

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 JULY 5, 2007

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:30 p.m. on Thursday, July
5 5, 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, Director
9 Ward Pedley
10 Sean Dysinger
11 Ruth Ann Mason
12 Clay Taylor
13 Madison Silvert, Attorney

14 * * * * *

15 CHAIRMAN: Let me call the meeting to order.
16
17 Want to welcome you to the Owensboro Board of
18 Adjustment meeting this evening. We start our
19 meetings each night with a prayer and the pledge to
20 allegiance. We invite you all to join us if you so
21 desire. Ruth Ann will have the prayer, please.

22 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

23 CHAIRMAN: Again, I want to welcome you to the
24 meeting. If you have any comments on any item, please
25 come before the podium and state your name. You will
be sworn in because we'll have a record for the
transcript if we have problems down the road.

With that the first item on the agenda is the
minutes of the last meeting of June 7th. They are in

1 the office. We haven't found any problems. Anyone
2 have anything in addition?

3 (NO RESPONSE)

4 CHAIRMAN: If not entertain a motion.

5 MR. DYSINGER: Move to approve.

6 MR. PEDLEY: Second.

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

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries.

11 Next item, please, sir.

12 -----

13 CONDITIONAL USE PERMITS

14 ITEM 2

15 15 Carter Road, zoned A-U
16 Consider request for a Conditional Use Permit to
17 increase the size of the church building from 3070
18 square feet to 4870 square feet and to add additional
19 parking.
20 Reference: Zoning Ordinance, Article 8, Section 8.2B3
21 Applicant: Audubon Church of the Nazarene, Inc.

19 MR. SILVERT: State your name, please.

20 MR. HOWARD: Brian Howard.

21 (MR. BRIAN HOWARD SWORN BY ATTORNEY.)

22 ZONING HISTORY

23 The subject property is currently zoned A-U
24 Urban Agriculture and a church is conditionally
25 permitted under the zoning classification. Based on

1 OMPC records, three Conditional Use Permits have been
2 approved for the subject property. The first
3 application was heard by the OMBA in October 1992, to
4 consider a request for the construction of a church.
5 In October 1993, a request was made to rehear the
6 request for a Conditional Use Permit in order to
7 construct the church facility. The most recent
8 application was for the construction of a building on
9 the church property for use as church related
10 classrooms. All three applications were approved by
11 the OMBA.

12 The applicant has submitted an amended
13 development plan for an addition to the existing
14 church facility. The proposed expansion will not
15 increase the size of the sanctuary and will not alter
16 the parking requirement for the church.

17 LAND USES IN SURROUNDING AREA

18 The property to the north, east and west are
19 all zoned A-U Urban Agriculture and are occupied by a
20 botanical garden and city park. The property across
21 Carter Road to the west is zoned B-4 and is location
22 of the Humane Society.

23 ZONING ORDINANCE REQUIREMENTS

24 1. One (1) paved parking space for every five
25 (5) seats in the main auditorium.

1 2. Vehicular use area screening as required.

2 MR. HOWARD: We would like to enter the Staff
3 Report into the record.

4 CHAIRMAN: Has there been any objections filed
5 in the office on this?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: Staff have anything to add?

8 MR. NOFFSINGER: No, sir.

9 CHAIRMAN: Board members have any questions
10 before we call the applicant forward?

11 (NO RESPONSE)

12 CHAIRMAN: Anyone wishing to object to this
13 item?

14 (NO RESPONSE)

15 CHAIRMAN: The applicant have anything you
16 want to bring forward or state at this time?

17 (NO RESPONSE)

18 CHAIRMAN: Board members have any questions of
19 the applicant?

20 (NO RESPONSE)

21 CHAIRMAN: Hearing none entertain a motion to
22 dispose of the item.

23 MR. PEDLEY: Mr. Chairman, make a motion for
24 approval based on this is an existing use and it is
25 compatible with the neighborhood, and will not have an

1 adverse influence on the neighborhood.

2 CHAIRMAN: Is there a second?

3 MR. DYSINGER: Second.

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

7 (NO RESPONSE)

8 CHAIRMAN: Staff have anything else?

9 MR. NOFFSINGER: No, sir.

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, please.

15 MR. NOFFSINGER: Mr. Chairman, Staff would
16 recommend that you suspend the rules and consider
17 amending the agenda tonight to place Item 3 at the end
18 of the agenda and to hear these other items which I
19 think will go very quickly, in the interest of the
20 number of people that are here. That would need to be
21 voted on.

22 MR. DYSINGER: So moved, Mr. Chairman.

23 MS. MASON: Second.

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

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: The third item will be put on the
3 end of the agenda.

4 ITEM 4

5 9255 US 431, zoned A-R
6 Consider request for a Conditional Use Permit in order
7 to construct and operate a farmer's market.
8 Reference: Zoning Ordinance, Article 8, Section 8.2E1
9 and Section 8.2E3
10 Applicant: Kevin Trunnel; Edward and Shirley Trunnel

11 ZONING HISTORY

12 The subject property is currently zoned A-R
13 Rural Agriculture. The applicant proposes to use the
14 subject property as a farmer's market to include the
15 sale of fresh fruit, vegetables, flowers, dairy
16 products and meat, some of which may come from sources
17 outside of the farm. The use as a farmer's market
18 requires a conditional use permit within an
19 agricultural zone.

20 The site plan submitted with the Conditional
21 Use Permit shows two existing driveways to US 431 that
22 have been approved by the state according to the
23 applicant. The parking and drive areas are proposed
24 to be gravel. However, the handicap unloading aisle
25 must be paved and the drive approaches to the site
should also be paved to prevent gravel from spilling
into US 431.

1 LAND USE IN SURROUNDING AREA

2 All adjoining property is currently zoned A-R
3 Rural Agriculture with farming and rural lot
4 residential land uses in the vicinity.

5 ZONING ORDINANCE REQUIREMENTS

6 1. Six (6) parking spaces plus one per 250
7 square feet.

8 2. Vehicular use area screening along the
9 road frontage.

10 3. A 50 foot roadway buffer from the street
11 centerline.

12 4. A 75 foot building setback from the street
13 centerline.

14 SPECIAL CONDITIONS

15 Pave drive approaches from the edge of US 431
16 pavement 50 feet in order to prevent gravel from
17 spilling into US 431.

18 MR. HOWARD: We would like to enter the Staff
19 Report into the record.

20 CHAIRMAN: Is there anyone wishing to speak in
21 opposition of this item?

22 (NO RESPONSE)

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

25 MR. NOFFSINGER: No, sir. I might add, Mr.

1 Chairman, that this is a use that certainly can be
2 considered compatible with an agricultural zone in the
3 area because it is just that, a farmer's market.

4 It's our understanding that the commodities to
5 be sold on the premises will be farm grown local
6 products as well as meats.

7 Just want to remind the applicant that the
8 provisions that you're applying under, farmer's
9 market, which is a very limited use. Grocery stores,
10 for example, that we're accustomed to would not be
11 allowed in this zone. It would have to be rezoned to a
12 commercial type zoning classification. They are not
13 doing that. They're coming in under the clause of the
14 zoning ordinance that allows agricultural activities
15 and those uses that need to be near such activities to
16 be located in rural areas. They are activities that
17 are not to change the rural character of the area.

18 So with that I think certainly a farmer's
19 market would be compatible with the area, but the
20 applicant needs to be reminded that products that are
21 typically sold at a grocery store that are shipped in
22 from elsewhere and sold and stocked on the shelves
23 such as bread, a loaf of Colonial bread, if you will,
24 and whatnot, will generally not be acceptable items.
25 The other items you would think about at a farmer's

1 market such as fresh vegetables and things like that
2 would be. We've talked with the applicant and I think
3 the applicant understands the provisions.

4 CHAIRMAN: The applicant have anything you
5 want to come forward and bring at this time, please?

6 MR. SILVERT: State your name, please.

7 MR. TRUNNELL: Kevin Trunnell.

8 (KEVIN TRUNNEL SWORN BY ATTORNEY.)

9 MR. TRUNNELL: I really don't have anything to
10 add unless there are any questions.

11 I am aware of what Gary was saying about this
12 conditional use permit, what it will allow and what it
13 will not allow. Aware of those conditions. We don't
14 want to be a grocery store. We don't want to be a
15 convenient store. That's what makes this project
16 unique and that's why we want it on our farm. If
17 there are any questions.

18 CHAIRMAN: You understood the special
19 conditions that the Staff recommend, the paving of 50
20 foot?

21 MR. TRUNNELL: Yes, I'm aware of that. I've
22 had several conversations with Brian, and Becky, and
23 Jim. I'm understanding what they're recommending.

24 CHAIRMAN: Any board members have any
25 questions of the applicant?

1 (NO RESPONSE)

2 CHAIRMAN: Staff have anything else?

3 MR. NOFFSINGER: No, sir.

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

6 MR. DYSINGER: Mr. Chairman, given the
7 findings that this use would provide a benefit to the
8 surrounding area, will provide an outlet for local
9 produce, further as the surrounding area is rural
10 agricultural it is compatible and does not conflict
11 with the comprehensive plan. Move to grant the
12 conditional use permit with the special condition that
13 the paved drive approaches from the edge of US 431 be
14 paved 50 feet in order to prevent gravel from spilling
15 into US 431.

16 CHAIRMAN: Is there a second?

17 MS. MASON: Second.

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

21 (NO RESPONSE)

22 CHAIRMAN: Staff have anything else?

23 MR. NOFFSINGER: No, sir.

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

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries.

3 Next item, please, sir.

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5 VARIANCE

6 ITEM 5

7 300, 301, 307, 313, 321 Links Cove, zoned R-1C
8 Consider request for a Variance in order to increase
9 the front yard fence height from 3 feet to 8 feet to
10 the rear of the proposed single family residential
11 homes on these lots having double street frontage.
12 Reference: Zoning Ordinance, Article 3,
13 Section 3-7(g)(2)
14 Applicant: Thompson Homes, Inc., PKP 79 Co.

15 MR. NOFFSINGER: Mr. Chairman, the Planning
16 Staff has reviewed this application. The application
17 is found to be in order. All adjoining property
18 owners have been notified.

19 The Planning Staff has submitted or has
20 prepared a Variance Staff Review that we would like to
21 submit into the record here tonight.

22 You approved a similar variance on property in
23 this development last month. This is a new
24 development. It's the Fiddle Sticks development.
25 It's a planned residential development.

26 In that development we have some of the lots
27 that have double street frontage; in other words, you
28 could say two front yards. The zoning ordinance

1 requires that a fence not be any higher than three
2 feet in the front yard. We've had several request for
3 pools to be located on some of these lots. In order
4 to construct a swimming pool, you have to have by the
5 Kentucky Building Code a four foot high fence. Well,
6 on these lots, if they do not receive this variance
7 they would be unable to construct a pool in the rear
8 yards of these residences, which the rear yards do
9 front a street.

10 We feel in this review that since we have
11 granted one variance, which was last month, and the
12 fact that this is a planned development and it's still
13 in the construction phases that the variance would not
14 circumvent the zoning ordinance and it would not alter
15 the essential character of the area because it is a
16 neighborhood that is in the development stages. So
17 with that we're certainly recommending that it be
18 approved.

19 CHAIRMAN: Any other suggestions?

20 MR. NOFFSINGER: No, sir.

21 CHAIRMAN: Any objections filed in the office?

22 MR. NOFFSINGER: No, sir.

23 CHAIRMAN: Anyone in the audience wishing to
24 object to this item?

25 (NO RESPONSE)

1 CHAIRMAN: Entertain a motion to dispose of
2 the item.

3 MS. MASON: Mr. Chairman, I move for approval.
4 My findings of fact is it will not adversely affect
5 the public health, safety or welfare; it will not
6 alter the essential character of the general vicinity;
7 it will not cause a hazard or a nuisance to the
8 public; and it will not allow an unreasonable
9 circumvention of the requirements of the zoning
10 regulations.

11 CHAIRMAN: Is there a second?

12 MR. PEDLEY: Second.

13 CHAIRMAN: A motion has been made and a
14 second. Are there any other comments from the board?

15 (NO RESPONSE).

16 CHAIRMAN: Staff have anything else?

17 MR. NOFFSINGER: No, sir.

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

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries.

22 Next item, please, sir.

23 ITEM 6

24 557, 561, 565, 571 Snap Hook Court, zoned R-1C
25 Consider request for a Variance in order to increase
the front yard fence height from 3 feet to 8 feet to
the rear of the proposed single family residential

1 homes on these lots having double street frontage.
Reference: Zoning Ordinance, Article 3,
2 Section 3-7(g)(2)
Applicant: Thompson Homes, Inc., PKP 79 Co.
3

4 MR. NOFFSINGER: Mr. Chairman, the Planning
5 Staff has reviewed this application. This application
6 is found to be in order.

7 Everything I said in Item 5 is related to this
8 application and the record will so reflect that. We
9 would recommend it's approval.

10 CHAIRMAN: Anyone in opposition of this item?

11 (NO RESPONSE)

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

14 (NO RESPONSE).

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

17 MR. TAYLOR: Mr. Chairman, vote to approve
18 this Variance based upon the finding it is a new
19 neighborhood and the previous decision made by this
20 board, as well as it will not adversely affect the
21 public health, safety or welfare; it will not alter
22 the essential character of the general vicinity; it
23 will not cause a hazard or a nuisance to the public;
24 and it will not allow an unreasonable circumvention of
25 the requirements of the zoning regulations.

1 CHAIRMAN: Is there a second?

2 MR. PEDLEY: 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 you want
8 to add?

9 MR. NOFFSINGER: No, sir.

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, please.

15 ITEM 7

16 1600 River Road, zoned I-2
17 Consider request for a Variance in order to eliminate
18 perimeter trees along the southern, western and
19 western 312 +/- feet of the northern property line and
20 to eliminate the solid fence along the entire western
21 limit of the working area.

