

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 JUNE 7, 2007

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:30 p.m. on Thursday, June
5 7, 2007, 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 Ward Pedley
10 Marty Warren
11 Sean Dysinger
12 Ruth Ann Mason
13 Judy Dixon
14 Clay Taylor
15 Madison Silvert, Attorney

16 * * * * *

17 CHAIRMAN: Call the meeting to order. Want to
18 welcome all of you this evening. We start our meeting
19 each evening with a prayer and the pledge of
20 allegiance. We invite you to join us if you so
21 desire. Judy Dixon will have our prayer this evening.

22 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

23 CHAIRMAN: Thank you.

24 Again I want to welcome all of you to the
25 Owensboro Metropolitan Board of Adjustment this
evening.

If you have any comments or complaints on any
item, please come to one of the podiums. State your
name and you'll be sworn in. Then proceed with your

1 comments from there. The one that is speaking at that
2 time have questions of the other side, please address
3 them to the chairman and we'll find out or try to find
4 out the answer at that time.

5 With that the first item this evening is the
6 minutes of the May 3, 2007 meeting. They're in the
7 office. I don't think there's any problems with it.
8 With that I'll entertain a motion to dispose of them.

9 MR. PEDLEY: Motion to approve.

10 CHAIRMAN: Motion to approve.

11 MR. DYSINGER: Second.

12 CHAIRMAN: All in favor raise your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries.

15 Next item, please.

16 MR. NOFFSINGER: Mr. Chairman, I would ask
17 that the Board of Adjustment amend this agenda to hear
18 Item Number 5 as your first item under the Conditional
19 Use Permits.

20 The reason for that the applicant has
21 requested a postponement. I think that will just take
22 us a minute to do. We will need you to vote on
23 amending the agenda.

24 CHAIRMAN: I'll entertain a motion to amend
25 the agenda.

1 MS. DIXON: Move to amend the agenda and place
2 Item 5 at Item 2.

3 MS. MASON: Second.

4 CHAIRMAN: A motion has been made and a
5 second. Any other discussion?

6 (NO RESPONSE)

7 CHAIRMAN: All in favor raise your right hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries.

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CONDITIONAL USE PERMITS

12 ITEM 5

13 9300 KY 815, zoned A-R (POSTPONED at May 3, 2007
14 meeting)
15 Consider request for a Conditional Use Permit to add a
16 600 yard rifle range to an existing pistol and rifle
17 range.
Reference: Zoning Ordinance, Article 8, Section
8.2K7/42
Applicant: Darrel and Rebecca Whittaker

18 MR. NOFFSINGER: Mr. Chairman, the applicant's
19 attorney, Edwin A. Jones, has requested that we
20 postpone action on this item until our July meeting
21 which will occur the first Thursday in July.

22 His position is that the gun range has closed
23 and they will not re-open the gun range until this
24 board acts on the Conditional Use Permit. They also
25 have a contract with the NRA to conduct a testing, if

1 you will, of the range and to make a determination,
2 and that was on June 4th. They have not received that
3 report back.

4 So with that there is opposition to this. The
5 adjoining landowner that is of record is opposing this
6 application is represented by Bob Kirtley. He was
7 made aware of that in advance. If you wish to
8 postpone, it will take a motion to postpone.

9 CHAIRMAN: What's the board's pleasure?

10 MR. DYSINGER: Mr. Chairman, move to postpone
11 this item until our next regularly scheduled meeting
12 per the applicant's request.

13 CHAIRMAN: You've heard the motion. Is there
14 a second?

15 MS. DIXON: Second.

16 CHAIRMAN: A motion has been made and a
17 second. Any other discussion?

18 (NO RESPONSE)

19 CHAIRMAN: All in favor raise your right hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries. The item is
22 postponed until next month.

23 Next item, please.

24 ITEM 2

25 6731 Pond River Road, zoned A-R (POSTPONED at May 3,
 2007 meeting)

1 Consider request for a Conditional Use Permit in order
2 to provide migrant farmer housing for a maximum of
3 eight people that will be occupied six months out of
4 the year.

5 Reference: Zoning Ordinance, Article 8,
6 Section 8.2A7/6a

7 Applicant: Brad Stephen and Clint Hardy

8 MR. NOFFSINGER: Mr. Chairman, I do have a
9 packet of information that needs to be entered into
10 the record.

11 Each board member has received a copy of this
12 packet of information that was provided by the
13 applicant in advance of this hearing. The applicant
14 is represented by counsel, Mr. Charlie Kamuf. He
15 submitted this in a timely fashion to the board. Each
16 member was mailed a copy a week in advance. Each of
17 you have it. We just need to make sure that is a
18 matter of record.

19 MR. WARREN: Mr. Chairman, I need to excuse
20 myself from this item.

21 CHAIRMAN: So noted.

22 Is the applicant here?

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

25 MR. KAMUF: Charles Kamuf.

(MR. CHARLES KAMUF SWORN BY ATTORNEY.)

MR. KAMUF: This application meets all the
requirements for guest workers.

1 Guest workers are not new in Daviess County.
2 About 12 years ago we filed an application for Joe
3 Elliott, who is here to testify. He has a conditional
4 use in Eastern Daviess County for approximately 15
5 workers. He has bunkhouses similar to the same that
6 we have applied for. The conditional use was approved
7 by this board approximately 12 years ago. He hasn't
8 had any problems with the seasonal workers.

9 The bunkhouse that's manufactured, I'll start
10 out with exactly all the requirements that we had to
11 go through.

12 There are two things that I will pass out.
13 One will be the statement from the inspector that he
14 has passed the housing. Another one that he has
15 qualified under the Criteria for Conditionally
16 Permitted Housing Groups. What this means, I'll give
17 you a copy of it, the noise. Everything about this
18 building has to be approved according to OMPC
19 regulations. They have done that. He has filed an
20 affidavit in the record. I think you have that in the
21 record. Let me file this, if I can.

22 The first document that I've presented to you
23 this evening, the approval of the inspector that he
24 made for approving a mobile home, which will be
25 involved in this matter.

1 The other one, Exhibit B, is the required
2 information which is required by your board before we
3 can make an application.

4 There's a statement attached to it by Brad
5 Stephen.

6 Is it okay to go ahead, Mr. Chairman?

7 CHAIRMAN: Go ahead, please, sir.

8 MR. KAMUF: The OMPC regulations requires an
9 on-site administrator. I think there was some
10 question by one of the board members, according to the
11 paper, the last time what this would be. The on-site
12 administrator would be Brad Stephen. His cell phone
13 number is 929-5048.

14 When Brad Stephen is not available, the
15 on-site administrator who will be on the premises will
16 be a gentleman by the name of Alfonso Martinez. His
17 cell number is 903-4112.

18 Mr. Martinez has been in Daviess County for
19 more than two weeks. He has a driver's license and he
20 speaks English.

21 A little about, there was some question I
22 think by Mr. Taylor the last time about what is an H2A
23 worker. What I have done is that I have brought you a
24 gentleman from the state by the name of Rick
25 Alexander. He has a degree in agricultural economics.

1 He has worked five years for the Commodity Growers
2 Cooperative. He administrates and administers the H2A
3 Program in the State of Kentucky. He has been
4 approved by the Department of Labor. He has a federal
5 license to administer the program. He does the
6 paperwork for the farmers to get the H2A worker. The
7 farmer will have a contract with the Labor for
8 approximately ten months. He will tell the board
9 exactly how the program works.

10 Just a couple of statements about the H2A
11 Program. Every person that qualifies under the H2A
12 Program nowadays has to have a 15 year background
13 check. If he's been in trouble in a foreign country,
14 he will not be eligible to come to the State of
15 Kentucky. If he gets in trouble while he's in the
16 State of Kentucky, he will be sent back to the area.

17 It's a federal program. It will be a seasonal
18 and temporary program. The worker must be paid at
19 least \$8.65 an hour. The employer must show that
20 there are no other available workers to handle this
21 job or they cannot come to the states.

22 The employer must provide free housing to all
23 workers who are not reasonably able to return to their
24 resident on the same day. The housing must be
25 inspected by OSHA.

1 That's the statement that I gave you a few
2 minutes ago.

3 Three meals must be provided to each worker or
4 furnish free and convenient cooking and cooking
5 facilities for the workers, prepare their own meals.
6 The employer must reimburse the worker for the cost of
7 transportation and substance after the worker has
8 completed 50 percent of the work on the contract.

9 In addition, he must provide free
10 transportation between the employer's housing and the
11 work site.

12 Rick will be here to tell you about that. Joe
13 Elliott will be here to tell you about his experience
14 with the H2A Program, and his conditional use which
15 was approved by this board approximately 12 years ago.

16 We think we've done everything possible to get
17 the legal guest workers here in Daviess County and on
18 the farms. With that I will leave it open.

19 If you would like Rick Alexander to give you a
20 statement. He can do that or he can stand up here and
21 give you the answers to the questions you'd like.

22 The other one is Joe Elliott. I would like
23 Joe just to make a short statement on exactly how his
24 business has operated. I think some of the members of
25 the board have actually been up to Joe Elliott's and

1 looked at them. I know that some of the staff from
2 the Planning & Zoning has looked at them.

3 Joe, would you just make a short statement,
4 please.

5 MR. SILVERT: State your name for the record,
6 please.

7 MR. ELLIOTT: Joe Elliott.

8 (MR. JOE ELLIOTT SWORN BY ATTORNEY.)

