

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 JANUARY 3, 2008

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:30 p.m. on Thursday,
5 January 3, 2008, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

8 MEMBERS PRESENT: Ward Pedley, Chairman
9 Gary Noffsinger, Director
10 Ruth Ann Mason, Secretary
11 Madison Silvert, Attorney
12 Marty Warren
13 Sean Dysinger
14 Judy Dixon
15 Clay Taylor

16 * * * * *

17 CHAIRMAN: Call the Owensboro Metropolitan
18 Board of Adjustment January 3, 2008 meeting to order.

19 We'll begin our meeting with the prayer and
20 the pledge of allegiance to the flag. Mrs. Dixon will
21 lead us.

22 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

23 CHAIRMAN: First item on the agenda tonight
24 will be the election of officers. We'll turn it over
25 to counsel for that.

MR. SILVERT: Every January we hold the
election of officers. That being chairman, vice
chairman and secretary.

1 We'll now take motions for the office of
2 chairman.

3 MR. DYSINGER: I nominate Ward Pedley.

4 MS. MASON: Second.

5 MR. SILVERT: Any other nominations?

6 MR. WARREN: I move that nomination cease and
7 that Ward be appointed by acclamation.

8 MR. SILVERT: All in favor.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 MR. SILVERT: Thank you, Mr. Chairman.

11 Second is the nomination for vice chair. Any
12 nominations on the floor?

13 MR. PEDLEY: I nominate Judy Dixon.

14 MR. WARREN: Second.

15 MR. PEDLEY: I make a motion that nomination
16 cease.

17 MR. SILVERT: Is there a second on that
18 motion?

19 MS. MASON: Second.

20 MR. SILVERT: All in favor of Ms. Dixon.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Thank you, Madam Vice Chair.

23 Now, nominations for secretary.

24 MS. DIXON: I nominate Ruth Ann Mason.

25 MR. WARREN: I'll second that.

1 MR. SILVERT: Any other nominations on the
2 floor?

3 (NO RESPONSE)

4 CHAIRMAN: Do we have a motion that nomination
5 cease?

6 MS. DIXON: So moved.

7 MR. SILVERT: Is there a second?

8 MR. DYSINGER: Second.

9 MR. SILVERT: All those in favor.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 MR. SILVERT: Thank you, Madam Secretary.

12 Mr. Chairman, I turn it over to you.

13 CHAIRMAN: Next item on the agenda will be to
14 consider the minutes of the December 6, 2007, meeting.
15 They have been read and placed on file in the Planning
16 Office. Are there any additions or corrections?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: Chair is ready for a motion.

19 MS. DIXON: Move to approve.

20 MR. WARREN: Second.

21 CHAIRMAN: All in favor raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries.

24 Next item.

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1 Inner-City Residential and are occupied by
2 single-family residences including several
3 manufactured homes.

4 ZONING ORDINANCE REQUIREMENTS

5 The class-2 manufactured home site standards
6 based on the requirements on the Zoning Ordinance are
7 as follows:

- 8 1. A concrete or asphalt parking pad to
9 accommodate two 9'x18' spaces is required.
- 10 2. A minimum 10'x10' deck or patio is
11 required.
- 12 3. A concrete sidewalk is required, but may
13 be waived along rural roads (without curbs).
- 14 4. The driveway apron shall not exceed 40
15 percent of the lot width.
- 16 5. The property is required to have at least
17 three trees.
- 18 6. The manufactured home shall be permanently
19 installed on a permanent foundation. A poured
20 concrete or masonry block skirting wall shall be
21 constructed beneath and along the entire perimeter of
22 the manufactured home.
- 23 7. All wheel, trailer-tongue and hitch
24 assemblies shall be removed upon installation.
- 25 8. The manufactured home shall be permanently

1 connected to an approved water and sewer system when
2 available.

3 MR. HOWARD: I would like to enter the Staff
4 Report into the record as Exhibit A.

5 CHAIRMAN: Anyone here representing the
6 applicant?

7 (NO RESPONSE)

8 CHAIRMAN: Any board members have any
9 questions?

10 MR. NOFFSINGER: I do of Mr. Howard.

11 Looking at the site plan, what is the
12 right-of-way width on Ebach Street?

13 MR. HOWARD: I was not able to find that out
14 today. I called the city engineer's office, but I
15 didn't get an answer. I'm not sure.

