAT MAY BE, CAN HAVE A CHICKEN AND SELL EGGS, WHICH WOULD THEN MAKE IT A FARM USE. SO THERE IS A DEFINITE DISPARITY OF DEFINITIONS IN THE PLAN. THAT VAGUENESS DOESN'T GIVE NOTICE TO WHAT MR. NOFFSINGER SAID. THE ALLEGED NOTICE THAT HE SAYS IT GAVE IT DID NOT GIVE IT TO THOSE PARTICULAR RESIDENTS THAT I'VE OUTLINED. YOU HAVE THE SECTIONS OF THE COMPREHENSIVE PLAN. YOU'VE HEARD ABOUT THE VARIOUS CONCERNS OF THE HOMEOWNERS. THE HEALTH DETRIMENTS. THE NOISE. AIR AND WATER POLLUTION. BREATHING CONCERNS. THE 2 PROPERTY DEVALUATION. NOW, I WOULD SUBMIT THAT YOU'VE ALREADY GOT FOLKS IN THE PLEASANT RIDGE AREA THAT ARE BEING CONTACTED BY THESE ORGANIZATIONS THAT ACTUALLY ARGUE WITH PVA TO GET TAX VALUES DOWN. THEY ARE PROFESSIONAL ORGANIZATIONS THAT DO THAT. RIGHT NOW THEY'RE SWIMMING LIKE SHARKS. YOU HAVE TRAFFIC ISSUES. THE BLASTING AND THE FLY ROCK. IF WE'VE LEARNED ONE THING, IT'S YOU CAN HAVE THE BEST INTENTIONS, BUT THE ROAD TO HELL IS PAVED TO GOOD INTENTIONS. THAT'S WHY WE HAVE FLY ROCK AND THE STATE POLICE ON THE PARKWAY. WE HAVE FLY ROCK FLYING WHERE CARS ARE PRESENT. THANK HEAVEN THAT NOBODY GOT HIT. WE CAN'T SAY THAT BECAUSE WE'RE OUT THERE AND WE'RE ALL ALONE. WE DON'T HAVE WALLS IN THE BACK OF OUR HOMES. WE DON'T HAVE NETS LIKE THE OWENSBORO COUNTRY CLUB TO CATCH A TINY GOLF BALL, BUT WE'RE SUPPOSED TO BE SUBJECTED TO BLASTING ROCK, WHICH IS SUBJECT TO MUD, WATER, OTHER FAILURES OR MISCALCULATIONS. IT'S NOT AN EXACT. THERE'S A REASON THAT IT'S CALLED AN ULTRAHAZARDOUS ACTIVITY. THERE'S A REASON THAT THEY CONTINUALLY TALK ABOUT THE DIFFERENT INSURANCES THAT THEY HAVE. HOWEVER, THE TESTIMONY WAS THAT THEY HAVE BEEN CITED FIVE TIMES FOR NOT HAVING SUPPLEMENTAL INSURANCE THAT THEY WERE REQUIRED TO HAVE. THEY MAKE IT SOUND AS IF, IF YOU HAVE DAMAGE TO YOUR HOME, THEIR INSURANCE COMPANY IS JUST GOING TO PAY YOU. THAT'S A FARCE. WE ALL KNOW THAT. YOU CAN'T EVEN GET PAID ON AN AUTOMOBILE CLAIM. YOU COMPOUND THAT WITH FOLKS WHO ARE STRUGGLING TO GET BY IN TODAY'S ECONOMY. DO THEY REALLY HAVE THE ABILITY TO GO OUT AND PAY 15 OR \$20,000 TO LITIGATE? AS MR. KIRKLAND TOLD ME, HE WANTED TO KNOW WHERE I GOT MY FACT. I'M SURE YOU'VE READ IT. I QUICKLY TOLD HIM, I'VE BEEN IN LITIGATION OVER MY

OWN HOME. I CAN TELL YOU, IT ADDS UP VERY, VERY FAST. VERY FAST. MOST FOLKS DON'T HAVE THE ABILITY TO FIGHT WITH THAT. NOW, I WOULD LIKE TO MAKE ONE CORRECTION AT THIS POINT. MR. SCOTT MENTIONED THE 2000 FOOT BUFFER AROUND THE GIRL SCOUT CAMP. I WILL REFER YOU TO MR. WRIGHT'S TESTIMONY IN THE FEBRUARY TRANSCRIPT, PAGE 165 WHEN THEY WERE REFERRING TO THE 2000 FOOT BUFFER. HE SAID, "THAT'S GONE OUT OF THE DOOR FOR TODAY." ONCE THINGS STARTED ROLLING THEIR WAY, THE PROMISES STARTED TO DISAPPEAR. THEY GOT BLOWN AWAY SO-TO-SPEAK. AS YOU HEARD TONIGHT, YOU JUST GOT A SMALL BIT OF IT, BUT IT WAS THE REGULATION DOESN'T REQUIRE THAT. THE REGULATION DOESN'T REQUIRE THAT. THE TESTIMONY FROM THE FEBRUARY HEARING HAS MANY, MANY EXAMPLES FROM MR. FRAZIER WHERE HE WOULD SAY IT'S THE APPLICANT THAT HAS TO DO THIS. THE APPLICANT HAS TO REPORT. THE APPLICANT HAS TO DO THE TESTING. WELL, YOU DON'T PUT THE FOX IN CHARGE OF THE HEN HOUSE. THEN YOU COUPLE THAT WITH THE FACT THAT BASICALLY THERE'S NO OVERSIGHT BY THE AGENCIES UNTIL SOMEONE COMPLAINS. UNTIL SOMEONE IS HURT. UNTIL SOMETHING IS DAMAGED. THEY DON'T DO OFF-SITE AIR TESTING. IN FACT, HE SAID AT ONE POINT THAT, OUR REGULATIONS -- LET ME FIND THE EXACT QUOTE.

JUDGE MATTINGLY: WOULD YOU KIND OF WRAP IT UP.

MR. OVERSTREET: YES. "THERE IS NO AIR QUALITY MONITORING AT OUR SITE. THE ONLY THING THAT APPLIES TO THE 20 PERCENT OPACITY IS THAT COAL CRUSHER. AS FAR AS OUTSIDE THE AREA, THERE'S NO AIR QUALITY MONITORS. AS FAR AS I KNOW, WE DON'T HAVE ANY NOISE RESTRICTIONS." THAT'S TIMOTHY WRIGHT IN FEBRUARY 9, 2012 TRANSCRIPT, PAGE 170. "THE DUST LEAVING THE MINE IS IF SOMEONE COMPLAINS." THAT WAS MR. FRAZIER FROM THE DIVISION OF MINING. MR. SETH BURNS, "LIKE I SAY, WHEN WE BLAST YOU'RE GOING TO FEEL IT." IF YOU REFER TO THE TRANSCRIPT, YOU'LL HEAR MR. PEDLEY WHO GOES ON AT LENGTH, AND OBVIOUSLY HE HAS KNOWLEDGE AND EXPERIENCE IN CONCRETE WORK. HE WENT ON AND ON ABOUT HOW YOU COULD HAVE CRACKS THAT YOU WOULDN'T KNOW ABOUT BECAUSE DRY WALL COULD GIVE. WE TALKED ABOUT WHAT AN OPERATION THIS IS. WESTERN KENTUCKY MINERALS HAD 50 VIOLATIONS WITH MSHA. THE BLASTING SUBCONTRACTOR HAD 66 CITATIONS. HE WENT ON TO SAY THAT THERE WAS SIX AGENCIES THAT REGULATE THEIR BLASTING ACTIVITIES, BUT THOSE 66 CAME FROM ONE AGENCY.

DR. DARRELL: YOU NEED TO BE CLOSING.

JUDGE MATTINGLY: YOU GOT ABOUT 30 SECONDS TO GO AHEAD AND SUMMARIZE OR MAKE YOUR CASE OR YOUR PLEA OR WHATEVER.

MR. OVERSTREET: AGAIN, WITH THE FINDINGS OF FACT THERE'S NO DOUBT THAT THEY WERE IN ERROR. THEY WILL NOT WITHSTAND A REVIEW BY THE CIRCUIT COURT. IF YOU RELY ON THOSE, YOU'LL BE MAKING THE SAME ERROR. YOU CAN'T HAVE AN INDEPENDENT INVESTIGATION IN YOUR OWN OPINION IN YOUR OWN FAMILY MATTERS TO SUPPORT THE BASIS FOR FINDINGS OF FACT TO SUPPORT AN ADMINISTRATIVE BODY. THE VARIOUS STATEMENTS THAT HE MADE CANNOT BE SUPPORTED. YOU ALL HAVE THE '86 TRANSCRIPT. WHEN MR. CASTLEN TESTIFIED THAT VALUE DECREASED TO 30 TO 50 PERCENT ON MORE EXPENSIVE HOMES AND 25 TO 30 PERCENT ON LESSER PRICE HOMES. THERE IS ALSO TESTIMONY AT THIS HEARING THAT THE EXTRAMALITY, AS MR. REYNOLDS REFERRED TO IT, THE MINE WOULD HAVE A DEFINITE IMPACT ON THE HOME VALUES. HE STATES, "THERE'S NO QUESTION WHATSOEVER THAT AN OPERATION THAT COMES IN, WE CALL IT EXTRAMALITY IS GOING TO HAVE A NEGATIVE IMPACT ON PROPERTY VALUES. THERE IS NO QUESTION. THE COMPREHENSIVE PLAN, AS I'VE INDICATED, AS IT WAS APPLIED, IT WAS NOT CONSIDERED PROPER. THE GOALS AND OBJECTIVES, THEY'RE NOT ENUMERATED IN ANY ORDER. AT THAT POINT YOU CAN CONSIDER IT ALMOST A BALANCING TEST. IF YOU LOOK AT THE GOALS AND OBJECTIVES THAT THIS COMMUNITY OUTLINED THAT THEY WANTED TO FOLLOW, THERE'S NO WAY THAT THIS MINE GETS APPROVED. ITS SO HEAVILY WEIGHTED IN FAVOR OF CITIZENS, THEIR LIFESTYLE, THEIR HEALTH, THE HEALTH OF THE ENTIRE COMMUNITY. I WOULD ALSO LIKE TO NOTE, AS I POINTED OUT AT THE OMPC MEETING AND THEY QUICKLY TOLD ME THAT THEY DIDN'T CARE WHAT THE LAW SAID. THE OBLIGATION IS NOT TO THE

MINE. IT'S NOT TO THE PERMIT. THE OBLIGATION WHEN YOU CONSIDER REZONING IS TO THE COMMUNITY AS A WHOLE. NOT THE 12 OR 14 PEOPLE WHO ARE GOING TO SELL THEIR MINERAL RIGHTS, WHICH IS SPECIFICALLY WHAT MR. PEDLEY LIMITED IT TO. IT'S TO THE ENTIRE COMMUNITY. YOU'VE HEARD DR. HUXOL –

JUDGE MATTINGLY: WE'VE GONE BEYOND THAT. YOU GOT A PLEA OR A REQUEST, MAKE IT TO THE COURT.