19 Reference: Zoning Ordinance, Article 17,
Section 17.311

20 Applicant: Dixieland Properties, LLC; Marnic, LLC

21 MR. NOFFSINGER: Mr. Chairman, Planning Staff
22 has reviewed this application. The application is
23 found to be in order. This board approved last month
24 a conditional use permit in order to operate a salvage
25 yard on the property. There were several instances,

1 cases where the applicant agreed to exceed the
2 screening requirements of the zoning ordinance.
3 However, they are coming back to you this month, which
4 they stated that they would, to ask that some of the
5 fencing and perimeter trees that they not have to be
6 installed. This is due to, one, the fencing along the
7 southern boundary. They intend to provide, however it
8 adjoins another salvage yard. Therefore they are
9 requesting that the trees not to be installed there.

10 They are also requesting that the fence and
11 the trees be waived along the western boundary. This
12 is due to topography. There's a very steep grade
13 there, incline, whereby putting up a fence would do
14 absolutely nothing to screen the adjoining property
15 because that adjoining property is many, many times
16 higher than what this property is the finish grade.

17 They're also requesting that the trees not be
18 required along a portion of the northern boundary
19 line, which is shown on the site plan.

20 So with that these screening requirements are
21 in affect to protect the adjoining properties and that
22 they're asking for the waiver on. If the adjoining
23 property owners do not have an interest or do not
24 object to the waiver of these fencing and other
25 screening requirements, we would recommend that they

1 be approved, waived to be approved.

2 CHAIRMAN: Any objections filed in the office?

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: Is there anyone in the audience
5 objecting to this item?

6 (NO RESPONSE)

7 CHAIRMAN: Does the applicant have anything
8 you want to add at this time?

9 APPLICANT REP: No.

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

12 (NO RESPONSE)

13 CHAIRMAN: Staff have anything else?

14 MR. NOFFSINGER: No, sir.

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

17 MR. PEDLEY: Mr. Chairman, make a motion for
18 approval based on Staff's findings and
19 recommendations; and it will not adversely affect the
20 public health, safety or welfare; will not alter the
21 essential character of the general vicinity; will not
22 cause a hazard or a nuisance to the public; and it
23 will not allow an unreasonable circumvention of the
24 requirements of the zoning regulations.

25 CHAIRMAN: Is there a second to the motion?

1 MR. DYSINGER: Second.

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

5 (NO RESPONSE)

6 CHAIRMAN: Staff have anything else?

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 3

14 9300 KY 815, zoned A-R (POSTPONED at June 7, 2007
15 meeting)
16 Consider request for a Conditional Use Permit to add a
17 600 yard rifle range to an existing pistol and rifle
18 range.
19 Reference: Zoning Ordinance, Article 8, Section
20 8.2K7/42
21 Applicant: Darrel and Rebecca Whittaker

22 MR. NOFFSINGER: Mr. Chairman, this
23 application has been postponed over the course of the
24 past several months due to the applicant needed
25 additional time to gather information regarding the
26 construction of the range and the safety of that
27 range.

28 The applicant is here tonight to make a

1 presentation. Each board member has received a copy
2 of the summary or the findings of the National Rifle
3 Association. I won't elaborate on that. Certainly
4 let the applicant do that.

5 There is on record opposition to this
6 application. They are represented by Mr. Bob Kirtley.
7 He also has received a copy of that summary.

8 We wish to enter a copy of that into the
9 record, as well as Mr. Kirtley has given me a piece of
10 paper talking about the Rock Hill Gun Range being
11 their status as a corporation. We certainly like to
12 give the applicant a copy of that because I'm sure Mr.
13 Kirtley will make reference to it as well as enter
14 that into the record.

15 With that it's ready for consideration.

16 CHAIRMAN: Is the applicant ready to present
17 your side at this time?

18 MR. SILVERT: State your name, please.

19 MR. JONES: My name is Eddie Jones.

20 (MR. EDDIE JONES SWORN BY ATTORNEY.)

21 MR. JONES: Let me first speak to the issue of
22 the Rock Hill Gun Range, Incorporated. We have
23 prepared a deed conveying the property back to Darrel
24 and Becky Whittaker individually. I had that deed
25 fully executed and I have the deed with me here

1 tonight. I believe that we have provided to Mr.
2 Mischel a copy of the dec sheet of the liability
3 insurance policy insuring the gun range in the amount
4 of \$1 million.

5 You will recall some months ago when we met
6 the opposition's reference to this corporation status
7 was a concern that somehow there wouldn't be anybody
8 to sue or there wouldn't be anybody to be liable for
9 some negligence. We have taken steps to correct that.
10 Darrel and Becky are going on individually as the
11 owners of this property and we have given you the
12 proof of insurance to cover the liability to alleviate
13 that concern.

14 It also puts us in a bit of a mix as far as
15 procedurally.

16 Mr. Chairman, you'll have to tell me how you
17 want to proceed.

18 We have reviewed the NRA report and I think
19 you've reviewed an advanced copy. I can tell you that
20 while I'm not doing it right now at this moment
21 because I want to preserve the ability to give you
22 evidence on the issue of safety, but at the end of the
23 day we intend to withdraw our application for a 600
24 foot range. Simply want to continue to exist as we
25 have been existing under the existing conditional use

1 permit.

2 That puts us then at a position where we are
3 responding to the April 9, 2007 issue of the notice of
4 violation.

5 You gentlemen will have to tell me how you
6 want to proceed from here so that I don't waste your
7 time.

8 CHAIRMAN: Whatever you've got information to
9 give to us that will assure us it is a safe facility
10 go from there.

11 MR. JONES: That's what I understood from you
12 the last time.

13 I think what I'd like to do so that I can
14 preserve the record is first ask Mrs. Becky Whittaker
15 to come forward and with your permission I'd like to
16 present this testimony by question and answer.

17 Becky, would you state your name and somebody
18 is going to give you the oath.

19 MS. WHITTAKER: Becky Whittaker.

20 (MS. BECKY WHITTAKER SWORN BY ATTORNEY.)

21 MR. JONES: Becky, would you tell the board
22 the history of the gun range.

23 MR. KIRTLEY: Can I ask the board --

24 MR. SILVERT: Could you state your name,
25 please.

1 MR. KIRTLEY: Robert Kirtley.

2 I was told when I was first here that we're
3 not allowed to cross exam direct questions to
4 witnesses. They speak from their own position. Has
5 that now changed? Because I tried to do that and I
6 was told I couldn't do it.

7 CHAIRMAN: We're trying to get the information
8 all we can possible to support everything we need.

9 MR. KIRTLEY: So cross examining or asking
10 question is now permissible.

11 MR. SILVERT: I believe what you were told was
12 that you shouldn't ask questions directly of the
13 witness. That you should ask the board to direct them
14 to the witness.

15 MR. KIRTLEY: Is that going to be procedure
16 here tonight?

17 MR. SILVERT: That is.

18 MR. KIRTLEY: That's fine.

19 MR. NOFFSINGER: What has been my experience
20 is that what we wanted to avoid would be having this
21 side ask question of this side. You need to direct
22 questions that you have of this side say to the
23 chairman. Then the chairman will get your answers.
24 If you want to do what Mr. Jones is doing, I think
25 that has been allowed.

1 MR. SILVERT: I don't think anyone directed
2 you not to ask questions of your own client.

3 MR. KIRTLEY: Well, I got that impression and
4 I stopped doing it.

5 CHAIRMAN: Proceed.

6 MR. JONES: Becky, just give us the history.
7 I think this gun range started in 1994. Tell us what
8 you did to start this gun range.

9 MS. WHITTAKER: We applied for a conditional
10 use permit. Submitted a drawing of what we wanted.
11 Was granted a conditional use permit. Then we were
12 told that the direction we were shooting might be a
13 better idea if we were shooting away from Highway 815
14 instead of toward Highway 815.

15 There was a natural hill there that would have
16 been cheaper for us to build the range shooting
17 towards Highway 815, but we thought, okay, do they
18 think it might be safer we'll change direction. Shoot
19 away from the highway. Move all this dirt down there.
20 Build the berm and shoot away from Highway 815. We
21 did that.

22 MR. JONES: Did that modification cost more
23 expense than it would have?

24 MS. WHITTAKER: Yes. It was more expensive to
25 do it that way, but it made sense that they would

1 suggest to shoot away from the highway. So we did
2 that.

3 MR. JONES: When we're talking "they," who is
4 the "they"?

5 MS. WHITTAKER: Someone just suggested that --
6 I don't remember who it was.

7 MR. JONES: Someone from the government
8 though?

9 MS. WHITTAKER: I don't know if it was Jeff
10 Dame. I remember working with him back then when I
11 was doing this. I don't know if it was him or
12 somebody from -- somebody suggested that we shoot away
13 from the highway. Would be like common sense.

14 MR. JONES: So then the plan was redesigned.
15 Now the gun range is such that the bullets go down
16 range and there's no road on the backside of the
17 range?

18 MS. WHITTAKER: Correct.

19 MR. JONES: How long has the gun range been in
20 operation?

21 MS. WHITTAKER: Close to 13 years.

22 MR. JONES: What do you charge?

23 MS. WHITTAKER: Four dollars. They shoot all
24 day for \$4.

25 MR. JONES: Do you make money off this?

1 MS. WHITTAKER: No. We just hope to break
2 even. Sometimes that doesn't happen. Sometimes it
3 does. We're giving people a safe place to go shoot.
4 If they want to go in the afternoon with their kids to
5 learn to shoot their .22. Just someplace to go.

6 MR. JONES: You and your husband are in the
7 business. You own Whittaker's Gun. So it is a sport
8 that is consistent with the business in which you do
9 make money?

10 MS. WHITTAKER: Correct. Yes.

11 MR. JONES: But as far as making money off the
12 range?

13 MS. WHITTAKER: No. Hopefully they'll come
14 down and buy some ammunition and go to the range and
15 shoot. It's kind of related.

16 MR. JONES: During the 13 years that you've
17 been in operation, has there ever been an incident
18 that you're aware of where anyone has been injured or
19 there's been any property damage with regard to this
20 gun range?

21 MS. WHITTAKER: Never.

22 MR. JONES: I'm going to hand you. You've
23 taken a look at a note that Darrell Whittaker signed.
24 Is that his handwriting?

25 MS. WHITTAKER: Yes.

1 MR. JONES: Darrel is not able to be with us
2 tonight, is he?

3 MS. WHITTAKER: No.

4 MR. JONES: I would ask that this be into the
5 record.

6 If the board members have any other, I'll go
7 on to another witness.

8 MR. SILVERT: I think the opposite side needs
9 to have the opportunity to cross examine. I think the
10 opposition needs to have the opportunity to cross
11 examine the witness.

12 CHAIRMAN: Mr. Kirtley, you have anything you
13 want to ask at this time?

14 MR. KIRTLEY: Yes.

15 Were you with your father when he filed this
16 application?

17 MR. SILVERT: You haven't been sworn in yet,
18 Mr. Kirtley.

19 (MR. BOB KIRTLEY SWORN BY ATTORNEY.)

20 MR. KIRTLEY: I ask that question.

21 CHAIRMAN: Would you answer it, please.

22 MR. JONES: Actually she's the wife of Darrel
23 Whittaker. She signed the application.

24 MR. KIRTLEY: I'm sorry. I apologize.

25 MR. NOFFSINGER: Before we go any further.

1 Mr. Kirtley, if you have questions, what you will do
2 is state those to the chairman. The chairman or the
3 attorney or I, after we hear your questions, will then
4 look to them to answer those questions.

5 MR. KIRTLEY: Does she or her husband have
6 anything in writing that was issued by this board
7 contrary to what the original application was approved
8 for; in other words, reversing the range? That's my
9 question.

10 MR. NOFFSINGER: Is that all?

11 MR. KIRTLEY: That's one.

12 MR. NOFFSINGER: I think you heard the
13 question.

14 MR. JONES: Assist from counsel because that
15 kind of calls for a legal conclusion.

16 You probably have a copy of my letter dated
17 May 10th which is the response to Notice of Violation.
18 We did an open record request. We came and we looked
19 at the review. While there was a proposed site plan
20 with the initial application in 1994, that proposed
21 site plan was not made a part of the conditional use
22 permit. Rather the conditional use permit only
23 addressed the types of activities that are to be
24 conducted on this property. It did not say, you've
25 got to fire it this way or you've got to fire it that

1 way. It just simply said, these are the activities
2 you can do on this property under this conditional use
3 permit.

4 Apparently somebody from the government then
5 went out and said, you know, you ought to shoot that
6 way. Shoot away from the road. They simply made that
7 suggestion. There's nothing in writing about that,
8 nor is there anything in writing that says you have to
9 shoot anyway. All this application does is simply say
10 the conditions are the activity. The argument seems
11 simple.

12 If Mr. Kirtley had a conditional use permit
13 for a law office, but he wanted to have his bathroom
14 in the back, but for whatever reason decides he wants
15 to move his bathroom in the front. It has no relation
16 to the activities.

17 In fact, this only deals with the activity.
18 He's still practicing in his office building. They're
19 still having a rifle range consistent with this
20 conditional use permit. There were no conditions as
21 to which way to fire. The agency suggested they fire
22 that way. They built it the way that they did. It's
23 a long-winded answer, but I think that's the answer.

24 MR. KIRTLEY: Point of order, I was always of
25 the impression the site plan was incorporated into the

1 conditional use; otherwise, they could be shooting
2 north, south, any which way for any activity. I
3 believe it's part of that. That's a point of origin.
4 You tell me.

5 MR. NOFFSINGER: All I can tell you is the
6 extent of time that I've been here, which has been 18
7 years, a conditional use permit included an
8 application. It's called an application for a
9 conditional use permit. This board relies on the
10 application and all matters of evidence in their final
11 action. The site plan that was submitted as a part of
12 that application, the board relied on that when they
13 took action to approve. What you have filed over in
14 the courthouse would be the certificate of conditional
15 use permit application which summarizes that this
16 board took action to approve the range.