16 MR. NOFFSINGER: The reason I bring that up
17 they are asking for a waiver on the sidewalk
18 requirement along Ebach Street, and I certainly
19 understand that and would support that because Ebach
20 Street does not have curb and gutter. So where we
21 have a roadway without curb and gutter, an unimproved
22 city street, we have traditionally waived that
23 requirement. However, the right-of-way along Ebach
24 Street is likely substandard. With future
25 improvements to that street, it would require

1 additional right-of-way. Should there be a
2 right-of-way dedication in lieu of constructing a
3 sidewalk for the future improvements on Ebach Street.
4 Two, the parking is shown to where it's in front of
5 the home and with future right-of-way dedication it
6 could put that parking in the right-of-way. It's just
7 something that we need to be mindful of. Make sure
8 we're looking at it when reviewing these site plans.
9 It sounds like we don't have the answer here tonight.

10 MR. DYSINGER: Mr. Chairman, we had an action
11 December 2005. If we could ask Staff, if additional
12 setback was included in that action or not?

13 MR. NOFFSINGER: I don't recall that. I doubt
14 that it was, but the situation could have been
15 different. It may be a situation where we need to
16 consider that as policy in lieu of not constructing
17 the sidewalk, which would require others to do. That
18 right-of-way be dedicated for future roadway
19 improvements. Then they're not out the cost of
20 constructing the sidewalk. It's something that I
21 think you need to consider for future applications.
22 Certainly here, depending on what that right-of-way
23 is, it could have a bearing on how this site is laid
24 out.

25 MR. DYSINGER: The diagram I have shows a ten

1 foot apron. In other words, that area could be moved
2 into without affecting what looks like 18 feet of
3 parking space. In Staff's opinion, is that enough or
4 does it need to be more formalized?

5 MR. NOFFSINGER: Typically this type of street
6 would require a 25 foot half right-of-way. Looking at
7 this scale, and I doubt its to scale here, but I think
8 the right-of-way would be less than 20 feet now. I
9 don't know if there would be an additional ten foot
10 right-of-way necessary. I just don't know.

11 We need to be mindful of that on the Staff
12 level in the review of these plans. We need some
13 guidance on it too and a policy. That if we're going
14 to waive the sidewalk requirement on unimproved
15 streets, then we should be taking a look at the
16 right-of-way width so as to get the necessary
17 right-of-way for future roadway improvements.

18 MR. DYSINGER: On future actions, I'd
19 certainly be open to that. I wouldn't want to
20 arbitrarily impose something on this applicant,
21 especially based on what appears to be precedent to
22 the contrary.

23 CHAIRMAN: Mr. Howard, is this ten foot apron,
24 is it in the right-of-way or is it actually behind the
25 property line?

1 MR. HOWARD: Looking at the plan it appears as
2 though it is on the property. It showing the property
3 line being forward of a 10 foot apron.

4 CHAIRMAN: So the property line in the unit
5 itself is sitting back 29 feet behind the property
6 line?

7 MR. HOWARD: Correct.

8 MR. DYSINGER: If that's the case, the entire
9 parking area and apron is in the right-of-way. Is
10 that not correct? Did I misunderstand?

11 MR. NOFFSINGER: I don't think so. I think
12 that ten foot apron is shown on their private
13 property. That's what the drawing shows. It would
14 not be in the right-of-way, but we don't know what
15 that right-of-way width is.

16 I'm concerned that we have a very deep lot
17 here and we're pushing everything to the front of the
18 building setback line. Whether we dedicate
19 right-of-way at this point or not, I think we need to
20 be cautious that we don't have that home sitting too
21 far forward to where it could interfere with the
22 future roadway.

23 MS. DIXON: Do we know why the applicant
24 wanted everything pushed so far forward?

25 MS. MASON: Is it where the slab, maybe the

1 concrete slab is already placed.

2 MS. DIXON: Where it already was.

3 MR. NOFFSINGER: Probably where it's currently
4 sitting.

5 MS. MASON: Although this manufactured home is
6 going to be longer. So I don't know if he's coming
7 closer to the property line or going further back into
8 his yard with it.

9 CHAIRMAN: Are there any other questions from
10 the board members for Mr. Howard?

11 MR. HOWARD: I will mention, as Mr. Noffsinger
12 brought up the point, if right-of-way were dedicated
13 in the future, it could compromise the access. As you
14 can see, there is a garage off the alley in the rear.
15 It could be a possible solution that if right-of-way
16 were required in the future that the parking in the
17 front actually access the lot from the back where the
18 garage is already in existence.

