

## 1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 APRIL 6, 2006

3 The Owensboro Metropolitan Board of Adjustment  
4 met in regular session at 6:00 p.m. on Thursday, April  
5 6, 2006, at City Hall, Commission Chambers, Owensboro,  
6 Kentucky, and the proceedings were as follows:

7 MEMBERS PRESENT: C.A. Pantle, Chairman  
8 Gary Noffsinger  
9 Marty Warren  
10 Sean Dysinger  
11 Ruth Ann Mason  
12 Ward Pedley  
13 Judy Dixon  
14 Brad Anderson  
15 Elliott, Attorney  
16 Madison Silvert, Attorney

17 CHAIRMAN: Want to call the meeting to order  
18 of the Owensboro Metropolitan Board of Adjustment.  
19 Want to welcome you this evening.

20 We open our meeting each evening with a prayer  
21 and the pledge to allegiance. We invite you to join  
22 us. Judy Dixon will give us our prayer tonight.

23 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

24 CHAIRMAN: Again, I want to welcome all of you  
25 to the Board of Adjustment at this time. If you have  
26 anything that you want to add on any item, please come  
27 to one of the podiums, state your name and be  
28 recognized.

29 With that we'll go ahead and proceed at this

1 time. The first item on the agenda is the minutes of  
2 the last meeting. They're in the office. Anything  
3 that need to be added on to it?

4 MR. NOFFSINGER: No, sir.

5 CHAIRMAN: Entertain a motion to dispose of  
6 the item.

7 MS. DIXON: Move to approve.

8 CHAIRMAN: Is there a second?

9 MS. MASON: Second.

10 CHAIRMAN: All in favor raise your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries.

13 Next item, please.

14 -----

15 CONDITIONAL USE PERMITS

16

ITEM 2

17

1100 West Fifth Street, zoned R-1T

18

Consider request to amend a previously approved  
Conditional Use Permit in order to construct a 10'x40'  
19 building addition to an existing church facility for  
storage and classroom space.

20

Reference: Zoning Ordinance, Article 8, Section 8.2B4

21

Applicant: The Church of the Living God

22

MR. NOFFSINGER: Mr. Chairman, this

23

application has been reviewed by the Planning Staff.

24

It's found to be in order. It has been advertised for

25

public hearing at this time.

1 I would like to enter into the record as  
2 Exhibit 1 the Staff Report for this particular item.

3 Each member has been mailed a copy of the  
4 Staff Report. It includes a description of the  
5 surrounding properties. It does not prepare any  
6 recommendations as to approval or non-approval of this  
7 application. It does not state findings of fact. It  
8 is merely an image of what the area looks like so that  
9 this board has a description that they can use in  
10 determining and conducting this hearing. So with that  
11 it's ready for your consideration..

12 CHAIRMAN: Is there any objections filed in  
13 the office?

14 MR. NOFFSINGER: No, sir.

15 CHAIRMAN: Is there anyone wishing to object  
16 to this particular item?

17 (NO RESPONSE)

18 CHAIRMAN: Is the applicant here at this time?

19 (NO RESPONSE)

20 MR. NOFFSINGER: Mr. Chairman, I would like to  
21 add also that if the board approves this Conditional  
22 Use Permit they should do so with the condition that a  
23 final development plan be submitted and approved by  
24 the Planning Staff because the parking necessary for  
25 this development is located off site.

1           It is in compliance with the ordinance;  
2           however, some of their required parking is off site  
3           and the development plan is required for that.

4           CHAIRMAN: And there's no one here  
5           representing the applicant?

6           (NO RESPONSE)

7           CHAIRMAN: Hearing none any board members have  
8           any comments?

9           (NO RESPONSE)

10          CHAIRMAN: Entertain a motion to dispose of  
11          the item.

12          MS. DIXON: Move to approve based upon  
13          findings of fact that it's an extension of the  
14          previous approved conditional use. That churches are  
15          conditionally permitted in an R-1T zone so it's an  
16          appropriate use, and subject to and amended final  
17          development plan.

18          CHAIRMAN: Is there a second?

19          MR. PEDLEY: Second.

20          CHAIRMAN: Any other comments from the board.

21          (NO RESPONSE)

22          CHAIRMAN: Staff have anything else to add on  
23          to it this time?

24          MR. NOFFSINGER: No, sir.

25          CHAIRMAN: Hearing none all in favor of the

1 motion raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries.

4 Next item, please, sir.

5 -----

6 ITEM 3

7 4524 Honeysuckle Lane, zoned A-U, R-1A zone  
(Proposed A-U)

8 Consider request for a Conditional Use Permit for a  
9 landscaping company to park vehicles, store mulch and  
10 store inventory of plants, trees, shrubs, flowers and  
11 other materials associated with landscaping.

12 Reference: Zoning Ordinance, Article 8, Section 8.2H8

13 Applicant: Gary M. Boswell, Margaret L. Boswell

14 MR. NOFFSINGER: Mr. Chairman, the Planning  
15 Staff has reviewed this application. The application  
16 is found to be in order. It has been advertised for  
17 public hearing at this time.

18 The Planning Staff has prepared a Staff Report  
19 for your review. Each members have been mailed a copy  
20 of this report. We would like to enter it into the  
21 record as Exhibit 2.

22 CHAIRMAN: Is there any opposition filed in  
23 the office?

24 MR. NOFFSINGER: No, sir.

25 CHAIRMAN: Is there anyone in the audience  
opposing to this item?

(NO RESPONSE)

1           CHAIRMAN: Is the applicant here if they want  
2 to add anything?

3           MS. REAL: I have a question.

4           CHAIRMAN: Are you in opposition?

5           MS. REAL: I'm not really in opposition. I  
6 have a question.

7           CHAIRMAN: Would you wait until we get the  
8 applicant and be sure and then we'll answer your  
9 question at that time.

10           Is the applicant here at this time?

11           MR. BOSWELL: Yes.

12           CHAIRMAN: Anything you want to add?

13           MR. BOSWELL: No, sir.

14           CHAIRMAN: Ma'am, you want to come forward and  
15 state your name for the record, please.

16           MS. REAL: My name is Margaret Real. Our  
17 property adjoins this property to the rear.

18           MR. ELLIOTT: Let me swear you in.

19           (MS. REAL SWORN BY ATTORNEY.)

20           MS. REAL: I've never been to one of these  
21 before and I have a question. I know I look not  
22 informed because, well, that's the truth.

23           Mr. Boswell, could you tell me your plans. Is  
24 it going to be mostly things that grow or is it going  
25 to be mulch?

1           CHAIRMAN: Ma'am, direct that to the board and  
2 then we'll get the answer.

3           MS. REAL: I would like to know the intentions  
4 of the landscaping property. Is it going to be mostly  
5 decaying flats, large equipment not parked under  
6 garages, mulch piles, or is the plan to be mostly  
7 plants that are growing?

8           CHAIRMAN: We'll get that information for you.

9           MS. REAL: Thank you.

10          CHAIRMAN: The applicant please come forward  
11 and state your name.

12          MR. BOSWELL: My name is Gary Boswell. I'm  
13 the applicant.

14          (MR. GARY BOSWELL SWORN BY ATTORNEY.)

15          CHAIRMAN: You've heard the question she  
16 asked. Would you please inform us.

17          MR. BOSWELL: Yes. We submitted the site plan  
18 and maybe that would be helpful. I don't know if we  
19 can make that available to the lady.

20                 Basically there is going to be one place  
21 between a little greenhouse and the buildings that are  
22 existing on the property where there's going to be  
23 some mulch, but other than that it's going to be trees  
24 that are bedded in. They take them and they put dirt  
25 up around them and flowers and things of that nature.

1 The majority of the material to be put on the property  
2 will be living plants, trees, flowers and things of  
3 that nature. They will have a mulching bed, a place  
4 where they put their mulch.

5 CHAIRMAN: Will there be public sales at this  
6 location?

7 MR. BOSWELL: No retail sales, no, sir.

8 Regarding equipment, when we first submitted  
9 the application or at least we talked about it, it was  
10 my understanding they would be parking some of their  
11 equipment outside, but I've since learned from  
12 Mitchell McClellan who owns the landscaping service,  
13 that their big equipment like their tractors and their  
14 backhoes will actually be parked inside. So be very  
15 little equipment outside.

16 CHAIRMAN: Does that answer your question,  
17 ma'am?

18 MS. REAL: Yes, sir. I'm happier now.

19 CHAIRMAN: Good deal.

20 Any other questions from the board to the  
21 applicant or comments?

22 (NO RESPONSE)

23 CHAIRMAN: Staff have any other questions?

24 MR. NOFFSINGER: No, sir.

25 CHAIRMAN: Hearing none entertain a motion to



1 dispose of the item.

2 MR. PEDLEY: Mr. Chairman, I make a motion for  
3 approval based on findings of fact that we haven't  
4 heard any opposition. The use is compatible with  
5 agricultural uses in the area. It will not have an  
6 adverse influence on the neighborhood.

