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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

FEBRUARY 2, 2006

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, February 2, 2006, 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
- Brad Anderson
- Sean Dysinger
- Ward Pedley
- Madison Silvert
Attorney

* * * * *

CHAIRMAN: Let's go ahead and call the meeting of the Owensboro Metropolitan Board of Adjustment to order.

Want to welcome each one of you. We invite each one of you, if you so desire. We start our meeting with the pledge of allegiance and have a prayer. If you so desire, join with us. We'd appreciate it.

Gary, will you give our invocation this evening.

1 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

2 CHAIRMAN: Again, I want to welcome all of
3 you to the Owensboro Metropolitan Board of Adjustment
4 this evening. If you have anything to add to on any
5 of the items or something to add to it or speak with
6 them, please come to one of the podiums on each side.
7 Be sworn in by our attorney because we'll have a
8 record of it. You'd be welcome to say what you have
9 to say.

10 With that the first item on the agenda is
11 the minutes of the last meeting. They are in the
12 office. I don't think there's any additions or
13 corrections.

14 MR. NOFFSINGER: You're correct.

15 CHAIRMAN: With that I'll entertain a
16 motion to dispose of the item.

17 MS. DIXON: Move to approve.

18 MS. MASON: Second.

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

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries.

23 Next item, please, sir.

24 -----

25 CONDITIONAL USE PERMIT

Ohio Valley Reporting
(270) 683-7383

1 ITEM 2

2 2900 Fairview Drive, in an A-U zone
3 Consider request to amend a previously approved
4 Conditional Use Permit for a landscaping service in
5 order to construct an additional 80'x40' storage
6 building on the site.
7 Reference: Zoning Ordinance, Article 8, Section 8.2H8
8 Applicant: James T. West, Sherrie Ann West

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

12 There is existing at this particular site
13 a landscape business operated by the applicants. It's
14 been in business for several years now. There had
15 been several Conditional Use Permits requested from
16 this board and granted by this board over the past few
17 years. This proposal is to construct an 80 by 40 foot
18 storage building looks like the rear of the property.
19 In the past, there have been conditions placed on the
20 approval to this Conditional Use Permit.

21 At this time I would like to read those
22 conditions into the record for the board's
23 consideration. These conditions are located on
24 attached site plan.

25 The first condition is:

1. The private lane, shall not be used in
conjunction with this business. This is a private
land off of Fairview Drive. The business has a

1 separate access point driveway off of Fairview Drive.

2 2. Screening along the south property
3 line with evergreen trees 5 feet tall and planting
4 space 25 feet apart. I understand these trees have
5 been installed as required.

6 3. No outdoor storage on the site.

7 4. Vehicular use area shall be paved from
8 Fairview Drive to the front edge of the building. I
9 understand that that condition has been met.

10 5. Installation of a minimum 3 foot high
11 continuous element and one tree per 40 feet along
12 Fairview Drive. It's my understanding that condition
13 has also been completed.

14 With that it's ready for the board's
15 consideration.

16 CHAIRMAN: Any objections filed in the
17 office?

18 MR. NOFFSINGER: No, sir, not to my
19 knowledge. I have not talked with anyone.

20 CHAIRMAN: Anyone here this evening
21 wishing to speak in opposition on this?

22 Applicant first. You want to present your
23 side at this time.

24 MR. SILVERT: State your name for the
25 record, please.

1 MR. CHARLES KAMUF: Charles Kamuf.

2 (MR. CHARLES KAMUF SWORN BY ATTORNEY.)

3 MR. CHARLES KAMUF: I talked to Jim
4 Mischel earlier, about 4:30, 5:00. There was some
5 question about the private road. There's a private
6 drive, I think it's called Pleasant Point or something
7 along that line. We will be glad to stipulate tonight
8 that that private drive will not be used by the
9 applicant.

10 Once this building is built in the back,
11 it's along his property. It's along the northeast
12 corner of the property to the rear.

13 He has in the past, pursuant to the letter
14 I think, Gary, that you sent, used this lane
15 periodically to put some fill in the back, but that
16 will not be necessary. So we'll be glad to stipulate
17 that we will not use this private road, number one.

18 To the rear of this property there's a
19 natural barrier. I'll be glad to show you pictures,
20 if there's question by the opposition, showing exactly
21 where the property would be and that the building is
22 pretty well will be shown or let's just say enclosed
23 somewhat by a natural barrier of trees to the rear
24 along three sides.

25 We're here to answer any questions. Jim

1 West is here with the landscaping company. We'll
2 answer any questions, but I wanted to be sure and make
3 that clear because I pointed that out to Jim Mischel
4 that we would stipulate, of course, that we would not
5 use this road any longer once we build a building.
6 The building will be built in the near future.

7 MR. NOFFSINGER: Just a point of
8 clarification. The private lane will not be used for
9 access to this property in conjunction with the
10 business or any other activity located on the
11 property?

12 MR. CHARLES KAMUF: That's correct.
13 That's correct, yes, sir.

14 CHAIRMAN: Is there any other questions
15 from the Staff?

16 (NO RESPONSE)

17 CHAIRMAN: Board member have any questions
18 of the applicant at this time?

19 (NO RESPONSE)

20 CHAIRMAN: If not, the opposition have
21 anything you want to bring at this time?

22 MR. SILVERT: State your name for the
23 record, please.

24 MR. TYSON KAMUF: Tyson Kamuf.

25 (MR. TYSON KAMUF SWORN BY ATTORNEY.)

1 MR. TYSON KAMUF: My name is Tyson Kamuf.
2 I'm an attorney with Sullivan, Mountjoy, Stainback &
3 Miller. I am here on behalf Glen and Patsie Galloway
4 who are in the audience. They live at 2967 Pleasant
5 Heights Lane. Pleasant Heights Lane is the private
6 road that's been discussed.

7 Mr. and Mrs. Galloway object to the
8 application and they do so for a couple of reasons.

9 First, this lane is a very small lane. If
10 I may present sense a picture.

11 CHAIRMAN: Bring it forward.

12 MR. TYSON KAMUF: That's a picture of the
13 lane. All the structures on this lane are
14 residential. The current business, the current
15 evergreen business is basically on Fairview Drive.
16 The building that they want to construct at the rear
17 of the property will front Pleasant Height Lane. It
18 will be clearly visible from the lane. Currently it's
19 just entirely residential. It will destroy the
20 character of the neighborhood.

21 The other concern that they have is that
22 even though the current Conditional Use Permit places
23 restrictions such as he shall not use a private lane,
24 he clearly uses the private lane for his business. He
25 uses it to access the rear of his property and he also

1 uses it to store trucks and equipment on the property.

2 This is an example of the trucks that he
3 uses. So we would have a real concern that even
4 though there is a stipulation that he won't continue
5 to use the lane that he's going to do that. That's
6 the primary objections.