9 MR. ELLIOTT: I appreciate the opportunity to
10 come before the board down here.

11 As Charlie said, I started with this here,
12 it's been probably 12 or more years ago. We've had
13 good relations with our workers. We've tried to
14 provide them descent housing and try to treat them,
15 would not treat them no different than we do any local
16 workers. We do have local workers on site too.

17 Anyway, everything has worked out pretty good.
18 We haven't had any trouble with our guys at all. I
19 will say, you know, they are human too. Can't promise
20 you that nothing ever will happen, but there won't be
21 nothing happening on our farm any more than what would
22 be happening if we had local people.

23 I'm up for any questions if anybody would like
24 to have or I'll be back for another statement if you
25 want.

1 CHAIRMAN: Board members have any questions of
2 Mr. Elliott?

3 MR. PEDLEY: Mr. Elliott, the investigation by
4 the state on the H2A program, do they check you on a
5 regular basis, once a year or two years?

6 MR. ELLIOTT: The Department of Labor will
7 come to our farm and inspect our housing. They will
8 come back sometimes through the summer and check on
9 you. You better have all your paperwork ready because
10 the wage and hour can walk in about any day. They may
11 give you a notice and they may not. I've had that to
12 happen to me a couple of times. They check all your
13 payrolls and stuff like work permit and everything.
14 Yes, you're eligible to be inspected by either wage
15 and hour or the Department of Labor at any time.
16 That's throughout the contract. That's part of their
17 business that they can do it.

18 CHAIRMAN: Anyone else? Does the board have
19 any questions?

20 (NO RESPONSE)

21 CHAIRMAN: Staff have any comments or
22 questions for Joe at this time?

23 MR. NOFFSINGER: No, sir.

24 CHAIRMAN: Thank you.

25 Do you have someone else you want to bring up?

1 MR. KAMUF: Yes. Rick, you want to make just
2 a short statement.

3 MR. SILVERT: State your name for the record,
4 please.

5 MR. ALEXANDER: Rick Alexander.

6 (MR. RICK ALEXANDER SWORN BY ATTORNEY.)

7 MR. ALEXANDER: I am Rick Alexander. I work
8 for Commodity Growers. I am a licensed farm and labor
9 contractor. What we do is we enter into a contract
10 with the growers in order to get this labor to them.

11 We work with the Department of Labor,
12 Immigration Services and the State Department to get
13 these workers here.

14 These are legal guest workers. They can be
15 here for up to ten months and then they have to return
16 home and reapply. The whole process starts again.

17 We work with the Department of Labor which
18 does, every contract has to meet certain criteria.
19 The Department of Labor approves those contracts and
20 then Immigration Services approves those contracts.
21 It's a very, a lot of paperwork involved. It's not
22 unusual to have a folder an inch thick on all the
23 paperwork that you have to do in order to get approved
24 and in order to bring those workers in here.

25 Not only do they do background checks for them

1 in Mexico, they also anything -- if they had been in
2 the US illegally and there's a record of that, then
3 they can't come as well.

4 This year one of the things that's changed a
5 little bit is the State Department has been able to
6 get more and more records as time goes on. So
7 Homeland Security records are now available to the
8 State Department when the interviews are done. It's
9 getting harder and harder to get people through.
10 They're doing more investigation of those workers.
11 That's good. You want good workers here. The history
12 of this program is that you do get good legal workers.

13 Any questions?

14 CHAIRMAN: Any questions from the board?

15 (NO RESPONSE)

16 CHAIRMAN: Staff have any questions?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: Thank you at this time.

19 Anything else you want to add at this time?

20 MR. KAMUF: We're here to answer questions
21 after we hear opposition.

22 CHAIRMAN: The position have any questions
23 this evening or comments?

24 State your name, please.

25 MR. PIKE: Larry Pike.

1 (MR. LARRY PIKE SWORN BY ATTORNEY.)

2 MR. PIKE: I'd like to know, they said in the
3 last meeting it was a 14 by 70 trailer. I was
4 wondering if that's big enough for eight people, eight
5 grown men?

6 CHAIRMAN: Mr. Kamuf, will you answer that,
7 please, sir.

8 MR. ALEXANDER: The only thing I can answer
9 from the standpoint is if the Department of Labor
10 comes and approves. Each facility is approved for a
11 certain occupancy. So if the Department of Labor
12 approves it, there are certain criteria that has to be
13 met. They've approved that so, yes, that trailer has
14 been approved. It's OSHA requirements for the
15 housing. It's not a state thing. It's a federal
16 thing. It's OSHA requirements.

17 CHAIRMAN: That's the paper you've given and
18 entered, Mr. Kamuf? The paper with the report was
19 entered into record already.

20 MR. KAMUF: Yes.

21 CHAIRMAN: Any other comment?

22 MR. PIKE: They said Mr. Stephen was going to
23 be on site. Is he going to be on site all the time?
24 If the migrant worker or whoever the other guy was
25 that he named, like I said that's like a fox guarding

1 a hen house. He ain't going to say nothing bad.

2 CHAIRMAN: Either one of you all have a
3 comment to add on to it?

4 MR. KAMUF: I might just say this: This site
5 requirement is not part of the H2A Program. This is
6 part of your all's program, as far as the regs from
7 the OMPC. In other words, that's the best we -- Brad
8 Stephen will be there most of the time, but if he's
9 not there we have an alternate and that's the one that
10 I talked to you about, Mr. Martinez. We gave you his
11 cell phone number that you can call him. You can call
12 Mr. Stephen any time. Last time I think there was
13 some question about communication. This gentleman
14 speaks English and has a driver's license. I don't
15 know that I can tell you much more about him. He's
16 been here for awhile. He's living in Daviess County
17 at the present time.

18 CHAIRMAN: Thank you.

19 Does that answer your question?

20 MR. PIKE: Somewhat.

21 CHAIRMAN: State your name, please.

22 MRS. PIKE: Sherry Pike.

23 (MRS. SHERRY PIKE SWORN BY ATTORNEY.)

24 MRS. PIKE: I would like to know if anyone can
25 answer why did we receive or why is it necessary that

1 we received a notice in the first place to let us know
2 that this was coming across the street from us?

3 CHAIRMAN: Staff.

4 MRS. PIKE: What was the purpose of that?

5 MR. NOFFSINGER: The proposed use, which is a
6 use of migrant farm worker housing is a conditionally
7 permitted use in the zoning ordinance that Daviess
8 County has adopted. So in order for them to have this
9 use, they have to receive a permit from this board. A
10 conditional use permit with that is a requirement that
11 the board has issued that adjoining landowners have to
12 be notified and there has to be a notice of public
13 hearing published in the news media. Because it is a
14 conditionally permitted use and there's a public
15 hearing involved, and you're an adjoining landowner,
16 you received notification as to what's going to occur
17 and the opportunity to speak to the permit. So it's a
18 requirement of law and based upon the ordinance that
19 Daviess County has adopted.

20 MRS. PIKE: I would also like to clarify that
21 it came up in the paper after the last meeting that we
22 lived a tenth of a mile. We're like an eighth of a
23 mile. We're right across the street from it. It said
24 that I had talked about the trash being the issue.
25 The trash was the last thing on my list. My property

1 value was my first concern. I would just like to
2 clarify that.

3 CHAIRMAN: Thank you. We have no control over
4 what the newspaper puts in the paper. What they write
5 we can't control. Sorry.

6 Anyone else? State your name, please.

7 MS. WRIGHT: Stacy Wright.

8 (MS. STACY WRIGHT SWORN BY ATTORNEY.)

9 MS. WRIGHT: I would just like to make a
10 statement.

11 If you look at the minutes from the last
12 meeting, on Page 11 and 12, lines 25 on Page 11 and
13 line 1 through 2. Under sworn testimony Mr. Stephen
14 said, "I was going to put these guys at my house, but
15 I'm in the floodplain so there's no way I can get a
16 permit to do that."

17 Toward the end of our discussion on the
18 meeting he once again reiterates that he would have
19 them by his house and also said that his wife wouldn't
20 mind it.

21 I would like to know who did he check with on
22 the codes department to not be able to get his permit?
23 If he's going to put them by us, he ought to be able
24 to put them by him. I've talked to Brian Bishop at
25 the county codes department and he never said, no, he

1 couldn't get a permit to put a trailer over there.

2 CHAIRMAN: Staff, answer that please.

3 MR. NOFFSINGER: I didn't hear, Ma'am, who you
4 spoke with in the codes department.

5 MS. WRIGHT: Brian Bishop from the county
6 codes department. Because I believe that he actually,
7 Mr. Stephen actually resides in Henderson.

8 MR. NOFFSINGER: I can't answer that question.
9 It involves Henderson County. It wasn't anyone from
10 the Daviess County Codes Department.

11 MS. WRIGHT: I mainly just wanted it noted
12 that he said under sworn testimony, if he could put
13 them by him, he would put them by him.

14 MR. NOFFSINGER: Mr. Chairman, that would be a
15 question that would have to be answered by the
16 applicant Mr. Stephen. Not the Staff.

17 CHAIRMAN: Mr. Stephen, would you come
18 forward, please?

19 MR. KAMUF: I don't think that's relevant.
20 We're here to talk to you and answer the question if
21 you want to.

22 MR. SILVERT: State your name, please.

23 MR. STEPHEN: Brad Stephen.

24 (MR. BRAD STEPHEN SWORN BY ATTORNEY.)