17 I can tell you what has been my experience
18 over the years. Certainly we've been consistent in
19 terms of you amend the application if you do something
20 different on that site plan or out in the field from
21 what's shown on that site plan. You have to come back
22 in for a rehearing on that conditional use permit
23 which you've altered. It may be something as simple
24 as adding square footage. Maybe it's 10, 20 square
25 feet. You have to come back in. That is the way

1 we've operated at least for the time that I've been
2 here.

3 MR. DYSINGER: Mr. Chairman, it seems to me
4 this issue is irrelevant. We have a new conditional
5 use permit in front of us that shows how they want to
6 do business.

7 With all due respect, Mr. Kirtley, if we can
8 move on from that issue, unless somebody else feels
9 different about it, but we've got a lot of ground to
10 cover.

11 MR. NOFFSINGER: Too, you might consider, and
12 I would recommend that legal counsel advise you here
13 in that an application was submitted to this board to
14 add a 600 yard range. The applicant has stated it's
15 their intent to withdraw that tonight.

16 Is this the proper venue at this time to be
17 considering since the application, you know, we have a
18 Notice of Violation out there. Perhaps it's a whole
19 separate issue.

20 MR. SILVERT: If they're withdrawing the
21 application as it exist today, they would have to
22 reapply. As for the Notice of Violation, we would
23 look at that at a separate hearing for an
24 administrative appeal.

25 MR. DYSINGER: Wouldn't they have to contest

1 that violation for us to need an administrative?
2 They're already shutdown.

3 MR. SILVERT: Yes. That's correct.

4 MR. JONES: We did file those papers.

5 MR. SILVERT: I do think if they want to
6 withdraw the application, certainly we have nothing to
7 discuss tonight. If they're agreeable to remove a
8 portion of what they're requesting, that might be done
9 maybe perhaps as a condition. We would leave that to
10 the applicant, if the applicant wants to withdraw the
11 entire application. It's not nothing you can
12 piecemeal. It was applied for in one manner. It
13 would be up to this board as to how that application
14 might be modified as requested.

15 I guess the question then to counsel for the
16 applicant would be: Is it the desire to withdraw the
17 application as applied for?

18 MR. JONES: We want to continue to operate a
19 gun range as it has existed. We do not wish to
20 proceed with a 600 yard gun range, that portion, at
21 this time.

22 MR. PEDLEY: I'd like to clarify one thing.
23 On my findings when we stated that you're in violation
24 of the original conditional use permit. There is on
25 file a plat that was a part of that application. That

1 was shown to us tonight of that. It's built exact
2 opposite of that application. Here is another
3 application that proves that it's built exact
4 opposite. That plat was part of that application. It
5 was built exact opposite. You are in violation, in my
6 opinion, of your original application for the
7 conditional use permit. This board has the power to
8 revoke your conditional use permit any time that
9 you're in violation. Any time. We have that power.
10 If that application and that plat you said is not part
11 of it, how did it get in that file? It's in that
12 file. It's got a stamp date. It's part of that
13 application. It's what we see. Same thing you've
14 submitted right here. It is part of that application.

15 MR. JONES: There's no question that we
16 originally intended to have the gun range firing
17 toward the road. I guess the testimony to you has
18 been back in '94 somebody from the office said, let's
19 rearrange it and shoot it the other way. Now, you can
20 either not believe that.

21 MR. PEDLEY: It's not what we saw. It's not
22 what was presented. You're in violation.

23 MR. JONES: The reason they might have gone
24 along with that is because there was no specific
25 reference to the direction of fire in the actual

1 action of the board.

2 MR. PEDLEY: You needed to come back before
3 this board to make that adjustment and amend that
4 application. You did not do that. You're in
5 violation of your original.

6 MR. JONES: I take it that this institution
7 has been inspected annually for 13 years. Isn't it
8 the duty of the board to conduct annual inspections?
9 I thought I read that in the statute where you guys
10 conduct annual inspections.

11 MR. NOFFSINGER: No, it's not the duty of this
12 board to conduct annual inspections. There is
13 language that talks about the duty of the zoning
14 administrator to conduct reviews at some point in
15 time, but in terms of this board, no. At the time the
16 conditional use permit was approved, it was approved
17 by this board, but the county had a separate zoning
18 administrator separate from this office. Ms.
19 Whittaker mentioned that was Jeff Dame.

20 In terms of this office, the current office,
21 the Planning Commission, we have no responsibility to
22 review that whatsoever.

23 MR. SILVERT: If you would, if you would like
24 my opinion on the application as it's written.

25 The question, what is requested says, "Adding

1 a 600 yard rifle range to the already pistol rifle
2 range that is there." They show on their proposed
3 plan a 50 yard range, a 300 yard range, a 600 yard
4 range. These would be the ranges that they are
5 requesting at this time. The plat shows multiple
6 distances here and the request is to add one to the
7 existing. Now, whether it existed legally or not, is
8 not the question. The question is: What is the
9 applicant asking for? They're asking for multiple
10 rifle range yardages here and all of which are shown
11 here.

12 If this board wanted to approve some and not
13 others, they would have to do so by a condition. If
14 the applicant wanted to remove the application in
15 total, then we have nothing to discuss tonight. If
16 they want to just remove a part of it, that would be a
17 discretion of this board. That would be my opinion as
18 to the application.

19 MR. DYSINGER: Mr. Chairman, I feel as though
20 we've got a conditional use permit in front of us.
21 Whatever has happened prior to this, not that I
22 disagree with Mr. Pedley, but whatever has happened is
23 not at issue here. If at some point they want to
24 challenge Mr. Mischel's noncompliance order, at that
25 time that would be appropriate.

1 My other concern is that the applicant has I
2 believe made a good faith attempt to provide this
3 board with evidence. If they would like to withdraw
4 their application, that's certainly within their
5 right, but I do understand that both sides are
6 incurring expense. They both have attorneys to do
7 this. If there's a way for us to handle this
8 application through a condition as counsel suggested,
9 I believe it's fair and reasonable for us to do that.
10 Understanding, of course, it is the applicant, they
11 can withdraw their application any time they want. It
12 may not be a horrible idea. There's expense involved
13 with this. That's my opinion. I would be interested
14 in knowing what the rest of the board thinks about
15 that.

16 MR. JONES: I would be willing to proceed, if
17 I understand Mr. Silvert's suggestion. That basically
18 we have re-applied for a gun range, pistol range of
19 50, a 100 and a 300. During the process you may say,
20 find those acceptable and we're going to ask that you
21 do so. You may decide that we're not prepared to
22 provide you with a 600 yard gun range and make the
23 condition that we not do the 600 yard gun range. That
24 would allow us and these gentlemen to present their
25 testimony to you tonight rather than crowd your docket

1 on another night.

2 CHAIRMAN: You're withdrawing the 600 foot?

3 MR. JONES: Only the 600 portion.

4 CHAIRMAN: You're proceeding. That's legal to
5 go ahead?

6 MR. SILVERT: I believe that's acceptable in
7 the way that they've worded their application.

8 MR. PEDLEY: Do we have to have a motion on
9 that agreement?

10 MR. SILVERT: I believe that would be the
11 discretion of the person that makes the motion as to
12 approval or disapproval of this request.

13 MR. PEDLEY: As a condition?

14 MR. SILVERT: Yes.

15 MR. DYSINGER: So for clarity sake so I know
16 what's going on. If we were to decide to allow them
17 to continue as they are, which still hopefully some
18 evidence to listen to this evening, we would just
19 basically be granting them their conditional use
20 permit with the condition that they not add a 600 yard
21 gun range?

22 MR. JONES: Until further action of the board.

23 MR. KIRTLEY: It wouldn't be on the table.
24 They would only be authorized to the maximum of a 300
25 yard range is my understanding. Not to withdraw it.

1 Is that correct?

2 CHAIRMAN: Being as he pulled the 600 foot
3 off, it would only be 300 yards.

4 MR. SILVERT: The reason you have to make it a
5 condition is because the 600 yards was specifically
6 requested in the application.

7 If you were to grant this, you grant the
8 application of the existing rifle and pistol range as
9 stated in the application, would be granted, but the
10 addition of the 600, there would be a condition that
11 the addition of the 600 would not be allowed because
12 that's on their site plan. You can proceed that way
13 if you believe from the evidence that you should.

14 CHAIRMAN: Do we legally need another motion
15 to proceed?

16 MR. SILVERT: No.

17 CHAIRMAN: We need to proceed.

18 MR. KIRTLEY: You have to have on the record a
19 formal request at this time that the applicant
20 withdraws that portion.

21 MS. MASON: He did.

22 MR. DYSINGER: He did. I disagree. If we put
23 a condition on there that they can't do it, they can't
24 do it whether they ask us to take it off or not.

25 MR. KIRTLEY: I understand that. At the

1 outset he's telling you he's withdrawing, which he has
2 every right to do, and then you can compound that with
3 the condition.

4 MR. DYSINGER: I believe he did do that. I'm
5 believe that's irrelevant, whether he asked us to or
6 not.

7 MR. KIRTLEY: That's all I'm trying to do.

8 MR. JONES: I assume you're ready for me to
9 proceed with some witnesses.

10 MR. SILVERT: Excuse me. I do want to make
11 sure that Mr. Kirtley had the opportunity to ask all
12 the questions that he wanted to.

13 MR. KIRTLEY: There's no since taking up her
14 time on those issues.

15 CHAIRMAN: Thank you.

16 MR. JONES: From this point I'll just kind of
17 operate as the MC and sit down. Mr. Jim Higginbotham
18 I think would like to give you some evidence from his
19 inspection of the range. He's actually inspected the
20 range for this purpose. I believe you have a letter
21 from a previous hearing regarding his opinions. I'll
22 let him take the microphone.

23 MR. SILVERT: Would you state your name,
24 please.

25 MR. HIGGINBOTHAM: Jim Higginbotham.

1 (MR. JIM HIGGINBOTHAM SWORN BY ATTORNEY.)

2 MR. HIGGINBOTHAM: My name is Jim
3 Higginbotham. I am the firearms instructor and also
4 survival instructor for the Grayson County Sheriff's
5 Office. I'm also a contract weapon marksman
6 specialist for the Kentucky National Guard. I oversee
7 the program for the Kentucky National Guard.

8 In that capacity, Mr. Whittaker when this
9 subject came up asked me to visit his range and tell
10 him if I saw anything that was unsafe about his range.

11 I did so. I drove by there. I had seen the
12 range several years before, but I haven't been there
13 in recent years. I looked over the range. I have
14 been to most of the ranges in the country, including
15 the FBI Academy. I recently returned from the NRA in
16 New Mexico. I overlooked the range and I did not see
17 anything unsafe about his operation. The 600 yard
18 range in question was not in operation at that time.
19 I didn't make any judgment really on that.

20 I have since seen the NRA's more detail study.
21 I certainly agree with the findings on that study. I
22 do not see anything at all on Rock Hill Range that I
23 would say stands out as being dangerous to the public.

24 I stand ready to answer any questions you
25 would have in my field. I don't have any sense of the

1 legal matter before you, but I do know a bit about
2 ranges.

3 CHAIRMAN: Any board member have any questions
4 of this gentleman?

5 MR. DYSINGER: Mr. Chairman, I would be
6 interested to know, you mentioned the NRA report. I
7 know on the report it references baffles being
8 installed on the shorter distance ranges. Different
9 ranges I've been on do have that sort of thing.

10 Assuming you can bring expert testimony, I'd
11 like to know what you would think of adding baffles to
12 those ranges.

13 MR. HIGGINBOTHAM: I think that in an urban
14 area it would be necessary. You may be familiar with
15 Louisville, Kentucky Police Department range has a
16 baffle range. The US Army has baffle ranges mostly in
17 Europe. They do not have too many over here.
18 Baffling is a concrete structure to prevent rounds
19 from leaving the range. In a rural area, considering
20 the rarity of rounds that leave the range and even
21 more rarely it hitting something, I would think that
22 would be an unnecessary precaution. No doubt it helps
23 to prevent the rare occurrence when rounds are fired
24 in an unsafe direction. Of course, anyone can fire a
25 firearm in an unsafe direction at any time anywhere.

1 MR. DYSINGER: Whether or not they're on the
2 range.

3 MR. HIGGINBOTHAM: Someone can cross the
4 yellow line on the road coming at you. I would think
5 that would be an unnecessary requirement in the rural
6 area.

7 MR. DYSINGER: Thank you, Mr. Chairman.

8 MR. PEDLEY: I have questions.

9 We've eliminated the 600 yard berm. Can you
10 tell me what the width of the 300 yard berm is?

11 MR. HIGGINBOTHAM: No, sir, not exactly. I
12 didn't walk it. I have seen it. It looks to be
13 possibly 25 meters maybe from memory from about a
14 month ago.

15 MR. DYSINGER: What is that in American?
16 Meters, how wide is that?

17 MR. HIGGINBOTHAM: Meters is 39 inches, I'm
18 sorry. It's just a little bit more than a yard.
19 Military folks think of meters.

20 MR. PEDLEY: Can you tell me what the height
21 is?

22 MR. HIGGINBOTHAM: I think it's approximately
23 12 feet.

24 MR. PEDLEY: According to the submitted plat
25 it's got a scale here of 200 feet per inch. It's

1 showing that 300 berm 60 feet wide.

2 MR. HIGGINBOTHAM: Could be.

3 MR. PEDLEY: It's pretty narrow.

4 MR. HIGGINBOTHAM: 25 meters would be 75 feet.

5 MR. PEDLEY: We've eliminated the 600 yards.

6 My question is: If you've got an inexperienced
7 shooter, they're not going to be stable with that gun.
8 I've watched a lot of them. I've taught my kids. An
9 inexperienced shooter when he pulls that trigger he
10 will pull one way. Most of the time he will pull up
11 because he anticipates that gun kick.

