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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

FEBRUARY 1, 2001

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, February 1, 2001, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: C. A. Pantle, Chairman
- Gary Noffsinger,
- Planning Director
- Marty Warren
- Ruth Ann Mason
- Judy Dixon
- Tim Miller
- Ward Pedley
- Stewart Elliott
- Attorney

* * * * *

CHAIRMAN: Call the meeting of the Owensboro Metropolitan Board of Adjustment to order.

First item of business will be to consider the minutes of the last meeting. They're on record in the office. They've been reviewed. No corrections or problems been found with it. Chair will entertain a motion to dispose of it.

MS. DIXON: Move to approve.

CHAIRMAN: Motion made to approve the minutes.

1 MR. MILLER: Second.

2 CHAIRMAN: Second. All in favor say aye.

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: Motion carries.

5 Want to welcome all of you, well, a few of
6 you tonight to the Board of Adjustment. You wish to
7 speak on a particular item, ask you to come to the
8 microphone, stand up, state your name and then be
9 sworn in by counsel and we'll listen and have it on
10 record.

11 First item.

12 -----

13 ADMINISTRATIVE APPEAL

14 ITEM 2

15 302 East 20th Street, in an R-4DT zone (Map N-8)
16 Consider request for an administrative review
17 concerning a request to change from one non-conforming
18 use as a contractor's shop/cabinet sales to another
19 non-conforming use as a retail sales establishment.
Reference: Zoning Ordinance, Article 4, Section 4.53,
20 Article 7, Section 7.34 and 7.4
Applicant: Shiloh Barksdale and Robert D. Haynes

20 MR. NOFFSINGER: Mr. Chairman, this appeal
21 has been advertised for public hearing at this time
22 and all parties of record have been notified. Mr. Jim
23 Mischel with the Planning Staff is here tonight to
24 present his view of the case.

25 CHAIRMAN: Be sworn in, Jim, please.

1 MR. ELLIOTT: State your name for the
2 record, please.

3 MR. MISCHEL: Jim Mischel.

4 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

5 MR. MISCHEL: Tonight we're here to hear
6 an administrative appeal. Presently located at 302
7 East 20th Street we have a contracting shop/cabinet
8 shop located there that has been there for I'd say a
9 few years. In the future they wish to - - those
10 people will be relocating and the people here would
11 like to buy that property and turn it into a retail
12 establishment.

13 This property is zoned R-4DT which is
14 residential. There's a couple of ways to handle this.
15 One is a rezoning; or two, we could do an
16 administrative appeal to change from one
17 non-conforming use to another non-conforming use if
18 that prior use was in existence before the adoption of
19 the Zoning Ordinance, which was around 1979. In doing
20 some research we found that and we'd like to show what
21 we have. We've got a power-point presentation. We
22 probably have to have the members come down here so we
23 could show it.

24 I would like to go ahead and furnish this
25 in the record.

1 Like I said the Zoning Ordinance does
2 allow for non-conforming uses prior to the adoption of
3 the ordinance. In the ordinance we have a definition
4 covering non-conforming structures. It's Article 4.4.
5 I'll just read that real quick.

6 4.4 Non-Conforming Structures. Where a
7 lawful structure exists at the effective date of
8 adoption or amendment of this ordinance that could not
9 be built under the terms of this Zoning Ordinance by
10 reasons of restrictions on area, lot coverage, height,
11 yards, its location on the lot, or other requirements
12 concerning the structure, such structure may be
13 continued so long as it remains otherwise lawful
14 subject to the following provisions.

15 Before we go into that, the effective date
16 which was at the beginning of the definition was March
17 14, 1980. That's when this section was adopted. We
18 found in the Owensboro City Directory in 1979 that the
19 Rack-N-Cue Supply House was located there; which means
20 it was grandfathered use before the ordinance was
21 adopted.

