

PLANNING COMMISSION MINUTES
October 18, 2018

PUBLIC HEARING

CASE NO. 18ZONE1043

Request: Change in zoning from R-5 to C-2 with a Conditional Use Permit for outdoor alcohol sales and landscape waiver
Project Name: 1039 Ash Street
Location: 1039 Ash Street
Owner: Jeffrey J. and Rebecca L. Hollcamp
Applicant: Jeffrey J. and Rebecca L. Hollcamp
Representative: Clifford Ashburner – Dinsmore & Shohl LLP
Jurisdiction: Louisville Metro
Council District: 10 – Pat Mulvihill

Case Manager: Joel Dock, AICP, Planner II

Notice of this public hearing appeared in The Courier-Journal, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

04:19:56 Joel Dock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

04:22:59 Commissioner Jarboe said that an additional binding element would have to be added to this case (and others like it) regarding hours of operation. Why is this not already included in the staff report? Mr. Dock said that, at LD&T, hours of operation were discussed but were not agreed upon. He said the applicant stated that they would have that information at today's public hearing.

The following spoke in favor of this request:

Clifford Ashburner, Dinsmore & Shohl, 101 S 5th St #2500, Louisville, KY 40202

Summary of testimony of those in favor:

04:23:52 Cliff Ashburner, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

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The following spoke neither for nor against (“Other”):
No one spoke.

The following spoke in opposition to this request:
Leila Faucette, 1017 Ash Street, Louisville, KY 40217

Summary of testimony of those in opposition:

04:28:12 Leila Faucette said a lot of weight is being given to the fact that this property has been used as commercial, so it wouldn't be a problem to change the zoning from R-5 to C-1. She discussed prior commercial uses, but said there have not been retail uses. She said evening hours could raise issues with noise and parking. She said this is not a very big building and the proposed outdoor service area is “tiny”.

04:31:04 Regarding hours of operation, Commissioner Carlson asked Ms. Faucette if there was a closing time she would be more comfortable with. She said 1:00 a.m. is very late. Also, she said this proposed outdoor seating is not the same as other businesses/restaurants with outdoor seating. She noted that other businesses have their outdoor seating completely separated from the street and the neighborhood. She said this is “right on top of the sidewalk”. She said she would be in favor of a coffee shop use.

Rebuttal:

04:32:25 Mr. Ashburner said there seemed to be support in the neighborhood, especially since one of the co-owners lives next to the property. He said the Code allows for a 1:00 a.m. closing time. (See recording for his detailed presentation.)

04:34:32 In response to a question from Commissioner Jarboe, Mr. Ashburner and some of the Commissioners discussed the seating capacity.

04:35:49 Mr. Ashburner requested relief from Conditional Use Permit requirement “E”. He said the applicant will *not* have 100 seats in the facility. In response to a question from Paul Whitty, legal counsel for the Planning Commission, Mr. Dock said tis request is NOT a “waiver” but is a relief from a Conditional Use Permit requirement.

04:37:38 Commissioners' Deliberation

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04:39:53 Commissioner Tomes asked to discuss when it's appropriate to cut off outdoor alcohol sales outside. After much discussion, it was decided to add a binding element.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Change in Zoning

04:54:31 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution based on the Cornerstone 2020 Checklist, the applicant's justification, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of Guideline 1: Community Form because the proposal utilizes the existing grid pattern by providing access to public streets and the rear alley; the proposal introduces an appropriately located neighborhood center including a mix of neighborhood-serving uses such as offices, shops and restaurants as it provides a neighborhood service and amenity commonly found in the area and one that would have been established in a previously constructed non-residential structure; the proposal does not eliminate any existing public open space on-site. The proposal is located in close proximity to neighborhood goods and services and located in a walkable urban neighborhood near public transit.; and the proposal will renovate the existing facilities to accommodate the use; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 2: Centers because the proposal will renovate the existing facilities to accommodate the use; sufficient population in the area exists to support a large variety of non-residential uses; the proposed development is compact and results in an efficient land use pattern and cost-effective infrastructure investment as existing structure will be utilized and utilities are available; the proposed center includes a mix of compatible land uses that will reduce trips, support the use of alternative forms of transportation and encourage vitality and sense of place as the neighborhood is walkable and contains a scattering of neighborhood serving uses located among the residential properties. The proposed district and use are compatible with the neighborhood; the proposed district does not preclude the ability to provide mixed-use; the proposal is located on a small corner lot with an existing non-residential structure; no significant site improvements are proposed; the subject site does not present options for shared facilities as it abuts single-family residential; utility connection would appear to be available as the site is in