MR. OVERSTREET: I DO.

JUDGE MATTINGLY: QUICKLY.

MR. OVERSTREET: I BELIEVE, JUDGE, THAT THE PROCESS WAS WRONG. THE PROCEDURE WAS WRONG. THE HANDLING OF IT WAS COMPLETELY IMPROPER, BUT MORE IMPORTANTLY IT'S NOT IN COMPLIANCE WITH THE COMPREHENSIVE PLAN. IT WAS AN ARBITRARY DECISION BECAUSE OF THE VAGUENESS OF THE DEFINITION IN THE COMPREHENSIVE PLAN AND THIS COURT, AS WELL AS THE OMPC, HAS PREVIOUSLY FOUND THAT THE COMPREHENSIVE PLAN IS IN ERROR. I WOULD NOTE THAT THAT DECISION IN '96 HAD THE EXACT SAME LANGUAGE REGARDING COAL MINING SHOULD BE USED GENERALLY, SHOULD BE ALLOWED GENERALLY IN THIS AREAS. SAME LANGUAGE THAT WE HAVE. I WOULD ASK THAT YOU NOT SUSTAIN IT AND THAT THE PETITION FOR THE REZONING BE DENIED.

JUDGE MATTINGLY: THANK YOU.

DR. DARRELL: MR. BRIAN HAYNES.

JUDGE MATTINGLY: WELL, IT'S EITHER MR. HAYNES OR MR. LANHAM.

MR. HAYNES: CAN I HAVE ONE MINUTE AND THEN MR. LANHAM?

JUDGE MATTINGLY: YES. ONE MINUTE AND, MR. LANHAM, I'LL GIVE YOU ABOUT 15 MINUTES.

MR. HAYNES: JUDGE, I WASN'T GOING TO SAY A THING. I DON'T KNOW IF I'M TALKING NOW TO DEFEND THIS REZONING, TO DEFEND LEGAL PROFESSIONS OR TO DEFEND THE WHOLE PROCESS. WHAT YOU JUST SAW, AND I THINK YOU ALL HAVE READ THE TESTIMONY. I TRUST YOU HAVE. I KNOW YOU HAVE. YOU'VE SEEN A MISSTATEMENT OF MANY FACTS. MANY FACTS TAKEN COMPLETELY OUT OF CONTEXT, WITHOUT TAKING INTO ACCOUNT THE SENTENCE THAT WAS BEFORE OR AFTER THEM. WORSE THAN THAT YOU'VE SEEN A COMPLETE MISSTATEMENT OF THE COMPREHENSIVE PLAN. ALL I'M GOING TO SAY IS RURAL MAINTENANCE AREA, WHICH IS WHERE THIS PROPERTY IS. THREE USES THAT ARE PERMISSIBLE IN GENERAL LOCATIONS: AGRICULTURAL FORESTRY, RURAL FARM RESIDENTIAL, COAL MINING. THEY HAVE SEPARATE SECTIONS IN THE COMPREHENSIVE PLAN TALKING ABOUT LARGE RESIDENTIAL LOTS AND SMALL RESIDENTIAL LOTS. I JUST TRUST YOU ALL WILL READ THE PLAN AND READ THE TESTIMONY. THANK YOU.

JUDGE MATTINGLY: ARE YOU MAKING THE CLOSING?

MR. WRIGHT: IT'S A BRIEF CLOSING. FIVE YEARS AGO WE STARTED PUTTING IT TOGETHER, "WE" BEING WESTERN KENTUCKY MINERALS. BEEN WORKING WITH 14 LANDOWNERS TO GET THEIR OKAY TO GET THEIR COAL LEASED, TO GET EVERYTHING WORKED OUT WITH THEM. THEY TRULY DESERVE THE RIGHT TO GET THEIR COAL MINE. WE'RE CONFIDENT WE CAN DO IT. WE'RE CONFIDENT THAT WE PUT TOGETHER OUR TRANSPORTATION PLAN. I HAVE THE ACTUAL COPY OF IT HERE THAT WAS APPROVED BY THE STATE THAT SHOWS THAT THEY HAVE INVESTIGATED ALL THE ROADS. THIS CLASS A FEDERAL HIGHWAY IS CAPABLE OF HANDLING COAL TRUCKS. YES, WE DO GET AN EXEMPTION FOR OVERWEIGHT COAL HAULAGE FROM THE COUNTY. WE GET IT FROM THE STATE. WE HAVE TO BOND THE ROAD. WE HAVE TO HAUL CERTAIN AMOUNT OF TON AND THEN IT GOES THROUGH THE COAL HAUL PROGRAM. IT HELPS PAY FOR THOSE ROADS. THAT'S PART OF THE PURPOSE OF THE SEVERANCE TAX. WE PUT THIS APPLICATION TOGETHER. PRESENTED IT TO PLANNING &



ZONING. IT MEETS THE FINDINGS THAT PLANNING & ZONING AGREED TO. THAT ALL OUR APPLICATION DID MEET THE FINDINGS OF THE COMPREHENSIVE PLAN. THEY DID TAKE IT TO VOTE AFTER ALL THE TESTIMONY THAT WE HEARD. THEY DID APPROVE IT ACCORDING TO THAT. MR. PEDLEY'S TESTIMONY WAS FROM THE HEART. IT WAS GOOD TESTIMONY. HE DONE A LOT OF RESEARCH. THE COAL SEVERANCE TAX. THEY HAD AN \$8,000 BILL BECAUSE I FILED IT TO THE DEPARTMENT OF REVENUE. THESE LANDOWNERS HERE WILL ALSO HAVE TO PAY THAT COAL SEVERANCE TAX. IT'S UNMINED MINERAL TAX, I'M SORRY. IT'S REAL AND IT'S EXPENSIVE AND IT IS A LOT FOR THEM. OUR STATE IS THE ONLY ONE THAT HAS UNMINED COAL TAX. MR. PEDLEY'S STATEMENT WAS CORRECT. THEY DO HAVE TO PAY IT, BUT THERE ARE SOME FARM EXEMPTIONS AND STUFF THEY PUT ON THEM AND YOU CAN GET IT. WITH THE PLANNING & ZONING RECOMMENDATIONS AND APPROVAL OF ZONING, AS TWO PREVIOUS ZONINGS THE COURT UPHELD, PLANNING & ZONING'S DECISION AND STOOD BEHIND PLANNING & ZONING WHICH IS A GREAT ORGANIZATION. I ASK, AS WESTERN KENTUCKY MINERAL, THAT THE COURT STAND BEHIND THEM AT THIS TIME. THANK YOU.

JUDGE MATTINGLY: MR. LANHAM, DO YOU HAVE ANYONE ELSE THAT WOULD LIKE TO SPEAK? YOU'VE GOT ABOUT FIVE MINUTES.