19 MR. WARREN: Through the alley?

20 MR. HOWARD: Right. That could be an option.

21 CHAIRMAN: Any other comments, Mr. Noffsinger?

22 MR. NOFFSINGER: No, sir. I would recommend
23 that we consider the location of this home in terms of
24 the front setback. That the home be located no closer
25 to the front property line than 50 feet from the

1 center of the existing right-of-way. What that does
2 is allows for a 25 foot half right-of-way and then a
3 25 foot setback. That's just trying to, without the
4 detailed information is just trying to set it up where
5 we could move forward. The two trees, I don't know if
6 those two trees are existing or proposed. If they're
7 existing trees, they may be trying to retain those
8 trees.

9 CHAIRMAN: So you're proposing that the home
10 be set back 50 feet from the center of the public
11 right-of-way?

12 MR. NOFFSINGER: Yes.

13 MR. TAYLOR: Seems to me like we're making
14 several propositions on things we don't know a fact of
15 whether, you know, the trees are there or what his
16 plans are or what the actual right-of-way is. I hate
17 to postpone or delay things for somebody as minor as
18 they may have thought it would have been, but it seems
19 like to me without these questions asked, they're
20 heavily considered, maybe that's what we should do.

21 MR. NOFFSINGER: It would help if the
22 applicant were here tonight. Certainly we need to
23 make sure we have that information at Staff level
24 prior to the hearing.

25 MR. TAYLOR: Mr. Chairman, at this time I

1 propose to make a motion to postpone this item.

2 MS. DIXON: Second.

3 CHAIRMAN: We have a motion and a second. Any
4 questions on the motion or any comments on the motion?

5 (NO RESPONSE)

6 CHAIRMAN: All in favor raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: It's postponed until the next
9 meeting.

10 Next item.

11 ITEM 4

12 3905 Carter Road, zoned B-4, (Postponed from December
13 6, 2007 meeting)

14 Consider revocation of the Conditional Use Permit
15 issued to Atlantis Swim and Sports Complex, Inc. and
16 Floyd D. Tapp approved at the September 6, 2007,
17 Owensboro Metropolitan Board of Adjustment meeting.
18 Reference: KRS 100.237(4)

19 MR. HOWARD: I have a letter that was
20 submitted to the office that I would like to read into
21 the record as well as pictures that I'm going to go
22 ahead and hand out at this time.

23 MR. NOFFSINGER: As each board member recalls,
24 this item was postponed to give the applicant time to
25 determine how they wish to proceed with the paint ball
26 facility. There were some neighbors in the area that
27 were objecting to paint balls being projected from the
28 site over onto their property. The applicant

1 acknowledged that and also stated that they were
2 trying to correct that situation. Rather than having
3 a netting over the facility, the top of the facility,
4 they were trying to capture all paint balls with a
5 higher netting facility on the sides. The board
6 instructed that the applicant may wish to file a new
7 conditional use permit application if they were going
8 to propose netting different from what was approved by
9 this board. The applicant has filed a new conditional
10 use permit application, and we'll need the applicant
11 to verify that in Item 4A, which is the next item on
12 the agenda.

13 It may be that at this point you wish to speak
14 to the applicant to determine if in fact Item 4A is
15 their new Conditional Use Permit. I think it would
16 make Item 4 much simpler in terms of revocation
17 because I think the applicant would be asking that you
18 revoke the conditional use permit that has already
19 been approved because you filed a new conditional use
20 permit application.

21 The applicant has no intent to construct the
22 facility as originally approved. I think you need to
23 hear from the applicant.

24 CHAIRMAN: This letter that has been
25 presented, should it be read into the record for the

1 benefit of the applicant?

2 MR. NOFFSINGER: I think it should, but I
3 think we need to hear from the applicant to find out
4 what their intentions are. Then we can read the
5 letter into the record, if necessary. Certainly it
6 would be read into the record now or the next item
7 with the new conditional use permit.

8 CHAIRMAN: Mr. Tapp, would you step forward
9 please and answer questions for the board.

10 MR. SILVERT: State your name, please.

11 MR. TAPP: Darin Tapp.

12 (MR. DARIN TAPP SWORN BY ATTORNEY.)

13 MR. TAPP: For my benefit I would like to know
14 what's in the letter.

15 MR. DYSINGER: First off, Mr. Chairman, if
16 it's all right.

17 I'm a little unclear, and you're the best
18 person to answer this. Was it your intention to file
19 a completely new permit request or conditional use
20 permit request or were you attempting to amend your
21 previous? It doesn't really effect anything right now
22 except just to make sure we move forward clearly.

23 MR. TAPP: That's a very good question. As
24 far as the correct terminology, I don't know exactly
25 how to answer that.