12 MR. HIGGINBOTHAM: Yes, sir.

13 MR. PEDLEY: Let's assume this is the gun
14 barrel. He pulls that up two inches. When that
15 travels 300 yards, how high will it be? If he pulls
16 to the right or left two inches, 300 yards, how far
17 would that be? Have you done it? Have you put it to
18 scale to say that berm needs to be 300 feet wide or 60
19 feet wide or what? I intended to do it before I got
20 here. I did not do it. Put it to scale. Find out.
21 If they pull that left, right or up two inches, when
22 it travels 300 feet, what will it be each way? You
23 need to do that to determine, in my opinion, the width
24 of that berm, the height of that berm.

25 The other thing on a 300 yard range, what

1 caliber guns are you shooting? If you're going to
2 miss that berm, it don't make any difference if it's a
3 600 yard range or if you're shooting the same caliber
4 gun because it will travel two miles. All you have to
5 do is miss that berm.

6 These are the questions that's very much a
7 concern to me. How massive is that berm? How wide,
8 how high. Again, with an inexperienced shooter,
9 especially -- I've watched my kids shoot a high power
10 rifle. When they pull that trigger, they go up
11 because they're anticipating the shock of that gun.
12 They'll flinch every time.

13 These are my concerns. Nothing from the
14 National Rifle Association addressed that. They did
15 not say how wide those berms are. They did not say
16 what they need to be. They just said they need to be
17 increased.

18 This plat is a part of this application. It's
19 to scale by HRG. You're showing a berm 60 feet wide.
20 That's ridiculous. If you're shooting a target in the
21 middle and you pull two inches, you'll miss that berm
22 because you've only have 30 feet. If you're looking
23 at a 600 yard range, which we're exempting that,
24 there's no telling how far up or down.

25 MR. HIGGINBOTHAM: I can answer your question.

1 It depends on the range you're talking about. These
2 are simple matters of geometry. It's called minutes
3 of angle. If you miss by two feet at 150 meters, then
4 you will miss by three feet at 300. Two feet is
5 pretty far.

6 MR. PEDLEY: Based on how much you move -- how
7 much are you going to move that barrel? When you move
8 that gun barrel and pull it to a different angle, when
9 it travels that far, it gets wider and wider and
10 wider.

11 MR. HIGGINBOTHAM: Yes, sir, that's exactly
12 what I'm speaking of.

13 MR. PEDLEY: The other thing is the topo map
14 shows you're firing area above -- it's 10 feet higher,
15 you're standing 10 feet higher than that point. At
16 600 you're 27 feet of that point.

17 MR. HIGGINBOTHAM: Yes, sir.

18 MR. PEDLEY: Do you think that's safe?

19 MR. HIGGINBOTHAM: Actually that's safer.
20 Your declination of depression would be downward.

21 MR. PEDLEY: Shooting down you think is safer?

22 MR. HIGGINBOTHAM: Yes, sir.

23 MR. PEDLEY: Do you think it's --

24 MR. HIGGINBOTHAM: It's marginally so. We're
25 not talking about a big difference there.

1 MR. PEDLEY: So a lot of safety, lot of
2 concerns here that to me has not been answered. The
3 national Rifle Association didn't answer it for me.
4 We haven't got to this point yet of supervised
5 shooting, an expert there to supervise shooting.
6 Controlled during non-shooting hours. You can't fence
7 that whole area. You can't close the door. What
8 keeps people from just pulling up there and saying,
9 I'm going to shoot. Do you have any control,
10 supervision during hours?

11 The Rifle Association, they recommended that.
12 I haven't heard what you intend to do.

13 MR. HIGGINBOTHAM: Sir, I'm not associated
14 with the range in any way. I was just asked to look
15 over the property and see if the berms were adequate.
16 They are very similar to military ranges. Our berm
17 where I shoot on our training site is 160 foot wide,
18 but I shoot 40 people across the firing line at the
19 same time. That's maybe not comparable because I have
20 so many people shooting. I do not see anything wrong
21 with the physical layout of his range. I don't have
22 anything to say about --

23 MR. PEDLEY: But you haven't answered the
24 question, the width of the berm as it is today and
25 what you recommend it be about?

1 MR. HIGGINBOTHAM: I can only say I think it's
2 adequate. Would I like to have a berm three miles
3 wide and three miles high? Yes, sir, I would.

4 MR. PEDLEY: How wide is the berm?

5 MR. HIGGINBOTHAM: I have not measured it.

6 MR. PEDLEY: Then how do you draw that
7 conclusion that it's adequate?

8 MR. HIGGINBOTHAM: I draw that conclusion from
9 years of experience of shooting and watching new
10 shooters.

11 MR. PEDLEY: But you can't tell me how wide it
12 is. What basis do you put that on? You haven't told
13 me how wide it is. What's the width of the berm?

14 MR. HIGGINBOTHAM: I did not measure it.

15 MR. PEDLEY: That's all I have. I'm done.

16 CHAIRMAN: Any other questions from the board
17 of the applicant?

18 MS. MASON: I have a question. Maybe I'm
19 showing my stupidity.

20 On these berms, there are targets up there?
21 Is there one target, several targets?

22 MR. HIGGINBOTHAM: There are usually targets
23 -- depending on how many shooters you have. There
24 will be a target in line with that shooting position.
25 The target may be at the berm or it may be somewhere

1 short of the berm.

2 MR. DYSINGER: In this case, can you guys
3 answer how many targets are at any one time?

4 MR. JONES: Three.

5 MR. SILVERT: State your name, please.

6 MR. FULKERSON: Chuck Fulkerson.

7 (MR. CHUCK FULKERSON SWORN BY ATTORNEY.)

8 MR. DYSINGER: Sir, how many targets are on
9 your berm at any given time, the 300?

10 MR. FULKERSON: The 300 I believe actually has
11 an item the size of a child's swing set. I think it
12 is a child's swingset. It's what they use to suspend.

13 The berm is here and the level ground is here.
14 The berm goes up. The berm reaches out. The target
15 is actually set in front of it.

16 Any individual shooting at this target misses
17 this target, there's so much space, you know, to the
18 right, to the left, and to the height above it that if
19 they miss it they hit the berm.

20 One of your questions was if he pulls to the
21 right or to the left. If you take this piece of paper
22 and aim a rifle, regardless of caliber, at this berm.
23 We're calling this piece of paper the berm. Down
24 range where the person actually shoots from, you can
25 limit that person's ability to ever go too far to the

1 right or too far to the left.

2 In the case of this 300 yard berm, the pistol
3 range is beside it. It would be impossible to shoot
4 to the left-hand side of this 300 yard berm because
5 you're going to hit the side of the pistol berm
6 before -- there's no space. There's no plain of
7 sight.

8 The 300 yard berm was engineered to develop in
9 behind this. In the NRA report, his suggestion was to
10 have a small berm to the right. Basically -- I was
11 there with him when he did his inspection. He said, I
12 have no problem with you up to the 300 berm. I do
13 have some issues with the 600 yard berm that we could
14 work out later, but right now I'm not going to sign
15 off on it. As far as the 300 yard berm, I'm perfectly
16 happy with what you have.

17 Your questions on if a person rises. Not that
18 it's not a good question and I don't mean to
19 disrespect you in any way, but that would depend on
20 the caliber. That would depend on what the scope was
21 zeroed at. At what distance, if that raised.

22 A lot of times when you get into your larger
23 calibers, depending on a lot, it's going to run out of
24 velocity before it ever gets there. Does that make
25 any sense? The bullet is going to start to drop.

1 MR. JONES: Because it's heavy.

2 MR. FULKERSON: Because it's heavy.

3 MR. DYSINGER: So how many targets do you
4 have?

5 MR. FULKERSON: The most I've ever seen would
6 be three. You've got to understand the guys that are
7 shooting at 300 yards, they're not shooting at
8 man-size targets. They're shooting for accuracy to be
9 able to hunt a sporting rifle. Generally it's, what's
10 the number of that? B12. B12 target. I'm guessing
11 two and a half feet by two and a half feet.

12 MR. NOFFSINGER: I have a question.

13 We're speaking of one berm, and that's a berm
14 that's out 300 yards, 310 yards, somewhere around
15 there. You have a 100, 200 and a 300 yard range. I
16 guess it's the same berm, but the targets are set up
17 at 100 yards, 200 yards and 300 yards, and the same
18 berm would be catching those targets.

19 MR. FULKERSON: That's exactly true. They're
20 staggered. The 300 yards there are built in addition
21 for safety.

22 We constantly add to that whether we need it
23 or not. Anything we ever have to add material to that
24 berm we just do it.

25 MR. NOFFSINGER: Do you know the height and

1 width of that berm?

2 MR. FULKERSON: The drawing is pretty
3 adequate. I do not know if it's on here, but when I
4 was there with him we took pictures. That berm is
5 significantly taller than this ceiling.

6 MR. NOFFSINGER: Twelve foot, but you don't
7 know?

8 MR. FULKERSON: I would guess this berm is
9 probably 14, 15, maybe 16 foot. I would say that it
10 is, I would guess that berm is between 75 and 100 feet
11 wide. It's a massive pile of dirt. Massive.

12 Be happy to get that information. If there's
13 a ballistics table that ever said that if someone
14 shot, you know what I'm saying, and their muzzle rolls
15 and something, if we thought there was ability for
16 something to go over it, we would be sure to add to
17 it. No one wants anyone to get hurt.

18 MR. TAYLOR: My only question I had is for Mr.
19 Higginbotham, I guess.

20 I don't know if there is a published
21 international standard of set numbers, but since the
22 numbers aren't already there and you are the expert,
23 with your experience. You were just going on to say
24 that regardless of what it does measure or whatever
25 the international standard is, that it is safe and

1 that the size of the berm is adequate?

2 MR. HIGGINBOTHAM: Yes, sir. As compared to
3 with any range I've ever been on.

4 CHAIRMAN: Anybody else?

5 MR. DYSINGER: I've got a question of Staff.

6 We've got this NRA report with photographs in
7 it, but their xeroxed copies. Do we have the
8 original?

9 MR. JONES: That's my fault. The original
10 came today just after I left to come to Owensboro. It
11 has the original pictures with it.

12 CHAIRMAN: The pictures we got are useless.

13 MR. JONES: I agree. I agree. I got a faxed
14 copy from the NRA. The original came today just as I
15 left.

16 MR. DYSINGER: So, no, we don't.

17 MR. JONES: No.

18 CHAIRMAN: Any other questions from the board
19 of the applicants right now?

20 (NO RESPONSE)

21 MR. JONES: I feel like I need to probably ask
22 him to put a little more of his qualifications into
23 the record just in case this isn't the final stopping
24 point.

25 CHAIRMAN: So do.

1 MR. JONES: Jim, tell us about your
2 qualifications to give an expert opinion on this gun
3 range.

4 MR. HIGGINBOTHAM: I am a graduate of the FBI
5 Academy Firearms Instructor School. Also the NRA Law
6 Enforcement Firearm Instructor Development School.
7 Also the American Pistol Institute, which is now known
8 as Gunsite, which I was an instructor back in the
9 1980's. I don't know how much more we want to go on.

10 MR. JONES: Tell me how many years you've been
11 in and around gun ranges and served as an instructor
12 in a gun range.

13 MR. HIGGINBOTHAM: I've been an instructor for
14 around 27 years.

15 MR. JONES: How many different gun ranges have
16 you either shot at taught at or seen?

17 MR. HIGGINBOTHAM: That, sir, I probably
18 couldn't enumerate.

19 MR. JONES: More than 100?

20 MR. HIGGINBOTHAM: Certainly more than 100.

21 MR. JONES: When you eyeball a berm down
22 range, are you able to know from your past experience
23 whether that berm matches the other berms you've seen
24 in the past several years ago?

25 MR. HIGGINBOTHAM: I would think so.

1 MR. JONES: When you eyeballed the berm on
2 Rock Hill Gun Range, are you satisfied with that
3 range?

4 MR. HIGGINBOTHAM: I am satisfied with the
5 berms.

6 MR. JONES: Does the fact that the NRA is
7 satisfied with that berm gives you further
8 satisfaction?

9 MR. HIGGINBOTHAM: It does.

10 MR. JONES: Have you reviewed the NRA report?

11 MR. HIGGINBOTHAM: I have. Just briefly
12 tonight.

13 MR. JONES: You're comfortable with the type
14 of inspection that the NRA performed?

15 MR. HIGGINBOTHAM: Certainly. That's their
16 business and they do it well.

17 MR. JONES: That's all I have.

18 CHAIRMAN: Any other questions from the board
19 at this time?

20 (NO RESPONSE)

21 CHAIRMAN: Mr. Kirtley.

22 MR. KIRTLEY: Would the board please ask Mr.
23 Higginbotham what his findings were with the soil
24 composition of the range itself?

25 CHAIRMAN: Would you answer that, please, sir.

1 MR. HIGGINBOTHAM: I did not analyze the soil.
2 However, I looked, particularly looking for large
3 rocks or anything like that.

4 Recently, and I should have brought it, when I
5 was on NRA range in New Mexico, I noticed that it was
6 a very similar range. The range that actually hold
7 national ranges on. It has about the same surface as
8 Rock Hill Gun Range. There are small rocks on it.

9 Typically bullets hit rocks. Sometimes
10 they'll break the rock. Sometimes they will glance
11 off a little bit, but it always damages the bullet.

12 MR. KIRTLEY: But did you walk the grounds?

13 MR. HIGGINBOTHAM: I did walk the ground, yes.
14 When you said, did I analyze the soil, I don't want to
15 say anything that I didn't do, but I did look for
16 rocks. There are some small rocks on there. We have
17 rocks on our military range.

18 MR. KIRTLEY: As being an expert in NRA, does
19 NRA recommend soil covered free of rocks and debris
20 like that to avoid ricochet?

21 CHAIRMAN: Answer that, please.

22 MR. HIGGINBOTHAM: That I do not know. I know
23 that they don't have it on their range.

24 MR. KIRTLEY: Can you ask him if he's ever
25 read the range book put out by the NRA? I have.

1 MR. HIGGINBOTHAM: Many years ago.

2 CHAIRMAN: Any other questions at this time of
3 this gentleman?

4 MR. NOFFSINGER: I have a question.

5 In NRA's report it looks like they're
6 suggesting that even on the 100, 200 and 300 yard
7 firing points that they add the side berm, which I
8 would say would be the norm, and then also the
9 overhead baffles.