MR. LANHAM: I'M BRANDON LANHAM, 5829 JACK HINTON ROAD. I WOULD JUST LIKE TO INITIATE THIS OPPORTUNITY TO THANK YOU GENTLEMEN ONCE AGAIN FOR THE OPPORTUNITY TO ANSWER, TO ADDRESS SOME OF THE CONCERNS OF THE INDIVIDUALS FROM PLEASANT RIDGE. JUST TO GO KIND OF WITH WHAT MR. ISBILL SAID. HE HAD SOME SERIOUS AND SOME SIGNIFICANT CONCERNS WITH HIS WIFE'S HEALTH AND DUST. THAT'S EVERYONE'S CONCERNS OBVIOUSLY WHEN YOU GET INTO DUST WHETHER IT'S FUGITIVE OR ACROSS THE BOARD OR DUST IN GENERAL. WE DID PURCHASE THE WATER TRUCKS CAPABLE OF DISBURSING 320,000 GALLONS OF WATER IN A DAYTIME. IT'S CONDUCTED AND IN PLACE AS WE SPEAK AND IT'S IN OPERATION. IT'S EQUIPPED WITH -- I KNOW IT CAME UP IN THE LAST MEETING THAT WE HAVE A PROBLEM WITH COAL PILES AND WE AREN'T CAPABLE OF SPREADING WATER ON THOSE PILES TO HOLD THAT DUST, ESPECIALLY COAL DUST MOST IMPORTANTLY. IT IS. OF COURSE, I HAVE PICTURES AND A VIDEO AND IT'S PROBABLY UNNECESSARY AT THIS TIME, BUT IT SPRAYS A LOT OF OUR PILES DOWN AND IT'S HIGHLY CAPABLE OF DOING THAT. GENTLEMEN, THIS EXERCISE, THIS OPERATION ALL TOGETHER, IT'S REPETITIVE, IT'S REDUNDANT. IT'S SOMETHING THAT WE PERFORM ON A DAILY BASIS. TO SAY THAT IT'S SOMETHING WE EXPERIMENT WITH AND WE CAN'T TAKE THESE SPECULATIONS AND SAY THAT THEY'RE NOT LARGELY PREVENTABLE WOULD BE WRONG. THEY ARE. WITH PRECAUTIONS, SAFETY AVENUE PRECAUTIONS, WITH ANY MEASURE THAT WE ARE FULLY KNOWLEDGEABLE OF IT AND CAN PERFORM. WE CAN LARGELY PREVENT THESE HEALTH PRECAUTIONS AND SAFETY VIOLATIONS AND SO ON AND SO FORTH. GENTLEMEN, IT'S WITHIN OUR REACH HONESTLY TO CONDUCT BUSINESS, TO EXTRACT THIS COAL WHILE MAINTAINING A VERY CIVIL RELATIONSHIP WITH THE INDIVIDUALS IN PLEASANT RIDGE. THE REASON I KNOW THAT IS BECAUSE I SEE IT ON A DAILY BASIS IN KNOTTSVILLE AND IT'S THE SAME. I CAN MAKE A PERSONAL RELATIONSHIP. WE CARE ABOUT WHAT WE DO. WE'RE VERY PASSIONATE IN OUR WORK AND WE MEET WITH THESE INDIVIDUALS WHETHER IT'S WITH BLASTING OR SOME OF THEIR GENERAL CONCERNS. WE MEET WITH THEM ON A ONE ON ONE BASIS AND WE MAKE SURE WE MEET THOSE NEEDS. WE'RE VERY PROFESSIONAL ABOUT DOING THAT AS WELL. THANK YOU AGAIN. IF THERE'S ANY ADDITIONAL QUESTIONS, I WILL ANSWER AT THIS TIME. I APPRECIATE YOUR TIME, GENTLEMEN.

JUDGE MATTINGLY: THANK YOU. COMMISSIONERS, WE'VE GOT ABOUT TEN MINUTES. WOULD YOU LIKE TO ASK A QUESTION OR TWO?

MR. CASTLEN: I'VE JOTTED DOWN SOME QUESTIONS AS WE LISTENED. I REALLY WOULD LIKE TO GET SOME ANSWERS, ESPECIALLY SINCE WE DON'T HAVE ANY TESTIMONY AT OUR FINAL MEETING.

JUDGE MATTINGLY: NO TESTIMONY, BUT REMEMBER I REQUESTED THAT THEY BE HERE IF THEY WISH BECAUSE WE MAY STILL HAVE QUESTIONS THAT WE WOULD LIKE TO CLARIFY

AFTER WE HAVE REVIEWED SOME OF THE TESTIMONY. NOT TESTIMONY, BUT THE STATEMENTS.

MR. CASTLEN: THE ONES I CAN I WOULD RATHER ANSWER TONIGHT, IF I COULD.

JUDGE MATTINGLY: GO AHEAD. I THINK COMMISSIONER LAMBERT IS OVER HERE SNORING.

MR. CASTLEN: SOMEBODY MADE REFERENCE BEING 1,000 FEET OFF THE ROAD. I KNOW SOME OF YOUR PROPERTIES OBVIOUSLY GO, THEY WERE TALKING ABOUT REZONING GO RIGHT UP TO THE HIGHWAY OBVIOUSLY OR YOU WOULDN'T HAVE NO ACCESS TO THE HIGHWAY. IN A REAL SENSE, HOW MANY TIMES DO YOU ALL ANTICIPATE THAT TRAFFIC WILL HAVE TO BE STOPPED ON 231 SO THAT YOU CAN DO YOUR BLASTING? MR. VINCENT: ANY TIME BLASTING IS CONDUCTED --

JUDGE MATTINGLY: WOULD YOU IDENTIFY YOURSELF.

MR. VINCENT: MARTY VINCENT. ANY TIME BLASTING IS DONE WITHIN 1,000 FEET OF A PUBLIC ROAD, DURING THE BLASTING EVENT TRAFFIC MUST BE STOPPED.

MR. CASTLEN: I UNDERSTAND THAT. MY QUESTION IS: AS YOU MINED THESE PROPERTIES, HOW MANY TIMES DO YOU ANTICIPATE THAT THAT WOULD OCCUR?

MR. VINCENT: I'M NOT SURE THAT THERE IS AN ANSWER TO THAT, OTHER THAN ANY TIME THAT WE'RE WITHIN 1,000 FEET. BASICALLY ANY TIME THERE'S BLASTING DONE WITHIN 1,000 FEET. IF I'M UNDERSTANDING CORRECTLY, THE MINING CAN BE DONE UP TO WITHIN THE RIGHT-OF-WAY OF THE PUBLIC ROAD.

MR. LANHAM: I THINK HE'S UNFAMILIAR WITH THIS PARTICULAR OPERATION. COULD POTENTIALLY BE TWICE A DAY IN A SITUATION WHILE WE'RE MINING UP TO ROAD, THE WAY MINING PLAN IS WORKED. SO TWICE A DAY.

JUDGE MATTINGLY: IS THAT ALL ROADS? NOT JUST 231 BUT WOULD THAT BE RUSSELL ROAD, GIRL SCOUT ROAD, ANY PUBLIC ROAD?

MR. LANHAM: THAT'S CORRECT, SIR.

JUDGE MATTINGLY: BASICALLY AS THE PLAN, I THINK THE MINING PLAN WAS PRESENTED BY THE ENGINEER. THERE WAS A, IF I'M NOT MISTAKEN, WENT COUNTER-CLOCK-WISE AROUND THE PERIMETER OF THE PROPERTY. WHEN YOU GET, I DON'T KNOW HOW FAR OFF OF THAT YOU WOULD BE, BUT PRETTY MUCH ANY TIME YOU BLAST YOU'RE GOING TO STOP TRAFFIC ON SOME ROAD.

MR. LANHAM: WE WERE LOOKING AT GREG WESTEIN, THE SUPERINTENDENT OF WESTERN KENTUCKY MINERALS. HE INFORM ME THAT WE WOULD BE INTERESTED IN LOOKING AT THE TIME MAYBE EARLIER OR LATER WHERE IT WOULDN'T EFFECT THE RUSH HOUR. IT COULD BE FLEXIBLE.

JUDGE MATTINGLY: CERTAINLY IT WOULD SEEM TO ME THAT YOU WOULDN'T WANT TO STOP TRAFFIC WHEN SCHOOL BUS ARE OUT.

MR. LANHAM: NO, SIR. DEPENDING ON THE SITUATION. ANOTHER THING I WANTED TO REITERATE ON, AND IT WASN'T BROUGHT UP, THERE WAS SOME CONFUSION SIGNIFICANTLY AT THE LAST MEETING WITH I THINK MR. JARBOE BROUGHT UP HIS THREE GIRLS AND THE BLASTING. I CAN'T THINK OF SOMETHING MORE IMPORTANT THAN CONSIDER, WHICH WE TALKED ABOUT FLY ROCK. WE TALK ABOUT THE 300 FEET, AND THAT'S HUGE ENOUGH FOR THEM TO PERFORM THOSE OPERATIONS, NOT ONLY WITH IT BEING THE DISTANCE, BUT WITH US BEING ON-SITE AT THEIR HOME IF WE NEED TO BE. WHATEVER WOULD BE NECESSARY.

JUDGE MATTINGLY: IT'S NO LONGER 300 FEET.

MR. LANHAM: YES, SIR, THAT'S CORRECT. IT'S 500 FEET. BUT WE WOULD BE ON SITE. WE WOULD HAVE EYES ON THAT PARTICULAR PROJECT AND THE SHOT WOULDN'T BE SET OFF WITHOUT -- AND THEY PERFORM THIS THROUGH RADIO COMMUNICATION.

JUDGE MATTINGLY: CAN YOU TELL ME HOW MANY HOMES YOU WILL BE BLASTING WITHIN 500 FEET OF THEM?

MR. LANHAM: I WOULD CONSULT WITH MR. TIM WRIGHT ON THAT. HE WOULD BE MORE FAMILIAR.

JUDGE MATTINGLY: MR. WRIGHT, DO YOU KNOW HOW MANY HOMES ARE ON THE PERIMETER OR WITHOUT 500 FEET OF THE PERIMETER OF THE MINE? AN ESTIMATE.

MR. WRIGHT: YOU'RE TALKING EIGHT TO TEN ALL THE WAY AROUND. MOST OF THE OTHER HOMES THAT ARE CLOSE --

JUDGE MATTINGLY: SOME OF THEM ARE OWNED BY WESTERN KENTUCKY MINERALS.

MR. WRIGHT: SOME OF THEM WERE PURCHASED. SOME OF THEM MINE THROUGH. SOME OF JUST RIGHT DIRECTLY IN THE COAL BED ITSELF.