22 This next one, we'll go on to the
23 following provisions here.

24 Provisions of Article 4.4 would be 4.53
25 which states, "If no structural alterations are made,

1 any non-conforming use of a structure, or structure
2 and premises, may be changed to another non-conforming
3 use by appeal to the Board of Adjustment as provided
4 under 7.4 here-in-below if the proposed use is in the
5 same or a more restrictive classification. In
6 permitting such change, the Board of Adjustment may
7 require appropriate conditions and safeguards in
8 accord with the provisions of this Zoning Ordinance",
9 which I think we have a case here of changing this.

10 I've got some pictures here of what the
11 premises looks like now. As you can see, the rear of
12 the parking is being used off the alleyway. There's a
13 paved public alley off of J.R. Miller Boulevard. As
14 you can see the parking area right now is gravel and
15 some mud there.

16 This kind of shows you the parking areas
17 and the construction company that operates the use
18 there now.

19 Again, of the construction company and the
20 parking lot.

21 Here is one provision that we think that
22 needs to be taken care of. As you can see this truck
23 is parked there and you can see J.R. Miller to the
24 extreme right. If you see the cone, orange cone
25 there, there's a public alley there that's paved.

1 That's where the access is to the parking lot in the
2 rear, but in the recent past they've started driving
3 over a curb. It's a 6-inch curb. It's not a drive.
4 You can see where gravel has been put down there and
5 they're driving off of that curb onto J.R. Miller
6 which is not permitted on J.R. Miller with the access
7 control standards we have.

8 That again just shows the parking lot.
9 Here is kind of a site plan of what we have there.
10 The store front building faces East 20th Street. You
11 can see J.R. Miller Boulevard and then the public
12 alley to the rear and there's an accessory building
13 off that public alley.

14 If this Non-Conforming Use Administrative
15 Appeal is approved, we have a couple of
16 recommendations for this site plan which we've gone
17 over with the applicant representative.

18 We suggest that some landscaping be
19 installed. You can see on the drawing there between
20 the store front building and accessory building.
21 There's a two-fold purpose for that. One, it would
22 screen the parking area from public right-of-way which
23 is required under the Zoning Ordinance. Also it would
24 prevent vehicles from jumping that curb and going out
25 on J.R. Miller Boulevard. There's approximately

1 34-feet there between the two structures.

2 The other thing that we would recommend is
3 that that area back there that you can see would be
4 paved. As I've stated earlier, that area right now is
5 a mixture of gravel and dirt and it holds water. Some
6 of that mud when the picture was taken goes out into
7 the alley. So we think that would be a good change.

8 The recommendation that I have for this
9 property would be as follows: If the administrative
10 appeal is approved, then the following conditions
11 should apply, as per Article 4, Non-Conforming Uses,
12 Subsection 4.53:

13 1) Install landscaping along J.R. Miller
14 Boulevard, between the store front building and the
15 rear accessory building, approximately 34-feet in
16 length.

17 2) Pave all vehicular use areas.

18 At this time that's all I have. If there
19 are additional questions, I'll be glad to answer them
20 now or later.

21 MR. MILLER: Mr. chairman, I wanted to ask
22 a question.

23 MR. MISCHEL: I do have some copies of the
24 recommendation I'd like to give a copy to everybody.

25 CHAIRMAN: Jim, one of the board members

1 has a question for you in a minute.

2 MR. MILLER: Jim, is the only access to
3 the parking area from the public alley? There's no
4 other access off 20th Street?

5 MR. MISCHEL: That's correct. The
6 building more or less takes up most of that property
7 along 20th Street. As far as I know, there's not.
8 There's no way to accomplish that. I think it's been
9 used that way for a number of years.

10 CHAIRMAN: J.R. Miller is a limited access
11 street, correct?

12 MR. MISCHEL: That's correct. It's major
13 arterial and there are access standards on J.R.
14 Miller. It's a north/south boarder which is meant to
15 move the traffic manual.

16 CHAIRMAN: Any other board member have any
17 questions of the Staff?

18 (NO RESPONSE)

19 MR. MISCHEL: Basically the ordinance
20 states as is set forth. When you change a
21 non-conforming use, as long as it was before the
22 ordinance was adopted this can be accomplished, but
23 there should be improvements made. We think this
24 would be a logical improvement, these two things to
25 this piece of property.

