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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

DECEMBER 4, 2003

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, December 4, 2003, 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
- Sean Dysinger
- Ward Pedley
- Ed Baylous
- Attorney

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CHAIRMAN: Call the Owensboro Metropolitan Board of Adjustment to Order. We're going to start the meeting today with invite each one of you to join us in prayer and pledge of allegiance. Tim Miller is going to give the blessing.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Want to thank all of you for coming and welcome you. A couple of guidelines to start with.

If you wish to speak, please come to one

1 of the microphones and state your name and be sworn in
2 for the secretary. Be sure it all gets correct.
3 You're all welcome to talk about any of the things as
4 long as you're saying the first time around. If
5 you're repeating on it, we'll cut you off. There's no
6 need to listening to it every time over and over.

7 With that we'll start off with the first
8 item of business which is the minutes of the last
9 November 6th meeting. They're on record in the
10 office. Have there been no corrections or anything
11 needed to it?

12 MR. NOFFSINGER: That's correct.

13 CHAIRMAN: We'll entertain a motion to
14 dispose of it.

15 MS. MASON: I move to approve the minutes.

16 CHAIRMAN: A motion has been made for
17 approval. Is there a second?

18 MR. DYSINGER: Second.

19 CHAIRMAN: Motion been made and a second.
20 All in favor raise your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries.

23 Next item, Mr. Noffsinger.

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1 CHAIRMAN: Staff have anything to add to
2 it?

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: Hearing none Chair will
5 entertain a motion.

6 MR. MILLER: Mr. Chairman, I make a motion
7 to approve since it complies with all the applicable
8 provisions of the Zoning Ordinance and is consistent
9 with the Comprehensive Plan. It will not have a
10 significant environmental impact and is adequately
11 served by the public utilities and facilities.

12 CHAIRMAN: Is there a second to the
13 motion?

14 MR. WARREN: Second.

15 CHAIRMAN: A motion has been made and a
16 second. Any other questions or comments by the staff
17 or board?

18 (NO RESPONSE)

19 CHAIRMAN: Hearing none all in favor raise
20 your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 Next item, please.

24 ITEM 3

25 5224 KY 54, in an A-R zone

1 Consider request for a Conditonal Use Permit to
2 construct a golf driving range with a pro shop and
3 teaching facility building.
4 Reference: Zoning Ordinance, Article 8,
5 Section 8.2/K7
6 Applicant: Donald H. Mitchell, Jr., Veronica L.
7 Mitchell

8 MR. NOFFSINGER: Mr. Chairman, this
9 application has been reviewed by the Planning Staff.
10 It's found to be in order.

11 The applicant has submitted a site plan of
12 how they intend to develop the property. The subject
13 property is located on Kentucky 54 which is an
14 arterial roadway. It's located in an A-R zone as we
15 discussed and the adjoining properties include a
16 vacant farm land or farm land as well as a cemetery in
17 the area and some commercial uses.

18 The applicant proposes to develop the
19 majority of the property, if not all of the property,
20 which contains approximately 30 acres. On that 30
21 acres there will be facilities for parking, a pro
22 shop. There will be a driving range as well as a
23 teaching facility.

24 The applicant is proposing conceptionally
25 a retention basin to the rear of the property, the
26 south end of the property. That will be a retention
27 basin an an irrigation lake.

28 The site plan was prepared by Bryant

1 Engineering, Inc.. With that it's ready for your
2 consideration.

3 CHAIRMAN: Have there been any objections
4 filed in the office?

5 MR. NOFFSINGER: There have been no
6 objections; however, we have had at least one call
7 from adjoining land owners that were asking questions,
8 but we have no formal objections.

9 CHAIRMAN: Is there anyone in the audience
10 wishing to object to this particular item?

11 MR. DAME: Yes.

12 CHAIRMAN: Let me get the applicant to
13 comply at this time and then you'll have your chance.

14 MR. KAMUF: Mr. Chairman, Charles Kamuf.

15 (MR. CHARLES KAMUF SWORN BY ATTORNEY.)

16 MR. KAMUF: Mr. Chairman, Mr. Mitchell is
17 here and also the engineering firm to answer any
18 questions that you would like. I don't think I need
19 to make a presentation until I see what the issues
20 are.

21 CHAIRMAN: Board any have any questions
22 right now of Mr. Kamuf?

23 (NO RESPONSE)

24 CHAIRMAN: Hearing none you object to it
25 so will you state your name and your questions please,

1 sir.

2 MR. DAME: I'm Walter Dame.

3 (MR. WALTER DAME SWORN BY ATTORNEY.)

4 MR. DAME: I'm a property owner. I don't
5 have no objection to someone making an improvement on
6 that property as long as it doesn't affect my
7 property. That is a flood area out there and I sure
8 wouldn't want it to cause worse flooding on my
9 property.

10 I talked with a fellow over the phone the
11 other day and he says he doesn't know how this pond or
12 lake is going to be drained. I wouldn't want it to
13 drain over on my property. There's a big ditch on one
14 side of his property and my property. That is a flood
15 zone out there, both properties and so forth.

16 CHAIRMAN: You're concerned with the
17 water?

18 MR. DAME: Water situation coming out on
19 me. If he's going to have a lake, he said he didn't
20 know how it was going to be drained. It would be up
21 to the engineering so are they present? Would they
22 know how it's going to be drained?

23 CHAIRMAN: We'll try to get the answer for
24 you then, sir.

25 Mr. Kamuf, you all have - -

1 MR. BRYANT: I'm Don Bryant of Bryant
2 Engineering.

3 (MR. DON BRYANT SWORN BY ATTORNEY.)

4 MR. BRYANT: He's correct in stating that
5 the entire site is in a flood zone, it's a regulated
6 flood zone. We have anticipated this from the
7 beginning. The topo has been completed for the site
8 in preparation of a site plan.

9 Elevations generally run from 396 to 398
10 for a couple of areas, even 400. Base flood elevation
11 for the site is 396 which is basically the existing
12 ground elevation near the rear of the property, south
13 of the property where the retention lake is proposed.

14 There will be regrading of the site, but
15 we have no intention of hauling any fill material
16 whatsoever into the site. We're not going to build it
17 up above what's there.

18 In shaping the site, will be removing
19 material from the retention area and some of the areas
20 outside of the green space areas and elevating the
21 practice areas that are shown in green and the
22 building pads and so forth. It will just be a
23 regrading of the existing site. There will be no
24 adverse affect on the flooding on any properties
25 upstream or down. Retention lake overflow will go

1 directly into Burnett Fork. It will not affect any
2 adjoining properties.