7 We would ask that the application be
8 denied, but if it's not denied we would ask that the
9 stipulation be made a condition, and also there should
10 be a condition that a fence and shrubbery should be
11 placed between the new building and Pleasant Heights
12 Lane. Thank you.

13 CHAIRMAN: Anybody else have any comments
14 to add to it at this time?

15 Come forward and state your name, please.

16 MR. SILVERT: State your name for the
17 record, please.

18 MR. GRAY: Curtis Gray.

19 (MR. CURTIS GRAY SWORN BY ATTORNEY.)

20 MR. GRAY: The only thing I've got to say
21 is if he builds this thing, like you said, the
22 speculation says that he wasn't suppose to it or park
23 any equipment on it. Currently he has been parking a
24 lot of equipment on it. He's parked trailers and he's
25 used the road. If you give all him speculation and he

1 starts using it, is he going to help and maintain or
2 widen the road? Is he liable to widen the road if he
3 does start using the private drive like he has in the
4 past?

5 CHAIRMAN: Staff want to make a comment on
6 that?

7 MR. NOFFSINGER: The only comment, in the
8 past it has been stated that the lane was not to be
9 used in conjunction with operating the business;
10 however, the applicant stated that any use of the lane
11 was for the filling in of the property to the rear.
12 The only way to access that would be through that
13 lane. It's questionable as to whether or not it would
14 be in conjunction with his business or not. Yes, he's
15 in the landscape business. He has fill material that
16 he picks up at different job sites and then he brings
17 it down the lane and dumps it.

18 MR. GRAY: Right.

19 MR. NOFFSINGER: If he weren't in
20 business, you would have vehicles and trucks using the
21 lane to fill. The board tried to differentiate
22 between the business and non-business use of it.

23 Now the applicant is stating that he
24 doesn't intend to use the lane period. The question
25 has been raised, how is that going to be guaranteed?

1 I think at this time perhaps the board would like to
2 hear from the applicant as to how that is going to be
3 guaranteed.

4 MR. GRAY: I mean how is he going to
5 access it? Is he going to access it in front of his
6 current off of Fairview Drive? I mean he's got to
7 access it some way.

8 MR. NOFFSINGER: It does state on the site
9 plan that he proposes a gravel road to the new
10 building. Through his existing site I guess the
11 blacktop parking area he has out in front of the
12 building on Fairview Drive, there would be a gravel
13 drive going back to this new building which he
14 wouldn't have to use the private lane.

15 MR. GRAY: Thank you.

16 CHAIRMAN: Any other comments from
17 opposition?

18 (NO RESPONSE)

19 CHAIRMAN: Would the applicant come
20 forward and answer Mr. Gray's questions.

21 MR. KAMUF: I might point out that we're
22 willing to make whatever type of screening that you
23 prefer, but I will show you three pictures. There's a
24 natural tree line along the whole rear of this
25 property to the adjoining owners. I think that would

1 be suffice, but if it's not sufficient then we'll be
2 glad to put whatever type of screening that you'll
3 require to the rear, which will be the northeast of
4 this property.

5 Here are some pictures and I'll mark those
6 1, 2, 3 and 4. It shows you that there's a natural
7 screening which is probably better than any type of
8 screening that we could make.

9 CHAIRMAN: Are these evergreens?

10 MR. KAMUF: No. It's an old tree line to
11 the rear of that property. It's tall 20 or 30 foot
12 trees.

13 We will stipulate in the record that we
14 will not - - once we get this building built - - how
15 long will it take you to build the building?

16 Let's say three months. Once we get this
17 building constructed, we will not use that private
18 road that they're talking about. In the past, Mr.
19 West has contributed to the gravel on the road, but
20 that will not be an issue in the future.

21 The building will front, the building with
22 not front on the private road. The building will
23 front on this gravel lane that goes back along the
24 property from Fairview Drive.

25 If you have any questions, I'll try to

1 answer them.

2 MR. DYSINGER: Could you show us either on
3 our site plans where the proposed gravel lane will be?

4 MR. KAMUF: I think I can show you. You
5 have a plat in front of you. Mr. Anderson is pointing
6 it out to you.

7 You see this little gravel lane. Right
8 here is where the building will be to the back and
9 there won't be any purpose to use the private
10 driveway. The reason that he uses it is to put the
11 fill in the back of the lot now is because along in
12 here it's a little muddy and it's a lot easier to take
13 the fill and go down the private driveway. That will
14 not be necessary. We'll put a covenant and agreement
15 that we will not use that once the building is
16 constructed.

17 MR. ANDERSON: So basically what you're
18 saying is when you enter Evergreen business you just
19 keep going and that's where you hit the gravel
20 driveway?

21 MR. CHARLES KAMUF: That's correct. To
22 the rear is where the new building will be. To the
23 rear is where the fill is being used at the present
24 time. Sometime there's leaves and different types of
25 dirt that he has putting in evergreens if he stores it

1 back there in the back. He doesn't store it. He's
2 leveling out that lot in the back.

3 MR. ANDERSON: The building faces the
4 existing business and not the private drive?

5 MR. KAMUF: That's correct.

6 MR. NOFFSINGER: Mr. Chairman, just for
7 the record. Pleasant Heights Lane is located along
8 the southern boundary of this property. Mr. Kamuf was
9 referring to north and east. I think what he was
10 making reference to there would be the location of the
11 building, but the private lane that's in question
12 would be along the south boundary of the property.

13 MR. CHARLES KAMUF: That's correct.
14 That's one we will agree to and we'll stipulate it's a
15 violation of the Conditional Use Permit. You can make
16 it that way.

17 MR. NOFFSINGER: Mr. Kamuf, when you were
18 speaking of the tree line and natural vegetation, I
19 thought you made reference to that north property
20 line. What about that south property line along the
21 Pleasant Heights Lane? Is that screened with a tree
22 line as well?

23 MR. KAMUF: There are three areas that
24 have a tree line. One of them doesn't have that much,
25 as far as area of the natural tree line. I know it's

1 around three sides to it. Exactly when you say south,
2 I assume that you're talking about - - this building
3 will not front on the private road that we've been
4 discussing. It will be on the gravel road that you
5 asked about, Mr. Dysinger.

6 MR. NOFFSINGER: If I might just add. I
7 would like to hear, well, the board would make this
8 determination, but I would like to hear what the
9 applicant would like to do in terms of screening or
10 guaranteeing that that lane is not going to be used
11 because, you know, we've been here on numerous
12 occasions. Each time the business expands we have a
13 Conditional Use Permit and this issue comes up.

14 MR. KAMUF: He's here and he will be glad
15 to discuss it.

16 MR. SILVERT: State your name, please.

17 MR. WEST: Jim West.

18 (MR. JIM WEST SWORN BY ATTORNEY.)