MR. CASTLEN: ONE OF THE COMMENTS MR. OVERSTREET MADE WAS REGARDING THE GIRL SCOUTS. MY UNDERSTANDING WAS APPARENTLY AT SOME POINT YOU ALL HAD AN AGREEMENT, VERBAL PERHAPS, WITH THE GIRL SCOUTS. YOU'D STAY 2000 FEET OFF THEIR PROPERTY. I KNOW WHEN I WATCHED THE MEETINGS AND LOOKED AT THE TRANSCRIPT ONE OF YOU, SOMEBODY ON YOUR TEAM MADE REFERENCE MORE THAN ONCE THAT, SOMEBODY DOESN'T WANT YOU TO DISTURB THEIR OIL FIELDS. APPARENTLY THAT'S YOUR NEW DISTANCE. I DON'T KNOW WHAT THAT DISTANCE IS, BUT I THOUGHT ON CROSS EXAMINATION SOMEBODY ASKED YOU, WOULD YOU BE WILLING TO DO THE 2000 FEET STILL? I THOUGHT SOMEBODY SAID, YES. WELL, TONIGHT THEY WANT TO. OKAY. THAT WAS YOU. NOW, MR. OVERSTREET JUST STOOD UP HERE AND SAID, THAT'S OUT THE DOOR. WHAT'S GOING TO MAKE THAT DETERMINATION? DO WE HAVE TO PUT SOMETHING IN HERE OR DO WE DECIDE TO APPROVE IT THAT IT'S GOING TO BE 2000 FEET OR ARE YOU GOING TO COME WITH A SIGNED DOCUMENT THAT SAYS, SIGNED BY BOTH OF YOU THAT 2000 FEET OFF? JUST SO WE KNOW WHERE YOU ARE. I DON'T LIKE THIS UNCERTAINTY. HEARING YOU SAY, WE'RE DOING NOW. HIM SAYING IT'S OUT THE DOOR. I UNDERSTAND, AS I WATCHED IT, THEY DETERMINED OPPOSITION AND THAT. I UNDERSTAND THAT RELATIONSHIP. BUT FOR ME I WOULD LIKE TO KNOW. ASSUME THIS GOES FORWARD. SO WHAT'S YOUR RESPONSE?

MR. WRIGHT: WE'RE STILL MORE THAN WILLING TO SIT DOWN WITH THE GIRL SCOUT CAMP, AND WE WILL. WE HAD AN AGREEMENT WITH THEM THAT INCLUDED A LOT OF THINGS. ONE OF THE THINGS WAS THAT I WAS GOING TO HELP THEM WITH SOME EDUCATION TOWARD THE COAL, COAL MINING. PUT ON A PROGRAM TO HELP THE GIRLS UNDERSTAND WHAT WAS GOING ON. TAKE THEM ON A TOUR OF THE MINE. DO DIFFERENT THINGS LIKE THAT. SOMEBODY ABOVE THE LOUISVILLE PEOPLE KINDLY STOPPED THAT WHOLE SIGNATURE THING THAT WE WERE WORKING ON. IT WAS READY TO BE SIGNED. IT WAS PUT OFF, YOU KNOW.

JUDGE MATTINGLY: WAS THAT 2000 FOOT OFF THE PROPERTY LINE OR 2000 FOOT FROM A BUILDING?

MR. WRIGHT: THE MAIN STRUCTURE.

JUDGE MATTINGLY: THE MAIN STRUCTURE. THE MINING PLAN THAT THE ENGINEER PRESENTED SHOWED A BUFFER AND A DISTANCE I WANT TO SAY 1200 FEET FROM THAT ROAD. IF YOU RECALL WHERE MR. ISBILL'S HOUSE IS, YOU COME DOWN THE HILL I THINK THERE'S A NICE LAKE THERE. IT LOOKED TO ME LIKE THAT BUFFER STAYED BEHIND THAT LAKE

AND KIND OF WENT AROUND THAT HILL. I DON'T KNOW THE DISTANCE BECAUSE THE MAP WASN'T VERY –

MR. WRIGHT: 1200 FOOT PROBABLY WASN'T OFF THE PROPERTY LINE. WE'RE TALKING 2000 OFF THE –

JUDGE MATTINGLY: YES.

MR. WRIGHT: THEY'VE GOT LIKE A \$2 MILLION STRUCTURE BACK THERE THAT THEY HAVE CONSTRUCTED IN THE LAST FIVE YEARS I THINK IT WAS. THEY WERE CONCERNED ABOUT IT. THE LAKE SITS BEHIND IT. THEY WERE CONCERNED ABOUT THE LAKE. THAT WAS PART OF THE AGREEMENT THAT WE WERE DOING WITH THEM. PART OF THAT INCLUDED US MONITORING THE LAKE FOR THEM.

MR. CASTLEN: THAT'S ONE OF MY CONCERNS TOO WITH THE LAKE. WHEN WE WERE TALKING ABOUT THE AQUIFERS. MY UNDERSTANDING WHEN I WATCHED THE SHOW, THE MEETINGS, IS THAT THAT'S A SPRING FED LAKE. HOW DO YOU KNOW, I MEAN IS IT UP ABOVE? I HAVE DRIVEN AROUND IT, BUT I DIDN'T GET OUT AND GO THROUGH THEIR PROPERTY. IS THAT UP ABOVE WHERE YOU ALL ARE GOING TO MINING, SO THERE'S NO WAY YOU CAN DAMAGE THEIR AQUIFER?

MR. WRIGHT: RIGHT. TONY AND I MET WITH THEM OVER THE FIVE YEAR PERIOD WE'VE BEEN PUTTING THIS TOGETHER. THEY HAD ALL THEIR CONCERNS THAT THEY WERE TALKING ABOUT. YOU CAN LOOK AT THE TOPOGRAPHIC MAP. THEY'RE WELL ABOVE ANYWHERE WE'RE DIGGING. THEY'RE 40 FOOT ABOVE OUR MINING AREA. WHAT'S UP THERE, WE'RE NOT GOING TO DISTURB. THEY'RE OVER THE SIDE OF THE HILL FROM WHERE WE'LL BE. NO, WE'RE NOT GOING TO DISTURB THEM. WE AGREED WITH THEM TO MONITOR THEIR LAKE TWICE A YEAR THAT WE TEST FOR OUR MINE SITE. MONITOR THE LEVEL. WE INSPECT THE DAM. DAM WILL BE PART OF THE PREBLAST SURVEY. ALL OF THAT WILL BE COVERED. ALL THAT IS IN THIS AGREEMENT. IF THE ZONING IS APPROVED, WE WILL GO BACK AND NEGOTIATE WITH THE GIRL SCOUT CAMP AND SEE HOW WE CAN GET THING WORKED OUT. THERE IS A SIGNED DOCUMENT THAT'S BEEN MADE UP, A DOCUMENT TO BE SIGNED. WE WILL WORK ON THAT AGAIN.

MR. CASTLEN: I DON'T MEAN TO CUT YOU OFF, BUT IN THE INTEREST OF GETTING THROUGH THIS EVENING. MR. VANMILLIGAN MADE A REFERENCE TO SOMETHING HE CALLED HIGH WALL BLASTING. I'VE NOT HEARD THAT MENTION.

MR. WRIGHT: HE WAS TALKING ABOUT CAST BLASTING IS WHAT HE WAS TRYING TO GET OUT.

MR. CASTLEN: SAY THAT AGAIN.

MR. WRIGHT: CAST BLASTING. MEANING YOU CAST YOUR ROCK AWAY. IT'S CHEAPER IF YOU'RE OUT IN THE MIDDLE OF NOWHERE AND CAN GET BY WITH IT, BUT WHEN YOU'RE AROUND RESIDENTS AND STUFF LIKE THAT YOU CAN'T CAST BLAST. THEY SET IT UP LIKE THIS TO BLOW IT WAY OUT THERE.

JUDGE MATTINGLY: MR. LAMBERT.

MR. LAMBERT: JUDGE, I HAVE QUESTIONS. I'VE HEARD A LOT OF TESTIMONY ABOUT THE TRUCKS. I'VE HEARD A LOT OF DIFFERENT NUMBERS OF TONNAGES. I'VE HEARD 10-TONS. I BELIEVE RECORD FARM TRUCK HAULS MORE 10-TONS. SOMEONE CLARIFY PLEASE THE NUMBERS OF TRUCKS, HOW MANY TRUCKS ARE INVOLVED. IS IT 40 TRUCKS OR 40 TRIPS PER DAY, ESTIMATING.

MR. WRIGHT: BRIAN HOWARD AND I COME UP WITH THAT ESTIMATE OF 40 A DAY.

MR. LAMBERT: FORTY 40 TRIPS?

MR. WRIGHT: YES. FORTY TRIPS A DAY. WE COME UP WITH THAT ON AN AVERAGE WITH FIVE TRUCKS RUNNING EIGHT TO NINE LOADS A DAY TO THE POWER PLANT. THAT'S KINDLY WHAT WE DO RIGHT NOW.

JUDGE MATTINGLY: WEIGHT OF THE TRUCK.

MR. WRIGHT: YOUR WEIGHT, EXTENDED WEIGHT FOR THE COAL HAUL IS 120,000 POUNDS.

MR. LAMBERT: TEN TONS. I WANTED TO GET THAT ON THE RECORD.

MR. WRIGHT: SOME OF YOUR FARMERS AND YOUR SINGLE-AXLE TRUCKS ARE LIMITED TO LESS, BUT OURS IS --ASHBY TRUCKING, YOU'VE SEEN THEM ON THE VIDEOS AND STUFF WHERE THEY HAVE THE TRI-AXLE TRAILERS. YOU KNOW, STUFF LIKE THAT.

JUDGE MATTINGLY: IS ASHBY HERE?

MR. WRIGHT: YES.

MR. LAMBERT: TIM, BEFORE WE ANSWER THAT. THE STATE POLICE, THE CITY POLICE, THE SHERIFF'S DEPARTMENT KEEP RECORDS OF ACCIDENTS, NUMBERS OF ACCIDENTS, KINDS OF ACCIDENTS, WHAT INTERSECTIONS, WHAT SPECIFIC POINT. THAT NOBODY HAS SUBMITTED TO THIS BODY ANY KIND OF RECORD INDICATING THE NUMBER OF ACCIDENTS ON THAT ROAD OR NUMBER OF TRUCKS INVOLVED IN THOSE ACCIDENTS. I THINK IT'D ALSO BE HELPFUL TO ME. THERE'S BEEN COAL HAULING ON HIGHWAY 144 FOR A NUMBER OF YEARS. WHAT DO THE RECORDS INDICATE? SO WE'RE HEARING A LOT OF OPINIONS AND IT WOULD BE HELPFUL FOR ME IF WE HAD RECORDS, REPORTS INDICATING SPECIFIC NUMBERS OF ACCIDENTS AND DETAILS PERTAINING TO THOSE ACCIDENTS.