10 You might have answered this earlier, but it
11 would seem to me that with that report and your
12 recommending, and I think I'm hearing you say that
13 this report be followed, is that a recommendation that
14 you have, that those baffles be added to the shed, the
15 shooter shed?

16 MR. HIGGINBOTHAM: No. We discussed baffles
17 here. Of course, I'm familiar with baffle ranges.

18 I don't necessarily think that's required for
19 safety on this range. Side berms add a measure of
20 safety for rounds that go to the side. For a rifle
21 range with three firing positions, I don't personally
22 feel that it will add a huge measure of safety. It's
23 another level of safety.

24 MR. NOFFSINGER: I'm not trying to put words
25 in your mouth. I'm just trying to understand.

1 Do you say that because there would be a
2 trained supervisor on site at all times or are you
3 saying that -- because when I look at this in
4 conclusion it clearly states that, "it may not be
5 reasonable to adopt all of these suggestion. For
6 example, I suggested the incorporation of overhead
7 baffles at the 100, 200 and 300 yard rifle range
8 firing points and a side berm. If the Whittakers
9 decide to have trained and closer range supervision,
10 this feature may not be necessary."

11 So it sounds like he's saying one or the
12 other.

13 MR. HIGGINBOTHAM: Right.

14 MR. NOFFSINGER: Are you disagreeing with that
15 report?

16 MR. HIGGINBOTHAM: No, I don't necessarily
17 disagree with that. I'm sure that the suggestions he
18 makes, each one adds a level of safety. It wouldn't
19 be up to me. We do not have side berms on all of our
20 ranges at the military. We do on some. I wouldn't
21 say that it would be necessary. The side berm will
22 protect you against an accidental discharge, only
23 those directed at the berm. You can have an
24 accidental discharge anywhere. You can have an
25 accidental discharge getting out of your car or at

1 your home.

2 Bermage is going to decrease the odds of that
3 bullet escaping the property in an odd instance, side
4 berm. I'm sure that's why the NRA feels that it might
5 be beneficial. Baffles are certainly for accidental
6 discharge. No one shoots a rifle into the air.

7 MR. NOFFSINGER: What about a red flag?

8 I think at some point we're going to have to,
9 Mr. Chairman, hear from the other side and then find
10 out what you're proposing. At this point I don't know
11 if the board is clear. I can tell you I'm not clear
12 on what the applicant is proposing to do. At some
13 point I'd like to hear your proposal.

14 MR. JONES: We just got the report ourselves.
15 I've talked to Darrel and Becky Whittaker. They have
16 no problem with the idea of a flag. They have no
17 problem with the signs. I think he made reference to
18 signs. No one ever travels that way, but in the event
19 somebody were to travel that way, there's signs
20 posting outside this is a gun range. Their preference
21 is to follow the NRA condition and to have a choice
22 between close supervision. They don't believe that
23 this is a range that requires baffles for safety
24 because of the reasons that Mr. Higginbotham has
25 expressed. Would like the choice between side berm

1 and the close supervision and will probably work
2 toward the side berm in the future.

3 MR. HIGGINBOTHAM: If I might say something.
4 There's two areas of concern here. One is the
5 physical property itself, which is what I'm
6 addressing. I have avoided talking about the
7 administrative controls.

8 Administrative controls are a very important
9 part of range safety, but it's not my place to speak
10 on them here. I don't have any problem with the NRA's
11 recommendation.

12 CHAIRMAN: I think we've pretty well got your
13 information.

14 MR. HIGGINBOTHAM: Thank you, sir.

15 MS. MASON: Going back to what the Whittakers
16 are saying that they will agree to do. I know the
17 side berm they said, but what about the overhead
18 baffles? Have you all agreed that you're going to do
19 that, if it's approved this evening?

20 MR. JONES: Our preference is to go with the
21 close supervision instead of the overhead baffle.

22 MS. MASON: There hasn't been close
23 supervision in the past?

24 MR. JONES: I believe there has been close
25 supervision in the past.

1 MS. MASON: When he inspected it, it wasn't
2 even in operation, correct?

3 MR. JONES: Right.

4 MR. FULKERSON: Chuck Fulkerson.

5 He said the overhead baffles were, in military
6 ranges that you've been on, constructed concrete, the
7 NRA instructor said two by fours. He said it doesn't
8 matter.

9 It's just something to -- a bullet is
10 traveling at 2300 feet per second. It hits the side
11 of the berm. It slows down. It deflects upward at a
12 whole lot slower velocity. It's just something to
13 stop it. It's just something to keep it from going
14 over there falling out that window and hitting someone
15 in the head with a rock, small rock. That's the
16 purpose of a baffle. I didn't want there to be -- I
17 wanted there to be a distinction between if there was
18 an event that this board requested there be baffles
19 that they didn't expect orange concrete wall with
20 overhangs. We'd be happy for Mr. Dison that wrote the
21 report to add that. I was there. I was the one that
22 walked him around the range. That was his suggestion.

23 CHAIRMAN: Thank you.

24 Do you have any other experts to present at
25 this time?

1 MR. JONES: Yes, sir. We would like to
2 present the Daviess County Sheriff, Keith Cain.

3 I believe his letter has been provided to
4 you. Do I need to make it a part of the record or is
5 it already a part of the record?

6 MR. NOFFSINGER: It's in the application. I'm
7 not sure if the board members have a copy of it
8 because we've been doing this, what, since February.
9 I'm not sure.

10 CHAIRMAN: State your name, please.

11 MR. CAIN: My name is Keith Cain. I'm the
12 sheriff of Daviess County.

13 (MR. KEITH CAIN SWORN BY ATTORNEY.)

14 SHERIFF CAIN: I have previously submitted a
15 letter to the commission, which I understand you may
16 not have. I can paraphrase that for you very quickly
17 if you'd like.

18 It primarily deals with three particular
19 issues.

20 First and probably foremost I'm well familiar
21 with the facility that's in question. Mainly because
22 I've utilized it countless times over the 13 years
23 that it's been in existence myself. I will say that I
24 certainly am not an engineer. I have not measured the
25 berms. I have not tested the soil or anything of that

1 nature.

2 I do believe based on my extensive personal
3 experience that I believe I can recognize a safe place
4 to shoot when I see one. I believe this range is.

5 Obviously if I didn't personally think that
6 this range was safe, I would not shoot there, nor
7 would I comfortably, be comfortable knowing that
8 numerous officers from not only my agency, but other
9 law enforcement agencies in the tri-state region
10 utilize extensively themselves for both off and
11 on-duty practice.

12 Regarding the latter point, I think it's
13 important that the commission understand that my
14 department does not have it's own range. While the
15 Owensboro Police Department's facility is available to
16 the sheriff's office, with sufficient prior
17 coordination for formal, scheduled training, it is not
18 available for off-duty deputies to conduct individual
19 practice. Most of the officers from our department,
20 as well as other area law enforcement agencies who
21 seek opportunities to maintain and enhance their
22 personal firearm proficiency utilize the range that is
23 in question on Highway 815 because it is the only
24 place that we have available for us for that reason.

25 Second, the availability of a publicly

1 accessible range provides a safer alternative for
2 people looking for a place to shoot than was the case
3 before this range opened 13 years ago. As our county
4 becomes more developed, there are fewer and fewer safe
5 settings where it's possible to obtain permission to
6 shoot. While there are members-only clubs in our area
7 that accommodate some of those who engage in regular
8 shooting activities, they do not address the needs of
9 those who require only additional access to a range or
10 who can go shooting only at times that may conflict
11 with numerous competitive events conducted at those
12 facilities on weekends, holidays, etcetera.

13 Should Whittaker's range become no longer
14 available to the public, it is reasonable to expect
15 that many people who would otherwise limit their
16 shooting activities to a structured, supervised
17 facility built and maintained for that purpose, will
18 probably go elsewhere. While the overwhelming
19 majority of them, I believe, would seek the safest
20 possible place to shoot, invariably some will have
21 available to them only settings that are much less
22 than ideal. Even the best of which likely would be
23 somewhat makeshift. Experience suggests that when
24 this happens, safety concerns and complaints from
25 neighbors will increase as landowners become aware of

1 increased shooting activities on their own and
2 adjoining properties.

3 Third, as our society becomes more urbanized
4 and fewer people have the opportunity to participate
5 in safe shooting activities such as hunting and target
6 shooting, I believe that our hunting and outdoor
7 heritage becomes increasingly at risk of being lost to
8 future generations.

9 I fully understand that while not everyone
10 supports hunting or shooting activities, my personal
11 views have been reinforced by the fact that among the
12 countless young people whom I've watch grow up in
13 homes that value that heritage, I've yet to see even
14 one get into serious trouble later in life. Versely I
15 have seen numerous become very productive members of
16 our community.

17 Learning as a young person to handle firearms
18 responsibly, appreciate wildlife, and respect the
19 rights of others seems to go hand-in-hand with
20 developing sound values regarding other issues as
21 well. I am absolutely convinced by what I've seen
22 over the years and working at your sheriff's
23 department that having a facility available where
24 parents can teach their children how to safely handle
25 firearms reduces the likelihood of accidents or misuse

1 later on. However, teaching young people to respect
2 firearms without access to a safe place to shoot such
3 as Whittakers makes that task significantly more
4 challenging for most people and indeed impossible for
5 many.

6 It's for all of these reasons that I appear
7 before you today, to tell you my thoughts in terms of
8 keeping the range at Whittakers open. I appreciate
9 very much the opportunity to do so.

10 CHAIRMAN: Does anyone have any questions of
11 Sheriff Cain?

12 (NO RESPONSE)

13 MR. JONES: I'd just like to ask him a couple
14 of questions.

15 Sheriff, I asked you at one point to do an
16 open records check on issues of safety in the past 13
17 years. I think there's been some allegations that
18 somebody's cow has been shot, and I think even a
19 report that they called the sheriff about it.

20 I would like you to respond to that and tell
21 them what you did in response to my request for an
22 open record on that issue.

23 SHERIFF CAIN: Yes, sir, I did receive a
24 formal written request under open records from Mr.
25 Jones to conduct a research of our CAD's. CAD is the

1 computer-aided dispatch, which is all the incoming
2 calls to the 911 emergency communication system which
3 is housed at the courthouse and under my direction, or
4 any possible reportings of people being shot, cows
5 being shot, any type of mishap relating to the issue
6 that is in front of you today.

7 I directed Paul Nave, the director of our 911
8 communications, to conduct that search and he did so.
9 Our CAD reports go back to May of 1998. So we
10 researched by computer all the way back to 1998. We
11 did so in a number of different ways.

12 We first pulled up a mile radius of the Rock
13 Hill Gun Range, north, south, east and west, to show
14 if any such report had been made by any persons. We
15 could find none.

16 We also had the computer to generate a map of
17 that location and circle that mile radius. We found
18 only nine animal-related incidents with relations to a
19 cow.

20 We also did keyword searches in the computer
21 such as cow, cattle, shooting, accident, things of
22 that nature.

23 Finally we also researched under the names of
24 both Frank and Linda Hayden to see if they had
25 themselves called in. Virtually all of these searches

1 resulted in a negative response from the computer,
2 indicating to me that no such call was ever made to
3 the Daviess County Sheriff's Emergency Dispatch.

4 MR. JONES: There had been no calls to the
5 sheriff's office because of any safety issue with
6 regards to this range in the last 13 years?

7 SHERIFF CAIN: There have been no calls made
8 to the sheriff's office that I can document since May
9 of 1998, which is as far back as our CAD goes.

10 Now, in the interest of total disclosure and
11 total honesty, a call could of that nature could have
12 been made to the Kentucky State Police, if it were
13 made on a call that was non-911. That would not be
14 reflected in my report, but if it was a 911 call, it
15 would have come to this dispatch center or if it was
16 made to the Daviess County Sheriff's Office on the
17 non-emergency line, it would have come into our
18 department.

19 MR. JONES: Thank you.

20 MR. NOFFSINGER: I have a question.

21 Do you have a report, do you have something to
22 submit into the record or are we going on your
23 testimony here that what you've said are the results
24 of your study, report?

25 SHERIFF CAIN: I submitted a written report

1 pursuant to Mr. Jones' open records. He has that I'm
2 assuming.

3 MR. JONES: I do and I will make it a part of
4 the record.

5 MR. NOFFSINGER: Thank you.

6 CHAIRMAN: Any other questions from the board?

7 (NO RESPONSE)

8 CHAIRMAN: Mr. Kirtley, do you have anything
9 you want to add?

10 MR. KIRTLEY: Just one.

11 Can you ask the Sheriff how frequently he's
12 been out to the range in the last 13 years?

13 CHAIRMAN: Can you answer that?

14 SHERIFF CAIN: Perhaps five or six times a
15 year. Maybe less than that, Bob. It wouldn't be any
16 more than that.

17 MR. DYSINGER: Did you say per year?

18 SHERIFF CAIN: Per year. It would average out
19 probably that. That's between my deputies and then
20 myself or with other persons.

21 MR. KIRTLEY: Could he be asked: On those
22 each occasions, did Whittaker provide trained people
23 to monitor the range or was he and his men free to
24 shoot?

25 SHERIFF CAIN: My men, of course, our men

1 always have safety range officers.

2 MR. KIRTLEY: Provided by the sheriff's
3 department?

4 SHERIFF CAIN: That's correct, yes, sir.

5 MR. KIRTLEY: So no Whittaker personnel was
6 there for you?

7 SHERIFF CAIN: No. Not while I was there, no,
8 sir.

9 CHAIRMAN: Any other questions from the board?

10 (NO RESPONSE)

11 MR. JONES: Sheriff, at the time that your
12 department uses, do they close the range so that your
13 department has exclusive use of the range at that
14 time?