19 MR. WEST: The tree line you're talking
20 about, there is a natural set of woods up there. The
21 only opening there is is probably a 30 foot width that
22 you can actually drive into. I'll be willing more to
23 put trees there where I couldn't even pull in to the
24 lot any longer. I put a set of trees there I cannot
25 access that road any longer. I wouldn't be able to

1 get into it myself. There's a natural tree line all
2 the way around the building. Pleasant Heights Lane is
3 right here and my building is going to be over here
4 facing my shop. The only opening I have coming up
5 here now is Pleasant Heights. I turn in here to dump,
6 which I have permission to do that from Planning &
7 Zoning. What I've been doing. I'd be willing to put
8 a set of trees there where I couldn't even pull in
9 there any longer or anybody could pull in there.

10 MR. DYSINGER: Mr. Chairman, I have a
11 question. It's probably for Staff.

12 What recourse do these folks have if four
13 or five months down the road the gentleman - - not
14 implying that you would, sir. Please don't take it
15 that way. What recourse do they have if these
16 conditions aren't lived up to?

17 MR. NOFFSINGER: It would be an appeal to
18 this board on the grounds that the applicant is in
19 violation of the Conditional Use Permit, if there is a
20 condition properly stated attach to the granting of
21 the Conditional Use Permit.

22 MR. WEST: That's what I'm saying. Once I
23 put the trees there, I can't use it. It's going to be
24 blocked off. I wouldn't want to use it anyway. I'm
25 saying I wouldn't even have access to use it. I'll

1 have a tree every 10 or 15 feet apart or 10 feet. I
2 couldn't get a vehicle through there.

3 MR. DYSINGER: Would trees also aid in
4 shielding the building from the private, I assume,
5 since it borders the private lane.

6 CHAIRMAN: Mr. West, would you like to
7 state that you will do that, put that condition to it.

8 MR. WEST: Yes, I will.

9 CHAIRMAN: Appreciate it.

10 Any other questions?

11 MR. PEDLEY: I have a question. You're
12 stating the existing pine trees are six to seven feet
13 high?

14 MR. WEST: Please.

15 MR. PEDLEY: The existing pine trees along
16 the southern boundary of what you have now.

17 MR. WEST: That or taller.

18 MR. PEDLEY: Six or seven feet. I can't
19 read it. Is it 25 foot on center?

20 MR. WEST: Yes, sir. They've been planted
21 probably five or six years ago. I've had three or
22 four of them die and I'm going to replace those.

23 MR. PEDLEY: Is that sufficient to screen
24 that area that they're - - 25 foot spacing does not
25 screen.

1 MR. WEST: That's what it called for a few
2 years ago. What, 25 feet every - - it's 5 or 6 feet,
3 25 foot centers.

4 MR. PEDLEY: Twenty-five foot centers.
5 Are you saying with this other area that you intend to
6 screen? Are you going to set those on 25 foot center?

7 MR. WEST: I will set them however you
8 want me to. It has a natural tree line already around
9 where the building is going to be built. If I need to
10 do something else, I can do that too.

11 CHAIRMAN: Any other questions of the
12 applicant from the board or Staff?

13 (NO RESPONSE)

14 CHAIRMAN: Opposition have anything else
15 you'd like to add at this time briefly?

16 Please come forward.

17 MR. TYSON KAMUF: I have, if you don't
18 mind, just a couple of more pictures.

19 This first one is a picture from the lane
20 overlooking where the building will be.

21 MR. SILVERT: Mr. Kamuf, let me ask you:
22 Do you wish to admit these as exhibits to the record?

23 MR. TYSON KAMUF: Yes, please.

24 CHAIRMAN: So noted.

25 MR. DYSINGER: Now, what is this we're

1 looking at?

2 MR. TYSON KAMUF: That is standing on the
3 lane, that is facing east. Over to the left would be
4 his property.

5 MR. DYSINGER: The applicant's property?

6 MR. TYSON KAMUF: Yes, sir. From my
7 understanding the building is going to be, from the
8 picture, all the way against the tree line. As you
9 can see, it's all clear from the lane to where that
10 tree line is. The building is going to stick out
11 pretty severely.

12 MR. ANDERSON: Whose driveway is this in
13 the picture?

14 MR. TYSON KAMUF: That is the lane,
15 Pleasant Heights Lane.

16 CHAIRMAN: Who maintains that lane?

17 MR. TYSON KAMUF: The residents that live
18 along the road. Mr. West owns property along the road
19 so he is expected to contribute. Last time that they
20 had to repair the road he did contribute, but all
21 previous times he has not offered any assistance with
22 that.

23 CHAIRMAN: Any questions from the board or
24 staff?

25 MR. DYSINGER: I would like for the

1 applicant, if it's appropriate to look at that photo
2 and can he show us in that photo where the building
3 will be?

4 MR. CHARLES KAMUF: I can show you in the
5 photos that I showed you a second ago, the ones that I
6 introduced, 1, 2, 3 and 4.

7 If you see this photograph, it will be
8 right to the right of that. Right in through here is
9 where the building will be built.

10 MR. DYSINGER: So if we were standing in
11 that first picture you showed, if we're standing there
12 facing that direction, the private lane that we're all
13 talking about is behind us; is that correct?

14 MR. CHARLES KAMUF: The private lane would
15 be to the south or to the right.

16 MR. DYSINGER: And that's facing roughly
17 northeast?

18 MR. KAMUF: That's correct.

19 MR. DYSINGER: So the lane is roughly this
20 way.

21 CHAIRMAN: Mr. Kamuf, is this the lane
22 that you're showing in your picture over here?

23 MR. CHARLES KAMUF: No.

24 MR. NOFFSINGER: The building is not on
25 the property.

1 MR. CHARLES KAMUF: The building has
2 nothing to do with that property.

3 MR. DYSINGER: That's what I'm asking.

4 MR. CHARLES KAMUF: Let me be sure.

5 MR. DYSINGER: In the picture that
6 opposition put in, the screening would be an issue,
7 but if that's not where the building is.

8 MR. CHARLES KAMUF: The building will be
9 behind that house and it will be screened. Behind
10 that house, is this the type of screen that you see.
11 The roadway, the private roadway is shown in that
12 picture. The private roadway of the gravel that goes
13 to our property is shown on this particular picture
14 that you see there. As you look this way, you're
15 standing to the rear of the property and you're
16 looking down towards Fairview Drive. This is the
17 gravel area. This is where he will - - to the rear is
18 where he'll put the building and there will be a
19 gravel road from the area that you see there to
20 Fairview Drive so that he can use this building for
21 his equipment.

22 If there's some question about that, we'll
23 be glad to explain that in more detail if we can.
24 That one photographs shows exactly what will take
25 place, if you all approve.

1 CHAIRMAN: The applicant have anything
2 else to bring at this time?

3 Come forward and state your name, please,
4 sir.

5 MR. McPHERSON: Virgil McPherson.

6 (MR. VIRGIL McPHERSON SWORN BY ATTORNEY.)