1 What I was doing could be described as
2 amending because I am modifying what we originally
3 spoke of doing here because there was some -- it
4 wasn't clear on some of the wording of what we were
5 going to do initially. So that was recommended that I
6 file a new one. I didn't word it as an amendment
7 whenever I filed it. I just filed a complete new one.
8 Went in another direction in an effort to minimize the
9 paint balls going over into my neighbors yards.

10 MR. DYSINGER: It's not a trick question. I'm
11 not trying to slip you up. I just want to make sure
12 that if we revoke something that you filed previously
13 you have the new one, which is the new business.
14 Whereas if you were amending something, I didn't want
15 to revoke anything until we got it. Does that make
16 sense?

17 MR. TAPP: Sure.

18 MR. DYSINGER: You're looking at me like I'm
19 trying to do some kind of three card thing and I'm
20 not. Just wanted to make sure that we don't get rid
21 of anything that we shouldn't at this point.

22 MR. TAPP: I may be wanting to go back into
23 this thing, but I would like to know that the new one
24 is going to be approved before the old one is
25 rejected. Is that feasible, doable?

1 MR. DYSINGER: My answer to that, and,
2 Counsel, please fill in any blanks, is we can't even
3 consider a new one unless something is done to the old
4 one. That is the question. That's why I wanted to
5 know was it your intent to file a new application or
6 new conditional use permit request or amend the old
7 one? It's really just a procedural thing.

8 MR. TAPP: Could I go back to request hearing
9 what's in this letter? Because I have no idea what
10 I'm looking at here.

11 CHAIRMAN: Mr. Tapp, we're going to take a
12 three or four minute recess while we talk to counsel
13 and discuss this issue.

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

15 CHAIRMAN: Call the meeting back to order.

16 MR. SILVERT: Mr. Noffsinger had ask that I
17 address really the question. Make sure you understand
18 what our issue is just in procedure.

19 What you filed reads more like an amendment to
20 your previous conditional use permit. So there was a
21 question as to whether or not it was. It was filed as
22 a new conditional use permit. So we were trying to
23 give you the opportunity to say, what did you feel
24 that it was?

25 Given that the question of amending the

1 previous one is really more appropriate before this
2 body considers whether or not to revoke the previous
3 conditional use permit. To do that this body would
4 need to make a motion to amend the agenda, to move
5 Item 4A to 4 and move 4 to 4A and consider them in
6 that order, if that is in fact your intention to amend
7 the previous one.

8 MR. TAPP: If that suits the purpose of why
9 we're all here, yes.

10 MR. DYSINGER: Is it not, Madison, from his
11 point of view six/one half dozen or the other? This
12 is really a procedural issue it seems to me.

13 MR. SILVERT: We put that to him and he stated
14 earlier that he would like to know what we were going
15 to do on the new application before we consider
16 whether or not revoked it. That's a nice
17 consideration for him, yes, but it may not be the only
18 consideration for this body. I leave that to you, how
19 you want to treat that application.

20 MR. TAYLOR: Basically what my concern is what
21 it seems like to me is that he has either, whether he
22 has or not, he's kind of sought out what he needs to
23 do and conveyed his plan. I'm going to raise these
24 nets. How do I need to go about doing that? Whether
25 that be amend or make a new one. Somehow, you know,

1 whether he's unfiled it or something else happen, it
2 got mixed up to where we'd have to revoke his other
3 one first.

4 What my question is, instead of him accidentally
5 saying something wrong, like amend instead of a new
6 one, I would hate for him to lose business over that.
7 So it seems like Madison's proposal of putting an
8 amendment to one before revoking it would cover him to
9 where a slip of tongue, some technicality, is not
10 keeping him from operating his business. Is that
11 basically what's happening? Are you making an
12 amendment?

13 MR. SILVERT: No. I don't make any proposals
14 of any kind. I'm saying that if this board would
15 chose to treat Item 4A, as Mr. Tapp has stated that
16 he'd like to treat it, an amendment to the previous
17 conditional use permit and not an application for a
18 new conditional use permit, in my opinion it would be
19 more appropriate to consider that item prior to the
20 question of revocation.

21 The reasoning for that is, if you were to
22 consider the evidence and pass that amendment, then
23 the question of revocation becomes very different than
24 it is without that amendment. You might want to
25 consider that way. Again, to consider it in that

1 manner, a motion needs to be made to amend the agenda.

2 MR. NOFFSINGER: Too, I don't wish to
3 complicate it, but if Item 4A, if the amended
4 conditional use permit is heard first and is approved,
5 then it makes Item 4 a mute issue.

6 MR. SILVERT: Yes.

7 MR. NOFFSINGER: Because no longer are you
8 considering. Because the amended conditional use
9 permit application would supercede the original
10 conditional use permit application.