15 SHERIFF CAIN: That's correct, sir.

16 MR. JONES: And you're expected to supply the
17 safety person?

18 SHERIFF CAIN: Whether we're expected, we do
19 so, yes, sir.

20 CHAIRMAN: Anything else to add?

21 (NO RESPONSE)

22 MR. JONES: Our next witness is Mr. Bob Purdy.

23 Bob, if you would go ahead and give your
24 qualifications for the record.

25 MR. SILVERT: State your name.

1 MR. PURDY: Bob Purdy.

2 (MR. BOB PURDY SWORN BY ATTORNEY.)

3 MR. PURDY: I was a drill sergeant in the
4 United States Army. Been handling firearms my entire
5 life.

6 Of course, I retired from the Owensboro Police
7 Department. I served 21 years. Five of those years I
8 was the range officer.

9 I was trained through the Department of
10 Criminal Justice Training. I was one of the officers
11 selected, one firearm instructor selected to create a
12 state program for transition from a revolver to a
13 semi-automatic pistol.

14 Since I retired, I am presently at the
15 Owensboro Community College where I teach firearm.
16 Also I teach firearm classes. The Whittakers have
17 been very kind to allow us to use their facility.

18 I also teach the carry and conceal training
19 classes required by the state for persons who apply to
20 carry a concealed license. Have trained over 900
21 people on that.

22 Basically what I have to add, I'm trying to
23 condense things. I think you've received two letters
24 from me. I think they're part of it.

25 Safety is above all. Let me assure you that

1 those of us who have spoken, this does matter to us
2 also. I appreciate your concern. I think there's an
3 issue about that. This range was operating. I don't
4 know the legalities of it, but it did operate for 13
5 years. I've been out there. Anticipate Mr. Kirtley's
6 question. I've been out there probably between 20 and
7 30 times a year since it's been in operation, either
8 conducting a class or as a shooter. I shoot quite a
9 bit myself.

10 During that period of time, there have been no
11 injuries. There have been no incidents in those 13
12 years. I think that speaks to the safety of the
13 issue. Now, whether it was approved incorrectly or
14 something, I can't address. I don't know.

15 Speaking of the times and I hope you can
16 appreciate some of the people I have trained there
17 have had, it's probably the first gun they've had in
18 their hands. Which, of course, that's my job. The
19 direct influence. This is what I do.

20 I'm quite sure some of them skills suffered
21 very badly. There's never been a time when a bullet
22 went over the back of the berm. Never been a time yet
23 even though some of them, I mean they miss the whole
24 target. Those are facts. These are things that those
25 of us who use that are very concerned about, the

1 safety of it. If it were not a safe range, I wouldn't
2 want to be on it. I wouldn't want to be on it at all.

3 I also have trained the explorer scouts. I
4 mentioned the class. I've taken a number of people
5 out there as well as -- at least 900 take training
6 from me for conceal carry permit. I guess I stand for
7 questions.

8 CHAIRMAN: Any questions from the board?

9 (NO RESPONSE)

10 CHAIRMAN: Staff have anything?

11 MR. NOFFSINGER: No, sir.

12 CHAIRMAN: Mr. Kirtley.

13 MR. KIRTLEY: Can the board ask Bob if the
14 firing positions, is there what is known as, I
15 believe, a monkey's eyebrow present?

16 MR. PURDY: Are you asking what that means,
17 I've never heard of that term.

18 MR. KIRTLEY: Bob Bowers told me to ask. It's
19 the shed to keep it from over-shooting the range. Do
20 you shoot under a covered --

21 MR. PURDY: There are covered positions, yes,
22 sir.

23 MR. KIRTLEY: In this range out there?

24 MR. PURDY: Yes, sir.

25 MR. KIRTLEY: And the purpose of that is to

1 keep from over-shooting?

2 MR. PURDY: My thoughts the purpose is if it
3 started to rain.

4 MR. KIRTLEY: In other words, they would not
5 prevent a person from over-shooting the target
6 entirely?

7 MR. PURDY: It is theoretically possible that
8 someone could over-shoot the berm. It is
9 theoretically possible.

10 MR. KIRTLEY: Do most ranges have some
11 limitations that they shoot from to permit that as a
12 safety?

13 MR. PURDY: I've never seen one that wasn't.
14 Obviously they're handling firearms is something that
15 proposes a risk and a hazard. I've never seen a range
16 that we could say absolutely that nothing could happen
17 on.

18 The question is, are they as safe as can be
19 humanly made possible? I'm unaware of any condition
20 that could prevent anything. Someone could have an
21 accidental discharge walking up to the range.

22 The handling of firearms are meant to be for
23 people responsible enough to treat them safely.

24 MR. KIRTLEY: My question is: This is a
25 safety feature that ranges, some ranges, NRA ranges in

1 their range book say to keep a person from
2 over-shooting a target, it prevents you, unless you're
3 going to blow your head off shooting at the rafters,
4 it limits the elevation of a shooter. You're not
5 familiar with that?

6 MR. PURDY: No. That's a new expression to
7 me. I've never heard of that.

8 MR. NOFFSINGER: Mr. Kirtley, someone correct
9 me. I may be wrong. I thought that the baffles were
10 what you're referring to as the monkey's eyebrow.

11 MR. KIRTLEY: No.

12 MR. JONES: I thought so too.

13 MR. KIRTLEY: I'm talking about at the
14 shooting point of origin of the shot. Your gun cannot
15 raise so far up because of this obstruction. That
16 keeps over-elevating from over-elevating the shot.

17 MR. NOFFSINGER: Then what's a baffle?

18 MR. KIRTLEY: He put the baffles in. I assume
19 is at the berm, a concrete overhang or a wood overhang
20 that would come back and catch it when it bounces off.

21 MR. NOFFSINGER: It's at the berm.

22 MS. MASON: The baffle is at the berm. That's
23 the way he explained it earlier.

24 CHAIRMAN: Any other questions?

25 MR. KIRTLEY: No, that's it.

1 CHAIRMAN: Thank you.

2 MR. NOFFSINGER: I don't think we know. I
3 don't know. I would like for somebody to explain that
4 to me.

5 MS. MASON: Did he say earlier that the baffle
6 was at the berm?

7 MR. JONES: I think he did say that. We're
8 discussing that. We think you're right. The baffles
9 are actually at the firing point that the NRA is
10 talking about to do this monkey eyebrow thing.

11 CHAIRMAN: Anything else you want to add at
12 this time?

13 MR. JONES: Dr. Randy Cox is here. He would
14 like to speak at this point if that's all right, Mr.
15 Chairman.

16 MR. NOFFSINGER: Mr. Chairman, we do have in
17 this NRA report that the baffles are at the firing
18 position. It's on Page 7 of the report. Firing
19 points. So they're not at -- it says, "As range
20 improvements are done, overhead baffles from the
21 firing points can easily and fairly economically be
22 installed."

23 MS. MASON: That's what I was asking earlier.
24 Are you all willing to put those in if this were
25 approved this evening?

1 MR. JONES: I don't think that we would like
2 to put in concrete type baffles that they're talking
3 about, but to the degree that we needed to build some
4 kind of wood structure that would basically give a
5 window in which the weapon would be pointing.

6 MR. DYSINGER: From the point of view of the
7 firing position, it makes it look solid. I mean
8 they're not. There are several feet between them, but
9 when you're at the firing position you can't fire out.
10 I've never heard of a monkey's eyebrow either.

11 MR. KIRTLEY: I apologize.

12 MR. DYSINGER: My understanding of baffles is
13 they're not even a solid ceiling. They're posts that
14 are several feet away.

15 MR. JONES: I think that's something we could
16 work with the Staff on in determining the right type
17 of use for the baffle.

18 CHAIRMAN: State your name, please.

19 DR. COX: My name is Randy Cox.

20 (DR. RANDY COX SWORN BY ATTORNEY.)

21 DR. COX: All I do is use the range. I may go
22 out there 30, 40 times a year. Usually on weekends.

23 Now, the way the range is set up is if you
24 fire from the proper position where you're suppose to,
25 either a pistol or a rifle, you're set back in this

1 building. There is an overhang over you that
2 stretches out allegedly to keep the weather out, but
3 it would function as I think this money's eyebrow.
4 You're not going to be able to go very high. There's
5 two long range rifle shooting positions where there is
6 a window that you shoot out of. I mean just a real
7 narrow window. So there is limitations on how high
8 you can go in one direction. I found it to be very
9 safe. You know, I taught my son how to shoot out
10 there. It's a good place for families. There's
11 always been somebody there. I swear to God. I had a
12 round once I couldn't get it to work right and before
13 I realized it there was somebody there to try to help
14 me fix that. Darrel always has somebody there. You
15 may not see them all the time, but they're there.
16 They're milling around constantly.

17 CHAIRMAN: Thank you.

18 Any questions from the board at this time?

19 (NO RESPONSE)

20 CHAIRMAN: Mr. Kirtley.

21 MR. KIRTLEY: No questions.

22 CHAIRMAN: Next expert, please.

23 MR. JONES: Dr. Chuck Higdon.

24 DR. HIGDON: My name is Chester Higdon. I'm a
25 neurologist in Evansville.

1 (DR. CHESTER HIGDON SWORN BY ATTORNEY.)

2 DR. HIGDON: Obviously, I could shoot at
3 several other ranges in Evansville. Red Brush, which
4 is well established by Alcoa and subsidized or the
5 Daniel Boone Club.

6 At those ranges no one is there on a regular
7 basis as a range officer. You're assumed to be
8 intelligent enough to use guns. That's not always the
9 case.

10 The same when you give someone a driver's
11 license. Obviously they're not smart enough to not
12 drink and not go over 90 miles an hour.

13 At Darrel's range, I enjoy going there more
14 than anyplace else. There is always someone there
15 that does supervise it. The range officers at the
16 other places in Evansville have titles, but you can go
17 out there any time you want and shoot by yourself and
18 there's no one else there.

19 In terms of all of the safety regulations in
20 the world, when people go out hunting, or go down to
21 the river, or the stripper pits, or anywhere else and
22 go shooting, there are no safety regulations
23 whatsoever.

24 The last real injury in Evansville I remember
25 were two guys shooting their SKS rifle in the backyard

1 and a girl a mile away got hit.

2 So I think having a structured situation where
3 people can shoot safely, and Darrel has that. It's
4 very user friendly for people to become more
5 proficient than shooting rather than dumber and dumber
6 or going someplace where they're not equipped or where
7 they shouldn't be. I think it's the worst thing in
8 the world.

9 The people that go out Saturday night
10 shooting, they don't go to the range.

11 These are professional people that want to go
12 out there and hold their skills doing what they enjoy
13 and love doing. Darrel has provided that safely for a
14 number of years. I go out there weekly and every
15 chance I can. I enjoy it. It's quiet. It's peaceful
16 and it's safe. It's safe for me and I feel like it's
17 safe for other people. It's as safe or more safe than
18 the other places that I've shot at in Evansville.

19 The berms are just as big. They do not
20 provide any overhangs. Not that they're unsafe
21 because none of them have had any problems either.

22 I think that Darrel and them have done a very
23 good job there. The community hopefully appreciates
24 that. Thank you.

25 CHAIRMAN: Anyone have any questions of the

1 gentleman?

2 (NO RESPONSE)

3 MR. JONES: I think one of our final witnesses
4 will be Allen Youngman would like to speak on behalf
5 of the range.

6 MR. YOUNGMAN: My name is Allen Youngman.

7 (MR. ALLEN YOUNGMAN SWORN BY ATTORNEY.)

8 MR. YOUNGMAN: I was a resident of this county
9 from birth up until not too many years ago.

10 The point I want to address is what Whittaker
11 range does in the community and the alternatives and
12 also talk about what Bob calls a monkey's eyebrow in a
13 second from a personal perspective.

14 Whittaker's range is safe. Everybody knows
15 that. There is no issue about that. If the exact
16 dimensions have never been fully measured, 13 years of
17 experience, hundreds of thousands of rounds, thousands
18 of shooters later, you know, that's the best evidence
19 of the safety of a range.

20 If you're comparing it with something, a fully
21 baffled berm enclosed range. California has something
22 that's very popular in that culture called the No Blue
23 Sky Range. That's where you build baffles at the
24 firing point so you cannot see blue sky over the berm
25 at the end of the range. I think that's what concerns

1 parts of Daviess County is called a monkey's eyebrow
2 maybe. I don't know of anybody that's familiar with
3 that term.

4 The Owensboro Rifle & Pistol Club is available
5 to members only. It doesn't have berms at the back or
6 sides. No baffles. No range officer. If you're a
7 member, you get a key and you go out there when you
8 want to.

9 I'm a member of the Green River Gun Club in
10 Warren County. It has no baffles. It has no berms in
11 the front and side or back. There's no range officer.
12 You get a key and you go there.

13 People who have access to private members only
14 ranges are in good shape. In this county until
15 Whittaker opened his range, there was no place. If
16 you didn't have access to a farm or were not willing
17 to trespass like a lot of people were, back in those
18 days old strip pits and shoot until the sheriff came
19 along to run you off. There was no place to shoot.
20 There were no standards. No safety regulations. A
21 lot of us shot where we could. I was fortunate
22 enough, my grandfather owned a farm. That's where I
23 learned to shoot. After I was out of high school he
24 sold the farm. There was no place to shoot in this
25 county. People shot anyway. You probably all have

1 acquaintances, you know, of places where people pull
2 off the road, set up a target and shoot. I think like
3 Sheriff Cain said they do the best they can for the
4 most part to be safe, but compared to what Darrel
5 Whittaker has provided this community over the years,
6 that's not a safe environment, and what Darrel
7 provides is safe.

8 I can't speak for the Whittakers. Hopefully
9 if they need to build the baffles they will. If they
10 need to extend the berm, they will, but it's not
11 really necessary. The range is safe as it stands.

12 The other point that Sheriff Cain made, people
13 are going to shoot somewhere. Whittakers ought to be
14 available. That's where I taught my son to shoot.
15 Without that resource in the community it's not going
16 to be as safe other places. That's the substance of
17 what I wanted to say.