7 MR. McPHERSON: I've got some more
8 pictures for you.

9 You wanting to know where the building is
10 going to be? It's going to be sitting right there.
11 Right there about 15 foot from my line right there. I
12 live right next to him. This is my line here. He
13 ain't suppose to have anything within 50 foot of my
14 line. It's got piled right up to it.

15 That's the lake he was suppose to fill in
16 four years ago and he still ain't filled in.

17 MR. SILVERT: If you could leave these
18 here and then approach the podium, please, and discuss
19 the pictures.

20 MR. McPHERSON: He promised you all when
21 he first got that permit he staked out a house right
22 up there next to me. Say it was going to be 250,
23 \$350,000 house next to me. Well, house ain't been
24 built, but he got his permit. Seems like every time
25 he wants, he wants to promise somebody something he's

1 going to do something.

2 CHAIRMAN: Staff or the board have
3 questions of the gentleman at the podium at this time

4 (NO RESPONSE)

5 CHAIRMAN: You want these in the record?

6 MR. McPHERSON: There's not a day go by
7 that he don't use that gravel lane there to haul
8 something up there and dump it up there.

9 MR. SILVERT: Would you like these
10 pictures into the record?

11 MR. McPHERSON: You keep them. I don't
12 care. I ain't got no use for them.

13 MR. CHARLES KAMUF: Mr. Chairman, - -

14 CHAIRMAN: Let him finish.

15 Do you have anything else you want to add,
16 sir?

17 MR. McPHERSON: Yes, I've got a lot, but
18 I'm getting too old for this.

19 CHAIRMAN: Thank you, sir.

20 Anyone else to add on the opposition one
21 more time?

22 MR. TYSON KAMUF: Few more things.

23 The last picture that I gave you, which
24 was standing on the lane overlooking a clear area,
25 that is an accurate picture. There's a gray house in

1 the picture. If you go on the east side of that and
2 you look down on his property, there are trees between
3 there and the road. If you come on the west side of
4 the house, that whole area is clear. His property
5 runs all along the tree line. That's where the
6 building is going to be. You can see his property
7 from the road over the cleared area.

8 The other thing is that from what Charlie
9 Kamuf is saying, it sounds as if he is going to use
10 the gravel lane during construction. We would also
11 want to object to that. Any heavy equipment on that
12 road is really going to tear it up. We don't think he
13 should be using that during the construction of this
14 building if the permit is granted.

15 CHAIRMAN: Any questions of the applicant
16 at this time?

17 MR. DYSINGER: Could I ask a question real
18 quick.

19 Mr. Kamuf, the older, stated that the
20 picture you showed us does not indicate the area that
21 the building would be built at. In other words, if
22 you took a photo after the building was built, it
23 would not show up on that photo. Are you saying that
24 that's not the casing?

25 MR. TYSON KAMUF: It's my understanding

1 that is not the case.

2 MR. PEDLEY: I have one question.

3 You're scene asking for screening and I'm
4 not sure what area that you're wanting screened.

5 MR. TYSON KAMUF: Any area of the building
6 that would face the road.

7 MR. PEDLEY: The private road?

8 MR. TYSON KAMUF: Yes, the private road.

9 If you're standing on the road, there should be
10 screening between you and the building.

11 MR. PEDLEY: And what type screening are
12 you asking for?

13 MR. TYSON KAMUF: I think a fence and
14 trees and shrubbery. You have two houses that are
15 going to look right down on this building. The gray
16 house and then Mr. McPherson's house. He lives right
17 next to that gray house. Anything that would be
18 consistent with a residential area. Just to keep it
19 as much of a residential area as possible.

20 MR. ANDERSON: I have a question.

21 Are there fences around these properties
22 now?

23 MR. TYSON KAMUF: Around the applicant's
24 property?

25 MR. ANDERSON: Around the people you're

1 defending.

2 MR. TYSON KAMUF: I believe there is - -
3 Mr. McPherson, he's not my client. I only represent
4 the Galloways, but I believe he has some sort of
5 fence. You'd have to ask him.

6 MR. ANDERSON: When you say be consistent,
7 I didn't know if there was other fences in that
8 neighborhood.

9 MR. TYSON KAMUF: I think a privacy fence
10 would be consistent with a residential area is what I
11 was trying to say. So that when you're standing on
12 the road it still looks residential.

13 MR. NOFFSINGER: Mr. Chairman, for your
14 use, it appears the subject property runs along that
15 private lane for a distance of about 353 feet
16 according to the site plan. So we are talking about
17 potential area of screening that Mr. Tyson Kamuf is
18 suggesting of 353 feet.

19 CHAIRMAN: Anybody else have any questions
20 from the board or opposition?

21 MR. CHARLES KAMUF: Mr. Chairman, two
22 things.

23 One, we will agree that during
24 construction that we will not use that private road.
25 You can put that in the record.

1 As far as the landscaping, this gentleman
2 is the landscaping business and whatever you want
3 tonight we're willing to agree to as far as
4 landscaping along that private road. I don't think
5 that's a issue. We'll be glad to put it every 10 foot
6 if you'd like it every 10 foot. Whatever you want as
7 far as the landscaping along that area that Gary was
8 talking about we'll be glad to screen with some type
9 of natural screening.

10 Now, I was out there twice. I don't think
11 I've seen any wood fencing out there on anybody's
12 property. Maybe I'm wrong. Maybe along the front
13 there might be some along Fairview Drive, but I don't
14 recall seeing any. Whatever your pleasure is, as far
15 as the screening, we'll do it. If you want to ask him
16 what he thinks would be best, we'll be glad to do that
17 right now.

18 MR. PEDLEY: Proper screening with pine
19 tree is a pine tree every ten feet. I'm familiar with
20 it. I do a lot of it.

21 MR. CHARLES KAMUF: We will do that. We
22 will do across the area that we're talking about,
23 stipulate that it will be every ten foot and it will
24 be pine.

25 MR. PEDLEY: Along with the 353 feet along

1 the private road.

2 MR. CHARLES KAMUF: Along that private
3 drive. That's the only area back there that doesn't
4 have a natural flavor to it anyhow.

5 CHAIRMAN: Any other questions of the
6 applicant at this time? We're going to cut this off
7 in just a few minutes.

8 (NO RESPONSE)

9 CHAIRMAN: Opposition come forward, if
10 you've got one more comment or question.

11 MR. GRAY: Yes, I've got a question. Is
12 he still going to be able to dump back, dump leaves,
13 trash, wood, whatever he wants?

14 MR. NOFFSINGER: That would be determined
15 by the Daviess County Solid Waste Department. I do
16 believe he has a fill permit that has been issued, but
17 that is an issue unrelated to this Conditional Use
18 Permit that's handled through the Daviess County Solid
19 Waste Department.