MR. WRIGHT: AND TRENT HAS ALL OF THOSE RECORDS WITH HIM AND WE'LL LET HIM ADDRESS THAT.

JUDGE MATTINGLY: COME TO THE PODIUM AND IDENTIFY YOURSELF WITH NAME AND ADDRESS.

MR. ASHBY: TRENT ASHBY, 819 WEST SECOND STREET, BEAVER DAM.

JUDGE MATTINGLY: DID YOU UNDERSTAND THE COMMISSIONER'S QUESTIONS?

MR. ASHBY: I THINK SO. PRESENTLY FOR THE PAST SIX YEARS WE'VE BEEN HAULING FOR WKM OUT IN THE KNOTTSVILLE AREA. BEFORE THAT WE HAULED OUT IN THE KNOTTSVILLE AREA FOR ANOTHER FOUR YEARS, AND PROBABLY 12 YEARS ALL TOGETHER OUT 144, AND WE'VE NEVER HAD AN ACCIDENT OUT THERE.

MR. LAMBERT: MY POINT IS IF I BELIEVE THAT THERE WERE LOTS OF ACCIDENTS, I THINK IT WOULD BE HELPFUL FROM THE STATE POLICE, SHERIFF, OF COURSE, THE CITY POLICE WOULD NOT BE INVOLVED. MAYBE ONLY A SMALL PORTION OF THAT ROUTE. THAT I WOULD PRESENT THAT AND THAT BE REPORTED AS EVIDENCE THAT THAT'S A PROBLEM. IF THERE'S NOT BEEN AN ACCIDENT AND I WAS PULLED IN THAT POSITION, I THINK WOULD BE HELPFUL TO PRODUCE THOSE REPORTS FROM THE POLICE INDICATING THE NUMBER AND THE FREQUENCY AND TYPES OF ACCIDENTS. JUDGE, I HAVE A QUESTION FOR MR. ISBILL, AND I'M GOING TO WAIT.

MR. CASTLEN: CAN I ASK?

JUDGE MATTINGLY: YES, PLEASE.

MR. CASTLEN: MR. ASHBY, REAL QUICK. AGAIN, WHEN I WATCHED THE PLANNING & ZONING MEETINGS, THEY SHOWED PICTURES OF YOUR TRUCKS. I THINK HE MADE THE

POINT THAT THERE WERE BRAKES ON EACH ONE OF THE AXLES. I GUESS THAT'S AN ADDITIONAL SAFETY FEE FEATURE.

MR. ASHBY: IT IS.

MR. CASTLEN: MY QUESTION IS: IS THAT SOMETHING WHEN THE STATE GETS COAL HAULERS THE EXTENDED WEIGHT, IS THAT SOMETHING THAT'S REQUIRED? ARE THERE ANY ADDITIONAL SAFETY FEATURES THAT'S REQUIRED OF COAL HAULING TRUCK VERSUS SOMEBODY THAT'S HAULING GOODS TO WAL-MART OR KROGER?

MR. ASHBY: COAL HAUL TRUCKS YOU'RE REQUIRED ADDITIONAL PERMITS ON SUCH. AS FAR AS THE TRI-AXLES, THAT'S A SAFETY THING FOR US. YOU HAVE AN EXTRA AXEL FOR BRAKING. THE TRAILERS ARE LONGER AND SHORTER SO IT BRINGS THE LOAD DOWN SO THEY'RE NOT AS TOP HEAVY AS A TANDEM TRAILER. IT ACTUALLY, IT PENALIZES US BECAUSE THE TRUCK AND TRAILER IS ACTUALLY HEAVIER THAN THE TANDEM AXLE COUNTERPART. SO WE'RE ALLOWED TO HAUL THE SAME WEIGHT AS A TANDEM TRAILER. SO WE ACTUALLY TONNAGE-WISE CAN HAUL, WE HAUL LESS THAN WHAT A TANDEM DOES. THE GROSS WEIGHT IS THE SAME, BUT THE NET WEIGHT IS LESS. I THINK IT'S OFFSET BY SAFETY.

MR. CASTLEN: I APPRECIATE THAT. I DIDN'T KNOW ANY OF WHAT YOU JUST SAID. JUDGE, GO AHEAD. THAT'S ALL I HAVE FOR HIM.

MR. ASHBY: ALSO, AS FAR AS 231. MY OPINION, THAT IS AN IDEAL HAUL ROAD JUST DUE TO THE WIDTH. THE VISIBILITY IS GOOD ALL THE WAY INTO OWENSBORO. THE REST OF THE ROAD THAT WE WOULD BE HAULING ON IS ALREADY, WHAT, MOST OF YOUR COAL TRUCKS AROUND OWENSBORO OUT --

MR. CASTLEN: 231 WIDER THAN 144?

MR. ASHBY: YES.

JUDGE MATTINGLY: THANKS. MR. ISBILL, COMMISSIONER LAMBERT HAS A QUESTION HE WOULD LIKE TO ASK.

MR. LAMBERT: MR. ISBILL YOU TALKED ABOUT WHAT YOU THOUGHT WAS A CONTRACT BETWEEN THE GOVERNMENT AND THE PEOPLE. YOU TALKED ABOUT SERVICES AND TAXES AND PERFECTION. HELP ME TO UNDERSTAND WHAT YOU BELIEVE, IF THIS WERE TO BE APPROVED, HOW THIS IS A VIOLATION OF THE CONTRACT. HELP ME TO UNDERSTAND YOUR POINT, PLEASE.

MR. ISBILL: MR. LAMBERT, I DON'T WANT TO BE LIKE SOME OF THE RESIDENTS OUT THERE AT KNOTTSVILLE. I'VE HAD CONVERSATION WITH THEM. THEY HAVE BEEN EVACUATED FROM THEIR HOME ALONG WITH THEIR TWO YEAR OLD GRANDDAUGHTER. THEY HAVE BEEN TOLD NOT TO BE IN THE POOL BECAUSE OF FLY ROCK. THE CABINETS HAVE BEEN SHAKEN OFF OF THEIR WALL. THAT'S WHAT SHE TELLS ME. SHE ALSO TELLS ME THAT THEIR SEISMOGRAPH WAS REMOVED FROM THEIR YARD, FROM THE CLOSEST BUILDING TO BLASTING. I DON'T TRUST THE FACT THAT THEY'RE GOING TO TAKE CARE OF ME. I BELIEVE THAT ME, MY PROPERTY, MY FAMILY IS IN HARMS WAY. NOW I DON'T HAVE ANY OF THAT. THIS COUNTY PROTECTS ME FROM THOSE THINGS. YOU CAN'T PROTECT ME FROM IT AND THEN IMPOSE IT UPON ME. THAT IS A VIOLATION OF OUR CONTRACT, BECAUSE I PAY TAXES, AND I WANT TO CONTINUE TO PAY TAXES FOR THOSE SERVICES. BY THIS BECOMING, IF IT IS APPROVED, IS A VIOLATION OF THE VERY THING THAT YOU'RE PROTECTING ME FROM. IT IS A BREACH OF THE CONTRACT THAT I HAVE WITH DAVIESS COUNTY. THE RESIDENT HAVE THAT CONTRACT AND THAT'S THE WAY I VIEW IT.

MR. LAMBERT: THANK YOU.

JUDGE MATTINGLY: I HAVE A QUESTION FOR MS. IVY. MS. IVY, ARE YOU OUT THERE. MS. IVY, IN YOUR TESTIMONY YOU TALKED ABOUT THE GIRL SCOUT CAMP. I THOUGHT I UNDERSTOOD YOU TO SAY THAT YOU HAD BEEN GOING THERE SINCE 1950.

MS. IVY: SWIMMING IN THE LAKE.

JUDGE MATTINGLY: SWIMMING IN THE LAKE. THERE HAS BEEN COAL MINING IN THAT AREA SINCE THAT TIME.

MS. IVY: ON 140.

JUDGE MATTINGLY: ON 140, AND IN OTHER AREAS IT WAS TESTIFIED. THE COAL MINING ON 140, WAS THAT CONTIGUOUS TO OR ADJACENT TO THE GIRL SCOUT PROPERTY?

MS. IVY: I DON'T KNOW.

JUDGE MATTINGLY: I THINK IT WAS. I LOOKED AT IT AND IT COMES UP TO THE BACK OF THE GIRL SCOUT. THAT'S ALL. I KNOW YOU HAD A CONCERN ABOUT THE LAKE AND THE AFFECT. WHAT CONCERN DO YOU HAVE?

MS. IVY: THE COAL COMPANY THINKS THAT BECAUSE IT'S A HIGHER ELEVATION IT'S PROTECTED AND I DISAGREE WITH THAT. WE HAVE A STATEMENT THAT WAS PUT INTO EVIDENCE FROM THE GEOTECHNICAL SURVEY THAT THE ENGINEER PUT INTO EVIDENCE AT THE LAST MEETING THAT I THINK SPEAKS TO SOME OF THAT. I'M NOT SURE. WE CAN CLARIFY THAT SOME MORE. I KNOW THAT LAKE IS -- IT'S 450 ELEVATION AND 500 ON THE TOPOGRAPHICAL MAP. THE LAKE IS 28 FEET DEEP. WE DON'T KNOW WHERE THE SPRING COMES FROM. THE AQUIFER, IT DOESN'T JUST STAY AT ONE LEVEL. IT MOVES UP AND DOWN. THAT LAKE IS GOING TO BE AFFECTED. IF THEY'RE GOING TO SAY THAT THE WELL WILL NOT BE AFFECTED, THAT LAKE IS LIKELY TO BE AFFECTED TOO. TWENTY-EIGHT FEET DEEP IS GOING TO MAKE IT DOWN TO THEIR LEVEL THEY'RE TALKING ABOUT, BUT THE UNKNOWN WHERE THE SPRING COME FROM.