3 Now, once we get the conditional use
4 issued for the property, we'll submit a more detailed
5 site plan. In this case it's in the county. It will
6 be reviewed and approved by the county engineer. Then
7 since it is in a flood zone we'll be submitting this
8 for the Division of Water for their approval as well.

9 CHAIRMAN: With that pond that you're
10 picturing, retaining will have a trickle type?

11 MR. BRYANT: Yes, for low flows. Actually
12 we're not going to be constructing any improving areas
13 such as roof areas and large paving areas or anything
14 that's going to increase the runoff from the
15 property. It's agricultural and undeveloped now.
16 When improved it will improved but it will still be in
17 grasses and so forth. It will not increase runoff.
18 We are going to route as much water into the lake. It
19 will be a permanent pool so they can irrigate out of
20 it and then it will also serve as a retention.

21 CHAIRMAN: Does that answer your question,
22 sir?

23 MR. DAME: Yes, pretty much so in some
24 ways. I still don't see - - if you see them three and
25 four inch rains we had this summer, it stands several

1 inches deep over all that property down in there. If
2 you don't fill it up, how are they going to hit a golf
3 ball in the water?

4 MR. BRYANT: Like I said we're not going
5 to bring the elevation of the entire site up. We'll
6 be regrading the site. The greens and fairways will
7 be elevated, but some of the other areas will be
8 lowered as part of the regrading plan. So the net
9 impact is zero.

10 MR. DAME: Is that blue in the corner
11 there on that map the lake?

12 MR. BRYANT: That's the retention lake,
13 yes.

14 MR. DAME: Where is it going to drain from
15 there?

16 MR. BRYANT: The overflow will be directly
17 into the creek. Will be a pipe structure or possibly
18 - - we don't have a detailed design, but it will go
19 directly into the creek.

20 MR. DAME: It's going to be some kind of
21 drainage from all of his property into that lake?

22 MR. BRYANT: Not the entire site. Just
23 the rear portion of the site. The rest of the site
24 will drain as it does now, directly into the creek.

25 MR. DAME: It don't drain into the creek

1 right now is the problem.

2 MR. BRYANT: Well, it's part of Burnett
3 Fork.

4 CHAIRMAN: It will have to be approved by
5 the county engineer and meet their specifications
6 before they can do it.

7 MR. DAME: There's one other problem. It
8 really doesn't concern me that much, but isn't the
9 state going to have to widen that highway out there,
10 you know, on and off problem there across that bridge?

11 MR. BRYANT: I suppose so. Undeveloped
12 doesn't encroach on the right-of-way in any way so it
13 won't interfere in any way with future development.

14 CHAIRMAN: Anyone else have any other
15 questions?

16 (NO RESPONSE)

17 MR. WARREN: Is this Burnett Fork the big
18 ditch that you were talking about that separates you?

19 MR. DAME: That's the first time I've ever
20 heard it called that.

21 CHAIRMAN: Staff.

22 MR. NOFFSINGER: Mr. Chairman, Burnett
23 Fork would establish the line for the urban service
24 area. This property is right on the edge of our urban
25 service area, our urban growth area. It's just

1 outside of that urban growth boundary.

2 Considering that this property is located
3 within the flood plain and the proximity to that
4 creek, the proposed use would probably have, well, I'm
5 sure would have less of an impact upon the environment
6 and flooding in that area than a residential
7 subdivision would. Whatever changes in elevations
8 that they make on this property, those will have to be
9 approved by the county engineer and they'll have to
10 have a detailed drainage plan plus the Division of
11 Water will have to approve this permit. So if you
12 take into consideration that there are going to be
13 very few buildings and very little impervious area on
14 this site, this is probably and environmentally is as
15 good of use as you could expect for this particular
16 piece of property.

17 Now, granted it's non-residential use and
18 it would be a use that would generate some traffic, be
19 non-residential in nature; however, as I stated,
20 Kentucky 54 is classified as arterial, it's an
21 arterial street. It is included for widening in the
22 transportation plan.

23 What does that mean? Well, when is going
24 to be widened? I don't know. I can tell you it's one
25 of the priorities this community is looking at.

1 Eventually I feel confident it will be widen, but at
2 this point the money has not been allocated for that
3 project.

4 With this type of development and traffic
5 that it should generate it should not overburden the
6 capacity of Kentucky 54 in that area.

7 CHAIRMAN: Anyone else have any other
8 comments?

9 (NO RESPONSE)

10 CHAIRMAN: Board members have any
11 questions?

12 (NO RESPONSE)

13 CHAIRMAN: Hearing none entertain a motion
14 to dispose of the item, please.

15 MR. WARREN: I'd like to make a motion to
16 grant this Conditional Use Permit due to the fact that
17 it does promote public health by providing
18 recreational opportunities. It will not have a
19 significant impact on the environment or negative
20 impact on the environment. It complies with site
21 development requirements for the zoning ordinance and
22 it's consistent with the goals of the Comprehensive
23 Plan.

24 CHAIRMAN: Is there a second?

25 MR. DYSINGER: Second.

1 CHAIRMAN: A motion has been made and a
2 second. Are there other questions from the staff or
3 board?

4 MR. NOFFSINGER: No, sir. I have said
5 enough.

6 CHAIRMAN: All in favor raise your right
7 hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries unanimously.

10 We're going to change our agenda and go
11 from Number 5 instead of Number 4, put that in last on
12 the agenda this evening. With that proceed on,
13 please, sir.

14 ITEM 5

15 819 East Ninth Street, in a B-4 zone
16 Consider request for a Conditional Use Permit to
17 operate a child day care facility within an existing
18 building to serve a maximum of 75 children.
19 Reference: Zoning Ordinance, Article 8,
20 Section 8.2/B3
21 Applicant: Debbie Cooney, Louis Reynolds

22 MR. NOFFSINGER: Mr. Chairman, the
23 Planning Staff has reviewed this application. The
24 application is found to be in order.

25 The proposed facility will be located
within the existing building. The existing building
contains a number of businesses. There is adequate
parking on the site to meet the parking needs of the

1 proposed use. There's an adequate drop-off area as
2 well located on the property so that the children
3 could be dropped off in a safe and efficient manner.
4 Access to the property is provided via East Ninth,
5 Street which is an arterial street, as well as Center
6 Street which is a local street. So there should be
7 adequate transportation facilities existing.

8 There are also a number of businesses
9 located within the community or within this
10 neighborhood such as the Owensboro-Daviess County
11 Hospital which would support or could support a need
12 for this type of facility. So that is ready for your
13 consideration.