20 MR. GRAY: How big is the building? Is it
21 going to be pretty high? Is it going to take five,
22 six, seven years before the trees can cover it and
23 we've still got to look at that? Is that going to
24 hurt my property value as that goes? If he builds a
25 building back here, it's going to hurt my property

1 value, especially when somebody comes up the drive and
2 sees it. It's going to take five, six, ten years for
3 the trees to grow up to cover the building. Where
4 does that leave me if I want to sell my house in a
5 couple of years? It leaves my property value down.

6 CHAIRMAN: Any other comments or questions
7 for the opposition?

8 MR. NOFFSINGER: The only statement I
9 would make is that we do not have the specifics on
10 what this building is going to look like. Owensboro
11 and Daviess County does not have design guidelines or
12 standards that you have to go by. This property is
13 zoned A-U Urban Agricultural. A barn, a pole barn,
14 any type structure like that could be built on this
15 property without the Conditional Use Permit. The real
16 issue is the use that this board has a handle on, the
17 use of the property. The use of the property is for a
18 landscape business. There will be a different type of
19 activity that's not necessarily associated with
20 agricultural uses; however, the proposed use is a use
21 that's allowed in that zone, but looking at the
22 building this board does not do.

23 MR. GRAY: Thank you.

24 CHAIRMAN: Let the opposition come up one
25 more time and we'll cut this off.

1 MR. McPHERSON: What's he going to store
2 in this building right next to me?

3 MR. CHARLES KAMUF: Equipment.

4 MR. McPHERSON: That's what he said when
5 he built the other one. All he was going to do is
6 store his lawn mowers. Wasn't even going to work on
7 them. Now look at what he's got down there. Fifteen
8 or twenty vehicles coming in and out of that driveway.
9 If he puts a storage building up there that big,
10 that's more traffic coming in and out of there. One
11 little driveway down there that he's going to have to
12 go up and down.

13 CHAIRMAN: Any other questions of the
14 opposition?

15 (NO RESPONSE)

16 CHAIRMAN: The applicant come forward now
17 and state what what you - -

18 MR. WEST: I will be storing equipment in
19 there and fertilizers, bags of fertilizers. The same
20 I have in my other building. I just need some more
21 room for some equipment.

22 Getting back to that tree line. Going up
23 that lane there's a natural set of trees already up
24 there 20, 30 feet tall right now. So the only really
25 part of that building you're going to see is the

1 opening where I actually pulled in there. Everybody
2 else has a wooded screen all the way around that
3 property except the entrance coming off Pleasant
4 Heights Lane.

5 MR. ANDERSON: If you're going to plant a
6 pine tree every 10 feet along that - -

7 MR. WEST: You're not going to see it.

8 MR. ANDERSON: - - will you be able to get
9 a truck through there?

10 MR. WEST: No. Once I plant the tress
11 there I won't be able to use that lane anyway. If I
12 put the pines there, I'm not objecting to doing the
13 pine trees. That's fine with me. If I put the pine
14 trees beside if there's already a tree there 30, 40
15 foot tall and I'm going to do another set of pine
16 trees, there's already a natural buffer there all the
17 way up through the lane there. So I'd be more than
18 willing to do pine trees.

19 CHAIRMAN: Any other questions for the
20 applicant at this time?

21 (NO RESPONSE)

22 CHAIRMAN: Mr. Kamuf, do you have anything
23 else at this time?

24 MR. CHARLES KAMUF: Not unless you have
25 some questions.

1 CHAIRMAN: Some questions of the
2 applicant? We're going to cut it off.

3 (NO RESPONSE)

4 MR. CHARLES KAMUF: I want to add to that.
5 The fill that's back there, in other words, it was
6 listed - - I think I have a letter from you, Gary,
7 from the last time. We were able to put some fill in
8 that old pond. It was one of the conditions that was
9 entered in the last hearing, I think. We have a right
10 to do that at the present time.

11 CHAIRMAN: With that does the board have
12 any comments or questions?

13 MR. DYSINGER: Mr. Chairman, I do have one
14 quick question.

15 The evergreen trees that we're talking
16 about now, is that in reference Condition Number 2,
17 that we're changing that from 25 feet apart to 5 feet
18 tall?

19 MR. NOFFSINGER: No, sir.

20 MR. DYSINGER: Do we need to make a new
21 condition with reference to - -

22 CHAIRMAN: If you so desire.

23 MR. DYSINGER: Do we need to leave Number
24 2 alone and add a condition?

25 MR. NOFFSINGER: The condition regarding

1 the screening of the private lane will be pertinent to
2 Condition Number 1, "The private lane shall not be
3 used in conjunction with this business." Now they're
4 saying the private lane will not be used period for
5 any activity associated with this property. That
6 south property line adjoining that private lane shall
7 be screened by a minimum of six foot tall evergreen
8 trees, pine trees I think was stated, at a distance of
9 no more than ten feet apart.

10 MR. CHARLES KAMUF: We agree.

11 CHAIRMAN: With that I'll entertain a
12 motion to dispose of the item.

13 MR. PEDLEY: Mr. Chairman, I'm going to
14 make a motion for approval based on findings of fact
15 that this is a compatible use with the activities
16 that's already on that property that he's been
17 operating for several years. Also, on the north side
18 of that property there's warehouses and similar
19 uses. So this is a compatible use. It will not have
20 an adverse influence on the neighborhood. I'm going
21 to add conditions.

22 Number 1, in addition to private lane
23 shall not be used in the future for business or
24 private or any use or during construction of your new
25 building by the applicant.

1 Number 2, on the south side of your
2 property where it runs parallel with the private lane
3 353 feet, you will place six foot pine trees, a
4 minimum of six foot pine trees 10 foot on center.
5 This is all in conjunction with the existing condition
6 that you have amounting to five that were read into
7 the record by Mr. Noffsinger at the starting of this
8 hearing.

9 MR. CHARLES KAMUF: We agree.

10 CHAIRMAN: is there a second to the
11 motion?

12 MR. DYSINGER: Second.

13 CHAIRMAN: Any other comments from the
14 staff?

15 MR. NOFFSINGER: No, sir.

16 CHAIRMAN: Any questions or comments from
17 the board?

18 (NO RESPONSE)

19 CHAIRMAN: The applicant understands all
20 the conditions and agrees.

21 MR. CHARLES KAMUF: Yes.

22 CHAIRMAN: With that all in favor raise
23 your right hand.

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: Motion carries.

1 Next item, please, sir.

2 ITEM 3

3 3306 Fenmore Street, in a P-1 zone
4 Consider request for a Conditional Use Permit in
5 order to provide a child Day Care Center to serve a
6 maximum of 88 children.

