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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

FEBRUARY 3, 2005

\* \* \* \* \*

The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, February 3, 2005, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

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

\* \* \* \* \*

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

The first thing we do is start our meeting each time and ask you all to join us if you so desire. We'll start with a prayer and then have pledge of allegiance.

Judy Dixon will have our prayer for us this evening.

(PRAYER AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: First item on the agenda is to

1 consider the minutes of the January 6th meeting. Has  
2 there been any complaints or problems in the office?

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: With that we'll entertain a  
5 motion to dispose of the minutes.

6 MR. DYSINGER: Move to approve.

7 CHAIRMAN: Motion made to approve the  
8 minutes.

9 MR. MILLER: Second.

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

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 MS. DIXON: Mr. Chairman, I need to resign  
15 as secretary and nominate Ruth Ann Mason to refill  
16 that position by acclamation.

17 MR. MILLER: Second.

18 CHAIRMAN: All in favor raise your right  
19 hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Want to welcome you all to the  
22 meeting this evening. If you have anything to bring  
23 up to the board, please come to the podium. Be sworn  
24 in and then state your name and go from there, please.

25 With that first item this evening.

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## ADMINISTRATIVE APPEAL

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## ITEM 2

4

715 East Fourth Street, in a B-2 zone

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Consider request for an Administrative Review to

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continue the non-conforming use of constructing,  
selling and repairing vehicles, vehicle parts and

7

other such related services on the property.

8

Reference: Zoning Ordinance, Article 8, Section 8.2F5

9

Applicant: Tracy Payne, James E. Russell

10

MR. NOFFSINGER: Mr. Chairman, Mr.

11

Mischel, the zoning administrator for the City of

12

Owensboro and Daviess County, is here tonight to

13

explain why this item is on the agenda and the

14

history. Then I believe the applicant is also in the

15

audience and is represented by counsel.

16

CHAIRMAN: Come forward and be sworn in,

17

please.

18

MR. MISCHEL: Jim Mischel.

19

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

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MR. MISCHEL: I'm going to try and give

21

you a short condensed version of what brought us up to

22

this point. Then if you have any questions you can

23

ask.

24

A few months ago I had Mr. Russell and Mr.

25

Payne come into the office. I believe Mr. Russell

26

would like to sell the property at this time to Mr.

27

Payne. There was some questions about the zoning, if

1 it would be proper for them to operate a vehicle  
2 repair business at this location.

3 This property is zoned B-2 which is  
4 Downtown Commercial Zone. Ordinarily for a vehicle  
5 repair business that would be in an I-1 light  
6 industrial zone for any kind of vehicle repair body  
7 shop, something like that. Essentially we looked at  
8 maybe trying to rezone this property from B-2 to I-1,  
9 but under the Comprehensive Plan we could not support  
10 that. There's also some parking issues.

11 At that time they had stated that this  
12 property has always been used for this type of  
13 business over the years. They set about with  
14 affidavits to show us that this property is  
15 non-conforming industrial use and repair vehicles that  
16 has occurred at this location. They did that through  
17 a series of exhibits. Mr. Meyer here has given us  
18 those.

19 There's a couple of questions I guess I  
20 thought that needed to come in front of this board so  
21 they could testify to that.

22 Also the affidavit has been sworn to by  
23 Mr. Russell, the owner, and not like the people that  
24 actually ran those businesses. Typically we get that  
25 a lot. He did do affidavits and showed some evidence

1 that these people have been at this location.

2 I think there was a question about the  
3 farm supply. Make sure that they had operated there  
4 prior to '79 all the way through. So they can  
5 probably testify to that. Essentially that's why  
6 we're here.

7 If you have any questions, I'll be glad to  
8 answer them now or later.

9 MR. MILLER: Mr. Chairman, I've got a  
10 question.

11 Jim, just for the record, would you  
12 describe the criteria for a business to be  
13 grandfathered in under the existing ordinance.

14 MR. MISCHEL: Typically if a business  
15 existed prior to the adoption of the zoning ordinance,  
16 that's typically what we feel like is a grandfather  
17 clause. They can continue that use as long as no  
18 major changes are contemplated such as additions or  
19 anything like that that would necessitate it to be  
20 brought into compliance. If for whatever reason that  
21 property is vacant for like 18 months, then they would  
22 lose that grandfather clause and that's part of them  
23 showing these through the affidavits that it didn't go  
24 through and 18 month gap to lose the grandfather  
25 clause. I think what they're trying to show is that,

1 one, it wasn't vacant for 18 months, and two, they  
2 kept that type of use in existence prior to, you know,  
3 since the ordinance was adopted.

4 MR. MILLER: And the date of the  
5 ordinance?

6 MR. MISCHEL: I'd have to get the exact  
7 date out of here.

8 MR. NOFFSINGER: April of 1977.

9 MR. MILLER: '77.

10 MR. NOFFSINGER: Yes, sir.

11 CHAIRMAN: Any other questions from the  
12 board at this time?

13 MR. DYSINGER: I'm sorry, Gary. Did you  
14 say '77?

15 MR. NOFFSINGER: Yes, sir. April 20th or  
16 21st of 1977.

17 CHAIRMAN: Any other question from the  
18 board at this time?

19 (NO RESPONSE)

20 CHAIRMAN: The other gentlemen have  
21 anything they'd like to present?

22 MR. MEYER: Just briefly, Mr. Chairman.

23 MR. ELLIOTT: State your name, please.

24 MR. MEYER: J.D. Meyer.

25 (MR. J.D. MEYER SWORN BY ATTORNEY.)