7 It's with conditions completion of zoning  
8 change to A-U and the applicant complete the proposed  
9 screening.

10 CHAIRMAN: Is there a second to the motion?

11 MS. DIXON: Second.

12 CHAIRMAN: A motion has been made and a  
13 second. Any other comments or questions from the  
14 board?

15 (NO RESPONSE)

16 CHAIRMAN: The Staff have anything else to  
17 add?

18 MR. NOFFSINGER: No, sir.

19 CHAIRMAN: All in favor raise your right hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries.

22 Next item.

23 ITEM 4

24 4641 KY 1514, zoned A-R  
25 Consider request to amend a previously approved  
Conditional Use Permit in order to construct a 4,480  
square foot storage building for an existing golf

1 course.  
Reference: Zoning Ordinance, Article 8, Section 8.2K7  
2 Applicant: Kevin Ferguson, Panther Creek Golf Club,  
3 Inc.

4 MR. NOFFSINGER: Mr. Chairman, this  
5 application has been reviewed by the Planning Staff.  
6 It too has been found to be in order. All adjoining  
7 property owners have been notified and it's been  
8 advertised for public hearing at this time. Planning  
9 Staff has prepared a Staff Report which each member  
10 has been mailed a copy and we would like to enter that  
11 Staff Report into the record as Exhibit 3.

12 CHAIRMAN: Any opposition filed in the office?

13 MR. NOFFSINGER: No, sir.

14 CHAIRMAN: Anyone wishing to be opposed to  
15 this particular item or questions?

16 (NO RESPONSE)

17 CHAIRMAN: Is the applicant here at this time?

18 APPLICANT REP: Yes.

19 CHAIRMAN: Do you have anything you would like  
20 to add to the application?

21 APPLICANT REP: No.

22 CHAIRMAN: We don't have any opposition or  
23 anything to add at this time. Entertain a motion to  
24 approve.

25 MR. DYSINGER: Mr. Chairman, move to approve

1 the conditional use permit given the findings it's in  
2 keeping with the existing uses and there appears to be  
3 no objection.

4 CHAIRMAN: Is there a second to the motion?

5 MS. DIXON: Second.

6 CHAIRMAN: A motion has been made and a  
7 second. Any other questions from the board?

8 (NO RESPONSE)

9 CHAIRMAN: Staff have anything to add to it?

10 MR. NOFFSINGER: No, sir.

11 CHAIRMAN: Hearing none all in favor raise  
12 your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries.

15 Next item, please, sir.

16 ITEM 5

17 7061, 7105 KY 2830, zoned I-2, B-4 (Proposed I-2)  
18 Consider request for a Conditional Use Permit for  
19 reclaiming sheet steel from used fabrication items and  
20 recycling and processing of automobiles.  
21 Reference: Zoning Ordinance, Article 8, Section 8.2G4  
22 Applicant: Double T Investments, River Metals  
23 Recycling, LLC

24 MR. NOFFSINGER: Mr. Chairman, I have a letter  
25 from the applicant's attorney, Mr. Charles Kamuf,  
26 requesting that this particular item be postponed  
27 until the May meeting. They will be submitting a  
28 variance request to be heard in conjunction with this

1 rezoning. So they're requesting that you postpone  
2 taking action on this item until the May meeting so  
3 they can file that application and they can be heard  
4 together.

5 CHAIRMAN: Entertain a motion to postpone.

6 MR. DYSINGER: Move to postpone.

7 CHAIRMAN: Is there a second?

8 MR. PEDLEY: Second.

9 CHAIRMAN: All in favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries. Postponed until  
12 the next meeting.

13 Next item, please.

14 ITEM 6

15 193 Phillips Court, zoned R-4DT  
16 Consider request to amend a previously approved  
17 Conditional Use Permit to construct a 30'x60' picnic  
shelter on the existing campus.  
18 Reference: Zoning Ordinance, Article 8, Section 8.2C1  
19 Applicant: Mary Kendall Campus/KY United Methodist  
Homes for Children and Youth, Methodist Home of KY,  
Inc.

20 MR. NOFFSINGER: Mr. Chairman, this  
21 application has been advertised for public hearing at  
22 this time. It's been reviewed by the Planning Staff  
23 and found to be in order.

24 Staff has prepared a report for you to be  
25 considered here tonight. Each member has been mailed

1 a copy of this report in advance. We would like to  
2 mark that as Exhibit 4 for the record.

3 CHAIRMAN: Any opposition brought to the  
4 office?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: Is anyone opposing the application  
7 at this time?

8 (NO RESPONSE)

9 CHAIRMAN: Hearing none is the applicant here?

10 APPLICANT REP: Yes.

11 CHAIRMAN: Do you have anything you'd like to  
12 add at this time?

13 APPLICANT REP: No.

14 CHAIRMAN: The board have any questions of the  
15 applicant?

16 (NO RESPONSE)

17 CHAIRMAN: Hearing none entertain a motion to  
18 dispose of the item.

19 MR. PEDLEY: Mr. Chairman, make a motion to  
20 amend the previously approved Conditional Use Permit  
21 to allow for construction of 30 by 60 picnic shelter  
22 based on findings of fact we've heard no opposition on  
23 this item and it is compatible with the existing use.  
24 It will not have an adverse influence on the  
25 neighborhood.

1 CHAIRMAN: Is there a second?

2 MR. WARREN: Second.

3 CHAIRMAN: Motion has been made and a second.

4 Any other questions or comments from the board?

5 (NO RESPONSE)

6 CHAIRMAN: Staff have anything else to add?

7 MR. NOFFSINGER: No, sir.

8 CHAIRMAN: Hearing none all in favor raise  
9 your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries.

12 Next item, please.

13 ITEM 7

14 1945 Tamarack Road, zoned R-3MF  
15 Consider request for a Conditional Use Permit to  
16 operate an early learning school for a maximum of 240  
17 children ages two through six.  
18 Reference: Zoning Ordinance, Article 8, Section 8.2B3  
19 and Section 8.2B14  
20 Applicant: Sue Hastings and Larry Hastings/Hastings  
21 Early Learning School, J.P. Simms/Rushing Wind Church  
22 of God

19 MR. NOFFSINGER: Mr. Chairman, this  
20 application has been reviewed by the Planning Staff.  
21 It's found to be in order. It has been advertised for  
22 public hearing at this time and adjoining property  
23 owners have been notified.

24 The Staff has prepared a report that we mailed  
25 to you. We would like to enter that report into the

1 record as Exhibit 5. With that it's ready for your  
2 consideration.

3 Mrs. Hastings was one of my elementary school  
4 teachers. I think about second grade perhaps at  
5 Lincoln Elementary. I don't have a vote in this, but  
6 I wish you the best.

7 CHAIRMAN: Any opposition filed in the office?

8 MR. NOFFSINGER: No, sir.

9 CHAIRMAN: Is anyone in the audience objecting  
10 to this?

11 (NO RESPONSE)

12 CHAIRMAN: Hearing none does the applicant  
13 have any comments to add at this time?

14 APPLICANT REP: No.

15 CHAIRMAN: Any board members have any  
16 questions of the applicant or anything?

17 (NO RESPONSE)

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

20 MS. MASON: Mr. Chairman, I move for approval  
21 and my findings of fact are there is no opposition and  
22 it's already definitely essential to the public  
23 health, safety and welfare because there's already a  
24 school there and it's compatible with the  
25 neighborhood.

1 CHAIRMAN: Is there a second to the motion?

2 MR. DYSINGER: Second.

3 CHAIRMAN: A motion has been made and a  
4 second. Any other comments or questions from the  
5 board?

6 (NO RESPONSE)

7 CHAIRMAN: Staff have anything else to add?

8 MR. NOFFSINGER: No, sir.

9 CHAIRMAN: Hearing none all in favor of the  
10 motion raise your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries.

13 Next item, please, sir.

14 ITEM 8

15 3300 US 60 East, zoned P-1  
16 Consider request to amend a previously approved  
17 Conditional Use Permit for operation of a preschool  
18 for a maximum of 74 children within an existing church  
19 facility.  
20 Reference: Zoning Ordinance, Article 8, Section 8.2B3  
21 and Section 8.2B14  
22 Applicant: Owensboro Church of Christ

23 MR. NOFFSINGER: Mr. Chairman, the Planning  
24 Staff has reviewed this application. It's found to be  
25 in order. We have advertised this item for public  
hearing at this time and adjoining property owners  
have been notified.

The Staff has prepared a Staff Report which



1 has been mailed to each of the board members. We  
2 would like to enter that Staff Report into the record  
3 as Exhibit 6.

4 CHAIRMAN: Is there any opposition filed in  
5 the office?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: Is anyone wishing to oppose this  
8 application at this time?

9 (NO RESPONSE)

10 CHAIRMAN: Is the applicant here?

11 (NO RESPONSE)

12 CHAIRMAN: Not seeing the applicant, does the  
13 board have any comments?

14 (NO RESPONSE)

15 CHAIRMAN: Entertain a motion to dispose of  
16 the item.

17 MR. NOFFSINGER: Mr. Chairman, before you do  
18 that, I would remind you that there are conditions  
19 that Staff has listed in this report. Two of those  
20 special conditions that apply to this subject property  
21 is that there would need to be a final development  
22 plan submitted and approved as well as completion of  
23 the zoning change to P-1. They are rezoning a portion  
24 of this property to professional service.

25 CHAIRMAN: Any other comments from the board?

1 (NO RESPONSE)

2 CHAIRMAN: Hearing none entertain a motion to  
3 dispose of the item.

4 MR. PEDLEY: Mr. Chairman, I make a motion to  
5 amend the previously approved conditional use permit  
6 to allow for an increase from 49 children to a maximum  
7 of 74 children based on findings of fact that we have  
8 no opposition, it is a reasonable expansion and will  
9 not overburden the property, and it is compatible in  
10 use with the neighborhood.