25 CHAIRMAN: You heard her comment. Would you

1 answer that, please?

2 MR. STEPHEN: Actually I have had two
3 conversations with Jim Mischel at Planning & Zoning.
4 I guess maybe I did not state it right. I would have
5 had to build up a lot of dirt which would have been,
6 the cost would have been a very great thing. That's
7 why we chose not to go that route. I would have to
8 build up six feet. I do have an Owensboro address. I
9 do not live in Henderson County.

10 CHAIRMAN: In other words, where you had
11 planned on putting on was in the floodplain?

12 MR. STEPHEN: Yes.

13 CHAIRMAN: Thank you. That answers it.

14 MR. NOFFSINGER: For clarification of record,
15 Mr. Chairman. It sounds like what Mr. Stephen is
16 saying is that the property is located in the
17 floodplain. However, after talking with Jim Mischel,
18 it was determined that he could build in the
19 floodplain; however, he would have to build it up.
20 The floodplain could have been a limiting factor in
21 it, but it's not a factor that says, no, it can't be
22 done.

23 CHAIRMAN: Any other questions?

24 Come forward and state your name, please.

25 MS. PAYNE: Donna Payne.

1 (MS. DONNA PAYNE SWORN BY ATTORNEY.)

2 MS. PAYNE: I just want to know, I know they
3 have to have proof that they did try to get the jobs
4 through the newspapers from around in the community.
5 I just want to know if they do have proof of that?
6 Because that is a requirement. I have investigated it
7 quite thoroughly.

8 CHAIRMAN: Come forward and answer that
9 question, please.

10 MR. ALEXANDER: Rick Alexander.

11 Yes, that has been done. We have documents in
12 our office affirming that the advertisement was done.

13 MS. PAYNE: I would like to see the documents
14 myself.

15 MR. ALEXANDER: No problem.

16 CHAIRMAN: Where you're office? You're
17 welcome to go to his office and check it.

18 MS. PAYNE: Where is his office?

19 MR. ALEXANDER: My office is in Lexington.

20 MS. PAYNE: I'm not going to Lexington. I'm
21 in Owensboro.

22 MR. DYSINGER: Mr. Chairman, that requirement
23 is not a requirement of this ordinance.

24 CHAIRMAN: No, it's not.

25 MR. DYSINGER: So I don't know that this is

1 necessarily the venue for that.

2 MS. PAYNE: It is for the program.

3 MR. DYSINGER: Yes, ma'am, but not the
4 ordinance and that's all we have control over. Do you
5 understand what I'm saying?

6 MS. PAYNE: No.

7 MR. DYSINGER: The requirement you're speaking
8 to is not a requirement of this board or this zoning
9 requirements in Daviess County. It's a requirement of
10 the program. We don't have any control over that.

11 MS. PAYNE: I'm just trying to clarify. They
12 could put the building there, but in order to get the
13 workers they have to go through that, right?

14 CHAIRMAN: Through his office they have to go.

15 MS. PAYNE: Right. So they could put the
16 building there with nobody in it until they go through
17 the requirements, right?

18 CHAIRMAN: Answer that, please.

19 MR. ALEXANDER: The advertising is done. Up
20 until 50 percent of the contract is reached, if
21 somebody applies, then the drawer has to employ that
22 person. So it's ongoing. It's not did I advertise
23 and nobody applied for that job. It goes
24 concurrently. We advertise. We do proof of
25 insurance. We have to send the Department of Labor to

1 prove that we advertised. We send that documentation
2 with them before they'll ever approve for us to go
3 forward. After that's approved, then at the same time
4 the housing inspection is done. If somebody does
5 today applies for the job that Brad has, then he needs
6 to hire that person, that US worker, up until 50
7 percent of the contract is made. Whatever 50 percent
8 of that is, he has to take that US worker.

9 MS. PAYNE: So they don't have to advertise
10 before?

11 MR. ALEXANDER: Yes, they do advertise before.
12 We advertise prior to contact. That's part of the
13 requirement we have to do in order to get approval to
14 do this. We have to go ahead early on and start the
15 advertising process. We advertise early. That is
16 always open. If somebody wants to apply, they can
17 apply. The drawer has to take that person up until 50
18 percent of the contract is made. After that point,
19 they do not have to. The first 50 percent of the
20 contract that we have with DOL, they need to hire that
21 person.

22 MS. PAYNE: Right. So if I get in contact
23 with your office, then you would be able to show me
24 proof that they did advertise?

25 MR. ALEXANDER: Oh, absolutely.

1 MS. PAYNE: That's what I need to know. I
2 will require that.

3 CHAIRMAN: Any other comments in opposition?

4 (NO RESPONSE)

5 CHAIRMAN: Does the applicant have anything
6 else to add at this time?

7 MR. KAMUF: Not at this time unless there's
8 some questions.

9 CHAIRMAN: Any other comments or questions?
10 Come forward and state your name again.

11 MS. WRIGHT: Stacy Wright.

12 I just want some clarification on the on-site
13 administrator. They talk like that was something that
14 you all required; is that right, or is it a
15 requirement of the H2A?

16 MR. NOFFSINGER: That is correct. The OMPC or
17 the Daviess County Zoning Ordinance requires that they
18 address that issue with all types of uses such as
19 this. They have an on-site administrator identified
20 and contact information.

21 CHAIRMAN: Any other questions from
22 opposition?

23 (NO RESPONSE)

24 CHAIRMAN: Seeing none and hearing none, the
25 applicant have anything else to say at this time?

1 MR. KAMUF: No, sir.

2 CHAIRMAN: Board have any questions of the
3 opposition or the applicant?

4 (NO RESPONSE)

5 CHAIRMAN: Staff have anything else to add?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: Hearing none I'll entertain a
8 motion to dispose of the item.

9 MR. DYSINGER: Mr. Chairman, given the finding
10 that the applicant has met all of the requirements of
11 the ordinance, I move that we grant the conditional
12 use permit.

13 CHAIRMAN: You've heard the motion. Is there
14 a second?

15 MR. TAYLOR: Second.

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

19 (NO RESPONSE)

20 CHAIRMAN: Staff have anything else to add?

21 MR. NOFFSINGER: No.

22 MR. PEDLEY: I would like to add a condition
23 to that if it's okay.

24 CHAIRMAN: Will you hear the condition?

25 MR. DYSINGER: Sure.

1 MR. PEDLEY: Condition 1 would be Item 2 may
2 be waived provided housing is where work is being
3 conducted, and Condition 2, the applicant shall
4 provide transportation for workers to necessary
5 community services, and Condition 3, would be phone
6 numbers of Mr. Brad Stephen and the on-site
7 administrator shall be posted on site in clear view of
8 the public.

9 CHAIRMAN: Does the motion maker accept that?

10 MR. DYSINGER: Just to clarify. We're waiving
11 the half mile transit. No objections to that.

12 CHAIRMAN: Does the second accept that?

13 MR. TAYLOR: Yes.

14 MR. DYSINGER: Mr. Chairman, I'd like it just
15 for the purpose of clarity to restate the motion and
16 then we can add the amendment as we go.

17 Given the findings that the applicant has met
18 all the requirements of the ordinance and that it is
19 not incompatible with the neighborhood, I move that we
20 grant the conditional use permit with the conditions
21 that we waive the requirement for half mile proximity
22 to transit, that the phone numbers and names of the
23 on-site administrators are posted, and transportation
24 be provided to the workers as necessary to the
25 facilities.

1 CHAIRMAN: Second to the motion.

2 MR. TAYLOR: Second.

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

6 (NO RESPONSE)

7 CHAIRMAN: Staff have anything else?

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 - WITH THE
12 DISQUALIFICATION OF MARTY WARREN - RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 Next item, please.

15 ITEM 3

16 1600 River Road, zone I-2
17 Consider request for a Conditional Use Permit in order
18 to operate a scrap iron, salvage storage yard and
19 wrecking yard to include sorting, baling, shearing and
20 processing of scrap metal.

Reference: Zoning Ordinance, Article 8,
Section 8.2G4/27

Applicant: Dixieland Properties, LLC, Marnic, LLC

21 MR. SILVERT: State your name, please.

22 MR. HOWARD: Brian Howard.

23 (MR. BRIAN HOWARD SWORN BY ATTORNEY.)

24 ZONING HISTORY

25 The subject property is currently zoned I-2

1 Heavy Industrial. The Owensboro Metropolitan Zoning
2 Ordinance requires salvage and scrap yards to be
3 conditionally permitted in Heavy Industrial zones.
4 The subject property was rezoned in 1990 from I-1
5 Light Industrial to A-U Urban Agriculture to I-2 Heavy
6 Industrial. Property immediately to the south of the
7 subject property at 1564 River Road was a part of the
8 1990 rezoning and received a conditional use permit in
9 July of 1990 for operation of a vehicle storage lot.
10 Property to the north of the subject property is zoned
11 I-1 Light Industrial. Property to the east across
12 River Road is zoned I-2 Heavy Industrial and is part
13 of the Owensboro Riverport property. Property to the
14 west is zoned EX-1, Coal Mining and the applicant
15 proposes a 100 foot buffer from this zoning
16 classification along the entire western boundary of
17 the property. The applicant's site plan proposes 5
18 paved parking spaces, an 8' high minimum solid screen
19 around the working area and an access point spaced 500
20 feet from the existing access point to the north of
21 the property. River Road is classified as a minor
22 arterial roadway with spacing standard of 500 feet
23 between access points. In addition to the
24 requirements of the Owensboro Metropolitan Zoning
25 Ordinance, there are private restrictions that apply

1 to the property as identified by the letter provided
2 by the applicant's attorney.