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the Urban Services District; and the proposal is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities as bike facilities are provided, an existing ramp provides ADA access, and sidewalks are of sufficient width; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 3: Compatibility because no significant site improvements or changes to the existing structure have been suggested. All future changes shall meet the design guidance of the Land Development Code; the proposal does not constitute a non-residential expansion into an existing residential area, or demonstrates that despite such an expansion, impacts on existing residences (including traffic, parking, signs, lighting, noise, odor and stormwater) are appropriately mitigated as the structure was previously constructed for non-residential purposes and used non-residential; the proposal revitalizes an existing neighborhood serving use at a scale and intensity appropriate for the neighborhood; the proposal mitigates any potential odor or emissions associated with the development as refuse collection is located in the rear alley; the proposed use is located in a walkable urban neighborhood and is a minimal scale that does not appear to produce any adverse impacts on traffic; lighting will comply with LDC 4.1.3.; the proposal is located along local roads near an activity corridor; the proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development as existing conditions and structures provide a buffer of this use which is contained within a structure, except a small outdoor patio which faces the public street; the proposal is being located within an existing structure intended to serve the neighborhood. The intensity of the development is compatible with surrounding uses; no site improvements are proposed. Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards; sufficient parking is provided to serve the development; off-street and on-street parking is utilized to meet parking demand. Off-street facilities are located at the rear alley in an area which is typically reserved for accessory uses such as those provided; no parking garages proposed; and signage will be compliant with Ch. 8 of the LDC; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 4: Open Space because open space is not a requirement or necessity of the project. An outdoor patio has been provided; and there are no apparent natural features on-site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 5: Natural Areas and Scenic and Historic Resources because there are no apparent natural features on-site; the existing structure is being repurposed to accommodate the user; and the development site does not appear to contain wet or

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highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 6: Economic Growth and Sustainability because the subject site is well-connected to surrounding population and nearby employment centers. While the subject site is not located downtown, it is located in an urban neighborhood near downtown and constitutes redevelopment and revitalization; The proposal is not an industrial development; and the use is located within close proximity to an activity corridor and would not appear to generate large amount of vehicle trips given the size of the facility and the nearness to population within a walkable neighborhood; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 7: Circulation because the proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means; the proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation as bike facilities are provided, an existing ramp provides ADA access, and sidewalks are of sufficient width; the existing roadway network is sufficient to support the use. Connection to adjacent lands would be inappropriate; no additional right-of-way has been required; the proposal includes adequate parking spaces to support the use; and cross access would be inappropriate; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 8: Transportation Facility Design because no stub streets required per this application; the proposal is slightly removed from a major roadway and activity corridor and access would be from these areas; and the development does not necessitate any new roadways; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 9: Bicycle, Pedestrian and Transit because the proposal provides, where appropriate, for the movement of pedestrians, bicyclists and transit users as bike facilities are provided, an existing ramp provides ADA access, and sidewalks are of sufficient width; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10: Flooding and Stormwater because the proposal's drainage plans have been approved by MSD; and

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WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 12: Air Quality because the proposal has been reviewed by APCD and found to not have a negative impact on air quality; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 13: Landscape Character because no natural corridors are apparent on-site; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 14: Infrastructure because the proposal is located in an area served by existing utilities or planned for utilities; there would appear to be an adequate supply of water as it is located in the Urban Services District; and there would appear to be an adequate means of sewage treatment as it is located in the Urban Services District; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 1 – Community Form because the subject property is located in the Traditional Neighborhood Form District, which may contain "appropriately located and integrated neighborhood centers with a mixture of mostly neighborhood-serving land uses such as offices, shops, restaurants, and services." The subject property has had commercial uses for years, most recently as a chiropractor's office. The proposal is to redevelop and revitalize the subject property as a small cafe-style restaurant operated by the neighboring landowner, who is a local restaurateur. The proposed reuse of this property as a restaurant is consistent with the proposed C-1 zoning district and the intent and policies of Guideline 1 as it will provide a neighborhood service and amenity commonly found in the walkable Schnitzelburg neighborhood. Conforming and non-conforming commercial uses are nearby, including two non-conforming commercial bar uses directly across Ash Street from the subject property, and commercial uses along the Goss A venue activity corridor two blocks to the north; and