11 With condition 1) subject to final development  
12 plan submittal and approval; 2) completion of zoning  
13 change to P-1; 3) applicant be required parking,  
14 screening and landscaping; 4) applicant shall not  
15 exceed the 74 children without coming before this  
16 board for approval.

17 CHAIRMAN: Is there a second to the motion?

18 MR. DYSINGER: Second.

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

22 (NO RESPONSE)

23 CHAIRMAN: Any other comments from the Staff?

24 MR. NOFFSINGER: No, sir.

25 CHAIRMAN: Hearing none all in favor of the

1 motion raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries.

4 Next item.

5 ITEM 9

6 337 Washington Avenue, zoned B-4  
7 Consider request for a Conditional Use Permit in order  
8 to operate an indoor recreational facility.

9 Reference: Zoning Ordinance, Article 8, Section  
10 8.2B11

11 Applicant: Natalie Smith, Marie Casey/Toohey Realty

12 MR. NOFFSINGER: Mr. Chairman, this

13 application has been review by the Planning Staff.

14 It's found to be in order. It's advertised for public  
15 hearing at this time and all adjoining property owners  
16 have been notified.

17 Planning Staff has prepared a Staff Report  
18 which has been mailed to each member of this board and  
19 we would like to enter that Staff Report into the  
20 record as Exhibit 7.

21 CHAIRMAN: Any opposition filed in the office?

22 MR. NOFFSINGER: No, sir.

23 CHAIRMAN: Is anyone wishing to object to this  
24 item?.

25 (NO RESPONSE)

CHAIRMAN: Is the applicant here that would  
like to add anything else at this time?

1           APPLICANT REP: No, sir.

2           CHAIRMAN: Hearing none any question from the  
3 board?

4           (NO RESPONSE)

5           CHAIRMAN: Hearing none entertain a motion to  
6 dispose of the item.

7           MR. DYSINGER: Mr. Chairman, move to approve  
8 the conditional use permit given the findings that  
9 there's no opposition. The use is not inconsistent  
10 with the neighborhood and the over all neighborhood  
11 plan.

12          CHAIRMAN: Is there a second to the motion?

13          MR. PEDLEY: Second.

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

17          (NO RESPONSE)

18          CHAIRMAN: Staff have anything else to add?

19          MR. NOFFSINGER: No, sir.

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

22          (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23          CHAIRMAN: Motion carries.

24          Next item, please.

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ADMINISTRATIVE APPEAL

ITEM 10

1010 West Ninth Street, zoned I-1  
Consider request for an Administrative Appeal to  
relocate two existing non-conforming access points on  
an arterial street to one non-conforming access point  
on a local street for an existing business.  
Reference: Zoning Ordinance, Article 4, Section 4.43  
and Article 7, Section 7.34 and 7.4  
Appellant: River City Industrial Services, Inc.

MR. NOFFSINGER: Mr. Chairman, at this time I  
would like to ask Mr. Mischel to present a brief  
summary of what this request entails and his  
involvement with this application.

MR. ELLIOTT: State your name, please.

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: In the recent past we had a  
request made to us to allow for a loading dock to be  
constructed on Maple Street. On Maple now there's an  
existing parking lot across from the old tobacco  
warehouse. They've used that in the past.

They would like to be able to put their trucks  
in the parking lot and back across the street into  
this new loading dock.

Under the current ordinance that's not allowed  
to back out on public right-of-way. Seeing as right  
now in the past they've got two of those openings now

1 on Ninth Street, which is a major street. It's an  
2 arterial street. They've agreed to close up both of  
3 those. So right now on Ninth Street they have two  
4 doors and they back in to it now and they always have.  
5 They've agreed to close both of those doors out and  
6 take them out, put the street curb back in, put the  
7 grass in the right-of-way and close this up and have  
8 one opening on Maple Street. We thought that was a  
9 good trade off to get the truck traffic off of Ninth  
10 Street and blocking traffic and everything and put it  
11 on a local street.

12 I don't know if you have any questions.

13 CHAIRMAN: Board members have any questions?

14 (NO RESPONSE)

15 CHAIRMAN: Is the applicant here this evening?

16 APPLICANT REP: Yes.

17 CHAIRMAN: Do you have any questions or

18 comments you would like to add?

19 APPLICANT: No.

20 CHAIRMAN: Staff have anything else to add?

21 MR. NOFFSINGER: No, sir. We have had at  
22 least one call in the office so there may be some  
23 folks here tonight that have questions regarding this  
24 application, but no, sir.

25 CHAIRMAN: Anyone have any questions this

1 evening on this item?

2 (NO RESPONSE)

3 CHAIRMAN: Hearing none entertain a motion.

4 MR. DYSINGER: Mr. Chairman, move to find for  
5 the appellant given the findings that it will benefit  
6 the public safety by replacing an already unsafe  
7 situation with one that is at least slightly safer.  
8 Also with the finding that it will benefit the public  
9 welfare by providing additional landscaping in the  
10 area that frankly could use it.

11 CHAIRMAN: Is there a second to the motion?

12 MS. DIXON: Second.

13 CHAIRMAN: Any other comments or questions  
14 from the board?

15 (NO RESPONSE)

16 CHAIRMAN: Staff have anything else to add?

17 MR. NOFFSINGER: No, sir.

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

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries.

22 ITEM 11

23 4665 Hunters Ridge, zoned R-1A  
24 Consider request for an Administrative Review in order  
25 to appeal the Zoning Administrator's refusal to issue  
a certificate of occupancy per Owensboro Metropolitan  
Zoning Ordinance based on no installation of a  
swimming pool enclosure as required by the 2002

1 Kentucky Residential Code and Amendments.  
2 Reference: Zoning Ordinance, Article 5, Section 5.2  
3 and 5.3  
4 Appellant: Kimberly M. Watson

5 MR. NOFFSINGER: Mr. Chairman, Mr. Mischel is  
6 available to address this application.

7 CHAIRMAN: Mr. Mischel.

8 MR. MISCHEL: I'm Jim Mischel.

9 I'm going to try to just give you a brief  
10 history of why were here on this item here.

11 Our office for swimming pools they are  
12 required to have a permit. If you look in the Zoning  
13 Ordinance under 5.2 building permits are required for  
14 this.

15 Under Section 5.3 for any permit we issue it's  
16 required to have a Certificate of Occupancy before you  
17 use the structure.

18 I guess that's why we're here. Because the  
19 permit has been issued and we have not issued a final  
20 Certificate of Occupancy. It comes down to the fence.

21 Now, the applicant believes that they complied  
22 and they should receive that certificate because they  
23 have what is a pool cover.

24 Under the building code we belief it needs to  
25 have 4 foot tall fence surrounding the pool area.

What brought this to our attention is we had



1 a pool contractor come to us and say they would like  
2 to start installing these pool covers. I said, well,  
3 that's not in the code. You can't do that. They  
4 said, well, we have a location, one or two locations  
5 where that's been done in the past. So I got those  
6 locations and sure enough it was.

7 There was some confusion with the pool  
8 contractor and the owners. In their contracts they  
9 were saying that the owners were responsible for  
10 fences. Come to find to out we have a lot of swimming  
11 pools in this county that does not have a final CO  
12 certificate.

13 We went back and I had them pull all the  
14 permits issued. We can only go back as far as the  
15 year 2000. Our computer, the old system we had  
16 crashed and we lost all of our data in that.

17 Started in 2000, our new computer system.  
18 They pulled those up and we've issued 72 swimming pool  
19 permits. Of those 72, 68 we've gone back and a lot of  
20 people have complied, put a fence up. Sixty-eight of  
21 those people have put their fences up. We have three  
22 applicants that have agreed to install the fencing. I  
23 think as of today maybe one or two of those went on.  
24 So we might have one more that needs to do it.

25 Of course, we have the applicant here that is

1 before you tonight. They have their presentation.

2 All of you have a copy of this. I'll try to  
3 briefly go over this.

4 If you look on Page 2. A letter I had  
5 written October 12, 2005 to the Watsons. I'll just  
6 try to briefly read this.

7 "The Owensboro Metropolitan Planning  
8 Commission recently contacted you about the Kentucky  
9 Residential Code fencing requirement for swimming  
10 pools. After careful review and consideration, it is  
11 the OMPC's interpretation that an electric pool cover  
12 does not comply with the requirements of the Kentucky  
13 Residential Code.

14 "Enclosed is a copy of the Swimming Pool  
15 Building Permit and Application for 4665 Hunters Ridge  
16 that was submitted to the OMPC for approval in  
17 November 2004. Both the Application and Building  
18 Permit list the following:

19 "\* The swimming pool enclosure shall extend  
20 not less than 4 feet above the ground.

21 "\* All gates shall be self-latching and  
22 self-closing with latches placed 4 feet above the  
23 ground.

24 "Also enclosed is a copy of an email  
25 conversation with Terry Slade, Director for the Office  
of Housing, Building and Construction with the  
Division of Building Code Enforcement. This email  
conversation confirms the OMPC's interpretation that  
an electric pool cover does not meet the requirements  
of the Kentucky Residential Code for swimming pool  
enclosures.

"If you have any questions or comments, please  
contact our office."

On Page 3 I emailed Terry Slade, director of  
the office this question.