1 CHAIRMAN: If not the applicant have any
2 comments they would like to make, statements?

3 MR. BARKSDALE: Yes.

4 CHAIRMAN: State your name for the record,
5 please.

6 MR. BARKSDALE: My name is Tony Barksdale.
7 I'm Shiloh's father.

8 (MR. TONY BARKSDALE SWORN BY ATTORNEY.)

9 MR. BARKSDALE: Just so you all know the
10 retail there was even further back than that. That
11 was a general store at the very beginning when it was
12 built with the apartments overhead. Just kind of a
13 note of information. I've been checking out the
14 history on it and it's a pretty interesting place.

15 We do not have a problem with what you're
16 asking. It's just that what you have there is very
17 general. We do have a problem with a time factor as
18 far as the paving and stuff is concerned. We're just
19 starting this. Well, it's the second year this
20 business has been in operation. We've moved there to,
21 trying to move there in order to gain capital and
22 stuff. If you were to tell us we had six months to do
23 it, there's no way that we could do it in six months.
24 We could say that it would take a year, but if that's
25 the case we're going to have to do it six to eight

1 months anyway because you know how winter goes. It
2 could be like it was this winter or it could be like
3 the last winters that we've had which has been - - we
4 could do it within that period of time.

5 If this is something that you would like
6 to do, we don't have a problem with it. If we could
7 have 18 months to get that done as far as the paving
8 is concerned. As far as the other part is concerned
9 with the landscaping, we don't have a problem with
10 that. I think the landscaping is a great idea unless
11 we have to put up major trees in there that was going
12 to block the view which I don't think I would like to
13 do. If you're talking high shrubbery and stuff in
14 that area, we don't have a problem with that either.
15 I think it's a good idea.

16 We do have a little bit of money held back
17 for some things, but you know the place may need a
18 roof and stuff because we've had that checked out and
19 weren't really sure about that.

20 The other thing we were talking about the
21 alley. There won't be as much traffic as what Tom has
22 got off of that situation. This is a skate shop.
23 Traffic is probably a fourth of what Tom has had going
24 in and out of there all the time. That's basically
25 all I have to say as far as it's concerned.

1 We would like to buy the place, but it's
2 the time restraints that is going to stop us one way
3 or the other as far as that is concerned because we
4 have to build some capital within the next few months
5 in order to take care of this paving that you all are
6 wanting done.

7 Also not all of that parking in there
8 belongs to us. Some of that land belongs to the
9 next-door people. I believe on your thing it showed
10 you wanted paved basically from the side of the
11 building straight on out to the alley is what you
12 showed on your map up there. That's about what our
13 property is. It's a little bit further over, but
14 where the parking is there - - see where his trailer
15 is parked? Part of that, about half of that trailer
16 is on the guy next-door's property just so you'll
17 know.

18 MR. MILLER: Talking about this trailer?

19 MR. BARKSDALE: Yes. That trailer
20 probably about half of that is on the man next-door's
21 property. I guess they've had an agreement that they
22 could do that as long as they were able to park a car
23 up in front because there's another area up there that
24 there's a car that parks off the street up on a little
25 driveway. Half of it is on this property and half is

1 on the other property.

2 CHAIRMAN: Do any member have any question
3 of the applicant?

4 MR. PEDLEY: How much time did you say
5 that you need for the parking?

6 MR. BARKSDALE: For the parking about 18
7 months. The reason I say that is because it'll - - we
8 may even have it done like before the 18, I know we
9 can probably have it done before the 18 months is up,
10 but I can't count on the winter, trying to do this
11 during the wintertime. If we have the capital when
12 winter comes and it's bad winter and I've already
13 signed an agreement with you saying that I would do
14 it, I could be in big trouble and I'd rather not do
15 that. I'd rather have the 18 months to say I will
16 have it done in that period of time so that if the
17 winter is bad, then as soon as spring comes I'll be
18 able to put it in and have the capital to do that.
19 What you're asking is not unreasonable at all I don't
20 think at all as far as beautifying and getting it
21 squared away and stuff. It's just that particular
22 thing is going to cost anywhere from 2,500 to \$3,500
23 depending on who we get and how it's done and
24 everything and whether you have any - - when you do
25 that does the city say, okay, we want it so thick or

1 whatever for that parking? I know where I came from
2 that is the case.