WHEREAS, the Commission further finds that the proposal meets the intent and applicable policies of Guideline 2, Centers because the proposal is for the reuse of the existing building as a small cafe-style restaurant. The proposed use is consistent with other neighborhood-serving commercial uses in this walkable neighborhood, including the two non-conforming bar uses directly across Ash Street and the commercial uses to the north along Goss A venue; and

WHEREAS, the Commission further finds that the proposal complies with the intent and applicable policies of Guideline 3, Compatibility because the proposal will not cause adverse traffic, noise, odor, parking, or visual impacts to the surrounding residences. The small size of the existing building to be reused limits the potential for traffic and parking impacts, and the applicant will provide the required number of parking spaces

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through a combination of on-street parking along Ash Street and Hickory Street and off-street parking spaces in the rear of the subject property accessible from the all along Hickory Street. Refuse will be stored at the rear of the property near the alley and appropriately screened to mitigate visual and odor impacts to surrounding residences. The proposal includes minimal renovation to the exterior of the existing building. The existing patio along Hickory Street will be redeveloped into a small outdoor seating area that will be screened by a 3' barrier as required by Land Development Code Chapter 4.2.41. The applicant will comply with all codes and regulations regarding operating hours and noise limitations to mitigate noise and light impacts. The neighboring landowner, who is a local restaurateur, will operate the proposed restaurant; and

WHEREAS, the Commission further finds that the proposal meets the intents of applicable policies of Guideline 4, Open Space, and Guideline 5, Natural Areas and Scenic and Historic Resources. The subject property is an already-developed site and proposes a commercial use that does not require open space, and no historical resources are located on the site; and

WHEREAS, the Commission further finds that the proposal complies with the intent and applicable policies of Guideline 6, Economic Growth and Sustainability. The proposal is to redevelop and revitalize an existing building into a neighborhood-serving commercial use. The proposed restaurant is natural fit for this walkable neighborhood that is already home to a number of restaurants, bars, and other commercial uses along Ash Street and Goss Avenue; and

WHEREAS, the Commission further finds that the proposal complies with the intent and applicable policies of Guideline 7, Circulation, and Guideline 8, Transportation Facility Design, and Guideline 9, Bicycle, Pedestrian, and Transit. The subject property is located two blocks from a major arterial road and activity center, Goss Avenue, and is well-served by the existing road infrastructure and public transit. TARC stops are located nearby at the intersection of Texas Avenue and Goss Avenue. The subject property provides amenities to promote bicycle and pedestrian use as bike facilities will be provided, an existing ramp provides ADA access, and the existing sidewalks are five feet wide; and

WHEREAS, the Commission further finds that the proposal meets the intents of Guideline 10 – Flooding and Stormwater and Guideline 11 – Water Quality. The proposal should have very little impact, if any, on the surrounding waterways, complying with the intent and applicable policies of Guideline 10, Flooding and Stormwater, and

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WHEREAS, the Commission further finds that the proposal complies with the intent and applicable policies of Guideline 12, Air Quality. The proposal should have no negative impact on traffic or air quality based due to its location near an existing activity center on Goss Avenue and the small size of the existing building that will be reused; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the proposed Change-in-Zoning from R-5, Single-Family Residential to C-1, Commercial be **APPROVED**.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Conditional Use Permit and Relief From Section "E"

04:55:52 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal is consistent with the Comprehensive Plan as the proposal revitalizes an existing neighborhood serving property at a scale and intensity appropriate for the neighborhood. The proposal is located in close proximity to neighborhood goods and services and located in a walkable urban neighborhood near public transit and a sufficient population in the area exists to support a large variety of non-residential uses. The outdoor area is limited in scale and consistent with outdoor dining areas in the neighborhood; and

WHEREAS, the Commission further finds that the proposal is compatible with surrounding uses and the general character of the form district as the proposal revitalizes an existing neighborhood serving property at a scale and intensity appropriate for the neighborhood; and

WHEREAS, the Commission further finds that the necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. adequate to serve the proposed use will be provided; and

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WHEREAS, the Commission further finds that the proposal complies with the following specific standards required to obtain the conditional use permit requested. Outdoor alcohol sales and consumption and/or indoor live entertainment for a restaurant may be permitted in the C-1 zoning district upon the granting of conditional use permit and compliance with the listed requirements:

- A. All outdoor areas for the sale and consumption of alcohol must have designated boundaries.
- B. Outdoor dining areas within the public right-of-way must receive approval from the agency responsible for transportation engineering and shall be designed in accordance with agency standards.
- C. Outdoor dining areas adjacent to the public right-of-way shall contain a physical barrier that is at least three feet in height. The barrier should be designed to permit existing legal access from building to the adjacent public right-of-way.
- D. Outdoor dining areas that include the sale and consumption of alcohol within 50 feet of a residentially zoned or used property shall provide a six foot continuous screen as part of the designated boundary for the areas of the outdoor area within 50 feet of residentially used or zoned property. The continuous screen shall be in conformance with the Chapter 10, Part 4 (Implementation Standards).
- ~~E. This conditional use permit shall be limited to restaurant uses in the C-1 that hold the following types of ABC licenses:
 - 1. ~~Restaurant liquor and wine license by the drink for 100 plus seats~~
 - 2. ~~Restaurant wine license by the drink for restaurants with seating for 100 and receives at least 70 percent gross receipts from food sales.~~~~
- F. The use of outdoor dining areas for the sale and consumption of alcohol shall cease by 1:00 A.M.
- G. The entertainment activity shall be in compliance with the Metro Noise Ordinance (LMCO Chapter 99).
- H. The Board may require additional and more restrictive requirements than those listed above based on the conditions of the specific location and the characteristics of the specific restaurant.

Now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Conditional Use Permit with relief from item "E"

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Waiver of LDC, section 10.2.4 to eliminate 15' LBA along west property line

04:57:09 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as the existing structure is being utilized and the request is a result of existing conditions. Encroachments at the rear are consistent with the purpose of accessory use areas found throughout traditional neighborhoods; and

WHEREAS, the Commission further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The character of residential areas are preserved as the proposal revitalizes an existing structure built for non-residential purposes and the request is a result of existing conditions; and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the request is a result of existing conditions and refuse collection areas have been located to reduce the impact on public roads and pedestrian ways in an area consistent with the pattern of development in the area; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the request is a result of existing conditions and the relocation of refuse collection from this area may result in adverse impacts on pedestrian ways; now, therefore be it

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RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver of LDC, section 10.2.4 to eliminate 15' LBA along west property line.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.

Detailed District Development Plan with addition of binding element #7

04:57:58 On a motion by Commissioner Howard, seconded by Commissioner Peterson, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites will be provided. The site was previously developed and the proposal will revitalize the existing structure.

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are provided as the proposal is located in close proximity to neighborhood goods and services and located in a walkable urban neighborhood near public transit. An existing ramp provides ADA access and sidewalks are of sufficient width; and

WHEREAS, the Commission further finds that open space is not a required component of the development. An outdoor patio is provided; and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Commission further finds that the development is compatible with existing land uses and the future growth of the area as the structure was previously constructed for non-residential purposes and used for non-residential purposes. The

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proposal revitalizes an existing neighborhood serving property at a scale and intensity appropriate for the neighborhood; and

WHEREAS, the Commission further finds that the proposed development plan conforms to the Comprehensive Plan. The proposal provides a neighborhood service and amenity commonly found in the area and one that would have been established in a previously constructed non-residential structure on site. It does not constitute a non-residential expansion into an existing residential area as the structure was previously constructed for non-residential purposes and used for non-residential purposes. The proposal revitalizes an existing neighborhood serving property at a scale and intensity appropriate for the neighborhood. The proposal is located in close proximity to neighborhood goods and services and located in a walkable urban neighborhood near public transit and a sufficient population in the area exists to support a large variety of non-residential uses. It is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities as bike facilities are provided, an existing ramp provides ADA access, and sidewalks are of sufficient width; now, therefore be it

RESOLVED, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan, **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:

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- a. The development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits and Transportation Planning Review and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways or the Department of Public Works for all work within the right-of-way
5. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
 6. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
 7. The use of outdoor dining areas for the sale and consumption of alcohol shall cease on Sunday through Thursday at 12:00 midnight, and the outdoor sale and consumption of alcohol on Fridays and Saturdays shall cease at 1:00 a.m.

The vote was as follows:

YES: Commissioners Peterson, Robinson, Tomes, Daniels, Carlson, Lewis, Brown, Howard, and Jarboe.

NOT PRESENT: Commissioner Smith.