Says, "Terry, Kentucky Residential Code  
(Chapter 26) requires that a fence be installed around  
all swimming pools (P2601.9). I have had two recent  
owners/contractors contend that electric pool covers  
were acceptable and meet the intent of the code as per  
section P2601.9.3 (Alternative devices). My

1 interpretation has also been that an electric pool  
2 cover is not a natural barrier and that a fence is  
3 still required, because of the following issues:

4 "1) A cover is subject to human error; ie, if  
5 they forget to cover the pool

6 "2) Disruption of electrical service

7 "3) Malfunction of the pool cover

8 "An additional argument for the use of an  
9 electric cover in lieu of fencing has been that a 'Hot  
10 Tub' is defined as a 'Private Swimming Pool' and  
11 section P2601.9.1 states the exception that a hot tub  
12 (swimming pool by definition) would be exempt with an  
13 approved safety cover.

14 "I would like to get the State's  
15 interpretation on the above, before proceeding any  
16 further."

17

18 On Page 4, Terry replied to my email. His  
19 response was:

20 "Jim, The original 2002 KRC as published (red  
21 book) is not up to date. Please go to the code  
22 supplements at our website or go to the KRC on line.  
23 Alternative device section has been deleted entirely.  
24 Even when we allowed alternative devices, pool covers  
25 were not acceptable in lieu of the fence enclosure.  
Hot tubs are not regulated by this section. Only  
in-ground pools are regulated and in-ground pools are  
not regulated less than 24 inches deep or less than  
250 square feet of surface area (see Section P2601.1).  
The hot tube with safety cover exception is no longer  
in the code and if it were we would not interpret the  
code to mean that swimming pools with safety covers  
would also be acceptable because hot tubs are defined  
as swimming pools.

"Let me know if you have any questions.  
Terry."

If you go to Page 5, I'd just like to show you  
briefly. That's the application that we give  
everybody to fill out for swimming pool. If you note  
on there I've highlighted the requirements and  
conditions for swimming pools. Under it it says,

1 "Owner must erect and maintain an adequate enclosure  
2 surrounding the pool area. The enclosure, including  
3 gates, shall not be less than four feet above the  
4 underlying ground. All gates shall be self-closing  
5 and self-latching with latches placed four feet above  
6 the underlying ground."

7 Next item, "Before the pool may be used, a  
8 Certificate of Occupancy and/or final approval must be  
9 obtained from this office."

10 If you go to Page 6, that's the actual  
11 building permit that we issued. As you can see, we  
12 issued one for that address, 4665 Hunters Ridge looks  
13 like November 24, 2004.

14 On Page 7, the second page, you'll under  
15 Comments/Conditions Item Number 2 on building permit.  
16 It says, "SWIMMING POOL: Swimming pool walls shall be  
17 six feet from the property line and from any other  
18 structure. Swimming pool structural design, location,  
19 safety devices, and drainage systems shall comply with  
20 Section 421 of the Kentucky Building Code. Swimming  
21 pool enclosure (fence) shall extend not less than 4  
22 feet above the ground. All gates shall be  
23 self-closing and self-latching with latches placed at  
24 least 4 feet above the ground, or other approved  
25 methods presented to the Building Inspector."

1           Just like to point out that in the application  
2           and the building permit it clearly states that the  
3           fence is the only thing.

4           The state, the seminars they hold, they always  
5           stress that the fence is the only compliance that will  
6           take care of that. That the pool covers never have.

7           I know at one time they were saying, you know,  
8           the definition of spa it says "see swimming pool."  
9           That might be fine. Certain sections of that swimming  
10          pool Chapter 26 you will see certain things that both  
11          have to do with both of those things.

12          When it comes to enclosure, they just have to  
13          say swimming pools have to have up to four foot. They  
14          give an exception for spa to cover. That's something  
15          different. That's not covering the whole thing. If  
16          they meant that, you wouldn't have the exception. You  
17          wouldn't need the exception because everything is  
18          available for pool cover.

19          I don't know if you have any questions. I  
20          would like to go on and put a copy of this into the  
21          record.

22          MR. WARREN: Mr. Mischel, do you have any idea  
23          when the state changed their - -

24          MR. MISCHEL: Well, in talking to Terry,  
25          they've got a new it's called the Red Book. It's

1 residential, but it's commercial. They are coming out  
2 with a new code book. It has not been adopted yet.  
3 In that code book it should have some updates on it.

4 That probably, they were hoping to adopt it  
5 earlier. They have not done it. They're still doing  
6 it. It might not go on line until about June or July.

7 This item has come up in the past. It's  
8 always been that the fence has to surround the pool  
9 area. There are certain similar things that you have  
10 to do. When you read that code, some things are  
11 different when it comes to enclosure. They split off.  
12 You have certain things for a pool and certain thing  
13 for a spa cover.

14 Essentially that's why we've tried to be  
15 consistent, because of liability. That's why we put  
16 it in that application and the permit both. We tried  
17 to put it on there so everybody would be familiar with  
18 it.

19 The pool contractors, we've never had that  
20 happen. I mean they've always known that. We've  
21 never had that until recently. All of a sudden we've  
22 had two or three.

23 CHAIRMAN: Board have any other questions of  
24 the staff?

25 MR. DYSINGER: Mr. Mischel, I have two

1 questions.

2 Is it my understanding that your testimony was  
3 that even under the old standards a wall could never  
4 be replaced by a pool cover. They were never  
5 interchangeable even under the old standards? They we  
6 never considered - -

7 MR. MISCHEL: We've not done that. We've  
8 always had the fence. The only exception is if you  
9 have a natural barrier. We've had a few go down on  
10 the river. The river is a barrier that takes the  
11 fence to pass the river a little bit. We consider  
12 that a natural barrier.

13 MR. DYSINGER: The other question I had was  
14 regarding the swimming pool permit application. You  
15 stated that the applicant would have to receive a  
16 Certificate of Occupancy and/or final approval at some  
17 point. To your knowledge has that ever happened in  
18 any way?

19 MR. MISCHEL: No. That's I guess why we're  
20 here. We haven't issued a final CO. In our view we  
21 can't. I guess in the Watsons' view that they've  
22 complied. In our view they haven't complied and we  
23 can't issue that certificate and we do need to. It's  
24 a matter of safety.

25 MR. DYSINGER: Thank you.

1           CHAIRMAN: Any other questions from the board  
2 at this time or the staff?

3           (NO RESPONSE)

4           CHAIRMAN: The owner want to come forward and  
5 state your feelings.

6           MR. ELLIOTT: State your name, please.

7           MR. WATSON: Jim Watson.

8           (MR. JIM WATSON SWORN BY ATTORNEY.)

9           MR. ELLIOTT: Let me go ahead and swear your  
10 wife in too.

11          MRS. WATSON: Kim Watson.

12          (MRS. KIM WATSON SWORN BY ATTORNEY.)

13          MR. WATSON: First thing before we start I  
14 just want to pass around some pictures and introduce  
15 those in.

16                 Those pictures, Appellant's 1 is a picture of  
17 me standing on the cover. The second one is a picture  
18 from the east view. I think it's also written on the  
19 back what it is. The third one is from the west view.  
20 The fourth one is from the northwest view.

21                 I just want to give you an idea of what the  
22 pool cover looks like and how strong it is. It's a  
23 locking device that's connected next to the house. We  
24 have a key in a separate compartment and that's how  
25 that's opened and shut is through that device.



1           CHAIRMAN: Let me interrupt one minute.

2           One question. Is this operated by electricity  
3 or by battery or alternative?

4           MR. WATSON: Electricity.

5           CHAIRMAN: If it goes off then what?

6           MR. WATSON: If it goes off then we can't  
7 operate it. There is I think a manual device. I  
8 don't know whether we can do it. Home Pool can do it,  
9 but we can't.

10          CHAIRMAN: Thank you.

11          MR. WATSON: Again, that's more for  
12 informational purposes. Also I want the record to  
13 show that there's not a lot of houses. Our lot is  
14 about a two acre lot and there's not a lot of cross  
15 over in yard. If somebody wants to get in our  
16 backyard, they've got to come in our backyard and be  
17 there.

18          The second thing I wanted to say briefly is  
19 also show you my insurance policy. I'm going to get  
20 into the facts here in a second, but I also wanted to  
21 let you know that we built a pool with Home Pool back  
22 in the mid '90s when we lived in Town & Country and  
23 that was before the KRC was adopted. Back then the  
24 requirement was for a fence because of insurance  
25 reasons.

1           Now the confusion comes in that KRC, and we  
2           kind of contest that issue today, but the issue now is  
3           that some insurance companies, specifically Kentucky  
4           Farm Bureau, has said that you have to have two  
5           things, one or the other. You have to have a fence or  
6           an automatic pool cover. If you have an automatic  
7           pool cover, Farm Bureau will insure you. That's the  
8           purpose of introducing this as I think it's  
9           Plaintiff's 5, which is a copy of my declaration page  
10          in my policy of insurance, just to show that because  
11          of the automatic pool cover I have an insurance  
12          policy. I'm insured.

13           I think Mr. Mischel referenced earlier that  
14          they did that for liability reasons. I think one of  
15          the comments he made that, as you can tell, there are  
16          insurance companies that will insure automatic pool  
17          cover. I think we all recognized that insurance  
18          companies by in large are risk assessments. They have  
19          made determination that it is a risk that they're  
20          willing to assume if you have an automatic pool cover.  
21          That's the purpose of that exhibit.