3 The Staff Report explains what those
4 conditions are. However, since this application was
5 filed, there has been an amendment to those
6 requirements.

7 So the Staff Report states that private
8 restrictions include a greater setback requirement on
9 River Road of 100 feet. That has been amended to be
10 45 feet from the property line, which their site plan
11 does meet.

12 The applicant's site plan, that has been taken
13 care of.

14 The private restrictions also require a
15 minimum 10 foot width landscaped area adjacent to each
16 driveway, which is still not reflected on the site
17 plan. Private restrictions on land use state that
18 they will be based on performance standards, and any
19 operation that is dangerous, or objectionable because
20 of smoke, fumes, noise, etcetera, or that would have
21 an adverse affect on the existing business will not be
22 permitted.

23 The final statement in the Staff Report has
24 been taken care of as well.

25 ZONING ORDINANCE REQUIREMENTS

1 1. A minimum eight (8) foot high solid fence
2 or screen shall be required to enclose all outdoor
3 storage areas on all sides.

4 2. One tree per 40 linear feet along the
5 boundary of the screened outdoor storage area is
6 required.

7 3. Minimum of five (5) paved parking spaces,
8 one of which is handicapped accessible.

9 4. Access is limited to one access point and
10 should be spaced a minimum of 500 feet from existing
11 access points on River Road.

12 The special conditions that you might want to
13 take into consideration would be the prior
14 restrictions that are on the property. However, like
15 I said those have been amended and we do have an
16 attorney letters that states that the use that is
17 proposed for the property is not in conflict with the
18 prior restrictions on the property.

19 With that I would like to enter the Staff
20 Report into the record.

21 CHAIRMAN: Any other comments from the Staff
22 at this time?

23 MR. NOFFSINGER: I just have one question of
24 Mr. Howard.

25 Are you saying that the application including

1 the site plan is in order, meeting the minimum
2 requirements of the Zoning Ordinance as well as the
3 amended Deed of Dedication?

4 MR. HOWARD: It is in order in regards to all
5 Owensboro Metropolitan Zoning Ordinance requirements.
6 However the amendment I believe removed paragraph 7 or
7 condition 7 on the previous restrictions, which I
8 believe in section 6 was a requirement that there be a
9 10 foot strip along the driveway. I do not believe
10 that that has been reflected on the site plan.

11 MR. NOFFSINGER: Ten foot landscape strip?

12 MR. HOWARD: Ten foot with landscape area
13 adjacent to each driveway I believe is how it was
14 stated.

15 MR. DYSINGER: But it's your testimony that
16 this application is in order at this time?

17 MR. HOWARD: It does meet the requirements of
18 our Zoning Ordinance, yes. However there is one prior
19 restriction I believe, unless I'm mistaken, is still
20 in effect and is not on the site plan.

21 CHAIRMAN: Staff have any other comments?

22 MR. NOFFSINGER: No, sir.

23 CHAIRMAN: Has there been any opposition filed
24 in the office?

25 MR. NOFFSINGER: There's been no opposition

1 filed. There have been questions raised by folks in
2 the office.

3 CHAIRMAN: Anything that we need to put into
4 the record?

5 MR. NOFFSINGER: I don't think so.

6 CHAIRMAN: Just for information, is there
7 anyone in opposition to this item?

8 MR. KAMUF: Mr. Chairman, Charles Kamuf again.

9 I represent the Owensboro Riverport. Pursuant
10 to that letter I think that John Bickel sent in to you
11 as far as there would be some restrictions that might
12 prevent some of the conditional use, we have entered
13 into an agreement with the seller and the purchaser
14 and there is a waiver of those restrictions and there
15 is an amendment somewhat and I would like to file that
16 in the record to be sure that this is part of the
17 record here today.

18 CHAIRMAN: Please do it at this time.

19 MR. KAMUF: This is a Deed of Amendment to the
20 restrictions signed by the Riverport by Marnic and
21 also by Dixieland Properties.

22 CHAIRMAN: So noted and put in the record,
23 please.

24 The applicant come forward and state your name
25 and go from there, please.

1 MR. KIRKLAND: Drew Kirkland.

2 (MR. DREW KIRKLAND SWORN BY ATTORNEY.)

3 MR. KIRKLAND: I'm not the applicant, but the
4 applicants were too busy and I'm the father of one of
5 the applicants so I'm involved in this case.

6 I have a question for Mr. Howard.

7 Mr. Howard, either I was confused or I didn't
8 understand. What was the situation about the
9 screening, about the gate?

10 MR. HOWARD: I don't believe that it was in
11 regards to the gate. I believe that as it was stated
12 in the original deed that we received when the
13 application was filed. I believe under Item 6 on
14 that, which that's in the file and I believe the board
15 should have a copy of that, I believe it states that
16 there should be a ten foot landscape along the drive.
17 The amendment that was submitted late this afternoon,
18 which I had a chance to briefly look over, I believe
19 it says it only replaces section 7 of the previous
20 requirements. I don't know that Item 6 has been
21 addressed.

22 MR. NOFFSINGER: Just reading that and looking
23 at the site plan, I don't think that's anything that
24 would prohibit this board from considering the
25 application. It sounds like it's a ten foot wide

1 landscape easement on either side of the drive that
2 the Zoning Ordinance doesn't require, but the private
3 restrictions may require, but we don't enforce the
4 private restrictions.

5 MR. KIRKLAND: It's a ten foot wide --

6 MR. NOFFSINGER: Each side.

7 MR. KIRKLAND: On each side of the gate.

8 Okay.

9 Just for my clarity. It means ten foot either
10 side of the gate there will be no landscaping per
11 visual entrance and exit?

12 MR. NOFFSINGER: No. That's actually
13 requiring it. Minimum width of ten feet is to be
14 landscaped adjacent to each drive. I don't know if
15 that means parallel with the road or perpendicular to
16 the road, but that's not anything we're going to
17 enforce. It's not anything the Planning Commission --

18 MR. KIRKLAND: I think Mr. Riney and I have
19 that worked out.

20 MR. DYSINGER: Drew, you represent the
21 applicant? Do you represent the applicant here?

22 MR. KIRKLAND: I'm the father, yes. I got
23 involved because the applicants are too busy.

24 MR. DYSINGER: It's your testimony that you
25 believe everything is worked out with regard to prior

1 restrictions?

2 MR. KIRKLAND: Absolutely.

3 MR. DYSINGER: Thank you.

4 CHAIRMAN: The applicant have anything else at
5 this time?

6 (NO RESPONSE)

7 CHAIRMAN: The board have any questions of the
8 applicant?

9 (NO RESPONSE)

10 CHAIRMAN: The Staff have anything else of the
11 applicant right now?

12 MR. NOFFSINGER: No, sir.

13 CHAIRMAN: Opposition would you come forward
14 and state your name, please, sir.

15 MR. KING: I'm Norman King. I own the
16 property next to.

17 (MR. NORMAN KING SWORN BY ATTORNEY.)

18 MR. KING: When you take into consideration a
19 conditional use permit, I'm not trying to stop Mr.
20 Kirkland or anything in particular. I just want to
21 get a few things clarified and make sure that some of
22 the restrictions or some of the things are taken care
23 of.

24 I've owned the property next to this for
25 approximately 15 years. I haven't had a bit of water

1 problems or anything until this property -- it used to
2 have trees and valleys and stuff on it. They cleared
3 it up and sewed it down in fescue. It looks real
4 nice.

5 Since this has happened, I'm having a large
6 amount of water problems right across my property.
7 The water comes down right across the property that
8 Mr. Kirkland is planning on purchasing. I have some
9 pictures here that show my front gate and where a lot
10 of this water is going.

11 What has caused this problem, I'm not going to
12 say. I don't know. I did not have this before this
13 property was cleared up and straightened up. At the
14 same time this was going in, the Owensboro Riverport
15 was putting in some stuff across the road from me and
16 there were two large ditches there. These ditches has
17 put culverts in them and covered over and large mounds
18 of dirt put over it, which lets this water out of
19 there.

20 Now, I'm going to show you a few pictures here
21 of my front gate and where the water is coming. You
22 can kind of see where it's coming from. It's coming
23 from this property that the proposed junk yard is
24 going to be there. This water is going to come across
25 him right over into a ditch between him and my

1 property. The ditch cannot hold it. So it comes out
2 of the ditch and comes over into my property, runs
3 across it and it can't hold it. Then it goes across
4 the highway in front of me. I've got pictures here
5 showing six or eight inches in the road going across
6 the road. My driveway it's probably 12 to 15 inches
7 trying to drive out of here.

8 Now, this has all happened here in the last
9 couple of years. As this is going through, I would
10 love to have this straightened up. I don't want all
11 of the scrap and all of the whatever is coming off of
12 these two properties running across the front of my
13 property.

14 I don't think any of the neighbors down the
15 road from me that has to drive through this water to
16 get home, I don't think any of them were notified.
17 Some of them slow down to two or three miles an hour
18 to go through this water.

19 If this is cleared off and a bunch of this
20 stuff is done, no water is going to soak in. It's
21 going to get worst.