7 Reference: Zoning Ordinance, Article 8,
8 Section 8.2 B3

9 Applicant: Precious Blood Parish of Owensboro,
10 Kentucky, Inc.

11

12 MR. NOFFSINGER: Mr. Chairman, Planning

13 Staff has reviewed this application. We find the
14 application to be in order. There is a detailed site
15 plan that each member has been served a copy showing
16 the location of the proposed day care facility and
17 parking. There is an existing church located on the
18 property which is non-residential in use. There's
19 also, I believe, a parsonage or directory located on
20 the property as well. The non-residential use is
21 occurring on the property. This board has seen day
22 care centers being used in conjunction with these type
23 of activities that are occurring on the property being
24 an existing church. There is adequate parking on site
25 to meet the requirements for the center as well as
26 on-site off street pick up and drop off points for the
27 children. So with that it's ready for your
28 consideration.

29 CHAIRMAN: Any opposition in the office?

1 MR. NOFFSINGER: No, sir.

2 CHAIRMAN: Is anyone here this evening
3 wanting to speak in opposition of this item?

4 (NO RESPONSE)

5 CHAIRMAN: Hearing none the applicant have
6 anything you'd like to bring at this time?

7 APPLICANT REP: No.

8 CHAIRMAN: Board have any questions of the
9 applicant?

10 (NO RESPONSE)

11 CHAIRMAN: Staff have any more comments?

12 MR. NOFFSINGER: No, sir.

13 CHAIRMAN: Entertain a motion to dispose
14 of the item.

15 MR. DYSINGER: Mr. Chairman, I move to
16 grant the Conditional Use Permit given the findings of
17 fact that is compatible with the Comprehensive Plan in
18 the neighborhood as a whole. There appears to be no
19 one opposed to it in the area.

20 CHAIRMAN: Is there a second to the
21 motion?

22 MR. WARREN: Second.

23 CHAIRMAN: Attorney, do you think we've
24 added everything we need in this?

25 MR. SILVERT: That's adequate.

1 CHAIRMAN: Board have any more questions
2 of the applicant or any other comments at this time or
3 staff?

4 (NO RESPONSE)

5 CHAIRMAN: Hearing none all in favor of
6 the motion raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries.

9 Next item, please.

10 ITEM 4

11 11645 Indian Hill Road, in an A-R zone
12 Consider request for a Conditional Use Permit for
13 the construction, maintenance and operation of a 500
14 foot uniform cross section guyed antenna tower along
15 with a 12'x20' transmitter building
16 Reference: Zoning Ordinance, Article 8,
17 Section 8.2 K6
18 Applicant: The Cromwell Group, Kenneth R. Lanham and
19 Deborah Lanham

20 MR. NOFFSINGER: Mr. Chairman, Planning
21 Staff has reviewed this application. It's found to be
22 in order. This property is located in a remote area
23 of Daviess County. It has been reviewed. We find no
24 compelling reasons in looking at the site as to why
25 the Conditional Use Permit could not be considered by
26 this board. It is a conditionally permitted use in an
27 agricultural zone. In fact, I believe that's the only
28 zones that radio towers are allowed to be located in
29 would be your agricultural zones. With that the

1 applicant is represented here tonight if there are any
2 questions. It's ready for your consideration.

3 CHAIRMAN: Any opposition in the office?

4 MR. NOFFSINGER: No, sir.

5 CHAIRMAN: Anyone wishing to speak in
6 opposition of this item at this time?

7 (NO RESPONSE)

8 CHAIRMAN: Hearing none does the applicant
9 have anything you'd like to add at this time?

10 MR. SILVERT: State your name for the
11 record, please.

12 MR. HAYNES: Brian Haynes.

13 (MR. BRIAN HAYNES SWORN BY ATTORNEY.)

14 MR. HAYNES: I'm Brian Haynes of the firm
15 of Myer, Haynes, Crone & Myer. I am here on behalf of
16 The Cromwell Group, the Lanhams and Hancock
17 Communications. I'm just here to answer any questions
18 you might have, if any.

19 Mr. Norcia, who was going to be here
20 tonight, called a few minutes before his meeting was
21 going to start and asked if I could come over here
22 because he had been detained.

23 Obviously, he would have more information
24 on the technical aspects of this, but I think I could
25 probably guide you through most questions you might

1 have, if any.

2 CHAIRMAN: Thank you.

3 Anyone on the board have any questions of
4 the applicant?

5 (NO RESPONSE)

6 CHAIRMAN: Staff have anything else to add
7 at this time?

8 MR. NOFFSINGER: No, sir.

9 CHAIRMAN: Hearing none entertain a motion
10 to dispose of the item.

11 MS. MASON: Mr. Chairman, I move to
12 approval this Conditional Use Permit based on the
13 findings of fact that it is zoned for this particular
14 use and that the improvements, everything has been
15 approved by the FAA and the Kentucky Airport Zoning
16 Commission.

17 CHAIRMAN: Is there a second to the
18 motion?

19 MR. DYSINGER: Second.

20 CHAIRMAN: A motion has been made and a
21 second. Any other questions or comments from the
22 board?

23 (NO RESPONSE)

24 CHAIRMAN: Staff have anything else?

25 MR. NOFFSINGER: No, sir.

1 CHAIRMAN: The applicant have anything
2 else to that?

3 MR. HAYNES: No, sir.

4 CHAIRMAN: Hearing none all in favor raise
5 your right hand.

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries.

8 Next item.

9 -----

10 VARIANCE

11 ITEM 5

12 720 Ford Avenue, in a P-1 zone
13 Consider request for a Variance to waive the
14 required landscape buffer between a vehicular use area
15 and the adjoining residential zone.
16 Reference: Zoning Ordinance, Article 17,
17 Section 17.312, 17.3121(a)
18 Applicant: Trinity Episcopal Church of Owensboro

19 MR. NOFFSINGER: Mr. Chairman, the
20 Planning Staff has reviewed this application. The
21 application is found to be in order. It is a
22 landscape variance pertaining to new construction
23 located on the property and a development plan and
24 rezoning that was approved by the Planning Commission.
25 The applicant is asking that they not have to screen
 their existing asphalt parking lot from the adjoining
 residential property that they own. The Planning
 Staff would recommend that the Variance be granted

1 provided there's no opposition that would be affected
2 by this variance. Given that the church owns the
3 adjoining property and the ordinance requires
4 landscaping from this parking area to screen the
5 adjoining residence, the applicant is not concerned
6 about it. Therefore, we feel that the Variance should
7 be granted. We have prepared a Staff Review for you
8 outlining considerations as well as finding. Again,
9 we recommend that the Variance be approved.