18 CHAIRMAN: Anyone have any questions of Mr.
19 Youngman?

20 (NO RESPONSE)

21 MR. JONES: Mr. Youngman, could you just
22 compare for the record the range that you see to the
23 ranges you've seen in the military? I assume in your
24 career you've shot at many ranges.

25 MR. YOUNGMAN: I've not shot on as many ranges

1 as Mr. Higginbotham has, but I've shot on probably 100
2 ranges around the world. I have never shot on a range
3 that required the overhead baffles with one exception.
4 That was in Murray, Kentucky, in 1965 when the ROTC
5 Department, back when ROTC was mandatory, built a
6 range for M-1 rifles there at the city dump. They set
7 up a series of looked like railroad ties. They
8 eventually all fell down and the range remained in
9 operation. That's the only place I ever shot that
10 required any kind of baffling.

11 CHAIRMAN: No further questions. Thank you,

12 MR. JONES: If you just allow me just to tidy
13 up the record just a little bit and I'll be quick.

14 I'm not sure Lynnette has a copy of the NRA
15 report. Then I would like to offer a petition that
16 has been signed.

17 I'll hand that to you, Mr. Chairman. It's
18 been taped up and signed.

19 I think we mailed in, but I want to make sure
20 that you feel comfortable with the --

21 MS. MASON: The petition is what?

22 MR. JONES: The petition is to support the gun
23 range. It's basically a petition that has been signed
24 by those who have been in Whittaker Gun Shop. I think
25 there are over 600 signatures of Daviess County

1 residents asking you to support this range.

2 CHAIRMAN: We'll add that to the transcript.

3 MR. JONES: Then what I've handed you is the
4 declaration of policy for the limits of liability,
5 which addresses the issue of liability.

6 Then I have the original deed conveying the
7 property back from the Rock Hill Gun Range to Darrel
8 and Becky Whittaker, but I haven't recorded it yet.
9 I'd like to keep the original, but I brought a copy
10 that is unexecuted for your record.

11 I'm not going to belabor you with a lengthy
12 closing. I do want to make sure that our legal
13 position is clear. I won't quibble over that any more
14 except to say that for the record we do feel like
15 we've had a conditional use permit since 1994.

16 When I look at your rules, specifically Rule
17 7.321, it says, "any such conditions shall be recorded
18 in the board's minutes and on the conditional use
19 permit." When I look at the actual permit, I don't
20 see the conditions about the direction of fire. I
21 want to preserve my at least ability to argue to a
22 different forum and make sure it's clear on that.
23 We're trying to preserve that argument. We've had a
24 conditional use permit since 1994.

25 With regard to the issue that we'd like to

1 certainly get it resolved tonight and get it resolved
2 in this type of forum. Ask that you listen and then
3 to consider the testimony that you've heard tonight
4 from guys who simply know more about it than I do.
5 That this range is safe.

6 I believe that Mr. Youngman said the most
7 important measurement that you've heard tonight is not
8 the measurement of width or distance, but the
9 measurement of time. That is in 13 years this has
10 been a safe operating gun range and it's been a
11 valuable part of the community. I would ask you to
12 support this permit. Thank you.

13 CHAIRMAN: Mr. Kirtley, do you have anything
14 you want to add?

15 MR. KIRTLEY: Well, Mr. Hayden would like to
16 give some testimony.

17 MR. SILVERT: State your name, please.

18 MR. HAYDEN: Frank Hayden.

19 (MR. FRANK HAYDEN SWORN BY ATTORNEY.)

20 MR. HAYDEN: My name is Frank Hayden. I'm the
21 one that they're shooting at. These are the people,
22 the ones that are shooting at me.

23 I've got a farm straight in front of this gun
24 range. I run about 300 to 400 head of cattle there.
25 We're out there working, running fences, checking

1 fences and baling hay. Everything you do on a farm.

2 Also I've got 60 acres that runs right up
3 beside this gun range that the berms come out to.
4 I've had to abandon that 60 acres because if I run the
5 cattle up there, you know, that 60 acres somebody will
6 start shooting. The cattle they stay be. When cattle
7 stay be, you know, one or two can take off running and
8 the whole herd follows them. So I just had to abandon
9 that 60 acres because I couldn't use it.

10 Now, he says they don't make any money at the
11 gun range. I can make some money on that 60 acres of
12 ground pasturing cattle.

13 Also, Mr. Cain, he said he's had no reports of
14 any cattle being shot or anything like that. We've
15 had numerous cattle laying out there on the hill dead,
16 but when we find them they're all swollen up and you
17 can't prove that somebody shot them. They could have
18 died of a heart attack. Who could say that? I didn't
19 call the sheriff. They've got better things to do.

20 Another thing when we first opened that range
21 I was out there running and riding around on a
22 four-wheeler and things. My brother was down there at
23 Mr. Whittaker's. Mr. Whittaker said, is that dumb
24 brother of yours crazy? He's out there riding around
25 and these guns shooting at him. I said, yes, I guess

1 I am.

2 Like I say all these people here are shooting
3 at me. They're not worried about me. They're wanting
4 to shoot, a place to shoot. I've got cattle, and I've
5 myself. I've got Tony there working and riding fences
6 and things. We don't like to be shot at. That's
7 about the sum of it. We have had cattle shot and
8 killed, but who can prove it. From now on if we get
9 one dead, I'll call Keith and then they can come out
10 there and make a record of it. I'll guarantee you
11 that it will be every now and then. I guess that's
12 all I've got to say. That's my position. I'd just
13 like to see the gun range close down and stay closed.

14 MR. JONES: Can I ask the board to ask a
15 couple of questions?

16 CHAIRMAN: Yes, sir.

17 MR. JONES: I'd like you to inquire as to
18 where he resides? I think the property that is
19 actually adjacent is not a property that has a
20 residence and that his residence is somewhere else.
21 So the inference that he gets shot at at his home or
22 something is not true.

23 Also obviously this gun range is not open 24
24 hours, 7 days a week. I just wonder if he's aware of
25 the hours of operation. Does he keep track of that so

1 that he can do whatever he needs to do around that
2 area when there are many hours during the week that
3 there is no gun range activity.

4 CHAIRMAN: Can you answer that, please.

5 MR. HAYDEN: I live five miles away from it,
6 you know, on another farm. This is the second farm I
7 have where the gun range is.

8 Well, I've had instances that Tony rides the
9 fence and checks the fence and they're up there
10 shooting. He would go up there and ask them to shut
11 down so he can check the fences. They wouldn't do it.
12 No way they was going to shut the range down.

13 Also another statement I need to make. I made
14 a statement here one time that I heard bullets
15 ricochet over my head or zing going over my head.
16 I've had two different people in my store telling me
17 -- I used to let them hunt out there for ducks and
18 geese and things during hunting season. Darrell
19 Belcher is one of them. He says he's heard it several
20 times go over his head. He said, I'm sure glad I come
21 back down over that hill. George Wright, he said he's
22 heard them.

23 We've been lucky. We haven't been shot, you
24 know. Once we get shot I guess then you can close it
25 down. Mr. Whittaker now has got enough insurance, you

1 know, that I'll be worth \$1 million or Tony or whoever
2 gets shot.

3 CHAIRMAN: Answer one question. How many
4 years have you lived and owned this farm that you
5 have, sir?

6 MR. HAYDEN: I owned it before Darrel came.
7 I've owned this farm, I don't know. In fact, I was
8 pasturing the ground that Darrel's shooting range is
9 on now. Some guy that worked for the railroad company
10 he had owned it. He said, pasture that and you can
11 keep it and pasture it until I get ready to build out
12 there. I'm going to build out there some day.
13 Somehow or another Mr. Whittaker bought it. I didn't
14 even know it was for sale.

15 CHAIRMAN: Thank you. You answered my
16 question.

17 Are there any other questions?

18 MR. JONES: We've heard testimony that he's
19 found dead cows, but has he ever found an injured cow
20 that he took to the vet? Did the cows lay there
21 forever until he discovered they were dead? There
22 would have been an insurance claim for a cow that had
23 died in such a manner.

24 Finally, he was given notice of the original
25 application 13 years ago. Did he object then?

1 MR. HAYDEN: Thirteen years ago when he filed
2 the application for it, it was suppose to be a trap
3 shoot for shotguns and they would shoot in the other
4 direction. Into the hill and woods that was there. I
5 said, well, people are shooting trap shoots over here
6 at McLean County Fish & Game. You know, trap shoots
7 are not that bad because they're shotguns, you know.
8 Shells don't go very far. The pellets don't. So I
9 didn't feel, you know, that I should bail against him,
10 but then he comes in and he does completely the
11 opposite. They start shooting high-power rifles.
12 They start shooting everything.

13 I had a man in the store, another guy that
14 said he was out there with some boy scouts one day and
15 they had an old jeep and .50 caliber machine guns
16 shooting at this jeep. Just shooting it all to
17 pieces, you know, with .50 caliber machine guns. They
18 don't just shoot shotguns out there or .22 rifles like
19 the sign says. That ain't what they do. They shoot
20 machine guns. They shoot high-power rifles. They
21 shoot anything they want to take out there.

22 CHAIRMAN: Anyone have anything else?

23 (NO RESPONSE)

24 CHAIRMAN: Thank you, sir.

25 MR. JONES: I don't think he responded to the

1 insurance claim question.

2 CHAIRMAN: Sir?

3 MR. JONES: I didn't hear a response to the
4 insurance.

5 MR. HAYDEN: I didn't file an insurance claim
6 with anybody. We take our losses and go on. We take
7 our own losses. I don't file insurance claims.

8 MR. JONES: I may not have heard the
9 testimony, but was there testimony of a jeep and a .50
10 caliber machine gun?

11 MR. HAYDEN: Fifty caliber machine gun and an
12 old jeep and they were shooting at this old jeep.
13 That's what some guy told me now.

14 MR. JONES: You didn't see it, did you?

15 MR. HAYDEN: I didn't see it, no. This was
16 told to me.

17 MR. JONES: I think Mr. Silvert will tell you,
18 and I didn't object earlier, but we still get the
19 right to cross examine and obviously that testimony is
20 extreme hearsay. It's not even allowed under the
21 Geneva Convention.

22 CHAIRMAN: Any other questions?

23 (NO RESPONSE)

24 CHAIRMAN: Thank you.

25 MR. KIRTLEY: Mrs. Hayden.

1 CHAIRMAN: Come forward and state your name.

2 MRS. HAYDEN: Linda Hayden.

3 (MRS. LINDA HAYDEN SWORN BY ATTORNEY.)

4 MRS. HAYDEN: There is a sign at Little Fox
5 Cemetery that is right in line with the shooting
6 range. I would like for all of you all to go look at
7 it. It's shot to pieces. That's all I have to say.
8 I mean it has holes that big in it.

9 CHAIRMAN: Thank you.

10 Another comment.

11 MR. KIRTLEY: What we have here, we have
12 people conflicting with themselves being NRA experts.
13 I'll take responsibility for the monkey eyebrow
14 because I don't know a thing about guns. Allen knows
15 that. It's what I was told. It's a safety proceeding
16 for the range itself.

17 What I am concerned with is that the NRA made
18 suggestions here, if you do allow this -- now, Frank
19 wants you not to and he has good reason. What I'm
20 saying is the fact that the sheriff's office hadn't
21 had a 911 call out to the farm when you find a dead
22 animal, you don't usually do that. That's only 911
23 records that are being submitted to you here and
24 that's fine.

25 I'm just saying it's a safety thing. The name

1 of this corporation blows my mind. Rock Hill. The
2 reason the NRA range book says you don't have, you
3 have soil composition of the range. That's the bed so
4 they don't ricochet. At one hearing we had these
5 rifles that go 2600 feet a second, when it leaves the
6 muzzle velocity. It's already past the property line
7 here in less than a second.

8 So these are serious safety issues. The fact
9 that you've said in the last 13 years, you know,
10 nothing has happened. We're hearing all of this about
11 safe. We're hearing all of this about these boxes and
12 everything being present here. I'm saying, but we
13 don't need to do this.

14 The NRA suggested these things be done, as far
15 as baffling. The NRA suggested about having a trained
16 range manager out there. The NRA said have a red flag
17 when you're shooting.

18 I'm simply saying you have two granted this
19 community about public shooting ranges. This may be
20 the only one, but it's only on a 40 acre tract. That
21 at its widest point is 120 yards wide where all this
22 shooting takes place. It's 961 yards in length.
23 Wherever you put these berms, where you put the
24 starting place.

25 I submit to you what was stated about the

1 reason why they reversed it is because of the parking
2 lot. You had more parking facility. You'd be
3 shooting at your own customers if you put the range
4 shooting towards the road and you put your parking --
5 you'd have to travel through it. Now, that's just
6 some observation of the plat itself. That's a more
7 logical conclusion why the range was reversed to begin
8 with.

9 Now, you have here presented, but not of
10 record, a deed conveying from a dissolved corporation.
11 I don't know the legal status of a dissolved
12 corporation executing a deed conveyance. Granted the
13 Whittakers were the sole stockholders of this
14 corporation, but that for four years has been totally
15 -- that's your perfect insurance policy.

16 I know you're saying there's a lot of pass it
17 on. Well, this is all right. I'm just simply saying
18 that there's so many issues that are not being -- as
19 to what the applicant actually is going to do here.

20 I would say, you know, we're going to give you
21 a conditional use permit and based on this you don't
22 have to do anything of the NRA. You do business as
23 conducted.

24 What this cries for is what this board has
25 asked the last three times we've been here. Somebody

1 with an engineer, somebody with a design concept
2 present to this board what in fact they're going to
3 do. The last time they drew a plan and reversed it.
4 No record change.

5 Here you have a generality of visitors. No
6 matter in which you can say, well, we interpreted it
7 that way.

8 I think to have a lethal occupation and
9 business like this. It's not like a law office where
10 you put the bathroom over here. This can kill people.

11 What I'm trying to tell you is that this is
12 serious and it's a legitimate business. They ought to
13 be able to do it, but they need to do it in a proper
14 way. They need an engineer or somebody design to show
15 this board like that plat specifically what they plan
16 to do and present these administrative regs they're
17 going to do or follow as far as range procedure. They
18 say, it's all done. It's all like this. I don't
19 think it's good enough to give a conditional use
20 permit.