22           Briefly the facts. Again, I think the facts  
23          are not really an issue here.

24           We purchased the home around 2004. We  
25          contracted with Home Pool to build a pool. We

1 originally had a different design. Kind of a T-shape  
2 design. We met with Harold. We went over the design.  
3 Home Pool said, well, that law has changed. You need  
4 a fence or an automatic pool cover. I said, Harold,  
5 is that right? We built that pool in '97 and we had  
6 to put a fence because of insurance reasons. He said,  
7 no. You have to have one or the other. We both kind  
8 of talked about it. We changed our design to  
9 accommodate the pool cover. We spent about 11,000 on  
10 a pool cover. We'd spend 7, or 8, or 10 on a fence or  
11 whatever so we opted for the automatic pool cover.  
12 Just more for esthetic reasons.

13 Then once we got to that decision we changed  
14 it. I wasn't for sure so I asked our insurance agent,  
15 Gavin Roberts. I said, Gavin, we're getting ready to  
16 build this pool at Hunters Ridge. Our contractor is  
17 telling us that insurance no longer requires a fence.  
18 Is that right? He said, yes, that's right. You  
19 either have to have a fence or an automatic pool  
20 cover. We opted for the automatic pool cover.

21 We put it in. Everything is fine. I think we  
22 started corresponding back in November of '05 and that  
23 subsequently led to the letter from Mr. Mischel.

24 I think the first issue is understanding the  
25 KRC, Kentucky Residential Code. You have to

1 understand that that is from the International  
2 Residential Code. A lot of times legislature rightly  
3 or wrongly, a lot of these things are not new. They  
4 adopted them from somewhere else.

5 As my argument will show you that this is a  
6 poorly worded statute because it's fragmented.

7 IRCK in this provisions it includes all kinds  
8 of pools. Kentucky didn't want to do that so they  
9 didn't adopt all of them. They backed off and said,  
10 we're only going to adopt part of them. As a result  
11 the language is disjointed in consistence.

12 What you'll find in here is that when the KRC  
13 was adopted, it had a provision in here which I think  
14 one of the gentlemen over here asked Mr. Mischel about  
15 when the act was adopted. It originally had a  
16 provision that would have left the finders of the  
17 governing board to decide whether or not what is an  
18 alternative device.

19 In 2003 I think took some of that out. So  
20 there was a provision at the beginning that let you  
21 guys decide whether or not something was an  
22 alternative device.

23 The main argument I think for our purposes is  
24 understood P2601.9, which I think everyone has a copy  
25 to my appeal.

1           2601.9.1, the OPC provisions is basically  
2 saying that all public and private swimming pools  
3 shall be erected with an enclosure surrounding the  
4 pool area.

5           It goes on to talk about if you an enclosure,  
6 if the enclosure is a fence it's got to be a certain  
7 height. It has an exception. Spa or hot tub with an  
8 approved cover.

9           I know the emails that Mr. Mischel read and  
10 some of the testimony he gave were a little bit  
11 self-serving because if you look at the act, the act  
12 specifically says under 2601.2, does everyone have  
13 that act in front of them?

14           Under 2601.2 it specifically provides that the  
15 purposes of this section, which is the swimming pool  
16 section, the words in there shall have the meanings as  
17 determined by this section.

18           That's very important. You can't basically  
19 tell them the way the statute defines a word is the  
20 way that you define the word for the purpose of this  
21 act.

22           So if you go down and look at hot tubs and  
23 spa, which is the exception under the requirements.  
24 It says, "See definition of private swimming pool."  
25 The definition of private swimming pool is "Any

1 structure that contains water over 24 inches deep and  
2 which is used or intended to be used, for swimming or  
3 recreational bathing in connection with a home which  
4 is available only to the family and guests of the  
5 household." That's our pool.

6 Whether they did a bad job in piecing together  
7 the statute because I think our argument is that  
8 there's never a requirement for enclosure the way  
9 they've written the statute. I don't think they  
10 intended to do that, but that's what they did. That  
11 language is clear to me.

12 Does anyone have any questions on that part of  
13 it as far as hot tub/spa?

14 MR. NOFFSINGER: Mr. Chairman, I do have two  
15 questions related to the testimony by Mr. Watson.

16 One question would be in terms of your  
17 insurance policy that you've submitted for the board  
18 to review. Does that state anywhere that you have a  
19 swimming pool? The purpose of that is just to show  
20 you have insurance.

21 MR. WATSON: Well, the purpose of that is to  
22 show that I have insurance but also to show that Farm  
23 Bureau won't tell you they don't have swimming pool  
24 provision in there. They will either give you a  
25 policy or not. So if they had not made that decision

1 to insure pool covers, I wouldn't have any insurance.

2 MR. NOFFSINGER: Based upon the information  
3 you submitted, this board would not know that. We're  
4 just taking your word as to State Farm or Farm Bureau  
5 has insured you and they know that you have a pool.  
6 In some cases they may not know you have a pool.  
7 That's why I was wondering if it's stated anywhere in  
8 there that you have a pool.

9 MR. WATSON: There is not. There's not a  
10 provision in there. It's just a simple matter. If  
11 they did not insure the pool cover, I would not have  
12 the insurance.

13 MR. NOFFSINGER: But we don't know that by  
14 looking at that document.

15 MR. WATSON: No. Other than the fact that  
16 it's coupled with my testimony telling you two things.  
17 One, before we put in an automatic pool cover, I  
18 called our agent and said, this is what Home Pool is  
19 telling us. Either a fence or a pool cover. He said,  
20 yes, Farm Bureau has changed and they will insure an  
21 automatic pool cover.

22 MR. NOFFSINGER: At any time did you or your  
23 agent talk to the Planning Staff, or Mr. Mischel, or  
24 any of the building staff about this alternative  
25 device?

1           MR. WATSON: We did not because our Home Pool  
2 contractor who I presumably knew the new rules because  
3 we had built one back in '97. It's the same company.

4           MR. NOFFSINGER: So you had no discussion with  
5 the building staff. You just discussed this issue  
6 with your agent. Your agent was the individual that  
7 took out the permit, Home Pool?

8           MR. WATSON: Yes. Not the insurance agent.

9           MR. NOFFSINGER: Right.

10          MR. WATSON: You remember we built one back in  
11 '97 and I knew that there was not, back then I knew  
12 that there was not - - the KRC didn't exist. It was  
13 an insurance issue. The insurance company said, you  
14 need to have a fence. My point is they now have  
15 subsequently decided that you don't have to have a  
16 fence.

17          MR. NOFFSINGER: At some point I would like to  
18 get a clarification from Mr. Mischel in terms of  
19 verifying that or not in terms of whether a fence is  
20 required. It's been my understanding that a fence  
21 regarding a pool for many years have been required to  
22 have a four foot - -

23          MR. WATSON: It's always been an insurance  
24 issue. There's two homes in Stone Creek now that have  
25 no fences and no automatic pool covers.



1           MR. NOFFSINGER: But we don't know if they  
2 have a Certificate of Occupancy.

3           MR. WATSON: It predates the act. I think  
4 they're fine. They're predating what I'm here for.

5           If I could supplement the record, if you so  
6 wish in affidavit form from Farm Bureau. I didn't  
7 think that would be an issue.

8           MR. NOFFSINGER: The reason I ask that I was  
9 looking over that because you had submitted it and I  
10 thought it might reference the pool, but it does not.  
11 So I just wanted to make that clarification that it  
12 does not.

13          MR. WATSON: Does anyone else have any - - I  
14 think our strongest argument is this spa and hot tub  
15 exception. Does everyone understand that the purpose  
16 of this act, they're telling me what this is. It's  
17 not the hot tub that you guys think that sis over here  
18 or the spa. They're saying for purposes of this  
19 section it's a swimming pool. So therefore by  
20 definition the swimming pool is accepted.

21          That goes back to my ultimate argument. That  
22 this thing is a fragmented disjointed and inconsistent  
23 statute in its application. We as a homeowner should  
24 be afforded the benefit of the construction.

25          Anyone have any questions on a hot tub or spa?

1           CHAIRMAN: No, but I have one question.

2           The permit application that was obtained by  
3 Harold Jewell, is that the one that signed this for  
4 you?

5           MR. WATSON: I assume because I had never seen  
6 it before.

7           CHAIRMAN: That's what I wondered. Have you  
8 ever seen this permit?

9           MR. WATSON: No.

10          CHAIRMAN: In other words, where requirements  
11 and conditions stating in that you have never looked  
12 at, he has never showed?

13          MR. WATSON: No. I can probably clear a  
14 little bit of that up.

15          CHAIRMAN: Excuse me. What I'm trying to say,  
16 he obtained the permit and had all the conditions in  
17 it. He never did inform you. He checking with the  
18 staff.

19          MR. WATSON: That is correct. My wife can say  
20 the same thing.

21          MRS. WATSON: Yes, that's correct.

22          MR. WATSON: My opinion as to what happened is  
23 Harold Jewell - - Creek Haven I think it is. Creek  
24 Haven has a pond area in the middle of that  
25 subdivision. Harold erected a pool probably after the

1 KRC was adopted. The way that the KRC read at that  
2 point was that if you had a natural boundary you  
3 didn't need a fence. So Harold has two sides of his  
4 yard a fence and the back of it is open because of  
5 this pond they have back there. It's a natural  
6 barrier. I think Harold got confused and told us and  
7 these I think 17 other home owners that you didn't  
8 need to have a fence, fence or automatic pool cover.  
9 I was hoping to have strength in numbers up here, but  
10 everybody decided to get a fence except for the  
11 stubborn Watsons.