JUDGE MATTINGLY: THANK YOU. COMMISSIONER.

MR. CASTLEN: ONE OF YOU GENTLEMEN. IF YOU COULD SPEAK TO THE UNMINED MINERAL TAX. MR. HESTER MADE, WHEN HE WAS TALKING ABOUT MR. PEDLEY'S CLOSING COMMENTS. HE MADE REFERENCE SPECIFICALLY TO THE UNMINED MINERALS TAX. MY UNDERSTANDING IN READING ONE OF THESE OR WATCHING YOU ALL SHOW, I THINK IT WAS ACTUALLY THE '93 MINUTES, THE GUY SAID EVERY TIME YOU DO CORE DRILLING OR WHATEVER YOU'VE GOT TO TURN IT OVER TO THE STATE, THE RECORDS OR SOMETHING, AND THEY START TAXING PEOPLE THAT HAVE MINERALS ON THEIR LAND. IS THAT HOW IT WORKS OR AM I MISTAKEN?

MR. WRIGHT: THAT'S HOW IT WORKED IN '93. THEY'VE REVISED THE PROCESS SINCE THEN, THE DEPARTMENT OF REVENUE HAS. NOW WE DON'T START REPORTING THE MINE AND MINERAL TAX UNTIL WE GET ALL OUR PERMITS AND STUFF ISSUED AND GET EVERYTHING TOGETHER. THEN WE START REPORTING IT TO THEM AND THEN THEY START GETTING TAXED.

MR. CASTLEN: JUST BECAUSE THEY HAVE THE COAL THERE AND YOU'RE NOT MINING IT BECAUSE YOU'VE NOT BEEN PERMITTED YET. THEY'RE NOT NECESSARILY TAXED.

MR. WRIGHT: NO, THEY'RE NOT TAXED AT ALL.

JUDGE MATTINGLY: IN INVESTIGATING THE FACT THAT THERE IS AN UNMINED MINERALS TAX AND THAT SOME OF THE RESIDENTS IN DAVIESS COUNTY DO PAY THOSE UNMINED MINERAL TAXES, AND YOU'RE RIGHT MR. HESTER. WE HAVE ACCESS TO THINGS THAT YOU PERHAPS DO NOT HAVE ACCESS TO. I NOTICED ON SOME TAX BILLS A VERY SMALL TAX BILL AND IT ACTUALLY IS GOING TO PEOPLE THAT HAD FARMS THAT THE MINERALS HAD ALREADY BEEN

REMOVED, YET THEY STILL PAY A VERY SMALL TAX. WAS THAT FOR THE COAL THAT WAS NOT RECOVERED FROM THAT PROPERTY?

MR. WRIGHT: IF THEY DON'T FINALIZE THAT TAX BILL, THAT TAX RECORD BY THE COAL COMPANY OR THEMSELVES, GET WITH SOMEBODY AND SEND IT IN STATING THAT ANY COAL LEFT WOULD BE UNMINEABLE BECAUSE THERE'S NOBODY INTERESTED IN IT, THEN THEY'LL KEEP GETTING A BILL FOREVER. BUT IF ANYBODY LIKE THAT IS STILL GETTING A BILL, THEN THEY HAVE TO GET WITH THE DEPARTMENT OF REVENUE. SOME PEOPLE, THEY JUST THINK, WELL, IT'S 25 BUCKS. I'M JUST GOING TO KEEP PAYING IT AND THEY KEEP GETTING A BILL EVERY YEAR, BUT THEY CAN REPORT IT AS UNMINEABLE.

JUDGE MATTINGLY: BECAUSE THERE ARE SOME CITIZENS IN DAVIESS COUNTY THAT ARE PAYING THOSE VERY SMALL TAX BILLS, UNMINED MINERAL TAX BILL.

MR. WRIGHT: AND IT'S A PROCESS TO GO THROUGH AND FILE A RETURN THAT SHOWS THAT IT'S UNMINEABLE.

JUDGE MATTINGLY: CLAUD, THEY'RE GOING TO BE TELLING TO CONTACT YOU TO FIGURE OUT HOW TO DO THAT?

MR. PORTER: YES.

MR. CASTLEN: IF YOU COULD SPEAK TO THE ISSUE OF -- I KNOW IT WAS CHALLENGED IN EITHER THE MAY OR FEBRUARY MEETING WHEN YOU ALL MADE YOUR PRESENTATION, YOU SAID ADDITIONAL TAX REVENUE THE COUNTY IS GOING TO RECEIVE. THEN THE OPPOSITION SAID, WELL, YOU'RE JUST RELOCATING PEOPLE OR YOU'RE RELOCATING EQUIPMENT, AND THAT WAS SAID AGAIN TONIGHT BY MR. OVERSTREET, I BELIEVE. I'M NOT SURE. JUST RESPOND TO THAT. I'M CURIOUS.

MR. WRIGHT: THERE WILL BE NEW JOBS CREATED. THERE WILL BE NEW EQUIPMENT BOUGHT. WE WILL BRING SOME EQUIPMENT FROM KNOTTSVILLE NATURALLY. KNOTTSVILLE STARTING WRAPPING UP WE'RE GOING TO SHIP SOME OF THAT DOWN HERE. THERE WILL BE SOME OF THAT HAPPENING, BUT THERE WILL NEW EQUIPMENT PURCHASED. THE COMPANY PURCHASE NEW EQUIPMENT EVERY SO OFTEN BECAUSE THE MINES ARE A HARSH ENVIRONMENT FOR THE EQUIPMENT AND IT HAS TO BE REPLACED. SEVERANCE TAX IS PROBABLY THE BIGGEST BENEFIT TO THE COUNTY. THERE WAS \$230,000 THE COUNTY RECEIVED JUST A MONTH AND A HALF AGO THAT WENT INTO THE SEVERANCE TAX. I KNOW SOME WENT TO THE ART MUSEUM AND STUFF BACK EARLY IN THE YEAR. THAT'S A HUGE AMOUNT, BUT THE COMPANY ALSO PAYS PROPERTY TAX AND STUFF LIKE THAT. LOCAL COUNTY INCOME TAXES THAT WE PAY ON PAYROLL.

MR. CASTLEN: RIGHT. I UNDERSTAND ALL OF THAT. I DON'T MEAN TO CUT YOU OFF. I DON'T MEAN TO SOUND RESPECTFUL TO YOU.

MR. WRIGHT: THAT'S ALL RIGHT. YOU'RE GOOD.

MR. CASTLEN: AGAIN, WHEN I WATCHED THE SHOW, THE PLANNING & ZONING MEETINGS, SOMEBODY MADE A REFERENCE ABOUT THE LAND IS NOT SUITABLE TO BUILD ON ONCE IT'S BEEN MINED. NOW, I DON'T REMEMBER ANYBODY REBUTTING THAT. IS THAT TRUE OR IS THAT --

MR. WRIGHT: I DID ANSWER THAT AND I ANSWERED IT VERY TRUTHFULLY.

MR. CASTLEN: I'M SORRY, I DON'T REMEMBER YOUR ANSWER. TRY AGAIN.

MR. WRIGHT: TIM WRIGHT WOULD NOT BUILD A HOUSE ON MINED FLOOR, BUT YOU CAN GET AN ARCHITECT, A PROFESSIONAL ENGINEER AND THEY SAY THEY CAN BUILD A DESIGN FOUNDATION THAT YOU CAN BUILD A HOUSE AFTER THE COIL HAS BEEN IN PLACE FOR TEN YEARS. AFTER THE WEATHER HAS SETTLED IT. THERE'S FACTORS IN THERE THAT I JUST DON'T



AGREE WITH PERSONALLY. I MEAN THAT'S MY PERSONAL OPINION, BUT THE PROFESSIONALS SAY THAT YOU CAN.

MR. CASTLEN: JUST A THOUGHT.

JUDGE MATTINGLY: JUST AN EDITORIAL COMMENT. PROFESSIONALS TOLD US THAT WE COULD ALLOW MINING THROUGHOUT THE COUNTY ROAD AND REBUILD THE MINE OR REBUILD THE ROAD.

MR. CASTLEN: THAT CROSSED MY MIND TOO AS I LISTENED. ONE THING WE DID KNOW IS WE GOT QUITE A BOND ON IT AND OUR BOND GOES OUT.

MR. WRIGHT: YES. IT GOES OUT A LOT LONGER THAN -- AND YOU'VE GOT A COUNTY ENGINEER THAT'S A PROFESSIONAL.

MR. CASTLEN: ONE THING REGARDING MS. SCOTT'S COMMENT. I DON'T NEED A RESPONSE FROM HER, BUT I THOUGHT I'D SHARE FOR WHAT IT'S WORTH. SHE MADE A COMMENT, AN OBSERVATION ABOUT ALL OF THESE DOCUMENTS WERE HANDED IN AND NOBODY TOOK TIME TO LOOK AT THEM. FRANKLY, I ACTUALLY CALLED GARY NOFFSINGER AFTER THAT MEETING AND TALKED TO HIM ABOUT THAT BECAUSE CERTAINLY AS A PERCEPTION THEY WERE GIVEN THOSE DOCUMENTS WELL IN ADVANCE BECAUSE THEY KNEW THEY WERE COMING. I DON'T HAVE A CLUE. I KNOW GARY DID SAY A LOT OF THOSE THINGS WERE HANDED IN, BUT THEY WERE ALSO READ. OBVIOUSLY, IF I JUST HEARD IT, I DON'T NEED TO READ IT AGAIN. I NOTICED IT TOO. AT SOME LEVEL I WAS A LITTLE DISAPPOINTED THAT MAYBE THEY DIDN'T SAY, HEY, WE'RE GOING TO RECESS -- I KNOW IT WAS 2:00 WHEN THEY DID THEIR VOTING OR WHATEVER. EVEN IF THEY SAID, HEY, WE'RE GOING TO RECESS FOR 12 HOURS. WE'RE GOING TO GO HOME AND SLEEP AND WE'RE GOING TO TAKE TIME TO READ IT AND WE'RE GOING TO COME BACK AND VOTE. AT A MINIMUM THE PUBLIC PERCEPTION WOULD HAVE BEEN FAR BETTER FOR WHAT IT'S WORTH. I DON'T MEAN ANY DISRESPECT TO ANYBODY THAT SERVES ON THE PLANNING & ZONING COMMISSION. AS MR. PEDLEY OR ONE OF THEM SAID, I THINK IT WAS THE CHAIRMAN, MR. KIRKLAND SAID, HE GOT A SANDWICH OUT OF IT THAT NIGHT.