22 I don't know who needs to cure it. I don't
23 know whether I'm at the right meeting or not, but this
24 water needs to get on out of here for Mr. Kirkland's
25 sake, for my sake, and the neighbors down the road

1 from me.

2 Until somebody decides what we need to do
3 here, I think that it needs to be in consideration as
4 you take this permit in consideration.

5 I'm going to show you these two pictures
6 there. This is the road going to my property. All
7 the water is coming from the property headed down
8 through here.

9 MR. SILVERT: Mr. King, could you return to a
10 microphone.

11 CHAIRMAN: So we can record it and everybody
12 can understand it and get that on the record, please.

13 MR. KING: There's two pictures there. The
14 one that he's holding up right now is my front gate
15 going into my property and the highway in front.

16 You can see that the water coming out by those
17 two yellow gates are approximately 12 to 18 inches.
18 My secretary was afraid to drive out of there until it
19 ran down.

20 You can see the highway it's not handling it.
21 It's going across the road towards the Owensboro
22 Riverport and it doesn't handle it. The reason it's
23 going down here is because the ditch up above that
24 used to handle it can't handle it any more. This is
25 how much extra water we're receiving and trying to get

1 out of there.

2 This picture here is shot back towards Nick
3 Cambron's property, which they're fixing to do the
4 junk yard. You can see all the water. If you see a
5 little brown trace in the grass up there, you can see
6 a bunch of the water coming down right through this
7 property trying to get to the ditch and it gets to the
8 ditch. If it would stop there, I'm okay. It just
9 don't stop. It just keeps on coming. It used to
10 stop. That ditch used to hold it. This is something
11 that has happened in the last, since this property has
12 been cleared up and since the property across from me
13 has filled up these ditches and put a pipe in.

14 I don't know what needs to be opened back up,
15 but I need to get something opened up here. Mr.
16 Kirkland needs it opened up where it doesn't give him
17 a problem.

18 In consideration here also, my office is right
19 across that ditch from where he's proposing to put a
20 machine to cut up metal and compact it. As long as
21 that noise doesn't disturb my office, we're in good
22 shape. I don't care what he does over here as long as
23 the noise -- I don't want something going bang, bang,
24 cutting and going on when we're trying to work.

25 Some trees was proposed to go between us, you

1 know, to try to knock down some of this noise
2 hopefully. At the same time it would be -- I would
3 rather see some pine trees that I would a big pile of
4 junk out here. It's going to take ten years probably
5 for these pine trees to grow and do any good.

6 Mr. Kirkland has mentioned an eight foot
7 fence. An eight foot fence is normally good, but my
8 property, if you take a look at it there, is lower
9 than this is. An 8 foot fence is not going to do much
10 good. He had mentioned maybe putting a 12 foot fence
11 up.

12 These are some of the things that I would love
13 for Mr. Kirkland to address or you all take into
14 consideration as this goes through. If it takes a few
15 days here to get the water situation straightened up,
16 I don't know whether Mr. Kirkland is wanting to move
17 in tomorrow or next week, but I'm sure he would like
18 to have this straightened up also.

19 I definitely need you to take into
20 consideration what's happening here before you just
21 sign off on this thing.

22 CHAIRMAN: Does Staff have any comments?

23 MR. NOFFSINGER: Only to address just a few of
24 Mr. King's questions.

25 Number one, the applicant is proposing a 12

1 foot high fence. Now, the ordinance requires a
2 minimum 8 foot high. He has said he's going to do a
3 12, I believe. I think that's what the board is going
4 to hold him to at a minimum.

5 The drainage, I think the appropriate person
6 to talk with will be the city engineer. Prior to the
7 issuance of any building permits on this property, the
8 city engineer will have to review the drainage plan.

9 Certainly if you're having a problem now,
10 which it looks like that was back a year ago, July
11 21st of '06, somewhere in there, and we had a lot of
12 rain that year, but that's not to say something hasn't
13 happened out there to those ditches and culverts.
14 That's there not a blockage. I would certainly make
15 the city engineer aware of that. What we will do,
16 Brian Howard tomorrow morning will get in touch with
17 the city engineer's office and make them aware of the
18 issue you've raised here this evening.

19 CHAIRMAN: Does the board have any questions?

20 MR. TAYLOR: I have a question.

21 Mr. Noffsinger, you said a 12 foot fence, but
22 it looks like in the application, unless you have
23 something different, it says he propose an 8 foot high
24 minimum.

25 MR. NOFFSINGER: Yes, sir, on the application

1 it's a minimum 8 foot. As I understand it, the
2 agreement that they have with the Riverport, which has
3 been entered into the record and made a part of the
4 application, is a 12 foot high fence.

5 CHAIRMAN: State your name again, please.

6 MR. KIRKLAND: Drew Kirkland.

7 On the two sides, per our agreement with the
8 Riverport, on each side of 230 feet there's going to
9 be a 12 foot. Then beyond that there will be an 8
10 foot fence was our agreement with the Riverport. So
11 it will be a 12 foot in the front and on the two
12 sides. The property does sit higher than Mr. King's
13 property. So as you look up, whether it be an 8 foot
14 or a 12 foot, the angle would pretty much screen
15 what's going to be done.

16 Mr. King, I had some conversation with him on
17 the 24th and sent him a diagram and invited him to
18 come to our location to see what we did. He was
19 worried about scrap, as he said, moving. Any of you
20 that have been to our location, if any of our scrap
21 starts moving you better get to the high ground
22 because it's going to get you. We have i-beams,
23 channels, extremely heavy material, very dense.

24 He had a question about the noise of our
25 machine. There again I invited him to come to our

1 location to actually hear the machine.

2 We had a three done survey done by OSHA. I
3 believe most of you are familiar with who they are.
4 We had them monitor. Every one of our employees wore
5 monitors. In the three day monitor of our employees,
6 every one of our employees met an 85 db threshold,
7 which means that none of our employees are required to
8 even wear hearing protection. We use what they call a
9 hearing conservation program. We instruct our
10 employees it would be in their best interest to wear
11 hearing protection, but it's not mandatory. So as far
12 as the hearing, you know, as far as the noise, and I
13 think Mr. Cambron can address that. He was down to my
14 office today and I took him over there where the
15 machine is operating. The 85 db is the OSHA hearing
16 threshold for safety of hearing. Hearing protection
17 is not required.

18 The 12 foot fence is 230 feet on each side and
19 the front.

20 MR. NOFFSINGER: Mr. Kirkland, that's my
21 question.

22 So we get this right on the site plan. We
23 need to know what you're proposing in terms of where
24 that 12 foot high fence is going to be and the 8 foot.
25 Along River Road --

1 MR. KIRKLAND: Will be 12 foot solid fence.

2 MR. NOFFSINGER: Twelve foot along River Road.
3 What about on the north side?

4 MR. KIRKLAND: On each side would be 12 foot
5 extending I believe it's 230 feet. No. 275 feet, I'm
6 sorry.

7 MR. NOFFSINGER: Then it goes to an eight
8 foot?

9 MR. KIRKLAND: Eight foot fence.

10 MR. NOFFSINGER: And then the rear?

11 MR. KIRKLAND: The rear, we're going to come
12 back for a -- not a conditional use.

13 MR. NOFFSINGER: A variance.

14 MR. KIRKLAND: But a variance. The rear is a
15 75 foot cliff which we own up to a wooded forest.

16 MR. NOFFSINGER: So for tonight's
17 consideration it's an 8 foot fence?

18 MR. KIRKLAND: Yes, it's 8 foot, but it will
19 be life-threatening to get somebody to fence it.

20 MR. NOFFSINGER: Unless a variance is
21 approved.

22 MR. KIRKLAND: Correct.

23 CHAIRMAN: Any board member have any questions
24 of the applicant right now?

25 (NO RESPONSE)

1 CHAIRMAN: Staff have any other comments?

2 MR. NOFFSINGER: No, sir.

3 CHAIRMAN: Come forward please and state your
4 name.

5 MR. SILVERT: State your name, please.

6 MR. CAMBRON: Nick Cambron.

7 (MR. NICK CAMBRON SWORN BY ATTORNEY.)

8 MR. CAMBRON: The first thing is I want to
9 address the water issue. I wasn't aware -- I'm the
10 property owner there now. Mr. Kirkland and his two
11 sons are acquiring that from me.

12 I wasn't aware of the water issue until
13 yesterday afternoon about 4:00 and I met with Mr.
14 King. Myself and Mr. Riney met with Mr. King for
15 about an hour, hour and a half down at the property.
16 We weren't familiar, I wasn't familiar with any kind
17 of water issue other than what he told me yesterday.

18 Again, we're into trying to address that. I
19 never knew a thing about it, but there was a culvert
20 failure there also in that road. I'm not sure. We're
21 trying to figure out if it's the city or the county
22 issue or who came to repair it.

23 I have Mike Riney who is going to meet me out
24 there tomorrow, Commissioner Mike Riney, because
25 that's the county where Mr. Kirkland is purchasing

1 that property. So I'm not sure if the state is going
2 to take care of the issue or how we're going to
3 address that, but it is an issue, as I saw there in
4 those two photographs, which I finally saw today.

5 Again, everything that Mr. King has said about
6 this water apparently is an issue, but I didn't know a
7 thing about it until yesterday. I am going to pursue
8 it. I don't want to leave this burden with Mr.
9 Kirkland nor do I want to leave this burden with Mr.
10 King. Mr. King I have known forever and have gone to
11 church with for years and I don't want to have no
12 problem there.