1                   MR. MEYER: Ladies and Gentlemen of the  
2                   Baord, my name is J.D. Meyer. I'm here before you  
3                   tonight requesting the allowance of the continued  
4                   non-conforming use of this property by Mr. Payne, the  
5                   appellant here in this matter, so that he can operate  
6                   a vehicle construction repair business from the  
7                   location at 715 East Fourth Street. I'm also here on  
8                   behalf of Mr. James Russell who is the owner of this  
9                   property.

10                   Mr. Russell purchased this property on  
11                   March 3rd of 1967. We have submitted a detailed list  
12                   dating back to a lease agreement with Owensboro  
13                   Plumbing & Heating Company showing that this property  
14                   has been used for light industrial purposes for a  
15                   period dating back to 1967 when he originally  
16                   purchased the property.

17                   After Owensboro Plumbing & Heating stopped  
18                   leasing the property, there was a North Feeding  
19                   Systems that went into the property there. That  
20                   business constructed, designed and sold feeding  
21                   apparatuses for cattle, and hogs, and other livestock.  
22                   From that point there were a number of different  
23                   businesses of a similar light industrial use that for  
24                   about a small period that Mr. Russell leased the  
25                   property to.

1                   The most recent one Mr. Russell released  
2                   this property to a gentleman by the name of James  
3                   Allen. Mr. Allen operated out of this facility for a  
4                   period of about 13 years a motor vehicle repair  
5                   service facility. This operation that Mr. Allen  
6                   undertook was to basically specialize in rebuilding of  
7                   carburetors and undertaking other vehicle repairs.

8                   As Mr. Mischel pointed out, this property  
9                   is currently in a B-2 zone, but as I've just stated  
10                  forth, in the affidavits that are submitted along with  
11                  the application of Mr. Russell show this continued use  
12                  dating back to 1967. The property is zoned B-2, but  
13                  in all reality it's designed for light industrial  
14                  purposes. You have essentially a large warehouse that  
15                  comprises a majority of the square footage that has a  
16                  30 foot ceiling in it. There's also another floor  
17                  level above some offices that's used for storing  
18                  certain items that might be used in these various  
19                  businesses.

20                  We believe that Mr. Payne's intended use  
21                  of this property will continue in and along the same  
22                  parameters that the prior use of the facility has been  
23                  utilized for. For those reasons, we ask that you all  
24                  allow the continued non-conforming use of the  
25                  property. I would entertain any questions that the

1 board may have at this time.

2 CHAIRMAN: Any board members have any  
3 questions?

4 MR. DYSINGER: I have one. It may be more  
5 for clarification than anything else.

6 In the Affidavit, it indicates that the  
7 lease arrangement between North Feeding Systems covers  
8 a period of April 25, 1980 to April 24, 1986. You see  
9 that part, Section 5?

10 MR. MEYER: Yes.

11 MR. DYSINGER: It goes on to say that  
12 North Feeding Systems operated from February 10, 1977.  
13 Did it operate without a lease prior to April 25,  
14 1989?

15 MR. MEYER: North Feeding Systems, Richard  
16 North assumed the long-term lease that Owensboro  
17 Plumbing & Heating originally had and then they took  
18 over. There was some litigation and disputes between  
19 the two, between Mr. Russell and North Feeding  
20 Systems. The result of that dispute was a fixed lease  
21 term pursuant to a written contract; however, they  
22 remained and held over for a period of over a year  
23 after the termination of that original lease,  
24 operating under the same terms and conditions of the  
25 lease that was previously written.

1 MR. DYSINGER: Just to clarify. The  
2 nature of my question refers to the period before the  
3 lease actually began. They never ceased operation  
4 during the time of these disputes from February 10,  
5 1977 to April 25, 1980?

6 MR. MEYER: No, they did not.

7 CHAIRMAN: Any other board members have  
8 any questions?

9 (NO RESPONSE)

10 CHAIRMAN: The applicant have anything  
11 else you'd like to bring forward at this time?

12 MR. DYSINGER: I'm sorry, Mr. Chairman. I  
13 have one more question for the applicant or you may be  
14 able to answer it.

15 The hours of operation of the new  
16 business, what do you anticipate those being?

17 MR. MEYER: Mr. Payne, if you could come  
18 up.

19 MR. ELLIOTT: State your name, please.

20 MR. PAYNE: Tracy Payne.

21 (MR. TRACY PAYNE SWORN BY ATTORNEY.)

22 MR. PAYNE: As far as hours of business  
23 will probably be eight to five or seven to five. I  
24 might be there later at night or be there earlier in  
25 the morning, but as far as hours of business it will

1 be seven to five or seven to six. At this point  
2 that's what I'm looking at.

3 MR. DYSINGER: Thank you.

4 CHAIRMAN: Any other board members have  
5 any questions?

6 (NO RESPONSE)

7 CHAIRMAN: Hearing none entertain a  
8 motion.

9 MR. PEDLEY: Mr. Chairman, I make a motion  
10 to approve in favor of the appellant to continue the  
11 non-conforming use based on sworn testimony here  
12 tonight and the affidavit provided.

13 CHAIRMAN: Is there a second?

14 MR. WARREN: Second.

15 CHAIRMAN: Any other questions or comments  
16 from the boards or the office?

17 (NO RESPONSE)

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

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion passes.

22 One final motion.

23 MS. DIXON: Move to adjourn.

24 MS. MASON: Second.

25 CHAIRMAN: All in favor raise your right

1 hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: We are 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 12 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 February, 2005.

18

19

\_\_\_\_\_  
LYNNETTE KOLLER, NOTARY PUBLIC  
OHIO VALLEY REPORTING SERVICE  
202 WEST THIRD STREET, SUITE 12  
21 OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES:  
23 DECEMBER 19, 2006

24 COUNTY OF RESIDENCE:  
DAVIESS COUNTY, KENTUCKY

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