11 MR. SILVERT: Correct.

12 MR. NOFFSINGER: You've worded this in your
13 conditional use permit, "modification of netting to
14 minimize paint balls." So it sounds like you're
15 asking for an amendment to your existing conditional
16 use permit. You filed a new application, but you're
17 asking for an amendment.

18 I think Madison is suggesting here that this
19 board may consider a motion to amend the agenda, to
20 move Item 4A to be heard before 4. If you vote to do
21 that, then I will read 4A and we'll proceed and we'll
22 get on with the evidence.

23 CHAIRMAN: So then the proper procedure would
24 be to revoke 4.

25 MR. NOFFSINGER: No, sir. What I think proper

1 procedure would be is a motion to amend the agenda, to
2 move 4A to be heard before Item 4. So let's hear Item
3 4A, the amended conditional use permit application.
4 Then see how that goes and then we can see what we
5 need to do on 4.

6 MS. DIXON: Mr. Chairman, I move that we amend
7 the agenda to place Item 4A before Item 4 and hear the
8 evidence.

9 MR. TAYLOR: Second.

10 CHAIRMAN: We have a motion and a second. All
11 in favor of the motion raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 Item 4A is moved to supercede 4.

15 RELATED ITEM:

16 ITEM 4A

17 3905 Carter Road, zoned B-4
18 Consider request for an amended Conditional Use Permit
19 in order to modify the approved netting plan around
20 the tennis courts for paint ball related activities.
21 Reference: Zoning Ordinance, Article 8,
22 Section 8.2K7/42
23 Applicant: Atlantis Swim and Sport Complex, Inc.;
24 Floyd D. Tapp

25 MR. NOFFSINGER: Mr. Chairman, we do have a
conditional use permit Staff Report that probably
should be read into the record at this time by Brian
Howard.

1 Mr. Tapp, we'll let Brian read his information
2 into the record and then we can hear from you. Thank
3 you.

4 ZONING HISTORY

5 The subject property is currently zoned B-4
6 General Business. A zoning change for the subject
7 property for the B-4 zoning was approved in March
8 1987. Several Final Development Plans and Conditional
9 Use Permits have been approved for the property over
10 the years with the most recent approval being a CUP
11 for a paint ball recreational facility on the subject
12 property that was approved in September 2007.

13 The netting that was approved at the September
14 2007 meeting included all sides and the top of the
15 playing area. The OMPC office received several
16 complaints about paint balls landing in neighboring
17 yards and hitting homes and vehicles. When a field
18 inspection was completed by the Zoning Administrator,
19 it was discovered that the screening over the top of
20 the play area had not been installed. Since the site
21 was not in compliance with the approval from September
22 2007, the item was brought before the Owensboro
23 Metropolitan Board of Adjustments at the December 2007
24 meeting, to consider the revocation of the approved
25 Conditional Use Permit. At the hearing, the applicant

1 testified that the height of the netting was in the
2 process of being extended and he anticipated that the
3 increased height would alleviate the problem. This
4 application is submitted with a revision of the
5 proposed netting as detailed by the applicant at the
6 December 2007 revocation hearing.

7 LAND USES IN SURROUNDING AREA

8 The property to the north and south is zoned
9 B-4 General Business. The property to the east is
10 zoned R-3MF Multi-Family Residential and R-1C
11 Single-Family Residential. The property to the west
12 is zoned I-1 Light Industrial.

13 ZONING ORDINANCE REQUIREMENTS

14 Parking for the site is addressed on the most
15 recent development plan approved in July 2006 and the
16 proposed use will not require additional changes to
17 the development plan.

18 MR. HOWARD: At this time we'll go ahead and
19 read into the record the letter that was submitted as
20 well.

21 MR. NOFFSINGER: At this time, Mr. Howard is
22 going to read a letter into the record from an
23 adjoining property owner, Ginger Carter, that was at
24 the meeting in December where you were considering the
25 revocation of an approved conditional use permit. She

1 stated that she was unable to be here tonight. She is
2 out of town and asked Mr. Howard to read this letter
3 into the record.

4 MR. HOWARD: I'll read it now into the record.

5 "Due to my unavailability for the Planning and
6 Zoning Commission January meeting, I will use this
7 letter to express my continued and increased
8 displeasure with the Atlantis Paintball facility
9 located directly behind my house.

10 "Following the December Planning and Zoning
11 meeting, I was informed by Jim Mischel that Darin Tapp
12 had filed for a new conditional use permit stating
13 that he would add an additional 10 foot of netting to
14 the existing netting, which he has done. However, the
15 extra height and weight has caused the netting to
16 collapse twice since its initial installation.