13 I do have pictures here just showing you that
14 the county did come out. I'm not sure exactly what
15 they did. They came out and made a culvert extension.
16 I want to submit these just so you'll see that, and
17 also to address -- you can have all of them.

18 CHAIRMAN: You want those entered into the
19 record?

20 MR. CAMBRON: Yes, sir.

21 CHAIRMAN: Mr. Kirkland, do you want these
22 pictures in the record?

23 MR. KIRKLAND: No problem.

24 MR. CAMBRON: Again, I want to go on record as
25 stating I am going to be pursuing this. Had I known

1 about it earlier, I'd be glad to try to resolve this
2 problem. I don't know which way to turn. I don't
3 know if it's the state, or the city, or the county, or
4 who is going to be addressing it, but I'll have
5 somebody out there just as soon as possible to try to
6 see what the problem is.

7 Apparently there's a 24 inch culvert that goes
8 underneath the road there that does go into the
9 Riverport's property to the east. There is an issue
10 there with that culvert. I don't know if it's stopped
11 up. If I'm not mistaken, I think that culvert runs
12 under the Riverport property and runs back to --
13 anyway, it runs back there. For all we know it may be
14 stopped up. Again, there is something wrong there and
15 we're going to try to figure out what the problem is.

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

18 MR. KIRKLAND: Mr. Chairman, I have one other
19 statement.

20 Mr. King, and I do appreciate you bringing the
21 water issue to my attention before we purchased the
22 property. Mr. Cambron and I are going in to a legal
23 agreement about the water situation. He will be
24 responsible for the water situation before we purchase
25 the property. Obviously I don't want it. You don't

1 want it. Whatever it is, it is something that happens
2 periodically. Mr. Cambron has assured us and he will
3 enter into a legal agreement with us in regards to
4 that before we purchase the property.

5 Mr. Chairman, I want to address as far as the
6 noise issue there. I want to make sure Mr. King is
7 satisfied with that. I will offer for him to come to
8 our premises again if he'd like.

9 CHAIRMAN: Thank you.

10 The Staff will check with the city or county,
11 whichever, engineer which needs to straighten that
12 out.

13 MR. NOFFSINGER: Yes. I just want to make a
14 point of clarification for the record.

15 The property is indicated here to be in the
16 City of Owensboro.

17 Now, Mr. Cambron, my staff could be wrong
18 here, but that's what we show. It's probably one of
19 those situations where we have some city out there in
20 the area and then some hasn't been annexed into the
21 city. Regardless, I think we probably need to make
22 the city engineer and the county engineer aware of the
23 issue that's been raised.

24 MR. CAMBRON: I agree. I'm not sure. I was
25 always told that's the county, but apparently a part

1 of it was annexed in. I don't know if it took in the
2 road itself. Again, the issue, there's some problem
3 under the road.

4 MR. NOFFSINGER: They might not have taken in
5 the road. They might have just annexed the property.
6 I think it might had to do with consolidation of the
7 property and divided it and had to annex. Anyway, I
8 just wanted to make sure.

9 MR. CAMBRON: And I am addressing the issue.

10 CHAIRMAN: Any other questions from the board?

11 (NO RESPONSE)

12 CHAIRMAN: The applicant have anything else
13 you want to add at this time?

14 MR. KIRKLAND: No.

15 CHAIRMAN: Opposition have any other
16 questions?

17 MR. KING: No.

18 CHAIRMAN: Staff have any other comments?

19 MR. NOFFSINGER: No, sir.

20 CHAIRMAN: Entertain a motion to dispose of
21 the item.

22 MR. TAYLOR: Mr. Chairman, I vote to approve
23 the conditional use permit based upon the findings
24 that the applicant has met all requirements by the
25 OMPC as well as placed restrictions beyond our

1 requirements and that it seems a conditional use is
2 coherent with the zone of the property.

3 CHAIRMAN: Is there a second to the motion?

4 MR. WARREN: Second.

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

8 (NO RESPONSE)

9 CHAIRMAN: Staff have any other comments?

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.

16 ITEM 4

17 3585 Thruston-Dermont Road, zoned A-U
18 Consider request for a Conditional Use Permit in order
19 to construct a 2,986 square foot addition to an
20 existing church.

Reference: Zoning Ordinance, Article 8, Section 8.2A4

Applicant: Heritage Baptist Church, Joe Mattingly

21 ZONING HISTORY

22 The subject property is zoned A-U Urban
23 Agriculture. A church is conditionally permitted use
24 in an A-U zone. The property was created by minor
25 subdivision plat in 1980 and contains 4.468 acres. A

1 conditional use permit was approved for the property
2 in July of 1981 for the construction of a church
3 building including a sanctuary and Sunday school class
4 rooms. Property to the north of the subject property
5 is owned by Heritage Baptist Church and is zoned A-U,
6 Urban Agriculture, and contains a gravel parking lot
7 located on the lot. Properties to the south fronting
8 on Thruston-Dermont Road are zoned R-1A and A-U and
9 are occupied by single-family residences.

10 ZONING ORDINANCE REQUIREMENTS

11 1. One paved parking space for every five
12 seats in the main auditorium

13 2. Vehicular use area screening (3') high
14 continuous and one tree per 40 linear feet between
15 parking area and R-1A zone should be installed.

16 MR. HOWARD: We would like to enter the Staff
17 Report into the record.

18 CHAIRMAN: Has there been any opposition in
19 the office?

20 MR. NOFFSINGER: No, sir.

21 CHAIRMAN: Is there anyone wishing to speak in
22 opposition this evening?

23 (NO RESPONSE)

24 CHAIRMAN: Is the applicant here?

25 MR. MATTINGLY: Yes.

1 CHAIRMAN: Come forward and state your name.

2 MR. MATTINGLY: Joe Mattingly.

3 (MR. JOE MATTINGLY SWORN BY ATTORNEY.)

4 MR. MATTINGLY: I guess the only thing that I
5 would want to add is we feel like we've met all the
6 requirements, all the obligations. We just request
7 and hope that you would approve this conditional use
8 permit.

9 You just noted there was no opposition to our
10 request so we would request that you approve our
11 conditional use permit.

12 CHAIRMAN: Does the Staff or the board have
13 any questions of the applicant at this time?

14 MR. NOFFSINGER: I have a question.

15 Mr. Mattingly, do you know how long the church
16 has existed in that location?

17 MR. MATTINGLY: Approximately 25 years.

18 MR. NOFFSINGER: Thank you.

19 CHAIRMAN: Any other questions from the board.

20 MR. DYSINGER: I just had a question of Staff
21 about the parking.

22 Are they in compliance now with parking?

23 MR. HOWARD: Correct. We were given the
24 number of seats in the auditorium and they do meet
25 that requirement.

1 CHAIRMAN: Any other questions or comments
2 from the board?

3 (NO RESPONSE)

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

6 MS. MASON: Mr. Chairman, I move for approval.
7 My findings of facts are that since there is no
8 objections and since they've met all the Zoning
9 Ordinance requirements, since there's been a previous
10 conditional use permit granted, and since the property
11 is zoned A-U and churches are permitted in this zone I
12 move for approval.

13 MR. DYSINGER: Second.

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

17 (NO RESPONSE)

18 CHAIRMAN: Staff have any other comments?

19 MR. NOFFSINGER: No, sir.

20 CHAIRMAN: The applicant have anything else
21 you want to add?

22 MR. MATTINGLY: No, sir.

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Motion carries.

2 Next item, please.

3 -----

4 VARIANCE

5 ITEM 6

6 4010, 4016, 4022, 4028, 4038 Caddie Cove, 407, 421,
7 427, 433, 437, 445 Stableford Circle, 300, 308 Chip
8 Shot Cove, zoned R-1C

9 Consider request for a Variance in order to increase
10 the front yard fence height from 3 feet to 8 feet to
11 the rear of the proposed single-family residential
12 homes on these lots having double street frontage.
13 Reference: Zoning Ordinance, Article 3,
14 Section 3-7(g)(2)
15 Applicant: Thompson Homes, Inc., PKP 79 Co.

16 MR. HOWARD: This application for variance
17 comes before you this evening in that in the Fiddle
18 Stick Subdivision there were some lots that were
19 developed that were double frontage.

20 Based upon the definitions within our Zoning
21 Ordinance, the front yard is any yard adjacent to the
22 street. So in this instance these lots have two front
23 yards.

24 The maximum fence height for front yard is
25 three feet. However, in the rear of the yards, for
instance, if they want to put in a swimming pool or
something like that, it would be beneficial to be able
to go higher and be in line with the fence height
requirements if these weren't double frontage lots.

1 That's why it's before you tonight. Staff
2 would recommend that you take this item into
3 consideration for approval. That it won't be out of
4 character with fence heights of any other lot that was
5 not double frontage.

6 Be happy to answer any questions that you
7 have.

8 CHAIRMAN: Is there any questions from the
9 board at this time of the Staff?

10 (NO RESPONSE)

11 CHAIRMAN: Does the applicant have anything
12 you want to add at this time?

13 MR. SILVERT: State your name, please.

14 MR. THOMPSON: Tommy Thompson.

15 (MR. TOMMY THOMPSON SWORN BY ATTORNEY.)