12 I believe that Harold was rightly or wrongly,  
13 but he was confused based on his own situation. He  
14 has since, because he's billing a pool next-door to  
15 ours now. I've talked to that home owner. He now has  
16 given them, because I've talked to Harold myself. I  
17 said, Harold, you've got to give the homeowners this  
18 knowledge. You've got to tell them that until this  
19 board makes a clear determination, you've got to tell  
20 them that there's a fence or automatic pool cover, but  
21 it doesn't say that in the statute. I said, you've  
22 got to protect yourself. You can't go around telling  
23 everybody that you've got to have an automatic pool  
24 cover or a fence just for your own protection. That  
25 doesn't negate some of the arguments I've got. He has

1       since required that in writing from the homeowner.  
2       That you've got to have the homeowner sign off of it.  
3       I think that guess to the question did we have  
4       knowledge of this fence requirement. The answer is  
5       no.

6                He never showed it to us. The second reason  
7       is because in '97 it was an insurance issue to us. It  
8       was not a requirement anywhere else other than we  
9       couldn't get insured. The insurance now has changed  
10      that. At least Kentucky Farm Bureau has changed that.

11              I think one of the emails. I think it's Page  
12      4 of the emails that Mr. Mischel referred to.

13              Mr. Slade, who I also had conversation with,  
14      says, "Hot tubs are not regulated by this section."  
15      You can clearly see that hot tub is specifically  
16      stated in this section. So he's not right that the  
17      hot tub - - it's not a regulatory issue. It's a  
18      definitional issue.

19              In Chapter 26 they tell us how to define hot  
20      tube and swimming pool. We're not regulating hot tub  
21      or swimming pool. They're just telling us what hot  
22      tub and swimming pool is.

23              It goes on to say, "The hot tub with safety  
24      cover exception is no longer in the code." That's  
25      incorrect because it is in there.

1           He goes on to say, "if it were we would not  
2 interpret the code that way." Again, that's his  
3 interpretation. I don't think any of you here can  
4 read that statute and read it any other way other than  
5 the way we read it. It tells you how to define hot  
6 tub, how to define spa. If you don't interpret it the  
7 way it tells you, you're not listening to the statute.

8           MR. WARREN: But, Mr. Watson, it also tells us  
9 exactly what a pool is. Exactly what a pool is. A  
10 swimming pool. It doesn't say that a swimming pool is  
11 a hot tub or that a swimming pool is a spa. It says  
12 what a swimming pool is. The code is specifically for  
13 a swimming pool. Although you can Internet a hot tub  
14 as a swimming pool or a spa as a swimming pool, a  
15 swimming pool, there's no interpretation. It is a  
16 swimming pool.

17           MR. WATSON: A hot tub is a swimming pool.

18           MR. WARREN: But it's also a hot tub. A pool  
19 is a pool.

20           MR. WATSON: See, I disagree with you because  
21 this section 2601.2 under definition tells you "The  
22 following words and terms shall for the purpose of  
23 this section have the meanings shown herein."

24           Again, I think what you're doing is you're  
25 taking your common sense, which you think of a hot

1 tub sitting over here in this square box. That's not  
2 what I'm talking about. I think we've got a poorly  
3 worded fragmented statute. I'm just dealing with what  
4 they gave us. They gave us this word of the statute  
5 that says, a hot tub is a swimming pool. A spa is a  
6 swimming pool. Because they are swimming pools,  
7 they're accepted. It is an argument.

8 MR. WARREN: It's not an exception because  
9 it's a swimming pool. It's an exception because it's  
10 a spa or a hot tub.

11 MR. WATSON: Correct.

12 MR. WARREN: There is no exceptions for a  
13 pool, which is what you have.

14 MR. WATSON: But you're missing the point.  
15 For purposes of this statute they tell what a hot tub  
16 is. That's what you're not getting.

17 MR. WARREN: I understand exactly what it's  
18 saying. I'm not getting your interpretation of it. I  
19 can tell you that.

20 MR. WATSON: But you're disregarding the  
21 statute.

22 MR. WARREN: No, I'm not.

23 MR. WATSON: I respectfully disagree because  
24 the statute tells you what it is. If you want to  
25 disregard it that's - -

1           MR. WARREN: Well, I'm disregarding it. I  
2           guess it's an issue of my interpretation of the same  
3           statute.

4           MR. WATSON: It is definitely an  
5           interpretation issue.

6           MR. DYSINGER: Mr. Chairman, could I ask a  
7           couple of questions of the appellant before we get too  
8           far.

9           CHAIRMAN: As long as they're not the same  
10          thing over and over.

11          MR. DYSINGER: No, sir.

12          First I want to thank you for bringing in the  
13          photos. It makes our job a ton easier when people  
14          will do that.

15          I guess the first question I would have, it  
16          shows a picture of you standing on the cover so it's  
17          very strong clearly. Is the cover waterproof to the  
18          best of your knowledge?

19          MR. WATSON: Yes. I don't know if you can see  
20          from the pictures, but we've got a - -

21          MR. DYSINGER: It appears there's some water  
22          collecting there.

23          MR. WATSON: Yes. Just rain water. We  
24          periodically put the pump on top.

25          MR. DYSINGER: Could you guess for me how deep

1       that water could get where it allow to collect?

2               MRS. WATSON:  It can't.  I mean it can to a  
3       certain degree, but you're talking very, very small.  
4       I mean less than an inch.  It's not going to - -  
5       unless you're standing on it and it pulls a little  
6       bit, but the thing is the pool cover is so large.  
7       It's not a small pool.  The pool is so large the water  
8       dissipates over the cover.  I mean there's not.  If  
9       you look it rained today and there's not any - - water  
10      does not stand on the pool cover at all.

11              MR. DYSINGER:  Because one of the photos there  
12      appeared to be water collecting on there.  In one of  
13      the photos he submitted there appeared to be water  
14      collecting there.

15              MRS. WATSON:  Yes.  We took those today right  
16      before we came.

17              MR. DYSINGER:  So water can collect on the  
18      pool cover?

19              MRS. WATSON:  We could all get on the cover,  
20      all of us, without any trouble.

21              MR. DYSINGER:  Let's say there was water on  
22      the pool cover.  If I were to stand on the pool cover,  
23      presumably that water would kind of move to my dimple  
24      area, for lack of a better word?

25              MRS. WATSON:  It might cover the top of your



1 shoes a little bit. That's it. That's only if you  
2 have a lot of rain.

3 MR. DYSINGER: If a toddler were to walk  
4 around the pool cover, is it reasonable to assume that  
5 wherever that toddler was at the water would collect  
6 as well to some extent?

7 MRS. WATSON: They're probably not heavy  
8 enough. When you're talking about 100 pounds to sit  
9 there, no.

10 MR. WATSON: It's a 24 by 54 pool. It's so  
11 disbursed.

12 MR. DYSINGER: Thank you.

13 MR. WATSON: Couple of other things and I'll  
14 be done here.

15 Another reason why I contend this statute is  
16 poorly worded is because if they define power safety  
17 cover, under the section, under the definition section  
18 under 2601.2, "Power Safety Cover: A pool cover,  
19 which is placed over the water area, and is opened and  
20 closed with a motorized mechanism, activated by a  
21 control switch."

22 That's all great and that's what I've got, but  
23 nowhere in the statute does it ever use the term. So  
24 why would it use the term or define a term and never  
25 use it. It goes, my position is it goes back to

1 Kentucky adopting only bits and parts of the  
2 international code. That makes for a fragmented  
3 statute section.

4 Again, I think under Section 2601.9.2 it never  
5 says that the fence is exclusive and it never defines  
6 the word enclosure anywhere. There are statements  
7 that provide that the enclosure are intended to  
8 prevent uninvited persons from intruding into the  
9 pool.

10 Section 2601.9.3, prints these two, "An  
11 exterior private pool enclosure may surround the pool  
12 area only." I submit to you that our automatic pool  
13 cover covers only the pool area as required by  
14 2601.9.3.

15 Again, what we're asking is that because of  
16 that ambiguities in the statute, I think a different  
17 interpretation the homeowner ought to be given the  
18 benefit of the doubt.

19 If the governing board want to go back and  
20 reissue clear regulations and say that an automatic  
21 pool cover is not acceptable, that's fine. We're kind  
22 of in a position that we rely upon our contractor who  
23 also is put on notice. That's kind of a separate  
24 issue. We did what we did based on what we were  
25 advised. Especially in light of the insurance company

1 changing its position to us back in '97. Back in '97  
2 they wouldn't insure it. Now they will. They  
3 obviously, insurance companies, they spend a lot of  
4 money and time with risk assessment and they decided  
5 that's the risk they're willing to take.

6 Does anyone have any questions about anything?

7 MR. DYSINGER: Not necessarily a question. I  
8 would like to add. When I was first asked to join the  
9 board adjustment to be honest with you I kind of  
10 wondered what in the world could the board of  
11 adjustments do. The zoning ordinance is written and  
12 everyone can look to it and see what it says and so  
13 forth.