14 CHAIRMAN: Has there been any objections
15 filed in the office?

16 MR. NOFFSINGER: No, sir.

17 CHAIRMAN: Is there anyone wishing to
18 object to this application?

19 (NO RESPONSE)

20 CHAIRMAN: Is the applicant here?

21 APPLICANT REP: Yes.

22 CHAIRMAN: Do you have anything you'd like
23 to add to it at this time?

24 APPLICANT REP: No, I don't think so.

25 CHAIRMAN: Any board members have any

1 questions of the applicant?

2 (NO RESPONSE)

3 CHAIRMAN: Staff have anything else to
4 add?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: Chair will entertain a motion
7 to dispose of the item.

8 MS. DIXON: Move to approve because it
9 would provide a use that's essential to the community;
10 would not have a significant impact on the
11 environment; complies with the site development
12 requirements of the zoning ordinance and is consistent
13 with the goals of the Comprehensive Plan.

14 CHAIRMAN: Is there a second?

15 MR. MILLER: Second.

16 CHAIRMAN: A motion has been made and a
17 second. Any other questions or comments from the
18 board?

19 (NO RESPONSE)

20 CHAIRMAN: Staff have anything else to add
21 on?

22 MR. NOFFSINGER: No, sir.

23 CHAIRMAN: Hearing none all in favor raise
24 your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Motion carries unanimously.

2 The next item, please.

3 ITEM 4

4 1253 Willett Road, in an A-R zone (POSTPONED)
5 Consider request for a Conditional Use Permit to
6 construct a 3,946 square foot bunkhouse with a 2,818
7 square foot deck to house a maximum of 14 migrant farm
8 workers and one supervisor.

Reference: Zoning Ordinance, Article 8,
Section 8.2/A7

Applicant: MISAS, Inc., Robert J. & Lisa C. Wimsatt

9 MR. NOFFSINGER: Mr. Chairman, Planning
10 Staff has reviewed this application. We find the
11 application to be in order.

12 At this time I would like to read the
13 project overview into the record as submitted by the
14 applicant.

15 In Spanish, the word "posada" means "inn."
16 When we speak of an inn, we refer to a place of
17 hospitality, where paying guests stay for a time. The
18 posada or inn that we plan will be for migrant workers
19 who are employed by farmers in this part of the
20 county. In some ways it will resemble the
21 European-model hostel; a place where guests share in
22 the care of the facility.

23 The Inn/Posada will be an attractive and
24 well-maintained building that offers simple bunkhouse
25 style accommodations to meet the housing needs for

1 single migrant workers. It will be an asset to the
2 community, both visually and in its purpose.

3 We feel that our plan has benefits for
4 both the migrant workers and the farmers who employ
5 them. We are aware that farmers are increasingly
6 dependent on migrant help, and that housing their
7 workers is often a continual challenge. If farmers
8 apply for special visas for workers through the H2A
9 program, they must have housing arrangements that meet
10 certain standards, and are guaranteed for the duration
11 of the visa. In addition, the presence of guest
12 workers will make a modest contribution to the local
13 economy.

14 Our Inn/Posada will have a full-time
15 "innkeeper" - a live-in administrator who will
16 supervise the living arrangements and residents, and
17 oversee care of the building and grounds. It will
18 also have the oversight of the MISAS Board. Sr.
19 Larraine Lauter OSU will be closely involved in
20 direction and supervision of the inn and its guests.

21 All of the guests will be employed by
22 local farmers. They or their employers will lease
23 space for the duration of their intended employment.
24 They will have some share in responsibilities for the
25 inn, including cleaning and cooking.

1 The Posada will not be an open homeless
2 shelter. Those who live there will be gainfully
3 employed. They will be contributing to the local
4 community for the duration of their stay.

5 Guests of the Posada will have
6 opportunities for recreation, shopping and laundry,
7 and worship. Enrichment programs will be offered,
8 most notably classes in English. These programs will
9 be open to anyone in the area, whether or not they are
10 guests at the Posada.

11 We believe that the Posada will be a
12 remarkably strong asset to the community in which it
13 is located. By welcoming the Posada, the community
14 will be supporting the farmers who are its backbone,
15 while offering decent and affordable housing to guest
16 workers.

17 The Posada will be built under the
18 auspices of MISAS (Migrant/Immigrant Shelter and
19 Support). MISAS was founded in February 2002, in
20 response to an invitation from the Kentucky Housing
21 Corporation. The KHC was searching for a group that
22 would develop a plan for migrant housing, a need that
23 is critical throughout the state. With the
24 acquisition of an approved site, and an approved plan
25 for construction (including input from contractors,

1 architects, engineers and other construction
2 professionals) MISAS will be awarded a challenge grant
3 of up to \$220,700. MISAS is pursuing grants from
4 other entities as well for ongoing support of the
5 project.

6 Questions relating to the Posada project
7 may be directed to Sr. Lorraine Lauter, 229-2713, or
8 llauter@maplemount.org.

9 Mr. Chairman, this was postponed from the
10 last meeting due to some questions regarding
11 conditions to a possible recommendation. At that time
12 there were questions raised by the applicant as to
13 previous conditions that were placed on the approval
14 by this board.

15 This is a new day. The previous
16 conditional use permit expired. The applicant is
17 before you again to ask for approval for this project.

18 The proposed facility is being classified
19 under use group 8.2/A7 in the Zoning Ordinance. With
20 that it's ready for your consideration.

21 CHAIRMAN: Does the applicant have
22 anything you want to direct new at this time before
23 the board?

24 SISTER LARRAINE: Yes.

25 CHAIRMAN: Please state your name.

1 (SISTER LARRAINE LAUTER SWORN BY
2 ATTORNEY.)

3 SISTER LARRAINE: My name is Sister
4 Lorraine Lauter. I'm a little unsure as to how to
5 address the entire nature of my remarks since I had
6 sent the memo both to Mr. Noffsinger and to the board.
7 Just now am aware that you would not have seen the
8 memo because it would have to be reviewed by all of
9 you in full. The memo is quite lengthy. I'm not sure
10 if we want to engage in reading it into the record or
11 what's the appropriate step to do.

12 CHAIRMAN: It should be read into the
13 record.

14 MR. BAYLOUS: If we can put a copy into
15 the record, that will be fine. It doesn't have to be
16 read in its entirety as long as a copy is in the
17 record of the proceeding.

18 CHAIRMAN: Do you have anything major you
19 want to bring or do you want to read it or not?
20 That's up to you.

21 SISTER LARRAINE: I'm fine with
22 summarizing the subtle points.

23 CHAIRMAN: That will be fine.

24 SISTER LARRAINE: The first point had to
25 do with the desire that has been from the beginning on

1 part of MISAS and myself as to carry out whatever is
2 done in spirit of cooperation with the community;
3 city, county and entities of the community.