3 CHAIRMAN: Jim, you come back to the
4 microphone, please.

5 MR. MISCHEL: I would like to make a
6 suggestion here. We could look at the structure
7 itself. The retail area, the parking I believe is 400
8 square feet. If we could find out the square footage
9 of that structure and then maybe within six months we
10 could do landscaping and whatever space that is
11 required on the back end going towards the structure,
12 and then in the future after that six months if they
13 feel like they need more parking then they could pave
14 the rest of it. If they could at least pave the
15 minimum requirement now off the alley, whatever that
16 might be, and then the excess could be done later.
17 That excess, if they don't do it now it should be put
18 back in grass. It should be resodded.

19 CHAIRMAN: Go back to one of the other
20 slides. You had one that showed more I think.

21 MR. BARKSDALE: You're talking about the
22 area that they've been running over, you're talking
23 about sod and stuff in that area there?

24 MR. MISCHEL: If you met the basic general
25 parking requirements and put that area back there

1 resod it.

2 MR. BARKSDALE: Are you talking about the
3 whole building or are you talking about just the
4 retail part size-wise? Because retail part is about
5 2000 square feet and the other is about 2000 square
6 feet. That building is a lot bigger than it appears.

7 MR. MISCHEL: What is upstairs?

8 MR. BARKSDALE: They have apartments up
9 there.

10 CHAIRMAN: That brings in some other
11 factors in the number of parking because of the
12 upstairs apartment too.

13 MR. MISCHEL: Yes. That would probably be
14 hard to minimize the parking there if they have the
15 apartments up there too. Our ordinance mainly
16 restricts it to six months for improvements.

17 CHAIRMAN: Board members have any
18 questions of the applicant?

19 MR. ELLIOTT: State your name, please.

20 MR. HAYNES: Robert Haynes.

21 (MR. ROBERT HAYNES SWORN BY ATTORNEY.)

22 MR. HAYNES: I'm the current owner of the
23 building at the present time. Mr. Barksdale is hoping
24 to be able to purchase the building from me. We've
25 got all the details worked out and we find out about

1 the paving issue which has got us a little worried.
2 I'm afraid it's going to hinder the sale of the
3 property. He and I both discussed it and we've got
4 some prices on paving and we would hope that we could
5 try to work something out with the city to get a
6 little bit of extra time on this.

7 I also wanted to say something about the
8 landscaping issue where you've got the landscaping
9 marked off. Mr. Barksdale said something about trees
10 may hinder. If they hang over into the street, gets
11 them too close to street, of course, you wouldn't want
12 to do that. If you get them back between the
13 buildings, they're actually going to be blocking the
14 entrance way to that garage. That's a garage door
15 you're looking out on the other side of that truck. I
16 was just worried if we go between the two buildings,
17 actually go all the way to that building, it would
18 actually block that. If we do something to maybe keep
19 the vehicles from actually passing that would be
20 great, but it was just a concern I had. If we could
21 think of something else there.

22 We actually used to have an entrance way.
23 That used to be a driveway about ten years ago before
24 they put the boulevard. That was taken away when they
25 put the street in. That was just one thing that I

1 would like to bring to your attention.

2 If there was any way possible we could get
3 a variance on the six months we could keep the parking
4 lot gravel, we would be willing to do that right away.
5 The mud factor, you were talking about going into the
6 alley. Keep that to a minimum. Also needs to know if
7 the paving all the way to the alley, the actual alley
8 way is getting pretty, the paving on it is getting
9 pretty broke up. I need to know if the city is
10 planning on - - where my stopping point is. If I'm
11 going to be paving the alley or if they're going to
12 fix that part. I need to know that also.