14 Since then I've learned that no ordinance, no  
15 statute, no law can be written so clearly and to such  
16 an extent that there won't at some point be a question  
17 about it. Now, I'll definitely stipulate that you've  
18 raised a good point about the ordinance that we're  
19 speaking of. It does refer you to swimming pool  
20 definite and to define hot tub. Part of the reason  
21 why we have administrative bodies and, in fact, courts  
22 in this country is because people are expected to  
23 bring their common sense to it. In this particular  
24 issue, 72 permits were issued. 72 people saw that  
25 they had a swimming pool and not a hot tub. You're

1 the one exception to that. I don't fault you for  
2 making the best case you can, especially after the  
3 expense you've gone to do what you felt was complying  
4 with the law. I would recommend that you want to take  
5 this up with the contractor you worked with.

6 You seem to be proceeding under the assumption  
7 that we are bound to such an extent by the words that  
8 are in the ordinance that we can apply common sense.  
9 I would tell you, sir, that that's inaccurate.

10 MR. WATSON: I understand that, but also  
11 that's only part of your argument. The other argument  
12 is that the statute does not say that the fencing  
13 requirement is the only requirement. It just says, if  
14 you're going to have a fence, that's what it's going  
15 to have to be.

16 I submit to you under 2901.9.2 is the approved  
17 barriers. Also it talks about private swimming pool  
18 enclosures.

19 Again, that's part of the frustration I have  
20 with it personally. They've adopted fragmented  
21 sections of the international code and then they  
22 changed it in '03 and they took out certain parts that  
23 makes it kind of inconsistent to read. They took out  
24 - - there's another section called alternative  
25 devices. There were some provisions that it allowed

1 the board to do what it saw fit under the  
2 circumstances and also under some natural boundary  
3 exceptions. It doesn't say, again, if you're  
4 statutory reading, it's hard to read just one section.  
5 You've got to read all of it. The whole thing it's  
6 just a fragmented disjointed section that we should,  
7 as the homeowners, be given the benefit of the doubt.  
8 That's my position. If you disagree that's fine.  
9 That's why were' here.

10 MR. DYSINGER: Thank you, sir.

11 CHAIRMAN: Any other comments from the Staff  
12 or board?

13 (NO RESPONSE).

14 CHAIRMAN: I have one comment that disturbs me  
15 a little bit. That you all didn't read or see the  
16 permit that came from this office. You did not read  
17 or see the requirements of conditions?

18 MR. WATSON: Never saw it.

19 CHAIRMAN: That's what disturbs me about it as  
20 much as anything that come out here tonight. That  
21 nobody read that beforehand except the Staff when they  
22 give it to the applicant.

23 MR. ANDERSON: They never gave it to the  
24 applicant.

25 CHAIRMAN: The permit was given to Mr. Jewell

1       stating all of the requirements and conditions.

2               MR. WATSON: I agree with that.

3               CHAIRMAN: That what disturbs me. You all  
4       didn't get to see it beforehand.

5               MRS. WATSON: We thought it was strange. We  
6       had put a pool in in '97. When we moved from that  
7       residence, we had a pool in the backyard that had a  
8       fence around it too. We had planned to put a  
9       different design in. This was brought to our  
10      attention. Yes, everything has been said. It's quite  
11      disturbing.

12              The other side of that. It brought to our  
13      attention that there were 17 other people this  
14      happened to, you know. There are different reasons  
15      why they went through with what they did as far as  
16      putting the fence in. Some of them have little kids.  
17      Some are concerned about, you know, getting into the  
18      barriers of these neighborhoods now that have the  
19      little lakes in the back. Their kids have fallen in  
20      those lakes. It's ironic I have to put a fence around  
21      my pool, but yet these subdivisions that have these  
22      nice lakes there's nothing bound there and they're  
23      quite a bit more dangerous. I understand that.

24              We changed what we did. Put a lot of money  
25      into it. It's not really clear as far as the issue.

1       It's a very safe thing. It's very, very safe. We  
2       heard about it before. When you put a pool cover, you  
3       have to do it when you build it. I think it's  
4       wonderful because it's very safe. It's safer than  
5       having a fence because you're four foot enclosures,  
6       they don't always lock. A lot of them don't close or  
7       left open. Kids can get over it. Much easier they  
8       can get over that fence than they can in that pool  
9       that has a cover that covers it all the time. It's  
10      not, it's covered. The thing is it covers the entire  
11      pool; whereas somebody, a little kid can get through a  
12      fence, get over a structure. You know, nothing is  
13      fool proof.

14                Just to sort of give you away from the legal  
15      act. You know, from being a parent and having kids  
16      that swim and having pools. You know, it's very, very  
17      dangerous and I understand that.

18                MR. WATSON: Also just for clarification I  
19      think for Mr. Warren and Mr. Dysinger, we're kind of  
20      playing a hand that we were dealt. I can say under  
21      oath, and I think my wife will too, that if Harold  
22      told us we needed a fence, we would have put a fence  
23      up. I don't think there's any question. When this  
24      thing kind of - -

25                MR. ANDERSON: I don't think anybody is

1       questioning your honesty. I think people know you're  
2       honest people. It's just unfortunate that Mr. Jewell  
3       is signing these applications. You know, how many  
4       applications come in here from Home Pool with his  
5       signature on it? You know, has he been notified of  
6       this?

7                I'm actually directing this towards Staff.  
8       Has Mr. Jewell been notified of this rule? Obviously  
9       this problem is coming from Home Pool time and time  
10      again. If another application came in with his name  
11      on it, I would ask to speak to the owners of the  
12      house.

13              I mean it's an unfortunate situation. I  
14      understand where you spent more money thinking you did  
15      the right thing, but it's clearly not right by code.  
16      We've got to get some clarification to this because  
17      it's causing me to be here way too long.

18              MR. WATSON: I have had specific conversation  
19      from the neighbor next-door. She was put on notice.  
20      I told Harold he needs to write out something that the  
21      homeowner needs to sign because he knows, if I lose  
22      here, I'm coming for him. I told Harold, we'll try to  
23      win here first. If we win, we're square.

24              CHAIRMAN: I think we've covered this topic  
25      pretty good on both sides. Any other comments from



1 the board or the Staff to something new to be added?

2 Jim.

3 MR. MISCHEL: I'd just like to make a few  
4 comments. It won't take very long. Back in '97, they  
5 were talking about a pool they had before, we did have  
6 a code, in fact, in '97 and prior to '97.

7 Now, the Kentucky Residential Code, KRC, came  
8 into affect recently. Up until then we had what they  
9 called KAMO code. That code required a fence. It  
10 wasn't something that just came about. I've been here  
11 doing this for about 20 something years.

12 Terry Slade, he is the director of the state  
13 building code that looks over when they adopt the  
14 building code. He's been there for 20 some years. He  
15 stands firm that nothing has changed. They've always  
16 required a fence. I don't see how, and that might be  
17 for the legal people, how an insurance company can  
18 override what the state law has passed. If we have a  
19 statute, a building code that says you must do this,  
20 I'm not sure the insurance company can say, you can  
21 put a pool cover in. I don't know.

22 Harold's pool, we've talked about that, the  
23 swimming pool. We had a clear understanding of that.  
24 I told Harold, we went over about pool covers,  
25 everything else. We allowed him to put the fence on

1 both side of his and go down to the lake into. He  
2 understood. After this happened he came to my office  
3 and I just kind of looked at Harold. You know,  
4 nothing has changed. He really didn't have anything  
5 to say.

6 My impression, I mean nothing has changed.  
7 Other pool contractors knew they couldn't do it.  
8 That's why they came to me and said, what's changed?  
9 We want to start selling these because we make more  
10 money on them. I said, hold it. We can't do that.  
11 Nothing has changed. We can't allow that.

12 I don't see how we can get much clearer. The  
13 application permit states, I mean we went out of the  
14 way to say it has to have a fence.

15 Harold should have come to us and say, hey,  
16 has anything changed? He never came to us.

17 I don't think there's 17 out there. I don't  
18 think. I think there's three or four or a couple that  
19 did pool covers, but I don't think there's 17 with the  
20 automatic pool cover. Could be wrong on that.

21 Unless you have any questions, that's it.

22 CHAIRMAN: Any other questions of the Staff?

23 MR. WARREN: Jim, does this seem to be an  
24 issue only with Home Pool?

25 MR. MISCHER: At this point, yes. We have

1       like three or four pool companies here. There's one  
2       or two in Evansville. They've pretty much go by the  
3       same thing, and Harold did too. I don't know. It  
4       happened all of a sudden.

5               MR. WATSON: Most people probably can't afford  
6       the automatic pool cover.

7               MR. ANDERSON: I think, Gary and Jim, the  
8       other I was trying to say is the Watsons, from their  
9       standpoint of view they don't deal with developing or  
10      building. They don't understand the permit and how it  
11      works. From a different standpoint, I know general  
12      contractors that won't sign a permit because the  
13      applicant, the person receiving it needs to know.  
14      It's just an unfortunate situation that he up and sold  
15      them a pool cover and tried to say it's replacing a  
16      pool and it's not right. That's where I was going,  
17      Jim.

18              Does he know this and should we stop letting  
19      him sign this for them? Because it's putting people  
20      in a bad situation.

21              MR. NOFFSINGER: If I might interrupt. Harold  
22      Jewell knows. Harold Jewell understands. I can say  
23      today he does. I met with him a few months ago. We  
24      discussed this. He understands.

25              He signed this application. It states clearly

1       it's to have an enclosure four foot above the ground.  
2       He signs these routinely.