4 I want to reiterate with that that my
5 personal philosophy is that adversarially
6 relationships are not in the best interest of
7 anyone. I say that as a preface to these other
8 remarks which I hope make more clear my concern with
9 the conditions as they were placed on the previous
10 permit.

11 We've already reviewed the Kentucky
12 Housing Corporation invited me to start the non-profit
13 to pursue this project.

14 Another point is that its reasonable to
15 conclude that we have demonstrated a sincere desire
16 for a successful project. One of the first things I
17 would say in response to the conditions is that they
18 seem to imply that perhaps it might not be the desire
19 of MISAS to have a successful project. That just
20 doesn't seem very reasonable, especially given that
21 two of the conditions specifically refers to simply
22 restate the law as it stands that would be a given,
23 the condition that it would be given that those
24 conditions would be met according to the law. If not,
25 that the permit would be withdrawn. Those would be

1 the conditions on any conditional use permit.

2 I'd like to read this section of the memo:

3 I have a well-founded and researched
4 concern that all involved (both MISAS and the Board of
5 Adjustors) have inadvertently violated the Kentucky
6 Fair Housing law by the conditions set on the
7 conditional use permit for the La Posada Hostel. The
8 Board of Adjustors has set extraordinary conditions in
9 response to opinions and fears stated at on public
10 record that may be clearly demonstrated to be
11 discriminatory in nature, relating to ethnicity and
12 country of origin of the likely residents of the
13 project. MISAS has agreed to these conditions in the
14 past, knowing that they were extraordinary and the
15 response to discriminatory fears and opinions.
16 Therefore, both MISAS and the Board of Adjustors could
17 be demonstrated to be in collusion with discriminatory
18 intentions. A lack of bad intent is in no way an
19 adequate defense when the violations of fair housing
20 laws are identified.

21 Then from the next section;

22 MISAS is very concerned about what appears
23 to be a lack of uniform administration and treatment
24 as to similar structures and activity. For example,
25 it is our understanding that similar structures and

1 activities either have no conditional use permit at
2 all, or if such permits were issued, no special or
3 extraordinary conditions were attached to such
4 permits.

5 Then we have a list of particular permits,
6 particular issues including a variety of bunkhouses
7 and the Jennifer House; none of which have conditions
8 attached to the permits.

9 Just bare with me for a moment. I'll see
10 if we can skip anything.

11 MISAS has already stated an intention to
12 build a hostel in compliance with the housing
13 regulations of the H2(a) program. Our hope is that
14 farmers who wish to participate in the visa program
15 and yet are precluded from doing so by the stringent
16 housing regulations may find housing for their workers
17 and thereby afford them the opportunity to work
18 legally and safely in this country. However, our
19 public willingness to support, and I'm speaking of
20 MISAS, the H2(a) program and our open dialogue with
21 farmers and state officials who work with the program
22 makes us, MISAS, vulnerable to potential criticism of
23 the intentions of our mission. Any hint of collusion
24 with discrimination would likely bring well-deserved
25 challenges to our intentions, and the nature of our

1 support of fair housing.

2 I'd like to add that not five minutes
3 after I finished typing this I received with e-mail
4 from across the state asking about this very concern.
5 Completely unsolicited. I had no idea if this person
6 had any understanding of what our project was about
7 or anything. Just someone in another non-profit
8 housing venture.

9 MISAS has a partnership with the Kentucky
10 Human Rights Commission to assist in the awareness of
11 fair housing laws, and in fact, is co-sponsoring the
12 Fair Housing Symposium on November 15, 2003.

13 Our vision and that of Kentucky Housing
14 Corporation is that Daviess County be known as a site
15 for a model program of housing for farm workers. We
16 want a project that the community can be proud of and
17 which merits positive attention, rather than negative
18 criticism.

19 Now, this parts speaks more distinctly to
20 the issue of fair housing, as the Kentucky Fair
21 Housing law are set.

22 MISAS must operate rental housing under
23 the same conditions of the new landlord. There is no
24 law that requires proof of citizenship or legal
25 residence to rent, and in fact to do so on the open

1 market could be challenged as a fair housing
2 violation. If in the future federal farm worker
3 housing funds are secured for the construction of
4 additional housing, the legislation pertaining to
5 those funds would mandate the recording of legal
6 residency documents.

7 I was asked that question kind of on the
8 spot last time about this so I want to be clear.

9 I was confused and unprepared for the
10 related question at the last hearing, and I should
11 have been clearer. MISAS may only legally request to
12 retain copies of legal residency in those cases where
13 housing or rental subsidy has been funded by
14 particular federal programs. It's a legal mandate to
15 us.

16 Below is a draft statement in response to
17 the issue of extraordinary conditions placed on the La
18 Posada Conditional Use Permit, which has been prepared
19 with legal counsel. Jesse Mountjoy is our lawyer.

20 I would also like to invite the Board of
21 Adjustors, after I read this, to offer suggestions as
22 to wording that would allow both parties to rectify
23 the unintended violation of fair housing laws. So
24 this is a draft statement.

25 Kentucky Fair Housing Law mandates housing

1 without discrimination. Sr. Lorraine Lauter, as
2 Executive Director for MISAS, has the responsibility
3 to act solely in accord with the law. She also has a
4 mandate, set by the Kentucky Housing Corporation, that
5 the funds granted for this project be in no way used
6 in violation of fair housing. The extraordinary
7 permit conditions that can be demonstrated to have
8 been set and maintained in response to concerns of a
9 discriminatory nature could readily be challenged as
10 violating the fair housing laws.

11 One year past the original date of the
12 conditions set for the permit, Sr. Lorraine is far
13 more educated as to the intent and implications of
14 Kentucky Fair Housing Law. She, and the MISAS Board
15 of Directors realize that in agreeing to the
16 conditions out of a spirit of compromise, she
17 unwittingly colluded with discriminatory intentions.
18 The MISAS Board of Directors also believes that the
19 Board of Adjustors acted without intention of
20 discrimination.

21 To wit, some of the permit conditions,
22 specifically Numbers 1, 2 and 4, point to a special
23 set of concerns about a particular group of people,
24 identified solely by their ethnicity and country of
25 origin, as they are currently stated. They may be

1 demonstrated to have been set in response to very
2 publicly aired opinions and fears about the group of
3 people who would most likely constitute the residents
4 of the project. Statements that may be clearly
5 demonstrated to be discriminatory, prejudicial and
6 defamatory in nature have been made on public record
7 at all three of the public hearings that have
8 addressed the conditional use permit for the La Posada
9 project.

10 It may be easily ascertained that similar
11 conditional use permits for seasonal farm worker
12 housing in Daviess County have not reflected those
13 discriminatory concerns.