17 "After the first collapse, Mr. Tapp used a
18 tall lift to reinstall the netting. In the meantime,
19 he was either 'open for business' or had
20 family/friends playing in the northernmost section,
21 which still had the taller netting. I collected 15
22 paint balls from all over my backyard the following
23 two days on December 21st and 22nd, that came from the
24 northern section (which is further down the street
25 from my property). Of course, I had hoped this would

1 not occur.

2 "Owensboro experienced very high winds during
3 the night of December 22nd. I awoke Sunday, December
4 23rd, to see the taller netting behind my house
5 actually draped on my stockade fence. I have attached
6 labeled photos that I took that morning. You can see
7 some of the damage to my fence. Two slats were
8 totally misplaced. Three were broken at the top of
9 the pickets with another five chipped or cracked.

10 "Mr. Tapp was there at 9:15 that morning
11 collecting netting from my fence. Although he was in
12 the ditch area between his chain-link fence and my
13 privacy fence, he made no attempt to repair my downed
14 slats, nor has he done so as of the writing of this
15 letter. I also have had no contact from Mr. Tapp
16 concerning the damage his netting caused on my
17 property.

18 "December 26th was a very busy day for the
19 paint ball participants. They were playing in the
20 section directly behind my house without the extra 10
21 foot netting installed. The netting is still lying in
22 the ditch at this current moment. I also had a lovely
23 splatter of white paint ball in my driveway exactly
24 where I usually park my vehicle. Good thing I had
25 parked on the street or I would have had paint ball on

1 my car for the third time this fall. And yes, you
2 guessed it, I found seven more paint balls in my
3 backyard this morning.

4 "In the past four months I have told Mr. Tapp
5 several times that I was his unhappy neighbor. I am
6 now an extremely dissatisfied neighbor! As I stated
7 at the December Planning and Zoning meeting, I have no
8 intentions of closing down Mr. Tapp's new business.
9 My only intent was to protect my property and my
10 neighbors' property from any further damage. Now I do
11 request that Mr. Tapp be required to repair my fence
12 at his cost. I feel that is a fair request.

13 "If the Planning and Zoning Commission decides
14 to revoke Mr. Tapp's permit since he is obviously not
15 complying to its use, I will certainly not be upset
16 and more than likely will once again be a happy
17 neighbor on McIntire Crossing.

18 "Thank you for your time and consideration in
19 this very disturbing matter.

20 "Sincerely, Ginger Carter."

21 I would like to enter that into the record.

22 CHAIRMAN: Mr. Tapp, would you like to step
23 back up and answer some of the questions for the board
24 and the letter you just heard.

25 MR. TAPP: Yes. This is an ongoing battle

1 with the netting. Matter of fact, after the winds we
2 experienced a couple of days ago, it rolled two of my
3 three-eighths inch big rods that I had that were
4 holding it up. So I went out today and bought
5 five-eighths inch rods to reinstall them. I've got
6 another lift ready.

7 I would like to say at this time that, you
8 know, I saw her on the morning of the 27th and had had
9 no phone calls. You know, I've spoken to her several
10 times about trying to, you know, asking her to call me
11 if the problem persist so I could make adjustments and
12 try to do things to try to alleviate this problem. I
13 had not heard a word from her. The morning of the
14 27th, the day she left to go out of town, I was up
15 there replacing the netting she's talking about. That
16 it was draped over her fence. I did tell her that I
17 have insurance for that. I'll be more than glad to
18 repair her fence. That's what I have insurance for.
19 I'm going to take care of that for her.

20 I have solicited responses from all my
21 neighbors behind me. The most recent agreement that I
22 have come, and I haven't had the opportunity to talk
23 to her about it yet, but basically this was designed
24 as an off-season activity. Between the fall and the
25 spring. In the spring, at the end of April, I've got

1 to shut this down and reopen the swim facility. At
2 that time, and I've talked to Mr. Mischel about it, I
3 have located some farm property that I am going to
4 relocate this entire facility, but between now and
5 then, I'm doing everything in my power to keep these
6 paint balls from going into my neighbors yards. I've
7 offered to send people over there and clean up on the
8 occasion that it does happen. I seem to have, and I
9 think I've illustrated this before, two quarters that
10 are a problem area for me. Actually one of my
11 neighbors behind me, he lives right next-door to the
12 lady that wrote the letter. That's one of the areas.

13 Basically I can't stand up here and tell you
14 right now tonight that a paint ball is not ever going
15 to go over into a neighbor's yard. I can't do that.