3               In fact, it is typical that the contractor  
4       takes out the permit. It's a convenience. It's a  
5       convenience to the Watsons. It's a convenience to me  
6       that the contractor can sign that application, get the  
7       permit and the Watsons don't have to come to city hall  
8       to get that permit. That's why we do that. Also, the  
9       laws states that the applicant can do that. Doesn't  
10      have to be necessarily the owner. It can be their  
11      agent. That's why we do it. I would hate to see us  
12      do something that would cause more bureaucracy, if you  
13      will, to the application process.

14             I know the more information you have and had  
15      the Watsons signed this application, we could have  
16      said, well, you signed this too. Perhaps we wouldn't  
17      be having this discussion today. How far do you take  
18      that and how far can Staff be expected to contact  
19      contractor/owner and whatnot.

20             That's the issue we deal with. Fortunately we  
21      don't have too many of these. We have to, I think,  
22      rely on the professionals out there doing the job that  
23      our local, that are reputable, to get adequate  
24      information out there.

25             I'm not saying Mr. Jewell gave bad information

1 or he didn't either way because I wasn't a party to  
2 that. I do know Mr. Jewell signed this application  
3 and it's very clear on this application for the permit  
4 as to what the requirements are.

5 MR. ANDERSON: And it clearly states nothing  
6 about a pool cover.

7 MR. MISCHEL: We issue an awful lot of  
8 permits. Just not for pools, but houses, room  
9 additions, garages and everything. You could have the  
10 same about a garage. Well, I didn't understand it.  
11 They didn't sign it. Where do you stop? Like you  
12 said, pretty soon we're going to create a lot of red  
13 tape for a lot of people if the owner has to come in  
14 each time. Most of the time we like for the  
15 contractor to come in because they're the ones  
16 building the thing and we can talk to them. Evidently  
17 something broke down here. Usually we can talk to  
18 them about how to build something whether it's a house  
19 or a garage or swimming pool. Pool is pretty clear.  
20 We like to talk to the contractors really so there  
21 isn't any problem on foundation or anything.

22 CHAIRMAN: Thank you, Jim.

23 Does the board have any other questions of the  
24 Staff?

25 (NO RESPONSE).

1           CHAIRMAN: Does the applicant have any further  
2 comments?

3           MR. WATSON: Just a couple.

4           Gary, you said convenience. I don't know why  
5 the builder or whoever could just take it to the house  
6 and get somebody to sign it. I don't understand why  
7 the homeowner needs to come down.

8           It's unfortunate this situation and I know in  
9 least four or five other situations that it  
10 misrepresented what was in there. It misrepresented  
11 what stated the requirements were.

12          MR. NOFFSINGER: Trust me, Jim. We deal with  
13 convenience and bureaucracy on a daily basis. The  
14 easier we can make it for these permits to be issued  
15 the happier the community is. If that builder or that  
16 contractor has to come up, pick that application up  
17 and sign it, take it to you to have you sign it, come  
18 back, we're going to hear about it. That's it. We  
19 can certainly do that. It covers, you know, us, you  
20 as well as the builder, but I can tell you we already  
21 hear that there's too much red tape. I can tell you  
22 we just about string line the process about as much as  
23 we can. By letting the agent that application that  
24 doesn't - - I don't think government can be expected  
25 to enter in and becomes a party to the negotiations

1       you have with your contractor. That's between you and  
2       your contractor.

3               MR. WATSON: That's not what I'm asking.

4               MR. NOFFSINGER: You know, the contractor is  
5       signing as your agent and should be making you aware  
6       and making sure what's required is done. If you have  
7       to do it, then that's going to put you as having to  
8       enter into that building process too. That slows down  
9       the process.

10              MR. WATSON: At least we'd be on notice.

11              MRS. WATSON: I have a comment.

12              From what I do and from the profession that I  
13       had and going through and making plans for things that  
14       are done, it seems ironic that ultimately we're the  
15       ones that are responsible. It's our home. The  
16       homeowners are no matter what. If it's a garage  
17       you're adding on or pool you're putting in your  
18       backyard. You do what you do. I'm a teacher. You do  
19       what you do. If it takes a little longer, it takes a  
20       little longer. You do the job right. That's the main  
21       thing.

22              Politics aside. Hey, I know. I've been  
23       there. Know all about it. It's in our family. To me  
24       you do the right thing.

25              Whether or not it went wrong with us, you

1 know, it goes wrong. To keep trying to make excuses,  
2 not that it's excuses, but to say it's easier for me,  
3 you know.

4 Like the comment that some of you all have  
5 made up here, you know, I'm going to use my good  
6 common sense. Good common sense is that at some point  
7 in time that paper that's got that information on it,  
8 that one sentence could have saved us a lot of money.

9 With the profession that I do, I work very,  
10 very hard to get. I mean very hard. That's half my  
11 year salary, you know.

12 That's what irritates me coming from some of  
13 the comments that I hear up here. You know, to  
14 getting out of the meeting earlier to - - you know,  
15 you do what's right. If there's a piece of paper  
16 would have cleared all this up, and that's the  
17 direction you all are going to go as far as, you know,  
18 some points have been made, you know, through the law,  
19 legal point in mind, you know, it's there. Whether  
20 you agree with it, because I know he showed me. I'm  
21 like, hey, I know. I'm a big swimmer. Have been all  
22 my life. I've helped mange pools.

23 The law is the law or whatever it is, is there  
24 no matter what. Of course, you get to use common  
25 sense for the benefit of the community. What bothers



1 me is if you're trying to take away from, you know, if  
2 it takes five minutes, then it takes five minutes, at  
3 least from where I come from, from the profession I  
4 come from.

5 Being a citizen of Owensboro and being here my  
6 entire life, you know, if it makes a little bit more  
7 work, it makes a little bit of work. You know, to  
8 save us a lot of money or somebody else, then you do  
9 the right thing.

10 I don't know what that is, but to me I think  
11 that if someone is signing off but yet I'm held  
12 accountable, then maybe I need to see that piece of  
13 paper.

14 MR. ANDERSON: My comment about being here too  
15 long in the meeting was you should have never been  
16 here so I think you misinterpreted it.

17 MRS. WATSON: I know that. It's just sort of  
18 something that sticks in your mind. I know and I  
19 appreciate it. Like I said we're just sort of in a  
20 different situation. You know, politics is not my  
21 thing. I'm a teacher by trade. I'm just saying, you  
22 know, if it takes a few extra minutes to do something,  
23 you know, you do it. I'm sorry. Just sort of hit the  
24 wrong way, I guess.

25 MR. DYSINGER: Ma'am, you feel wrong and I

1 don't blame you. I would too. Our problem is that  
2 the remedy to fix it is not in our power. You do have  
3 a remedy, but it's I'm afraid with the gentleman that  
4 put you in this position.

5 MR. WATSON: I disagree with you respectfully.  
6 You do have power. You just choose not to exercise my  
7 interpretation.

8 MR. DYSINGER: We choose not to exercise your  
9 interpretation. That's very accurate to say. We  
10 choose not to use your interpretation.

11 MRS WATSON: I appreciate you all listening  
12 and taking the time.

13 MR. DYSINGER: Personally I'm very sorry.

14 CHAIRMAN: I think we've covered this pretty  
15 well on both sides. Have talked on it. With that  
16 I'll entertain a motion.

17 MR. DYSINGER: Mr. Chairman, I move to uphold  
18 the decision of the zoning administrator given the  
19 findings that it would detrimental to the public  
20 safety and welfare by creating a potentially unsafe  
21 situation, especially for small children.

22 I would also say that the ordinance is fairly  
23 clearly written in terms of how it should be executed  
24 as evidenced by the finding that of 72 pool permits  
25 issued since 2000 only one applicant has had

1       misunderstanding with it.

2               I would also add as a fining the electric  
3       cover is not a natural barrier.

4               CHAIRMAN:  Is there a second to the motion?

5               MS. DIXON:  Second.

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

9               Give you one more time shortly.

10              MR. WATSON:  When Mr. Dysinger makes that  
11       factual reference, you're making that determination  
12       based on what we said today or is that - -

13              MR. DYSINGER:  My findings of fact have to be  
14       and they are based on evidence that was introduced in  
15       this.

16              MR. WATSON:  Evidence was introduced that  
17       there were at least four or five people that  
18       interpreted the provision that way.

19              MR. DYSINGER:  That was your testimony  
20       contrary to - -

21              MR. WATSON:  Was Mr. Mischel's testimony as  
22       well.

23              MR. DYSINGER:  I'm sorry, I'm referencing  
24       another piece of evidence.

25              All I can go by is how many people those

1 permits appealed and we only have one.

2 MR. WATSON: That is correct, but there is  
3 other people that misinterpreted it. I'm just taking  
4 issue with what the facts - -

5 MR. DYSINGER: I understand. I have physical  
6 evidence of only one person appealing the statute as  
7 it's written as evidenced by your being here.

8 CHAIRMAN: Is there any other comments briefly  
9 from the staff?

10 (NO RESPONSE).

11 CHAIRMAN: Hearing none all in favor raise  
12 your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Appeal is approved.

15 Any other information at this time or  
16 business?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: Entertain one final motion.

19 MR. MASON: Move to adjourn.

20 MS. DIXON: Second.

21 CHAIRMAN: All in favor raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: We are adjourned.

24 -----

25

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

16 WITNESS my hand and notary seal on this the  
17 26th day of April, 2006.

18

19

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

22

COMMISSION EXPIRES: DECEMBER 19, 2006

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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