14 I'd also like reiterate at this point that
15 as far as has been able to ascertain that there are
16 similar bunkhouses that have been built without
17 permits.

18 MISAS is therefore legally obligated to
19 request a careful review of the conditions as they
20 stand, and a rewriting of the conditions so that they
21 are in line with similar projects.

22 MISAS has no hidden agendas or plans for
23 the La Posada project, nor should we be held
24 accountable to respond to every public statement that
25 claims otherwise. The MISAS mission will be best

1 served by a well-managed and maintained facility, and
2 those involved fully recognize that the success of the
3 project or lack thereof will reflect on themselves
4 personally, as well as MISAS. To assert otherwise is
5 defamatory of the character and intentions of the
6 persons involved, and illogical.

7 That's the end of the draft statement.

8 I'd also have to say that I'm concerned
9 about the implications for setting special conditions
10 where none have existed before, particularly as they
11 might impact future permit requests.

12 I, again, have an obligation to act in
13 complete accord with Kentucky Fair Housing law and in
14 the best interest of the mission and activities of
15 MISAS. In addition, I can see that such precedence
16 would have implications for other projects, especially
17 those brought to the board by farmers.

18 MISAS would prefer a permit that is in
19 every way comparable to those of comparable
20 projects; that is, having no special conditions
21 attached, especially as regards special supervisory
22 conditions. At the same time, we recognize the
23 difficulty of simply wiping the slate clean.

24 Therefore, we propose the following:

25 A) That conditions 1 and 2 simply be

1 deleted, since they are in reality implied by existing
2 law, and do not need to be reiterated;

3 B) Condition 3, the condition that seems
4 most appropriate and lawful with regard to concerns
5 about discrimination - that was having to do with the
6 subdivision of the plat - has been satisfied, and
7 therefore, need not be reiterated;

8 C) Condition 4, the condition that most
9 patently reflects discriminatory concerns, be
10 eliminated in its entirety;

11 D) A new condition, which states in its
12 entirety: The facility shall be managed by MISAS,
13 Inc., would be the condition that we feel like we
14 could accept.

15 CHAIRMAN: Would you answer one question
16 for me. You were stating other locations in the
17 county that have been built accordingly like them. Do
18 you know of any of those on small locations on
19 theirself and not on large farm operations?

20 SISTER LARRAINE: I'm not sure about the
21 one that was built in relation to the - -

22 CHAIRMAN: That are not connected to large
23 farm.

24 SISTER LARRAINE: I'm thinking about the
25 one that was built in relation to the packaging

1 facility. Help me out here. Vegetable processing
2 facility. Western Kentucky Growers Co-Op. While
3 these are all on large parcels - - I'm not sure that
4 that one is permitted at all actually. Been unable to
5 find a permit for that. However, they're all in
6 residential areas. They're all public roads; all the
7 ones that we've been able to find permits for.

8 MR. NOFFSINGER: Mr. Chairman, if I might
9 comment on a few of these items.

10 Sister Lorraine mentioned Joe Elliott's
11 bunkhouse. No special conditions. Conditional use
12 permit came before this body. It was approved with no
13 conditions and the facility was constructed on Joe
14 Elliott's farm. He resided there. In fact, he had a
15 full-time innkeeper, if you will, administrator,
16 supervisor. It could be argued that that would be
17 tenant housing which is exempt by the statutes for
18 agricultural use and perhaps would not have required a
19 conditional use permit.

20 She mentioned the Jennifer House. I don't
21 know how you can attach conditions to an application
22 that this board denies. How do you deny an
23 application and then attach conditions? You don't do
24 it.

25 SISTER LARRAINE: It has a permit though.

1 MR. NOFFSINGER: It has a permit, but that
2 was outside of this board's decision. They were
3 directed to issue a permit by the court. So there
4 were no special conditions tied to it because it was a
5 recommendation from an action of denial.

6 She's mentioned another site. I'm not
7 aware of that facility. I can tell you that it may
8 very well have occurred prior to the time we started
9 enforcing the ordinance in January of 2000 and could
10 be a situation where it existed prior to, predates the
11 zoning ordinance. I don't know.

12 This body did not review those. How can
13 this board set conditions on those? In fact, this is
14 the first application of its type to come before this
15 board. It is before this board as a dormitory.
16 Dormitories by their nature have some type of
17 supervision. If we go to a university dormitory, they
18 have live-in resident hall administrators.

19 I disagree and take issue of Sister
20 Lorraine's I think accusations here that this board
21 has violated the Fair Housing Act or discriminated. I
22 can tell he it's certainly not the staff's intent to
23 do that nor is it the intent of this board to do that.

24 In fact, the board has approved the
25 conditional use permit on one occasion and each of the

1 conditions listed speak directly to the project
2 overview. You presented that to us. We can't control
3 what the general public says in these meetings. You
4 know, we have the fifth amendment which talks about
5 freedom of speech. I think you need to be very
6 careful what you say, but you have the freedom of
7 speech. I don't think it's this gentleman's job right
8 here to tell us you can't say that, but what they
9 speak on record and what comes out is the way other
10 people will perceive them and understand them. I
11 don't think anyone on this board has done that. In
12 fact, I think this board is in favor of this project
13 and has worked to find a way to make this project come
14 about in line with what's been presented to us.

15 Condition 1, we talked about number of
16 residents. You're bound by law with a conditional use
17 permit to have 15 beds. If you want to come back or
18 if you want to expand, you have to come before this
19 board.

20 It's not out of the ordinary for this
21 board to set a condition reminding the applicant of
22 that because I can tell you our staff, and we deal
23 with folks on a daily basis, once a conditional use
24 permit is issued they believe that they can do
25 anything they want with that property under that

1 particular use, but that's not the case. If they
2 expand, they have to come back before this board for a
3 hearing.

4 Well, they expand. They don't get the
5 permit and someone, somehow we find out about it.
6 Well, you were suppose to get a conditional use
7 permit. Well, I didn't know that. I didn't know I
8 had to do that. That is placed there as reminder and
9 as a favor to the applicant to help the staff to
10 assist boards in the future and staff in the future.
11 Hey, here it was. It's a matter of record. We can
12 take that condition off.

13 We have you on record and this board on
14 record stating that 15 is the maximum. It's not that
15 big of an issue whether we leave that condition on.

16 There was a condition about severe
17 regulations and rules. You had indicated in that
18 public hearing that there would be rules and
19 regulations, as with most dormitories. I know when I
20 was college I had rules and regulations I had to go
21 by. You had presented that to the board and the board
22 wanted to have an absence of specific rules and
23 regulations just to know, hey, there was going to be
24 some type of order to the living arrangements no
25 matter who lived there. It doesn't matter to me who

1 lives there. Anyone can live there. That's an issue,
2 but there be some type of rules that you have a group
3 of people living together and someone supervising it.