13 MR. NOFFSINGER: I can address those
14 questions.

15 CHAIRMAN: Go ahead.

16 MR. NOFFSINGER: Your responsibility would
17 end at the alley way. In terms of the city repairing
18 that alley, good luck. In fact, they're trying to
19 give alleys away. In terms of maintaining that alley,
20 probably is not going to happen, but it doesn't hurt
21 to ask.

22 In terms of the landscaping, are you
23 speaking of pedestrian access to that garage door or
24 are you speaking vehicular access?

25 MR. HAYNES: It's not a vehicular access.

1 The construction company right now it's a fairly wide
2 door, but they bring in a lot of windows and things of
3 bigger nature. I wouldn't want to hinder, you know, -
4 - if we do this and Mr. Barksdale sells it a year down
5 the road and then somebody decides to use that garage
6 as a storage area for like it's being used now, that
7 would hinder the entrance way to that garage.

8 CHAIRMAN: One statement on that. If you
9 sell it again or if it's sold again, they'll have to
10 come back to reapply for a Conditional Use Permit
11 again.

12 MR. MISCHEL: I might make a comment on
13 the landscaping. Basically we're asking that the
14 landscaping be installed between the two buildings. I
15 don't think the landscaping being installed - - we're
16 talking about shrubs that are two foot tall between
17 the two buildings. I don't think it would hinder the
18 access to that door. Now, as far as the tree, we're
19 looking at just one tree. The ordinance says one tree
20 per 40 foot. You've got room. One tree would do
21 that. A lot of your vehicle sales lots, they put in
22 like evergreen trees, small. They keep them
23 trimmed. So I think that could be placed. It could
24 be placed anywhere along that frontage there.

25 MR. HAYNES: I was worried about the

1 amount and how wide you'd go with that.

2 MR. MISCHEL: Typically a shrub will get
3 two foot fall. One tree in that area would take care
4 of it. I don't think it would hinder the access to
5 the door. The landscaping does need to be on private
6 property.

7 MR. NOFFSINGER: Mr. Haynes, you mentioned
8 you had some estimates on the paving.

9 MR. HAYNES: Yes.

10 MR. NOFFSINGER: Can you share those
11 costs?

12 MR. HAYNES: \$2,500. That was from the
13 telephone pole that we showed you on the other slide
14 over to the garage that you're looking at on this
15 slide to the alley and to the building.

16 MR. NOFFSINGER: If this board were to
17 give additional time for the parking to be installed,
18 would it be possible for surety to be posted in the
19 amount of \$2,500 to cover?

20 MR. BARKSDALE: That's the problem I have.
21 I might as well do it instead of having it in escrow
22 accounts I understand what you're saying.

23 CHAIRMAN: Come forward and be worn in,
24 ma'am.

25 MR. ELLIOTT: State your name, please.

1 MS. OWEN: Roberta Owen.

2 (MS. ROBERTA OWEN SWORN BY ATTORNEY.)

3 MS. OWEN: Whatever happens is going to be
4 an improvement. I think you understand that. You're
5 going to get rid of all of those trucks. You're going
6 to get the landscaping. The property is going to be
7 improved. I just feel like it's only reasonable that
8 they get extended time to do it. If they don't, then
9 it's going to stay like it is and they're going to be
10 coming across that curb.

11 CHAIRMAN: Any other comments?

12 MR. BARKSDALE: You mentioned the word
13 sod. To me sod is sod. Are you suggesting that we
14 have to sod that or are you suggesting that we get it
15 squared away and reseed it and stuff? There is a lot
16 of difference in cost there also.

17 MR. MISCHEL: After our little discussion
18 here, I don't think that's possible because of two
19 units up above. I didn't realize you had rental units
20 up above. I think what parking you have there is
21 needed. I don't think you're going to have excess
22 parking. I don't believe that's an option.

23 MR. BARKSDALE: You're talking about
24 sodding back there.

25 MR. MISCHEL: That is the area between

1 that street curb and back to the garage that needs to
2 be sodded.