MR. WRIGHT: PART OF OUR AGREEMENT THAT I WAS TALKING ABOUT A WHILE WITH THE GIRL SCOUT IS WE WILL MONITOR THE LAKE, MEANING THE WATER LEVEL AND QUALITY AND SO FORTH.

MR. WATHEN: MR. ISBILL JUST MADE REFERENCE TO A LADY'S HOUSE BEING SHAKEN AND THINGS COMING OFF THE WALL. ARE YOU ALL AWARE OF THAT?

MR. WRIGHT: BRANDON WILL KNOW MORE ABOUT THAT.

MR. LANHAM: NOWHERE -- WE MINED WITHIN 150 FEET OF THAT HOME, AND THAT WAS NEGOTIATED THROUGH THE LANDOWNER ON THAT PARTICULAR HOUSE. NOWHERE IN ANY EVENT IN PLEASANT RIDGE WILL WE BE MINING WITHIN 500 FEET FROM EACH DWELLING SO THAT SEEMS REALLY IRRELEVANT.

MR. WATHEN: YOU ASKED HER IF YOU COULD MINE CLOSER?

MR. LANHAM: SHE DOESN'T OWN THE HOUSE THERE. IT'S A SEPARATE LANDOWNER THAT OWNS THAT PROPERTY.

MR. WATHEN: THAT WAS NEGOTIATED?

MR. LANHAM: YES, THAT'S CORRECT. IT WAS SAFE TO COME WITHIN 150 FEET. THAT GIVES YOU AN IDEA OF 300 FOOT DISTANCE. IT'S STILL FEASIBLE TO ACCOMPLISH A SAFE BLAST. WE CAN GO UP TO 150 FEET FROM THE HOUSE, AND THAT WAS FROM NEGOTIATION OF THAT. THAT WAS AS CLOSE AS WE GOT.

MR. WATHEN: IT WAS SHAKING AND RATTLING?

MR. LANHAM: I'M NOT AWARE OF ANY OF THAT, SIR. YOU CAN SUCCESSFULLY PERFORM A BLAST AT THAT DISTANCE.

MR. LAMBERT: MR. LANHAM, ARE YOU SAYING THE PERSON THAT MADE THE COMPLAINT WAS A RENTER AND THE PERSON WHO OWNED THE PROPERTY IS THE ONE THAT MADE THE AGREEMENT WITH THE MINING COMPANY TO COME WITHIN 150 FEET?

MR. LANHAM: THAT'S CORRECT, SIR.

MR. WATHEN: THAT DOESN'T OFFSET THE FACT IT STILL KNOCKED THE STUFF OFF THE WALL.

MR. LANHAM: SHE DID SIGN A WAIVER FOR THAT TO BE PERFORMED.

JUDGE MATTINGLY: SO SHE KNEW THAT THAT WAS POSSIBLE.

MR. LANHAM: WE WORKED WITH DEBBIE.

JUDGE MATTINGLY: THAT'S FINE. ONE OF THE STATEMENTS I WANT TO MAKE, COMMISSIONER, IN TALKING ABOUT -- YOU CAN YOU CAN SIT DOWN, MR. LANHAM, UNLESS YOU HAVE OTHER QUESTIONS.

MR. CASTLEN: I HAVE ONE MORE, BUT NOT FOR MR. LANHAM.

JUDGE MATTINGLY: THERE WAS SOME ISSUE MADE ABOUT MR. SILVERT AND MR. NOFFSINGER TALKING AMONG THEMSELVES AND NOT PAYING ATTENTION. IF YOU NOTICE THAT, AND IT DID GO ON ON OCCASION. IT'S THE SAME THING THAT HAPPENS HERE. THEY ARE STAFF. THEIR JOB IS TO SERVE THE PLANNING COMMISSION OR THE BOARD. THEIR JOB IS TO SERVE THAT BOARD. LOTS OF TIMES OUR OWN STAFF WILL TALK AMONG THEMSELVES AND BRING ISSUES TO US THAT MAY HAVE BEEN MISSED. THEY DO NOT VOTE. THEY DO HAVE A HAND IN THAT DECISION. WHILE THERE WAS A LOT MADE OF IT, AND PERHAPS IT WAS IMPOLITE, I DON'T KNOW, BUT WE HAVE ON OCCASION OURSELF DONE THOSE THINGS.

MR. CASTLEN: I HAVE ONE MORE. WHOEVER WANTS TO TALK ABOUT DUST. MR. WRIGHT TALKED A LOT ABOUT FUGITIVE DUST; IS THAT RIGHT?

MR. WRIGHT: YES.

MR. CASTLEN: I THOUGHT THAT YOU TALKED A LOT ABOUT WHAT YOU ALL DO TO CONTROL. YOU SPRAY THE COAL PILE. YOU SPRAY EVERYTHING. THE BOTTOM LINE IS WATER IS WHAT FIXES IT. THAT'S THE BOTTOM LINE. I THOUGHT YOU SAID MORE THAN ONCE THAT THE DUST DOESN'T LEAVE. AM I RIGHT?

MR. WRIGHT: WE CANNOT ALLOW VISIBLE DUST TO LEAVE OUR PERMITTED AREA.

MR. CASTLEN: CANNOT ALLOW VISIBLE DUST TO LEAVE. THAT SEEMS TO BE WHAT YOUR RESPONSE WAS MORE THAN ONCE. I KNOW YOU'RE NOT SUPPOSE TO, BUT YOU'VE SAID MORE THAN ONCE IT JUST DOESN'T HAPPEN.

MR. WRIGHT: I DID NOT MEAN THAT COAL DUST LEFT OFF THE PERMIT, NO.

MR. CASTLEN: SAY THAT AGAIN.

MR. WRIGHT: ARE YOU SAYING THAT I MENTIONED THAT IT DOESN'T HAPPEN.

JUDGE MATTINGLY: THE IMPLICATION WAS THAT YOU DO NOT HAVE ANY DUST LEAVE THE PERMIT BOUNDARY.

MR. CASTLEN: ANY DUST THAT YOU'RE SUPPOSED TO BE IN CONTROL OF NEVER LEAVES YOUR PERMITTED AREA. THAT'S WHAT I HEARD. WHETHER THAT'S WHAT YOU SAID OR NOT.

MR. WRIGHT: WE'RE NOT ALLOWED TO LET VISIBLE DUST, COAL DUST AND FUGITIVE DUST, AS YOU CALL IT, LEAVE OUR PERMITTED AREA.

MR. CASTLEN: THE RULES ARE YOU'RE NOT ALLOWED TO DO IT. I UNDERSTAND THAT PART. I GUESS MY QUESTION IS, ARE YOU STANDING HERE TONIGHT AND SAY THAT IT NEVER LEAVES YOUR PLACE?

MR. WRIGHT: FUGITIVE DUST WE KEEP IT CONTROLLED. COMMON DUST, WHICH IS FIELD AND STUFF LIKE THAT, WE CAN'T DO NOTHING ABOUT IT.

MR. CASTLEN: BUT THE DUST THAT YOU ALL HAVE CONTROL OF IS THE DUST WHEN YOU'RE BLASTING, FROM THE ROCKS THAT YOU'RE MOVING, THE OVERBURDEN, AND ALSO YOUR COAL DUST. IS THAT REALLY THE ONLY DUST THAT YOU ALL HAVE TO CONTROL?

MR. WRIGHT: THAT'S WHAT AIR QUALITY REGULATION IS.

MR. CASTLEN: LET'S SAY YOU GOT A BIG SPREAD THAT -- MAYBE YOU'RE DOING THE RECLAMATION PART AGAIN. YOU'RE MOVING THE TOPSOIL BACK ON THERE. I ASSUME IT HADN'T RAINED IN A WHILE IT'S GOING TO BE KIND OF DRY AND YOU'RE SPREADING IT OUT AND IT HAPPENS TO BE BREEZY. IF I LIVED NEXT-DOOR, EVEN IF I'M 1,000 FEET AWAY, I DON'T REALLY WANT A TON, I DON'T WANT A DUST STORM GOING MY WAY AS YOU ROLL ACROSS BACK AND FORTH. DO YOU DO ANYTHING TO TRY TO ALLEVIATE THAT TO BE A GOOD NEIGHBOR?

MR. WRIGHT: THE TOPSOIL IS NOT A FUGITIVE DUST.

MR. CASTLEN: I UNDERSTAND IT.

MR. WRIGHT: IF WE WAS DUSTING SOMEBODY'S HOUSE, WE WOULD BE A GOOD NEIGHBOR AND STOP THAT DAY AND TAKE CONSIDERATION OF THEM. WE DON'T WANT TO DUST SOMEBODY.

JUDGE MATTINGLY: COMMISSIONER LAMBERT.

MR. LAMBERT: I'M GOING TO SAVE MINE FOR THE NEXT MEETING.

JUDGE MATTINGLY: COMMISSION WATHEN, DO YOU HAVE ANYTHING ELSE?