4 Condition 3, I'm sure you want to delete
5 that. We do too because it's already been
6 fulfilled.

7 Item 4, a full-time live-in administrator
8 must be on site at all times. You stated in the
9 application that you'll have a full-time innkeeper.

10 You know, generally a dormitory you have a
11 live-in administrator. I can tell you it certainly is
12 not my intent to discriminate against anyone or to
13 violate a fair housing act.

14 The Planning Staff, we've reviewed the
15 application. This application is in order and ready
16 for consideration.

17 SISTER LARRAINE: If I may respond.

18 First of all, I would like to reclarify as
19 I said at the beginning. I do not, MISAS is not
20 saying that the board is guilty of intentional
21 violation of the fair housing. Indeed by saying that,
22 I hold myself responsible for the acceptance of those
23 conditions. I'm trying to clearly demonstrate that.
24 I have no doubt of the goodwill of the Board of
25 Adjustors.

1 Secondly, as someone who is familiar
2 because of other experiences with fair housing, not
3 experiences that I've personally been involved with
4 but that members of my family who rent have been
5 involved with in Louisville. I can assure you that if
6 you appear to be, we appear to be in violation of fair
7 housing, any concern at all our intentions do not
8 matter. Our intentions do not matter and they should
9 not.

10 There is no much there to respond to I'm
11 trying to sort this out.

12 I don't really see a need to reiterate
13 the need for supervision or the need for programs or
14 whatever when we have clearly demonstrated our
15 interest and concern with that piece of it. By being
16 interested in that ourselves, we don't see ourselves
17 to be in violation of fair housing. It's the nature
18 of the condition set in an environment where
19 prejudicial comments were made that renders this an
20 unfortunate kind of situation.

21 I would also say that I think, for
22 example, that the dormitory at Brescia, most recent
23 dormitory at Brescia was built since 2000. I would
24 just submit that I'm doubtful that it's possible to
25 find any permit in the city, in the county that calls

1 for conditions like this.

2 I'm also not sure that we really want to
3 follow the path of opening up the door for farmers,
4 agricultural employers who want to build housing in
5 the future, I know that some have plans there, who are
6 then vulnerable to the same kinds of attacks by people
7 who are going to be unhappy about that.

8 I can personally witness that Joe Elliott
9 tells me that he had neighbors who were very opposed
10 to that.

11 I don't think this is a good direction for
12 us to start taking with this.

13 Again, in terms of, I think MISAS has
14 clearly demonstrated that, yes, our initiative that
15 set the ideas like rules, regulations, programs,
16 etcetera, you know, that clearly came out of our
17 court. We don't feel a need to have that reiterated
18 to us. We don't feel a need to have it specially
19 reiterated for us because of the population that we're
20 serving. So we submit that it's not legally
21 defensible and that we are very uncomfortable with it
22 because it's not going to be legally defensible for us
23 either. It's something that I've researched with fair
24 housing.

25 MR. DYSINGER: I'm sorry, Sister.

1 Mr. Chair, the application that we have
2 before us includes the conditions which Sister
3 Lorraine says that she is uncomfortable with. It
4 seems to me that the question is what we do with that
5 application.

6 CHAIRMAN: She submitted it.

7 MR. DYSINGER: And she's no longer
8 comfortable with the conditions in that application.

9 CHAIRMAN: Is my understanding you want to
10 change your application?

11 SISTER LARRAINE: I don't want to change
12 our application. I want to receive a new permit,
13 which I understand is the given at this point, that
14 does not have these same sorts of conditions placed on
15 it. If we're starting over, let's start over.

16 MR. DYSINGER: If we deny this
17 application, is MISAS able to resubmit under new
18 arrangement or is that not the best way to handle
19 that, Gary?

20 We have to make a decision based on the
21 application that's in front of us. As the applicant
22 you have purview to bring in other things, other
23 people. We do not. That is completely outside of our
24 ability. I'm just trying to think - - because as Mr.
25 Noffsinger pointed out, despite what you may or may

1 not think or despite what the record reflects, this
2 board is supportive of what you're trying to
3 accomplish here. We also have the responsibility of
4 the safety and welfare of the people in the adjoining
5 properties. That's not to say that there's going to
6 be problems. It's to say we have to look at this
7 issue from all sides. If we have to make this
8 decision based on just the information that's in front
9 of us right now, what's the best way to handle
10 this?

11 SISTER LARRAINE: May I interject that we
12 have here a new permit that as of yet has no
13 conditions on it. We are submitting - - our
14 submission, our proposal does not change in any way.
15 It's what were placed on the permit that we're asking.
16 We're asking that the conditions of the previous
17 permit not be reiterated in this permit because of the
18 vulnerability to the concerns of fair housing. Our
19 vulnerability as well as yours. In fact, in some ways
20 more ours.

21 CHAIRMAN: Staff.

22 MR. NOFFSINGER: Mr. Chairman, I just want
23 to comment on Sister Lorraine's comments in this memo
24 regarding intentional or unintentional violation of
25 Fair Housing Act.

1 I can tell you I'm not buying into that.
2 That I can speak, and I will speak only for myself,
3 but I feel I have not intentionally or even
4 unintentionally attempted to discriminate, violate the
5 Fair Housing Act and - -

6 SISTER LARRAINE: Mr. Noffsinger, have you
7 dealt much with fair housing?

8 MR. NOFFSINGER: - - that is the
9 indication. I think if you look at my comments at
10 what I've made - - what you're doing is coming before
11 this board telling this board that, hey, you have
12 violated and here is what you're to do and you have
13 become educated.

14 I will submit to you that you have an
15 application before this board and this application as
16 submitted is what you're agreeable to. The
17 application you submitted speaks to these same
18 conditions.

19 Now, if I'm recommending to this board,
20 I'm recommending that they hear from anyone in the
21 audience that wishes to speak and then take that
22 evidence into consideration and weigh it as to the
23 Fair Housing Act and the issues of discrimination and
24 due process, and I think they will. If the
25 recommendations is for approval, I think it should be

1 conditioned upon the application as submitted.

2 Now, we're here tonight to consider this
3 application. Not a discrimination case or fair
4 housing case, and that's what you're speaking to. I'm
5 not admitting to that. I think we're far away from
6 that, unless someone raises that issue. I can tell
7 you for the record that it's certainly not my intent
8 to discriminate nor to violate the Fair Housing Act.
9 I don't believe I have done that or this board. I
10 think this board has worked with you to come up with a
11 good project and conditions that are germane to the
12 issue and consistent with what would be considered on
13 other types of projects and you have the first
14 project.