10 CHAIRMAN: There's no opposition filed in
11 the office?

12 MR. NOFFSINGER: No, sir.

13 CHAIRMAN: Is there anyone present this
14 evening to be opposed to this item?

15 (NO RESPONSE)

16 CHAIRMAN: Hearing none the applicant have
17 anything you all would like to add at this time?

18 (NO RESPONSE)

19 CHAIRMAN: Hearing none entertain a motion
20 to dispose of the item.

21 MR. DYSINGER: Mr. Chairman, move to grant
22 the Variance request given the findings of fact that
23 it will not adversely affect the public health, safety
24 or welfare; will not alter the essential character of
25 the general vicinity; will not cause a hazard or

1 nuisance to the public; and it will not allow
2 unreasonable circumvention or requirements of the
3 zoning regulations.

4 CHAIRMAN: Is there a second?

5 MR. ANDERSON: Second.

6 CHAIRMAN: A motion has been made and a
7 second. Any other comments or question from the
8 board?

9 (NO RESPONSE)

10 CHAIRMAN: Staff have anything else to
11 add?

12 MR. NOFFSINGER: No, sir.

13 CHAIRMAN: Hearing none all in favor raise
14 your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries.

17 Next item, please.

18 -----

19 ADMINISTRATIVE APPEAL

20 ITEM 6

21 302 East 20th Street, in an R-4DT zone
22 Consider request for an Administrative Review to
23 change from one non-conforming use as a Tatto Parlor,
24 a commercial unit and four residential apartments to
25 another non-conforming use as a Tattoo Parlor and five
residential apartments.

Reference: Zoning Ordinance, Article 4, Section 4.53,
Article 7, Section 7.34, 7.4

Applicant: Michael Hayden

1 MR. NOFFSINGER: Mr. Chairman, the
2 Planning Staff has reviewed this application. The
3 property as previously stated is zoned residential;
4 however, there has been some type of non-conforming
5 activity taking place on this property for many, many
6 years. I remember it primarily as having a commercial
7 or business use associated with it. Ranging from a
8 gun shop, to a cabinet shop, to now a tattoo parlor.
9 I think there's been a skateboard shop in there as
10 well.

11 They are proposing to somewhat reduce the
12 non-conformity of this premises in that they are
13 taking it toward more of a residential use. They're
14 getting rid of some square footage that was devoted to
15 non-residential use as I believe a skate board shop
16 and they're converting that to an apartment. I think
17 they are moving in the right direction in terms of the
18 zoning being residential.

19 With that Jim Mischel is here tonight to
20 answer any questions you might have. I don't know if
21 the applicant is here tonight.

22 Yes, the applicant is represented. You
23 may have questions, but at this point staff is
24 recommending that you grant the appeal as requested by
25 the applicant in that it does tend to reduce the

1 non-conformity on the property. We do have a record
2 as to how much activity is being used for commercial
3 use. That will be 400 square feet now. The rest of
4 the property is being used for residential.

5 The applicant needs to be mindful in the
6 future that they are going to be somewhat limited in
7 that to go back to the property being used more as
8 non-residential, I believe this board would have a
9 very difficult time in finding that they could do that
10 because it would be increasing non-conformity.

11 With that I know I've said a lot. The
12 application is in order and it is moving in the right
13 direction in terms of the existing zoning.

14 CHAIRMAN: Is there anyone opposed to this
15 item?

16 (NO RESPONSE)

17 CHAIRMAN: Does the applicant have
18 anything else you would like to add?

19 APPLICANT REP: No.

20 CHAIRMAN: Do you understand all of the
21 conditions that he has presented?

22 APPLICANT REP: Yes.

23 CHAIRMAN: With that I'll entertain a
24 motion to grant the appeal.

25 MR. PEDLEY: Mr. Chairman, I make a motion

1 to grant the Administrative Appeal to change from one
2 non-conforming use as the Tattoo Parlor, commercial,
3 and four residential apartments to another
4 non-conforming use as the Tattoo Parlor and five
5 residential apartments. It's based on findings of
6 fact this is a less burdensome activity for that area.
7 It's getting it back to residential use and rather
8 than having an adverse affect on it it will help the
9 area. Based on that, that's my findings.

10 CHAIRMAN: Is there a second to the
11 motion?

12 MS. DIXON: Second.

13 CHAIRMAN: A motion has been made and a
14 second. Any other comments from the staff?

15 MR. NOFFSINGER: No, sir.

16 CHAIRMAN: Any questions from the board?

17 (NO RESPONSE)

18 CHAIRMAN: The applicant have anything
19 else you'd like to add?

20 APPLICANT REP: No.

21 CHAIRMAN: With that all in favor raise
22 your right hand.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: The appeal is granted.

25 Next item, please.

1

2

NEW BUSINESS

3

ITEM 7

4

1420 Benita Avenue, in an R-4DT zone (Remanded by
Circuit Court for Finding of Fact)

5

Consider request for a Conditional Use Permit in
order to operate a homeless shelter serving 90
residents and to provide educational, spiritual,
financial and substance abuse recovery services.

6

Reference: Zoning Ordinance, Article 8, Section 8.2C1

7

Applicant: Boulware Center Mission, Inc., St.

8

Joseph's Peace Mission for Children, Inc.

9

MR. NOFFSINGER: Mr. Chairman, as stated

10

previously this item has been referred back to this

11

board by circuit court for findings of fact. At this

12

time I would recommend that the board turn this item

13

over to Madison Silvert, the OMBA board attorney, in

14

terms of how we should proceed in this matter.

15

CHAIRMAN: Thank you. Would the attorney

16

advise us and set the guidelines out at this time.

17

MR. SILVERT: Certainly.

18

As Mr. Noffsinger stated, on January 26,

19

2006, the substitute judge for Daviess Circuit Court,

20

Division I, entered an order stating that this board

21

shall make findings of fact relating to the

22

conditional use application of Boulware Center Mission

23

and St. Joseph's Peace Mission.

24

Original hearing took place on April 7,

25

2005, where in addition to the application all

1 evidence was heard regarding this application.

2 That much being said, it is not the
3 intention of the board this evening to hear any new
4 evidence regarding this application. Merely we are to
5 follow the court's order and enter findings of fact.

6 It's my understanding that counsel for
7 Boulware Center and counsel for the neighborhood
8 residence have created their own findings of fact for
9 submission and for our review and those have been
10 submitted to counsel as well as to Staff. If counsel
11 would so waive, it would be appreciated if readings
12 those findings of fact into the record as a formal
13 reading would be waived and that they would be
14 attached as an exhibit to the record. Certainly
15 counsel does not have to feel obliged to do so, but it
16 would be appreciated.

17 That much being said, I will leave it to
18 you, Mr. Chairman, if there's a clear understanding of
19 the procedure for this evening.

20 CHAIRMAN: Let me be sure of one thing.
21 We cannot take any more opposition or comments because
22 we've got that in our transcript already and the court
23 has instructed us to stick to those transcripts.

24 MR. SILVERT: That's correct. We're to
25 enter findings of fact this evening. We're basing

1 that on the record that has already been established
2 and that was reviewed by the court.