16 MR. THOMPSON: Mr. Chairman, thank you. I
17 appreciate this opportunity to present this request
18 tonight. Certainly be willing to answer any questions
19 that the board has.

20 CHAIRMAN: Board have any questions of the
21 applicant?

22 (NO RESPONSE)

23 CHAIRMAN: Staff have any other comments?

24 MR. NOFFSINGER: No, sir.

25 CHAIRMAN: Anyone else in the audience have

1 any comments?

2 (NO RESPONSE)

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

5 MR. DYSINGER: Mr. Chairman, move to grant the
6 variance request given the findings that it will not
7 adversely affect the public health, safety or welfare;
8 will not alter the essential character of the general
9 vicinity; will not cause a hazard or a nuisance to the
10 public; and will not allow an unreasonable
11 circumvention of the requirements of the zoning
12 regulations.

13 MR. PEDLEY: Second.

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

17 (NO RESPONSE)

18 CHAIRMAN: Staff have anything else to add?

19 MR. NOFFSINGER: No, sir.

20 CHAIRMAN: Do you have any other comments, Mr.
21 Thompson?

22 MR. THOMPSON: No, sir.

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Motion carries.

2 Next item, please.

3 ITEM 7

4 4729 Wimbley Way, zoned R-1B
5 Consider request for a Variance to reduce the front
6 building setback from 25 feet to 23.8 feet to
7 accommodate a portion of an existing residence
8 encroaching into the prescribed setback.
9 Reference: Zoning Ordinance, Article 8,
10 Section 8.5.6(c)
11 Applicant: Jagoe Land Corporation

12 MR. HOWARD: As Mr. Noffsinger stated, this
13 variance request comes before you tonight because
14 during construction activities about 1.2 feet of the
15 garage was constructed in the front building setback.
16 So they have to request a variance in order to proceed
17 with that.

18 Staff does not have a major objection to this
19 request. We would like to note though for you to take
20 into consideration that if you do grant approval, that
21 the variance should be specific to this request only,
22 for the garage only and it would not be carried over
23 into future additions to the residence or any future
24 building on the lot.

25 CHAIRMAN: Was there any opposition in the
26 office? Any comments or opposition?

27 MR. NOFFSINGER: No, sir.

28 CHAIRMAN: Does board have any questions of

1 the staff at this time?

2 (NO RESPONSE)

3 CHAIRMAN: Does the applicant have anything
4 else to add?

5 MR. CAMP: Paul Camp.

6 (MR. PAUL CAMP SWORN BY ATTORNEY.)

7 MR. CAMP: We have no other comments. If
8 there's any questions, we're here to answer them. I
9 represent Jagoe Homes.

10 CHAIRMAN: Does the board have any questions
11 of the applicant?

12 (NO RESPONSE)

13 CHAIRMAN: Staff have anything else?

14 MR. NOFFSINGER: Since Mr. Camp is here,
15 obviously a mistake was made here and not just the
16 staking phase, whatever, and not to point any blame,
17 even in the inspection process. I trust that Jagoe
18 Home is taking necessary action to see what transpired
19 and how this might have happened and how it might be
20 prevented in the future.

21 MR. CAMP: That is correct. We have
22 implemented a form basically for in the field that
23 when they're laying out a foundation or a footing that
24 they have to follow and check all the guidelines and
25 procedures and sign off that everything has been

1 positioned properly. We do feel like that we've got
2 everything in place, that this won't happen again.

3 MR. NOFFSINGER: I have to say it's a rare
4 occurrence when Jagoe Homes comes before this board
5 for a variance.

6 MR. CAMP: Well, let's hope we don't come back
7 in front of you again you time soon.

8 MR. NOFFSINGER: Thank you.

9 MR. PEDLEY: Mr. Camp, last time Mr. Jagoe was
10 here he said if this happens again you'll move the
11 house.

12 MR. CAMP: That he would move the house? I
13 wouldn't want to comment for Mr. Jagoe, but I have no
14 knowledge of that.

15 MR. PEDLEY: Is Mr. Chairman ready for a
16 motion?

17 CHAIRMAN: Any other questions before we have
18 a motion?

19 (NO RESPONSE).

20 CHAIRMAN: Entertain a motion now.

21 MR. PEDLEY: Mr. Chairman, I make a motion for
22 approval based on the findings it will not adversely
23 affect the public health, safety or welfare; will not
24 alter the essential character of the general vicinity;
25 will not cause a hazard or a nuisance to the public;

1 and will not allow an unreasonable circumvention of
2 the requirements of the zoning regulations.

3 CHAIRMAN: Is there a second to the motion?

4 MS. DIXON: Second.

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

8 MS. MASON: Do we need to amend it with the
9 conditions?

10 MR. PEDLEY: I included the conditions.

11 MS. MASON: I'm sorry, I missed that.

12 MR. PEDLEY: The variance granted is specific
13 to the existing encroachment and does not extend to
14 future building additions that may occur on site.

15 CHAIRMAN: Is there a second?

16 MS. DIXON: Second.

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

20 (NO RESPONSE)

21 CHAIRMAN: Staff have anything else?

22 MR. NOFFSINGER: No, sir.

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Motion carries.

2 Next item, please.

3

4

ADMINISTRATIVE APPEAL

5

ITEM 8

6

102 West Byers Avenue, zoned R-1B

7

Consider request for an Administrative Appeal to change from one non-conforming use as a vacuum cleaner repair and parts supply store and a residence to another non-conforming use as a variety store and a residence.

8

9

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

10

Appellant: Robert Zimmerman

11

MR. HOWARD: As Mr. Noffsinger stated, this is

12

an administrative appeal. They're appealing changing

13

from one non-conforming use to another.

14

As the board, you need to hear evidence

15

tonight that the requested change in non-conforming

16

use will not increase the extent of the use on the

17

property. That it will not increase the amount of

18

traffic. It will not increase the amount of noise and

19

that the use will overall not change the character of

20

the neighborhood and will not impact the neighborhood

21

any more than the previous use did. The applicant is

22

here.

23

CHAIRMAN: Mr. Zimmerman, have any comments

24

that you want to state at this time, please?

25

MR. ZIMMERMAN: Yes, sir.

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

3 MR. ZIMMERMAN: Robert Zimmerman.

4 (MR. ROBERT ZIMMERMAN SWORN BY ATTORNEY.)

5 MR. ZIMMERMAN: Upon acquiring this property
6 from the late Charlie Bratcher who had a long
7 tradition, I knew him well, and had a long tradition
8 of being a good neighbor in that area, the only
9 neighbor for many years. He told me one time that it
10 was just a corn field when he first moved there in
11 '47.

12 Anyway, my intentions are having a small
13 variety store. More of an out reach probably for that
14 neighborhood as probably a variety store or something
15 of that nature. Would not be cost effective in itself
16 with all insurance and the expenses. Like I say in
17 keeping with my policy as a long-standing landlord
18 position, my rental property in the City of Owensboro
19 is also, I pride myself on having some of the best
20 rental property. I maintain it. I'm kind of amazed
21 at the past problems in the city between
22 landlord/tenant relationships. Really don't see why
23 there should be such an issue there, but I know
24 people's nature.

25 Anyway, basically I appreciate the board

1 giving me time to make this request. Would like to
2 request to have a small variety store there. Thank
3 you.

4 CHAIRMAN: Does anyone on the board have any
5 questions?

6 MR. WARREN: What exactly -- just kind of
7 would like to know a little more what you mean by
8 variety store.

9 MR. ZIMMERMAN: Right. My wife and I were
10 kind of undecided what to call it. It's going to be,
11 if approved, just like I say, more than a community
12 wide store. Just something that we can be a good
13 neighbor. I'm real familiar with that neighborhood
14 over the last 40 years. Just a lot of fine people and
15 neighbors in that area. I guess just to kind of build
16 a relationship.

17 As far as the variety store, it would just --

18 CHAIRMAN: State some items, please.

19 MR. ZIMMERMAN: Nick-knacks, typical garage
20 sale nick-knacks, clothing, some furniture. Just
21 mainly smaller inexpensive items.

22 MR. WARREN: Not like groceries and things
23 like that?

24 MR. ZIMMERMAN: No, sir.

25 MS. MASON: I have a question for you, Mr.

1 Zimmerman. I drive past that every day going to and
2 from work. I have noticed, and I don't know if you're
3 operating something there now or what, but I've
4 noticed a lot of things outside. Is that something
5 that you're going to continue with and is that
6 something that -- I'm not quite familiar with the
7 ordinances as far as that's concerned. If I was a
8 neighbor, I wouldn't want that.

9 MR. ZIMMERMAN: Absolutely. I appreciate your
10 input on that.

11 I'm ashamed of what I have there presently.
12 I've helped it a little bit in the last week, but I've
13 kind of been overwhelmed.

14 After purchasing this, in making some drastic
15 changes on my other properties elsewhere in the city
16 and county. I'm selling some of the property, taking
17 them out of the rental row and putting them on the
18 marketing them to sale. I've just been -- I have
19 seven properties presently that I'm marketing for
20 sale. I've just been overwhelmed. I've just, yes,
21 I've moved some stuff. On Byers Avenue frontage, I
22 have a tarp there that I put up two or three weeks ago
23 now I guess. I agree, it looks -- if I was a neighbor
24 I would not like that. I have made some, I've
25 approved it a little bit, but I'm still not happy with

1 it. On the Allen Street frontage, I have made, there
2 again there's two or three items that are encroaching
3 outside an expensive vinyl fence that I intend to
4 extend. It's about half completed. I intend to
5 extend that all the way across -- not at the property
6 line, but back, recessed back off the property to
7 completely conceal any storage or cars or whatever is
8 under those two carports. So I haven't made pretty
9 good progress. In the real near future, if this
10 request is granted, it's going to straighten up. I
11 have done some landscaping on the Allen Street
12 frontage. So I intend to change that rapidly.