21 The Haydens, they've looked on it the way it
22 was originally and there it was and then it got off on
23 itself.

24 So I will submit to you that their application
25 should be denied period because the other permit was

1 found back in May, I believe, to avoid because they
2 failed to implement it within a year.

3 So is this simply a fresh new application like
4 they never had one. That's on behalf of the Haydens.

5 CHAIRMAN: Summarize real quick. While you're
6 doing that, what is the hours and days that you plan
7 on operating?

8 MR. JONES: I think presently we had been
9 opening, before this issue, opened just on the
10 weekend. Saturday and Sunday 9 to 4. That's what
11 we've been opening at this point. I guess we wouldn't
12 want to limit our ability to open on a Thursday or
13 Friday or some other day during the week. It seems
14 that we probably need to open it more than two days a
15 week. At the time of our reapplication we were only
16 open two days a week.

17 With regard to the red flag and the signs, I
18 think we've already addressed that. Those are fine.
19 We would prefer to go with close supervision rather
20 than baffling, but I think we've all finally agreed
21 that baffling is at the trigger point and not at the
22 berm level.

23 I'm trying to remember is we have previously,
24 and I don't know if we even need to make it into the
25 record, but the minutes from the 1994 hearing. I

1 cited you to that rule that said any addition should
2 be in those minutes. Are those part of this record?

3 MR. NOFFSINGER: We have them. In fact, I saw
4 a copy in the application. I'd be agreeable, yes,
5 they are submitted.

6 MR. JONES: We would agree that the minutes of
7 the '94 are something that are entered into the
8 record.

9 We feel like we do have a safe gun range. We
10 want to work with this community and with your board
11 and stand ready to answer any additional questions. I
12 don't think there's been any substantiation -- a .50
13 caliber is not on this range. I don't think anyone
14 believes that.

15 MRS. WHITTAKER: If you're going to shoot a
16 rifle on the pistol range, it can't be larger than a
17 .22 caliber.

18 MR. JONES: We'll stay here until entertain
19 any discussion with regard to conditions that you may
20 want to ensue.

21 CHAIRMAN: Board members have any other
22 questions of anyone at this time?

23 MR. DYSINGER: Mr. Chairman, I'd like to know
24 the Staff's opinion regarding -- everybody has
25 referenced these recommendations from the NRA report.

1 There's some potential for conditions to be put in
2 there. I'd like to know Staff's opinion on the value
3 of - God forbid - postponing this one more month and
4 letting them meet and decide what's appropriate,
5 what's not appropriate. My point is the NRA report is
6 not really in a format that we can make a condition as
7 I think the opposition pointed out. It is a little
8 vague. You know, red flag. How high? That kind of
9 stuff. But at the same time there does seem to be
10 things in there that not only the applicant is
11 agreeable to, but that the Staff seems to have
12 indicated that they have an interest in too. I just
13 think it just needs to be put in a little bit more
14 definite, for the applicant's benefit as well as
15 anybody else's.

16 MR. NOFFSINGER: I comment to that. I can
17 just tell you that the Staff, we're not experts in
18 this field. I would be reluctant to recommend to you
19 what I feel would be safe or unsafe because we are not
20 the experts. We can certainly facilitate the
21 applicant in preparing what they want to formally
22 submit to you in terms of our recommendation on what's
23 safe and unsafe.

24 I think you have to rely on the expert
25 testimony and what testimony you've heard here from

1 both sides that you believe and form your decision
2 based upon the evidence from the experts and those
3 from both sides and go from there.

4 If it's assistance you need in formulating the
5 conditions, do that. In terms of safety, we're not
6 the experts.

7 MR. DYSINGER: I agree. I'm not prepared to
8 formulate any conditions at this time to be honest. I
9 think there's some conditions that can be put on this.
10 I do believe there's some compelling need in the area
11 for this service.

12 MR. NOFFSINGER: I would say that you did ask
13 for an expert's opinion.

14 MR. DYSINGER: Absolutely.

15 MR. NOFFSINGER: You have that from the NRA
16 and you have what's written there. The only thing
17 that I saw that struck me was that they're talking
18 about the berm on the 600 yard range needs to be
19 raised substantially. They didn't give any
20 indication. The 600 yard range is out.

21 So then you go to what they're recommending
22 for the 300 yard range. I think you have the
23 conditions there, but how long it's going to take you
24 to put those together. Whether it's tonight or you
25 come back. I just caution you in terms of carrying

1 this over another month and then taking new testimony.

2 MR. TAYLOR: It seems to me that if we're
3 referring to the NRA report as our expert advice, once
4 we take out that 600 yard range, basically in that
5 report it sounds like to me at least that he was
6 saying everything was okay. So any condition, whether
7 we say it's a 30 foot flag or whatever flag, would not
8 really be irrelevant. It would add more safety. He's
9 already saying in his opinion that it's safe enough.

10 MR. NOFFSINGER: Except in that --

11 MR. TAYLOR: Except for this 600 yard range.
12 If a motion was made, from what I understand a motion
13 that is going to be heard here would be to exclude the
14 600 yard range.

15 MR. NOFFSINGER: He is saying on the 300 yard
16 range that he does mention the baffles and the side
17 berm. Then you've got the flag pole and then the
18 warning signs along the perimeter of the property. He
19 is saying that. Then he goes into the conclusion
20 saying, well, it depends on what the applicant wants
21 to do.

22 MR. TAYLOR: From what I understood he did it
23 while they weren't operating. Then he acted like the
24 trained supervisor would supercede all of that. From
25 what I've understood, they have that trained

1 supervisor there the whole time. All the measures
2 that we would implement will be on top of what he
3 already said will be satisfied with the supervisor.
4 Being that berm, the flag. Not that they wouldn't
5 help on top of it. It would make it more safe as to
6 what he declared already safe, from my interpretation.

7 MR. NOFFSINGER: And you may want to look at
8 hours of operation too so the folks know when that
9 facility is going to be used. That's just a
10 suggestion. I'm trying to help you out in terms of
11 what you might want to pursue. You've certainly heard
12 the same information that Staff has heard tonight.

13 MR. KIRTLEY: If you vote on the application
14 and approve it and you set no conditions, you've
15 created what they did in '94. They set no ground
16 rules. If you don't set any conditions and you
17 approve it, the NRA, none of these things apply. You
18 see the red flag, the berms, all of this stuff doesn't
19 apply. You're saying the hours of operation and all
20 of this. If you are going to authorize this range,
21 that there be boundaries. Administrative boundaries.
22 That's training procedures and ground boundaries.
23 That's the safety features of it. If you don't,
24 otherwise your application, you simply approve it.
25 The fact that they say .22's are not allowed on the

1 pistol range, that doesn't mean anything. They can
2 shoot howitzer if they want to because it's not
3 restricted by you. That's the reason why I'm saying,
4 I really feel that you should require some type of
5 conditions. I think you ask counsel that and he'll
6 have to answer that. It's just a blanket if you
7 approve without conditions.

8 MR. NOFFSINGER: I think the board understands
9 that.

10 MR. TAYLOR: I wasn't making a motion at all.
11 I was just sort of clarifying on the delay. Saying if
12 we did make a motion it more than likely would include
13 conditions, but I was just saying if we refer to that
14 report, those conditions are satisfied in that.

15 MR. DYSINGER: My statement is to conditions I
16 think are as much for the benefit of the applicant as
17 anybody. These folks have put a lot of work into
18 this. We've all spent a lot of time on it. I would
19 like them to go out of here knowing what's expected of
20 them.

21 MR. JONES: I may have misspoke on the hours.
22 Apparently the two weeks before deer season there is a
23 heavy need for the gun range operation. At that time
24 it's open every day for two weeks.

25 The law enforcement agencies, they don't

1 confine them to certain times. When they need to use
2 the range, they basically run the range themselves.
3 They'll do that when in fact the public is excluded.

4 MR. NOFFSINGER: I think that's the problem
5 the board is having right now because I think we've
6 heard a lot of testimony, but what I'm hearing from
7 these board members is there are still a lot of
8 unknowns because you haven't really given a business
9 plan, if you will, as to how this is going to operate.
10 I think you're getting close. You've provided some
11 information from the NRA, but there's no business plan
12 as to how or what you propose to do.

13 MR. TAYLOR: The question I have is that
14 really a requirement for us? It seems like to me on
15 something like this with the magnitude, you could keep
16 going deeper and deeper. You can probably do it for
17 five years and come back with a different thing to
18 say, well, you sid 8 to 9. It should be 8 to 9:15.
19 If we start getting deeper and deeper and deeper, it
20 can just keep going and keep getting more elaborate
21 and more elaborate.

22 MR. DYSINGER: Hours of operation is a great
23 example. It's not unusual to get that when someone is
24 opening a business to state that. That's a pretty
25 basic thing that we would expect from any business.

1 Ward, what do you think?

2 MR. PEDLEY: Number one, most of my questions
3 were not answered. I can't believe they come before
4 this board and you don't know how wide those berms
5 are. You don't know how high they are even after
6 postponing. Even after we questioned this
7 information. I can't believe the National Rifle
8 Association did not say what they are. They did not
9 say what they should be. They haven't answered any of
10 my questions. I'm not prepared to make a motion. I
11 will abstain on this because my questions have not
12 been answered. I'll abstain on this issue tonight.

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

14 MR. DYSINGER: I guess the first question is
15 with an abstainer do we have a quorum?

16 MR. NOFFSINGER: Yes. You need four. You
17 have four.

18 CHAIRMAN: We have four. No problem on that.

19 MR. TAYLOR: Mr. Chairman, at this time I vote
20 to approve the conditional use permit as requested by
21 the applicant.

22 I'm basing my opinion on the safety record
23 that the range has had, the expert witnesses that have
24 been sought out by the applicant. I will quote the
25 site plan and the NRA evaluation when I make my

1 conditions.

2 I approve the range of the site plan on
3 February 2, 2007, which was included in the original
4 application, which is the way it is existing now. My
5 only difference that I take off that site plan is
6 removing the 600 yard range. The range as it's
7 operating now stay in its present use.

8 I do recommend that the property markers are
9 identified on each corners of the property as
10 suggested in the NRA report saying as it's stated with
11 the warning and the gun range.

12 MR. NOFFSINGER: Are you stating that as a
13 condition?

14 MR. TAYLOR: Yes.

15 MR. NOFFSINGER: You're saying "I recommend."

16 MR. TAYLOR: I'm sorry.

17 As a condition of this approval, they will
18 place the property markers as stated in the NRA
19 report. They will also fly a red flag every time the
20 gun range is hot, as said in the report. As stated in
21 the report, also there will be a trained on-site
22 supervisor or they will have to construct the berms to
23 the right of the range. In place of the hours, I
24 think the red flag, as long as it's identifiable,
25 would be willing to show when the range is hot.

1 MR. DYSINGER: So either somebody on hand or
2 the berm to the right?

3 MR. TAYLOR: Right, as stated in the report.
4 Either a trained on-site supervisor or the berm to the
5 right. I'm not making a recommendation to construct
6 the baffles.

7 MR. DYSINGER: Mr. Chairman, I'll second that.

8 CHAIRMAN: A motion has been made and a
9 second.

10 I don't know whether the Chairman needs to ask
11 questions or not, but I want to ask one anyway to the
12 Staff.

13 Who is going to enforce it to be sure that
14 it's properly operating?

15 MR. NOFFSINGER: Well, based upon the
16 conditions, they would have to meet the conditions
17 stated. That would have to be witnessed by the zoning
18 administrator.

19 Now, in terms of enforcement, if they're not
20 flying the red flag or if they don't have a trained
21 on-site supervisor there, that will have to be
22 reported. I would say it will be a call to 911
23 because it's going to have to be documented. When
24 that's documented, then the zoning administrator gets
25 involved. These conditions have to be, once you place

1 conditions they have to be enforced. It puts public
2 officials in the position of having to be responsible
3 for enforcing them. If they don't do what they say
4 they're going to do here, these conditions, then we'll
5 be back here.

6 CHAIRMAN: You understand the conditions?

7 MR. JONES: We do.

8 CHAIRMAN: You understand what the motion was
9 made?

10 MR. KIRTLEY: I'm a little confused. It's a
11 red flag and a trained manager at all times. Cows
12 don't have clocks and can't read red flags, but I
13 guess they'll run when they see the red flag.

14 I understand you're just putting the red flag
15 and a mandatory trained manager on site while it's in
16 operation.

17 MR. TAYLOR: Or if the trained on-site
18 supervisor has been monitoring the gun safety is not
19 there, then that's when we move to having that berm
20 constructed to the right, which was suggested in the
21 report.

22 MR. KIRTLEY: But that wasn't part of your
23 motion.

24 MR. TAYLOR: Yes, it was. I said either an
25 on-site supervisor or the berm.

1 MR. KIRTLEY: The baffles are different than
2 the berms.

3 MR. TAYLOR: Correct. I did not include the
4 baffles with that.

5 MR. KIRTLEY: But the berm they recommend
6 doing anyway.

7 MR. TAYLOR: I said the on-site supervisor or
8 the berm.

9 CHAIRMAN: You've heard the motion. We've got
10 a motion and a second. Is there any other comments
11 from the board?

12 (NO RESPONSE)

13 CHAIRMAN: Any other comments from the
14 Staff?

15 MR. NOFFSINGER: No.

16 CHAIRMAN: All in favor raise your right
17 hand.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE -
19 WITH THE ABSTAIN OF MR. WARD PEDLEY.)

20 CHAIRMAN: Motion carries.

21 Entertain one final motion.

22 MR. DYSINGER: Mr. Chairman, move to adjourn.

23 MS. MASON: Second.

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

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: We are adjourned.

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

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and
4 for the State of Kentucky at Large, do hereby certify
5 that 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 108 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 25th day of July, 2007.

18

19

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22

COMMISSION EXPIRES: DECEMBER 19, 2010

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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