16 What I can tell you is that I think I've got
17 it minimized. I will do what's right with the
18 neighbors as far as cleaning up, when there is an
19 issue.

20 When I shut this down at the end of April, I
21 will be relocating it. Not opening it back up at that
22 facility again.

23 MR. DYSINGER: Mr. Chairman, since the point
24 of the amended conditional use permit is to change it
25 to what he intends to do with the netting, and that

1 doesn't appear anywhere, I think it would be helpful
2 for me if the applicant would describe as specifically
3 as possible what he has set up at this point and
4 whether or not that is how he intends on finishing up
5 the season with this. In terms of how high the fence
6 is. That doesn't appear in writing anywhere in any of
7 these applications. I think it needs to be in here
8 somewhere.

9 CHAIRMAN: One of the things I noticed that
10 concerns me is in order to modify the approved netting
11 plan, did we have before an approved netting plan?

12 What you're stating here, Mr. Tapp, is to
13 modify the approved netting plan around the tennis
14 court. Was there ever an approved netting plan?

15 MS. MASON: I have a copy of the minutes from
16 that original meeting. I have personally asked him,
17 "The fencing that you're going to put around, how tall
18 is it going to be?"

19 Your wording was, "It's going to be 12 foot
20 tall and we're also going to put a netting on top to
21 prevent it from going out and over into the
22 neighborhood behind us."

23 Then I put, "And the 12 foot tall fencing,
24 what is that going to be exactly? Inflatable?"

25 You said, "No. The netting is a specially

1 engineered netting specifically for this purpose. It
2 won't allow anything bigger than three millimeters to
3 go through."

4 I asked, "Is that around the perimeter?"

5 You put, "The entire perimeter and on the top
6 as well. What I'm fencing in is my existing tennis
7 courts. They have what's called omni turf, AstroTurf
8 surface. We're going to put inflatable soft,
9 inflatable bunkers inside of the tennis courts to use
10 as the barricades."

11 So that's what I say that we were approving at
12 the original, back in September or whenever we did
13 this.

14 CHAIRMAN: So it was approved in the
15 conditional use permit originally what you stated.
16 That was approved.

17 MS. MASON: Yes. That's what we approved it
18 on. This was the evidence that was presented at the
19 meeting that we approved it.

20 MR. DYSINGER: My statement was just that
21 since that's what we approved at that point and what
22 we're doing now is amending that and the proposed
23 changes to that to my knowledge do not appear
24 anywhere. Certainly not in writing in the
25 application. I just think it's necessary at this

1 point for the applicant to state, much like he did at
2 the original meeting, what his intentions are. What's
3 there now perhaps, and what his intentions are up to
4 the point when you move it from that facility. Just
5 so that it appears in the record and we all know what
6 we're voting on.

7 MR. TAPP: What we've done initially, and I
8 think I spoke of this at the last meeting we had.
9 What I had envisioned as far as a top was like a
10 backstop at a ball diamond. That leaned in over the
11 facility. We had pictures here that illustrated that,
12 things of that nature. How it leaned over. But what
13 that did is the bunkers that were towards the middle
14 of the field, when we got bounces off of them it
15 actually lowered the netting and it was easier for
16 those to get over. My neighbors are so close behind
17 me. A 15 foot wide ditch and then there's their
18 backyard. They're just right butted up to each other.
19 That's where 90 percent of the problem is coming from.

20 So in theory I talked to the manufacturers of
21 the netting. The problem is not balls going through
22 the netting. It's bouncing over top of it. So
23 instead -- my chain-link fences are 12 feet tall.
24 With the backstop design I had another about six feet
25 that was leaning about approximately let's say a 45

1 degree angle. Maybe a little bit steeper than that,
2 in over the top of the facility. That only gave me
3 about maybe 14 or 15 feet in height.

4 So in theory I talked to the paint ball
5 manufacturer and they said, well, what we have is a 20
6 foot netting, a hybrid netting. It was very
7 expensive. They say, what we'll do for you is 20 foot
8 with a foot of draping at the bottom. I have 22 foot
9 poles that I have purchased. What that will do is
10 take it up another four or five feet in hopes that
11 that would catch the remainder of the bouncers.

12 In some areas it's almost completely
13 eliminated. I've actually gone, and like I said I've
14 canvassed and solicited responses from my neighbors.

15 In the middle I'm having absolutely no problem
16 at all. On the corners though, I'm having an adverse
17 affect. So I made another call to the paint ball
18 manufacturers. This is just since the 27th whenever I
19 actually talked to, I think Carter is her name. I was
20 up on the lift repairing the netting that had actually
21 damaged her fence. I was up there repairing that. I
22 kind of hollered down to her. I hadn't heard anything
23 from her so I assumed everything was fine. That's the
24 first time that she expressed her displeasure. Just
25 pretty much the same thing the letter said there. Not

1 quite as detailed.