3 MR. BARKSDALE: You're talking sod then or
4 seed?

5 MR. MISCHEL: You can seed it.

6 MR. BARKSDALE: Because there's a
7 difference in price.

8 MR. MISCHEL: The gravel needs to be
9 removed from J.R. Miller back to the garage.

10 MR. BARKSDALE: Right. Exactly. That's
11 not a problem. Blocking that is not a problem at all.
12 The shrubbery and stuff, one tree is not a problem.
13 See, we can get that done in the six months without
14 any trouble at all. The other part is the part that
15 we're at odds with.

16 CHAIRMAN: Any board members have any
17 questions or comments?

18 (NO RESPONSE)

19 CHAIRMAN: Staff have anything else to
20 add?

21 (NO RESPONSE)

22 CHAIRMAN: Applicant have anything else?

23 MR. HAYNES: Just mention one more thing.
24 That if this deal does go through, Mr. Barksdale is
25 going to be making other improvements on the inside

1 and outside of the building. It would greatly reduce
2 the traffic flow. With the business that's in there
3 now they've got a lot of construction trucks that come
4 in and out of the alley on top of their personal
5 vehicles that they park out on 20th Street. There's
6 up to five or six vehicles during the working day.
7 They're parked out on 20th Street. On occasion they
8 have a semi which will stop on J.R. Miller and unload
9 things such as cabinets and windows that it would
10 eliminate also. Mr. Barksdale's business wouldn't
11 have any type of those distractions at all. That
12 would be something else to consider to let this deal
13 go through for us. Thank you.

14 MR. PEDLEY: I have one more question for
15 Jim.

16 If we do allow this time they're
17 requesting, this 18 months successive, is that too far
18 out?

19 MR. MISCHER: Year and a half I would say
20 in my honest opinion that's a little excessive. I
21 would like to see it no later than a year if possible.
22 Like I said usually the ordinance we don't have a
23 mechanism for more than six months anyway. I think 18
24 months is probably just a little too much. The reason
25 for the six months is to get you into, if you're in

1 the middle of winter to get you into the spring or
2 summer. Landscaping in August it's not a good time to
3 plant. That gets you through a full cycle.

4 CHAIRMAN: It's usually been a normal
5 policy of about a year maximum the Adjustment Board
6 has granted on driveway improvements and probably 90
7 days on landscaping normally over the years.

8 What's the boards pleasure?

9 MR. PEDLEY: Mr. Chairman, I make a motion
10 to approve the Administrative Appeal with the
11 condition install landscaping along J.R. Miller
12 Boulevard between the store front building and the
13 rear accessory building approximately 34 linear feet
14 within a six month period. All vehicular area, use
15 areas be paved within a one year period.

16 CHAIRMAN: You've heard the motion. Is
17 there a second?

18 MS. DIXON: Second.

19 CHAIRMAN: Motion been made and a second.
20 Any other comments?

21 (NO RESPONSE)

22 CHAIRMAN: Do you understand the motion?

23 MR. BARKSDALE: Yes, sir.

24 CHAIRMAN: Hearing no other discussion all
25 in favor of the motion raise your right hand.

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries unanimously.

3 Is there any other item of business to
4 come before the meeting this evening?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: The chair will entertain one
7 last motion.

8 MR. WARREN: Motion to adjourn.

9 MS. MASON: Second.

10 CHAIRMAN: All in favor raise your right
11 hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Meeting is adjourned.

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

3 I, LYNNETTE KOLLER, Notary Public in and for
4 the State of Kentucky at Large, do hereby certify that
5 the foregoing Owensboro Metropolitan Board of
6 Adjustment meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 23 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this
17 the 6th day of February, 2001.

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LYNNETTE KOLLER, NOTARY PUBLIC
OHIO VALLEY REPORTING SERVICE
202 WEST THIRD STREET, SUITE 2
OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES:
23 DECEMBER 19, 2002

24 COUNTY OF RESIDENCE:
25 DAVIESS COUNTY, KENTUCKY