15 SISTER LARRAINE: Will we see in the
16 future all other multi-person use residential
17 facilities with their proposals restated as
18 conditions? Whether those be residence halls.
19 Whether those be bunkhouses. Whether those be
20 whatever. However people want to characterize those.
21 Shelters, halfway houses, Dismis House, the jail,
22 anything. Will all future conditional use permits
23 carry with them a restatement of the proposals in
24 order to remind the applicants what they wanted to
25 do?

1 MS. MASON: We're not here tonight to talk
2 about future. We're here tonight to talk about your
3 case.

4 CHAIRMAN: We've only got one to hear
5 tonight and that's yours. Let me make a clarification
6 of one of the things you stated.

7 Joe Elliott's operation is on his farm
8 operation. It's on a large farm application. It is
9 considered a tenant of his part of his location.
10 Yours is a private location on a private piece of land
11 of your own. So that sets different from a farm
12 operation.

13 Secondly, you made a statement on some of
14 the things made in here. Everyone that's invited in
15 here to speak for or against has the right to state
16 their feelings to the board. What they say is not
17 what we say or what we say is not what they say. So
18 be sure that is clear in the record, please.

19 With that does anyone else have any more
20 questions of her at this time?

21 MR. PEDLEY: Mr. Chairman, I'd like to
22 respond to their previous meeting and these four
23 conditions. I made the motion to these four
24 conditions and I'd like to respond to those.

25 First of all, I have in front of me

1 Kentucky Statute, Planning & Zoning Statute KRS 100.
2 That's what we're bound by, Public Health Safety and
3 Welfare. That's what we make our determination on.

4 In your original application you asked for
5 14 migrant farm workers and one supervisor. That's
6 what we gave you.

7 SISTER LARRAINE: That is what we intended
8 to comply with.

9 MR. PEDLEY: Then in Condition Number 1,
10 there shall not be an expansion on the residence or on
11 the site plans submitted without coming before OMB
12 Board. That's in here. That's a requirement. We
13 gave you what you asked for in your application, 14
14 migrant workers.

15 Number 2, if there are any severe rules,
16 regulations, maintenance violations, board may require
17 permit holder to appear before the board and address
18 the problems. The board has the power to revoke the
19 conditional use permit and may do so. Right here,
20 Kentucky Statute requires the zoning administrator to
21 annually inspect. If there are violations, then he is
22 to bring you before this board to address those
23 problems.

24 Number 3, was the Staff's request. We put
25 that in there.

1 Number 4, there's only one word in there
2 that you didn't have in your application and your
3 overview and your agreement. You said there will be a
4 full-time administrator. I said at all time. I said
5 a full-time administrator and I said at all time.

6 So these four conditions there's only one
7 word in there that you didn't have in your application
8 and asked for.

9 SISTER LARRAINE: I don't have any
10 concerns - -

11 MR. PEDLEY: There was no intent of
12 discrimination of this board. If we did, we did not
13 know that we were doing it. I know you're before this
14 board for a new application. The old application is
15 out the door. It expired in one year. We're
16 considering a new application.

17 Again, the project overview basically says
18 the same thing. Almost identical. I could go by your
19 overview and make a new motion and take out one word
20 and it would be according to your project overview and
21 your agreement before this board and what you tell
22 these people here that you're going to do. Now, we're
23 not just considering you. We're considering these
24 people over here or anybody in that community. That's
25 what we must consider and that's according to the

1 Kentucky Statute regardless of discrimination fair
2 housing. I don't like your accusations at all. We
3 tried - -

4 SISTER LARRAINE: I would like to clarify.

5 MR. PEDLEY: - - to accommodate you, give
6 what you want. You come before this board with the
7 accusation of discrimination. I don't like that.

8 SISTER LARRAINE: If I may interject. I
9 would like to reiterate another time that I said I do
10 not accuse the board of discrimination. I simply
11 bring up that the board and I together have
12 inadvertently violated fair housing law.
13 Inadvertently.

14 MR. NOFFSINGER: It's your opinion.

15 SISTER LARRAINE: It's my opinion that,
16 yes, you inadvertently and I inadvertently,
17 inadvertently without intention. So there's no
18 accusation here. It's simply a request that we put
19 this in line with the law. Again, I'm not sure that
20 we can find a permit where the conditions are restated
21 for the benefit of the applicant. I don't have any
22 concerns with what we said we would do.

23 CHAIRMAN: The agreements that agree to in
24 the application you're saying - -

25 SISTER LARRAINE: That is why that we said

1 that our - - the condition that we would be willing to
2 accept would be that the facility shall be managed by
3 MISAS, Incorporated. I'd be willing to say we could
4 add as stated in the permit application. That's
5 unusual in and of itself to be required to do that.
6 Again, I would submit that is vulnerable to inquiry as
7 to why all of the many, many applications before you,
8 including the ones tonight, there has been no
9 restatement of conditions. That's our only concern.
10 I don't want to look like I'm polluting with
11 discrimination. I don't believe that your intention
12 is discriminatory. I think we're sort in a difficult
13 place here. That can be very simply solved. I don't
14 have any intention to change the way that we go about
15 building or supervising or anything of this facility.
16 Our application stands as it is. I have no quarrel
17 with our application. I simply would say that I do
18 not understand why there's a special concern for this
19 particular application. That what we said we would do
20 has to be restated for our benefit.

21 MR. WIMSATT: Bob Wimsatt.

22 (MR. BOB WIMSATT SWORN BY ATTORNEY.)

23 MR. WIMSATT: I just have one question. I
24 realize everybody is trying to work something out
25 here. Certainly I don't understand all the issues as

1 well as Sister Lorraine as she's dealt with it, her
2 work on this project in the last year or two. I sense
3 that everybody is trying to work something out here.
4 I guess my question is: If it's in the record, Mr.
5 Pedley, I really don't understand either exactly why
6 those couldn't be restated as conditions, but
7 apparently Sister Lorraine has some concerns about
8 that. If it's in the record, isn't that sufficient?
9 I'm posing that as a question. Isn't it sufficient
10 that if everything is in the record, does it have to
11 be restated as a condition? I'm asking that
12 question.

13 MR. PEDLEY: You have some of the same
14 language in your lease. Basically some of the things
15 we're saying you have in your lease if you read your
16 lease.

17 MR. WIMSATT: I'm just posing the
18 question. Does it have to be stated as a condition
19 when it is on record, it's part of the application?
20 Everything that you said is part of their application
21 they've agreed to. I'm just questioning does it have
22 to be a condition because that seems to be a stumbling
23 block. It is on record. It's on record. Nobody can
24 argue that the commitments that they've made. I think
25 Sister Lorraine's concern is that it's attached as a

1 condition.