13 CHAIRMAN: Any other comments from the board?

14 (NO RESPONSE)

15 CHAIRMAN: Staff have anything to add at this
16 time, please?

17 MR. NOFFSINGER: There might be someone else
18 in the audience that wishes to speak.

19 CHAIRMAN: Anyone in the audience wishing to
20 speak?

21 MS. RAYMAN: I'm a neighbor. I own the
22 property next to it.

23 CHAIRMAN: Do you want to come forward and ask
24 any questions or state?

25 MS. RAYMAN: I really don't have any

1 objections, as far as I know. I didn't see anything
2 wrong.

3 CHAIRMAN: Would you state your name so we can
4 get it in the record.

5 MR. SILVERT: Could you state your name for
6 the record, please.

7 MS. RAYMAN: I'm Martha Rayman.

8 (MS. MARTHA RAYMOND SWORN BY ATTORNEY.)

9 MS. RAYMAN: I have the property at 118 and
10 120 Byers Avenue over to Mr. Zimmerman, over to St.
11 Ann Street.

12 MR. ZIMMERMAN: Just immediately west of my
13 property.

14 MS. RAYMAN: Yes. Charlie Bratcher was a
15 wonderful neighbor. I just loved him to death. I
16 told him when I bought the property, of course, he
17 didn't have the little vacuum shop there at that time
18 because he bought it in '55. It's been sitting there
19 ever since.

20 Anyway, I had a trailer out there. We bought
21 it and put the trailer out there while we were
22 traveling. Two of my brothers moved in with us
23 immediately with their trailers. Anyway, I still have
24 one trailer out there and I'm letting a friend use it.
25 His trailer is out there. I have a permit for it.

1 I'm thinking about doing something else with
2 it. I deeded it all to my three children and they
3 have other purposes, but as far as Mr. Zimmerman's
4 shop over there I don't see anything wrong with that
5 as far as I'm concerned.

6 CHAIRMAN: You don't have any opposition or
7 any objection; is that correct?

8 MS. RAYMAN: No, I don't. As long as he takes
9 care of his place and I'll try to take care of mine.

10 CHAIRMAN: Thank you, ma'am.

11 MR. NOFFSINGER: Mr. Chairman, one issue has
12 been raised here tonight in terms of possible
13 expansion of this non-conforming use. Certainly it is
14 not the intent for the non-conforming use to expand
15 beyond the areas where the non-conforming portion of
16 it exist today.

17 If you have outside storage that you're using
18 the lot for now and it hasn't been in the past, then
19 you're expanding the non-conforming. You cannot
20 expand beyond the boundaries of where the use existed
21 prior to April something 1977. I think certainly this
22 board, if you consider a change in one non-conforming
23 use to another, then you certainly need to set some
24 parameters to go by. Certainly, you know, I can't
25 recall the property having outdoor storage. That

1 could be a change in the character. It can certainly
2 effect the neighborhood. I think certainly that needs
3 to be addressed before you move forward.

4 CHAIRMAN: Does the board have any questions
5 of Mr. Zimmerman?

6 (NO RESPONSE)

7 CHAIRMAN: Come forward, please.

8 MR. ZIMMERMAN: The property now is actually
9 -- I'm trying to think here. Consist of four, I think
10 that's right. Yes, four non-contiguous buildings.
11 I'm not talking about the real estate.

12 Gary, I may be confused. I have no plans of
13 acquiring additional real estate for the purpose of
14 consolidating lots. As far as the structures, there's
15 four existing structures. The large store that Mr.
16 Bratcher had and then three independent out buildings.
17 I think one of them is 10 by 12 and another two are 10
18 by 10. They're just typical metal storage buildings.
19 I have no plans of adding any more buildings. Two of
20 the sheds are in pretty poor condition. They've just
21 got a rock floor in them rather than a slab floor. I
22 had considered when those become non-productive is
23 pouring a slab, not any bigger, but just pouring a
24 slab and putting a wood frame shed there to replace
25 those. I have no other plans. Realize that that

1 would be probably another administrative appeal.

2 MR. NOFFSINGER: Right. When I speak of
3 outdoor storage I mean, for example, I'm going to say
4 washer and dryers stored outside of a sheltered
5 building, storage building or the store with tarps or
6 not tarped over. That activity I don't recall that
7 having taken place in the past on that property and
8 should not be taking place today. That needs to be
9 removed immediately.

10 MR. ZIMMERMAN: Exactly.

11 MR. NOFFSINGER: You agree there will be no
12 outdoor storage on that property or display of
13 materials on that property because there hasn't been
14 in the past.

15 MR. ZIMMERMAN: Exactly. Yes.

16 MR. NOFFSINGER: Thank you.

17 CHAIRMAN: Do you understand that everything
18 will have to be inside an existing building?

19 MR. ZIMMERMAN: Yes.

20 CHAIRMAN: Any other question?

21 MR. ZIMMERMAN: If I could bother the board a
22 minute. I'm glad to meet Ms. Rayman. I made a
23 special effort since acquiring the property to, and I
24 think met seven or eight of the immediate neighbors
25 with exception of her. I appreciate her coming and

1 giving us her input because I've met her tenant on the
2 property to the west. I appreciate her remarks.
3 Thank you.

4 CHAIRMAN: Any other question from the board?

5 (NO RESPONSE)

6 CHAIRMAN: Staff have any other comments?

7 MR. NOFFSINGER: No, sir.

8 CHAIRMAN: Entertain a motion.

9 MR. PEDLEY: Mr. Chairman, I make a motion to
10 direct the appeal to change from one non-conforming
11 use to another non-conforming use with the findings
12 that it will not adversely affect the neighborhood and
13 the new use shall not extend outside the previous use.

14 CHAIRMAN: Is there a second?

15 MR. DYSINGER: Second.

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

19 (NO RESPONSE)

20 CHAIRMAN: Staff have anything else to add?

21 MR. NOFFSINGER: No, sir.

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

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: Motion carries.

1 Next item.

2

3

NEW BUSINESS

4

ITEM 9

5

Consider motion to enter into closed session to
discuss pending litigation.

6

7

MR. DYSINGER: So move, Mr. Chairman.

8

MR. NOFFSINGER: Any action that's taken we'll

9

come back out and announce and vote on it.

10

MS. MASON: Second.

11

CHAIRMAN: All in favor raise your right hand.

12

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13

CHAIRMAN: We are in closed session.

14

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

15

CHAIRMAN: We'll call the meeting back to

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order.

17

Madison, will you take over.

18

MR. SILVERT: We have two matters of

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litigation that were discussed in closed session. Any

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action in closed session needs to be taken in open

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session.

22

Those matters are Watson versus Board of

23

Adjustment, as well as Boone versus Board of

24

Adjustment. Those matters have been discussed. We're

25

ready for a motion regarding those two matters of

1 litigation.

2 CHAIRMAN: Entertain a motion.

3 MR. PEDLEY: Make a motion to authorize the
4 Chairman, Audie Pantle, to sign the grievance.

5 MR. NOFFSINGER: On Boone versus OMBA.

6 CHAIRMAN: Is there a second?

7 MR. DYSINGER: Second.

8 CHAIRMAN: Any other comments or questions?

9 (NO RESPONSE)

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

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 Next item, Madison.

15 MR. SILVERT: The next one would be Watson
16 versus Board of Adjustment.

17 MS. DIXON: That would be for you to sign?

18 MR. SILVERT: Correct.

19 MS. DIXON: Move to grant Madison Silvert the
20 authority to sign off on the Watson versus OMBA.

21 CHAIRMAN: You've heard the motion. Is there
22 a second?

23 MR. DYSINGER: Second.

24 CHAIRMAN: A motion has been made and a
25 second. Any other comments or questions?

1 (NO RESPONSE)
2 CHAIRMAN: All in favor raise your right hand.
3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
4 CHAIRMAN: Motion carries.
5 One final motion.
6 MR. WARREN: Motion to adjourn.
7 MS. MASON: Second.
8 CHAIRMAN: All in favor raise your right hand.
9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
10 CHAIRMAN: We are adjourned.

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

4 I, LYNNETTE KOLLER FUCHS, Notary Public in and
5 for the State of Kentucky at Large, do hereby certify
6 that the foregoing Owensboro Metropolitan Board of
7 Adjustment meeting was held at the time and place as
8 stated in the caption to the foregoing proceedings;
9 that each person commenting on issues under discussion
10 were duly sworn before testifying; that the Board
11 members present were as stated in the caption; that
12 said proceedings were taken by me in stenotype and
13 electronically recorded and was thereafter, by me,
14 accurately and correctly transcribed into the
15 foregoing 72 typewritten pages; and that no signature
16 was requested to the foregoing transcript.

17 WITNESS my hand and notary seal on this the
18 26th day of June, 2007.

19

20

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

21

22 COMMISSION EXPIRES: DECEMBER 19, 2010

23

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

25

26