3 CHAIRMAN: Thank you.

4 Do the two attorneys agree to request - -

5 MR. CRAIG: The applicants waive the
6 readings of the findings.

7 CHAIRMAN: The other attorney.

8 MR. SULLIVAN: I represent the neighbors,
9 Mike Sullivan, in the circuit court action and they
10 waive the reading of the two sets of findings that
11 have been submitted to you.

12 CHAIRMAN: We appreciate that.

13 There's two members. Have a comment you
14 want to add at this time?

15 MR. DYSINGER: Mr. Chairman, as I was not
16 present at the original meeting when this decision was
17 made, I'm unable in good conscious to make any
18 determinations, motions or findings of fact in this
19 matter. Therefore, I must disqualify myself from
20 voting.

21 MR. ANDERSON: Mr. Chairman, I feel the
22 same.

23 CHAIRMAN: Mr. Anderson wasn't on the
24 board at that time. Let that be noted that they both
25 have disqualified themselves.

1 With that anyone ready to make a motion?

2 MS. DIXON: Mr. Chairman, based upon the
3 evidence of record, including all evidence heard by
4 this Board on April 7, 2005, as well as the
5 Conditional Use Application, and subject to the
6 previously stated condition that the Conditional Use
7 Permit granted on April 7, 2005, be reviewed at
8 six-month intervals during the initial year of
9 operation, and in accordance with the January 26, 2006
10 Order of the Daviess Circuit Court, Division I, I move
11 that the following findings of fact be entered into
12 the record in support of the unanimous decision of
13 this Board of April 7, 2005, granting the Conditional
14 Use Permit requested by applicants Boulware Center
15 Mission, Inc. and St. Joseph's Peace Mission for
16 Children, Inc. regarding 1420 Benita Avenue,
17 Owensboro, Kentucky:

18 1. Allowing the Boulware Center to
19 operate at the proposed location helps to promote the
20 health, safety and welfare of the neighborhood by
21 providing shelter and treatment for the
22 underprivileged and addicted of our community. More
23 specifically, the applicant has adequately addressed
24 any safety and security concerns as relating to this
25 permit by demonstrating, as evidenced by the record,

1 that it will perform background checks, maintain open
2 communication with the Owensboro Police Department,
3 utilize staff trainings and the like.

4 2. The conditional use of the subject
5 property will not have an adverse impact on the
6 existing property or the surrounding neighborhood
7 because, as presented to this Board on April 7, 2005,
8 it is clear that the Boulware Center will provide much
9 needed services that provide an overall positive
10 impact to the neighborhood and surrounding community.

11 3. That the integrity of the neighborhood
12 will not be diminished, based upon the evidence shown
13 that the Boulware Center has a substantial positive
14 impact on the lives of the people that utilize their
15 services, helping them to become better citizens and
16 better neighbors.

17 4. Based upon the evidence submitted,
18 increased traffic to the subject property will not be
19 of such a substantial level as to negatively impact
20 the neighborhood.

21 5. Proper integration into the
22 neighborhood will occur based upon the operating
23 conditions of the Boulware Center as evidenced in the
24 application and as presented at the public hearing of
25 April 7, 2005.

1 6. In addition to the foregoing, the
2 applicant has testified it has performed its due
3 diligence in consulting with the Regional Water
4 Resource Agency regarding sanitary sewer service and
5 Lanham Construction Company to retrofit the existing
6 facility for the proposed use. The Applicant
7 recognizes that any drainage issues that may result
8 must be timely addressed. As such, Applicant's
9 planned use will not diminish the integrity or safety
10 of the neighborhood with regard to sewer drainage.

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

13 MR. WARREN: Second.

14 CHAIRMAN: A motion has been made and a
15 second.

16 This has been discussed before and stated
17 in the minutes. We cannot add anything else to it.
18 Give you a chance to briefly.

19 MR. SULLIVAN: I don't think I need to be
20 sworn since this is not going to be evidence. It's
21 argument.

22 MR. SILVERT: Please state your name for
23 the record.

24 MR. SULLIVAN: Michael Sullivan.

25 (MR. MICHAEL SULLIVAN SWORN BY ATTORNEY.)

1 MR. SULLIVAN: I'm a little upset that
2 what we got was no discussion whatsoever in public
3 about the key issue on this application which was,
4 would it have an adverse impact on the neighborhood,
5 being these people who live in the houses around it.
6 Instead what I think I heard was findings prepared by
7 an attorney behind closed doors. I think they're
8 upset because of that.

9 The other thing that I would simply like
10 to add is RWRA, something in the record from RWRA.

11 MR. NOFFSINGER: Yes, sir.

12 MR. SULLIVAN: We were expecting some
13 discussion from the board about this issue, especially
14 about the adverse impact on the neighborhood. We
15 didn't hear it. I think they're pretty upset about
16 it.

17 CHAIRMAN: Mr. Sullivan, on the guidelines
18 that the court give us, the way we had to have it and
19 advised by our attorney is the way we handled it. If
20 you have anything else to add in, I think you'll have
21 to add that to the court.

22 MR. SULLIVAN: Every lawyer will probably
23 interpret that decision of the court differently.
24 It's my interpretation that what was said here by the
25 board on April 7th was that Boulware, and we all know

1 this, would promote the health, safety and welfare of
2 the community. There's no doubt about that. Other
3 findings that the board would have to make is that it
4 would not have an adverse impact on the neighborhood.
5 There's no requirement that you come back here and
6 find that it will not have an adverse impact on the
7 neighborhood. You were open to consider that issue,
8 discuss it among yourselves and decide that one way or
9 the other. We just don't know whether that discussion
10 every took place. We didn't hear it. All we heard
11 were findings that were read off of a sheet prepared
12 by somebody. I don't know who. I think they were
13 simply hoping that they heard some discussion among
14 you from the board members themselves about the type
15 of impact this would have on the existing
16 neighborhood. I don't know if you all talked to
17 somebody and then they prepared those findings that
18 you just read off or if they were read off ahead of
19 time. Whatever happened didn't happen in public. So
20 we would know that. That was my interpretation of
21 what the court asked you to do was basically consider
22 the adverse impact on the neighbor issue, discuss it
23 and decide whether you made that finding or not.

24 CHAIRMAN: That will be so noted in the
25 transcript to give to the court.

1 Any other comments from the board members?

2 (NO RESPONSE)

3 CHAIRMAN: Hearing none all in favor raise
4 your right hand.

5 (ALL BOARD MEMBERS PRESENT - WITH THE
6 DISQUALIFICATION OF SEAN DYSINGER AND BRAD ANDERSON -
7 RESPONDED AYE.)

8 CHAIRMAN: Motion carries.

9 Entertain one final motion.

10 MS. MASON: Move to adjourn.

11 MR. WARREN: Second.

12 CHAIRMAN: All in favor raise your right
13 hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 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 53 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this
17 the 20th day of February, 2006.

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

25

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