MR. WATHEN: NO. I'M GOING TO STOP.

MR. LAMBERT: JUDGE, LET ME MAKE ONE STATEMENT. JUDGE, I'VE TRIED TO GATHER INFORMATION ON THE UNMINED MINERAL TAX. THAT TAX I BELIEVE MR. PORTER GOES DIRECTLY TO THE CABINET OF REVENUE, STATE REVENUE CABINET. DOES IT COME THROUGH US?

MR. PORTER: NO.

MR. LAMBERT: WE DON'T SEE THAT AND WE DON'T HAVE A LISTING OF HOW MUCH WHO PAYS AND HOW OFTEN THEY PAY THAT. I WOULD LIKE TO REQUEST BEFORE WE VOTE TO HAVE A CLEAR EXPLANATION OF THAT FROM THE COUNTY ATTORNEY OR SOMEONE OUT OF THE REVENUE CABINET.

JUDGE MATTINGLY: YOU WILL DO THAT FOR US?

MR. PORTER: I WILL, JUDGE.

MR. LAMBERT: ONE OF THE THING THAT I UNDERSTAND IS IF YOU APPEAL THAT YOU MAY HAVE AN ESTIMATE OF THE AMOUNT OF COAL ON YOUR PIECE OF PROPERTY AND YOU GET AN ESTIMATE FROM THE CORE DRILLINGS. THAT THEY HAVE SO MANY TONS OF COAL AND HAVE TAX. BASED ON THAT PROJECTED TONNAGE AND THE TONNAGE MAY NOT BE NEAR WHAT THE PROJECTIONS WERE. SO THERE'S SOME APPEAL PROCESS AND REDUCTION OF THOSE TAXES. I DO NOT UNDERSTAND IT.

MR. PORTER: I CAN VERY QUICKLY. I DEALT WITH THAT MOSTLY PERSONAL WITH MY PARENTS' FARM WHEN THEY HAD. YOU DON'T GET TO APPEAL WHAT THE -- ONCE THE MINING COMPANY HAS PERMITTED THE LAND, THERE'S AN UNMINED MINERAL TAX. THAT'S BASED ON THE ESTIMATE. THE DEPARTMENT OF REVENUE WILL MAKE THAT ESTIMATE AND THEY'LL SEND YOU A BILL. YOU HAVE TO PAY THAT BILL UNTIL COAL IS MINED AND THEN YOU HAVE MINE MINERAL TAX.

MR. LAMBERT: DOES THE INDIVIDUAL WHEN THEY CLOSE THE MINE THEN THAT'S ALSO A REVENUE FOR TAX PURPOSES, INCOMES TAX?

MR. PORTER: YES.

MR. LAMBERT: THAT'S A DIRECT TAX ALSO.

JUDGE MATTINGLY: CHARLIE, A BRIEF STATEMENT.

MR. CASTLEN: I DID SAY I WOULD BE BRIEF. THIS ISN'T A QUESTION. IT'S JUST AN OBSERVATION. I FEEL LIKE IT NEEDED TO BE REFLECTED HERE TONIGHT. I KNOW SOMEBODY MADE THE STATEMENT AT THE MEETING, AT ONE OF THE TELEVISED MEETINGS IN MAY OR FEBRUARY, THAT PLANNING & ZONING HAD TURNED -- WELL, THEY DIDN'T SAY PLANNING & ZONING OR FISCAL COURT, BUT THEY SAID, THIS APPLICATION HAS BEEN DENIED TWICE BEFORE AND THE VOTE WAS UNANIMOUS. I JUST WANT THE RECORD TO, I GUESS, THE TRANSCRIPT TO REFLECT THAT'S NOT TRUE. WHEN I WENT BACK AND READ THE '93 AND '86 TRANSCRIPTS, THE '86 VOTE WAS FOUR TO THREE OF DENIAL BY PLANNING & ZONING. IN 1993 THE VOTE WAS SIX TO ONE TO DENY. SO NEITHER WERE UNANIMOUS FOR WHAT THAT'S WORTH. NOW, FISCAL COURT DID UPHOLD PLANNING & ZONING, WHAT PLANNING & ZONING SENT TO THEM. THE SPEAKER, WHOEVER IT WAS, DID NOT SPECIFY WHETHER IT WAS PLANNING & ZONING OR WHETHER IT WAS FISCAL COURT. JUDGE MATTINGLY: MR. ISBILL YOU HAD YOUR HAND UP. I'LL GIVE YOU ONE BRIEF MINUTE.

MR. ISBILL: I JUST WANTED TO ADDRESS THE INCIDENT AT KNOTTSVILLE. MS. MCKNOUGHT WAS ASKED TO SURRENDER HER SEISMOGRAPH. THIS IS WHAT SHE TOLD ME. BECAUSE SHE WAS TOLD THAT THE PROPERTY AROUND THE MINE WAS BEING SHAKEN SO BADLY THAT THEY DIDN'T HAVE ENOUGH SEISMOGRAPHS. SO SHE WAS ASKED TO SIGN A RELEASE. MY QUESTION IS SIMPLY THIS: WHY WOULD YOU EVER REMOVE A SEISMOGRAPH FROM THE CLOSEST RESIDENCE TO THE MINING? THE BLASTING WAS NOT HELD 155 FEET WHEN THAT HAPPENED. IT WAS MUCH FURTHER AWAY. MORE THAN 300 FEET. SO I WANT THAT TO BE VERY, VERY CLEAR. SHE HAS BEEN EVACUATED OUT OF HER HOME WITH HER TWO YEAR OLD GRANDDAUGHTER. ALSO, WITH DUST. THEIR PERMIT SAYS THAT THEY CAN HAVE NO VISIBLE DUST TO LEAVE THEIR MINING SITE EVER. THEY ARE SELF-CONTROLLED ON THAT. THEY'RE SELF-MONITORED ON IT, BUT THEY HAVE NEVER SHUT THEIR MINE DOWN WHEN THE WIND GOT SUCH A VELOCITY TO CARRY THAT DUST AWAY. I WILL BE GLAD TO FURNISH YOU WITH PICTURES TO PROVE THAT VERY POINT IN KNOTTSVILLE. THANK YOU.

JUDGE MATTINGLY: THANK YOU. OUR NEXT MEETING IS AUGUST 2ND. AGAIN, AT THAT TIME WE WILL VOTE ON THIS ISSUE. WE WILL CONTINUE TO ASK QUESTIONS. I THINK THE COMMISSIONERS WILL GO BACK, WE'LL KINDLY MADE A LIST OF OUR QUESTIONS. I WOULD SUGGEST THAT ANY OF YOU THAT ARE INTERESTED OR HAVE A DOG IN THE FIGHT BE HERE IN CASE WE WANT TO ASK YOU A QUESTION. I WANT TO TAKE THIS OPPORTUNITY TONIGHT TO

THANK EACH AND EVERY ONE OF YOU, BOTH ON THE APPLICANT SIDE AND ON THE SIDE OF THE PEOPLE OR THE FOLKS WHO HAVE APPEALED THIS DECISION, FOR THE CIVILITY THAT YOU'VE SHOWN. YOU WERE VERY WELL BEHAVED THIS EVENING AND THE RESPECT THAT YOU'VE SHOWN THE COURT. IT'S GOING TO BE A LATE HOUR AND STORMING OUTSIDE. BE VERY CAREFUL AS YOU EXIT THE COURTHOUSE. BE VERY CAREFUL ON YOUR WAY HOME. IS THERE ANY OTHER BUSINESS TO BE BROUGHT BEFORE THE COURT.

MR. OVERSTREET: COULD WE LEAVE THE RECORD OPEN FOR MR. ISBILL TO PUT THOSE PHOTOS IN THE RECORD FOR THE COURT.

JUDGE MATTINGLY: I DON'T HAVE A PROBLEM WITH THAT. IF YOU WILL DELIVER THEM TO THE COUNTY ATTORNEY.

MR. OVERSTREET: YES, SIR.

JUDGE MATTINGLY: THERE BEING NO OBJECTIONS, WE ARE ADJOURNED.

(FISCAL COURT ENDING AT 10:45 P.M.)

STATE OF KENTUCKY ) )SS: REPORTER'S CERTIFICATE COUNTY OF DAVIESS )

I, LYNNETTE KOLLER FUCHS, NOTARY PUBLIC IN AND FOR THE STATE OF KENTUCKY AT LARGE, DO HEREBY CERTIFY THAT THE FOREGOING DAVIESS COUNTY FISCAL COURT MEETING WAS HELD AT THE TIME AND PLACE AS STATED IN THE CAPTION TO THE FOREGOING PROCEEDINGS; THAT THE BOARD MEMBERS PRESENT WERE AS STATED IN THE CAPTION; THAT SAID PROCEEDINGS WERE TAKEN BY ME IN STENOGRAPHY AND ELECTRONICALLY RECORDED AND WAS THEREAFTER, BY ME, ACCURATELY AND CORRECTLY TRANSCRIBED INTO THE FOREGOING 185 TYPEWRITTEN PAGES; AND THAT NO SIGNATURE WAS REQUESTED TO THE FOREGOING TRANSCRIPT. WITNESS MY HAND AND NOTARY SEAL ON THIS THE 30TH DAY OF JULY, 2012.

LYNNETTE KOLLER FUCHS  
NOTARY ID 433397  
OHIO VALLEY REPORTING SERVICES  
202 WEST THIRD STREET, SUITE 12  
OWENSBORO, KENTUCKY 42303  
COMMISSION EXPIRES: DECEMBER 16, 2014  
COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

OHIO VALLEY REPORTING  
(270) 683-7383

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**Without objection, Judge/Executive Mattingly adjourned the meeting.  
SO ORDERED THAT COURT STAND ADJOURNED.**

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Al Mattingly  
Daviness County Judge/Executive