2 CHAIRMAN: I'll answer that for you.

3 Since I've sat on this table as chairman and there's
4 been conditions made, I have asked the people, do you
5 understand what you're agreeing to almost every time.
6 I'll say every time just about. The restrictions that
7 we put on to be sure they understand. It's for their
8 benefit and safety. It's also on the record.
9 Sometimes you all don't listen to what is written in,
10 the secretary writes up. We want to be sure you
11 understand it. That's the reason they're stated.

12 SISTER LARRAINE: I really do not mean
13 this in an adversarial way. I would like to point out
14 that I do not believe the other conditions granted
15 tonight that there was any restatement or a need to
16 remind other than verbally. I'm not sure I heard
17 verbally. I could have missed that. I'm not sure
18 there was a need to restate in any way any of the - -
19 there was a discussion of it, whatever. In the
20 permits that were granted tonight, we do not see
21 similar line of thought. There is no previous history
22 of discriminatory comments made. If you look closely
23 at what happens with fair housing, when fair housing
24 suits are pursued legally in court, the concern is
25 simply with the response. You know, what's the

1 action. Intention is not a defense. It's not a
2 defense for me. It's not a defense. I'm trying to
3 say that not as a strong Army tactic. Not as a - -
4 simply to say this is something we can work out very
5 easily together. To keep telling me that there's no
6 particular, nothing special here, you know, I can't
7 accept that. It is not the conditions themselves.
8 It's the perceived need to state special conditions
9 for this special project. That's the problem.

10 CHAIRMAN: The three applicants we made
11 this evening there were no three any major
12 restrictions stated in the type they presented. So
13 they weren't stated. Yours have been last time, this
14 time so they have been restated and they've been put
15 in the record and restate for your benefit. Not for
16 your harm, but for your benefit.

17 SISTER LARRAINE: But the entire
18 application is part of the record. I mean there are
19 other things I have in the application that are not
20 stated as conditions.

21 CHAIRMAN: With that we're going to change
22 to the other side and see if they have anything. You
23 may say something else if you desire.

24 Sir, do you have anything else you'd like
25 to bring this evening?

1 MR. JACKSON: Brian Jackson.

2 (MR. BRIAN JACKSON SWORN BY ATTORNEY.)

3 MR. JACKSON: Only to say to the board
4 that I'm extremely confused now. I've been upset
5 about this project since word one. I do not come to
6 this as a bystander. I've lived in this community for
7 20 years. I've been awarded United Way Volunteer of
8 the Year Award. I've been awarded the Civitan
9 Owensboro Citizen of the Year Award. Pitino Shelter,
10 the Oasis Center, they've all given me awards and
11 honors for one reason and that's the work I've done
12 over the past two decades. Finding and funding ways
13 to provide adequate housing for low income people in
14 this county. So when I rise to object to the project
15 in principal as a matter FOLLY (CHECK), it is not
16 without some knowledge of what I'm talking about.

17 First off I was here when the applicant
18 agreed to the conditions of the board. There were
19 many witnesses in the room. It's on public record
20 when the applicant a year ago agreed to the conditions
21 of the board.

22 Now a month ago I was also here when the
23 applicant admitted to the board that they had only
24 made that agreement as a matter of convenience and had
25 no intention to comply because they found the

1 conditions disagreeable. Now I'm hearing
2 co-applicants dictate to the board what conditions
3 they will and will not accept.

4 This seems very inappropriate to me. The
5 board has counsel. The board does not need applicants
6 to interpret the law to it. This makes me very
7 uncomfortable indeed with the whole process. I just
8 want to restate my objections. Thank you.

9 CHAIRMAN: At this time the board is going
10 to take about 15 minutes, recess, and ask a couple of
11 things of our lawyer and at that time we'll start back
12 up. So within 15 minutes we'll start the program
13 again. Adjourn for 15 minutes.

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

15 CHAIRMAN: Does any board members have any
16 more questions of the applicant they want to ask?

17 (NO RESPONSE)

18 CHAIRMAN: Staff very anything else to
19 add?

20 MR. NOFFSINGER: Only to reiterate what I
21 said earlier at the beginning without going into full
22 details. Staff would recommend that if you consider
23 this item for approval that you place a condition on
24 the approval that the facility be operated as stated
25 in the application which was prepared by the

1 applicant. All members have a copy and has been
2 entered into the record.

3 CHAIRMAN: Does the applicant have
4 anything else you'd like to add at this?

5 SISTER LARRAINE: No.

6 CHAIRMAN: Do you have anything else you'd
7 like to add at this time? Change your mind?

8 SISTER LARRAINE: No. I'm agreeable to
9 that because I'm agreeable with our application.

10 CHAIRMAN: Any board member have anything
11 else you want to add or comment?

12 (NO RESPONSE)

13 CHAIRMAN: Ready to make a motion.

14 MR. PEDLEY: Mr. Chairman, I make a motion
15 for approval based on statements in the application by
16 Sister Lorraine. Findings are the Conditional Use
17 Permit is a farm-related use and is compatible with
18 the community in an A-R zone. Two, the permit will
19 not cause adversely influence on the existing or
20 future development or the property or surrounding
21 neighborhood. Complies with the site development
22 requirements of the Zoning Ordinance. With the
23 condition the facility will be operated in a manner as
24 described in the project overview provided in the
25 application by MISAS and Sister Lorraine.

1 CHAIRMAN: Is there a second to the
2 motion?

3 MS. DIXON: Second.

4 CHAIRMAN: Any other comments from the
5 board members?

6 (NO RESPONSE)

7 CHAIRMAN: staff have any questions?

8 MR. NOFFSINGER: No, sir.

9 CHAIRMAN: Do you understand the motion
10 has been made?

11 SISTER LARRAINE: I understand the motion
12 has been made to accept the application based on the
13 condition of the application, yes.

14 CHAIRMAN: Thank you. With that all in
15 favor of the motion raise your right hand.

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries.

18 Anything else on the agenda?

19 MR. NOFFSINGER: No, sir.

20 CHAIRMAN: If not, entertain one final
21 motion.

22 MR. MILLER: Move to adjourn.

23 MS. DIXON: Second.

24 CHAIRMAN: All in favor raise your right
25 hand.

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Everybody have a Merry
3 Christmas and Happy New Year and hope to see you all
4 next year. 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 54 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this
17 the 15th day of December, 2003.

18

19

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

22 COMMISSION EXPIRES:
23 DECEMBER 19, 2002

24 COUNTY OF RESIDENCE:
25 DAVIESS COUNTY, KENTUCKY