2 Immediately after that I contacted the paint
3 ball netting manufacturer again and said, hey, look,
4 the corners of my facility I'm still having some
5 issues where I'm getting some bounces. They described
6 what they called skirting in the corners. I could
7 skirt the corners in to -- because when it comes to a
8 corner, you know, a 90 degree corner like this you've
9 got this whole area here where something can get out
10 that way. What they suggest that I do is run a skirt
11 on the corner.

12 I got that done just in time for the big wind
13 storm to come and rip it all down for me again this
14 week. It will be back up tomorrow and I'm going to
15 put the skirts in the corners. I don't have that
16 described anywhere. I'm going to continue to do
17 everything that I can to prevent paint balls from
18 going in their yards.

19 I don't expect them, my neighbors, to clean up
20 our mess. I will go over there personally or send
21 guys over there. Any time they get any in their yard,
22 we will pick them up. If one lands on a car or
23 something like that, I've offered to wash cars for
24 free. Whatever.

25 I've got over 300 kids that have signed up to

1 participate in this thing. I think Dallas and my
2 others neighbors have agreed that if I will move it
3 and not bring it back in the fall, that they would be
4 fine with it. I have not had an opportunity to talk
5 to Ms. Carter and get her blessing on that because she
6 is out of town. Everybody else has agreed to that.

7 MR. DYSINGER: So you currently have 20 feet
8 high?

9 MR. TAPP: Minimum.

10 MR. DYSINGER: You currently have the skirting
11 at the corners or not?

12 MR. TAPP: Actually I have nothing. I have 12
13 feet high right now because it all blew down. It will
14 be -- the first of this week it was all installed.
15 Then we had the 50, 60, 70 mile an hour gust the other
16 night. It ripped my bolts. I mean just snapped them
17 in two. I will have it all back up tomorrow. It's a
18 real simple fix and I will have the skirts on the
19 corners also.

20 MR. DYSINGER: Do you suspend operations when
21 the netting is down?

22 MR. TAPP: Yes, I did. What she described is
23 correct. I did have people playing on the north
24 field. I was not aware of anybody playing on the
25 south field whenever the netting was down on the south

1 field. I trust that if somebody was doing that, they
2 should not have been and I'll admonish my referees for
3 allowing that to happen. That could be what she's
4 describing there came into play.

5 CHAIRMAN: Mr. Mischel, you have some
6 comments.

7 MR. SILVERT: State your name, please.

8 MR. MISCHEL: Jim Mischel.

9 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

10 MR. MISCHEL: I would just like say we took
11 some pictures this afternoon. Some of you might not
12 be familiar with the site. I thought it would be good
13 to pass these out. These were taken this afternoon.
14 It will kind of give you an idea of what he's talking
15 about, what everybody is talking about. We'll put
16 these into the record.

17 MR. TAYLOR: These picture are with the 20
18 foot down, right? This is just the 12 foot.

19 MR. MISCHEL: It shows the 12 foot and then --

20 MR. TAYLOR: Where the 20 foot would be up on
21 top.

22 MR. TAPP: Mr. Mischel, do you have the
23 pictures that I e-mailed you that showed it all up?

24 I sent Mr. Mischel the pictures of everything
25 once it was all up before the wind tore it down again.

1 MR. MISCHEL: I think this was in place. Like
2 he said, the wind in the last couple of days took it
3 down. It will give you an idea.

4 MR. NOFFSINGER: Mr. Mischel, did you also
5 have some paint balls to enter into the record?

6 MR. MISCHEL: We went out and took the
7 pictures today. We went at 3844 McIntire Crossing.
8 When he took the pictures, these were in the yard.

9 MR. TAPP: I have more of what the netting
10 will look like once its up. I think it's the same
11 thing I passed out the last time.

12 MS. MASON: This netting that you've
13 installed, has it blown down twice since you've
14 installed it?

15 MR. TAPP: Yes, ma'am, it sure has. The bolts
16 like I said were not adequate so I went down to Hanna
17 Supply on Fourth and Walnut down there and got the big
18 bolts like the telephone company uses.

19 MS. MASON: Is this the second time you've
20 installed it or is this for tomorrow when you
21 installed it?

22 MR. TAPP: No. This is for tomorrow. I have
23 not used these big -- I mean it's like the ones that
24 the telephone company uses. I have not used those.

25 MS. MASON: It concerns me that the neighbors

1 are still having problems. With the way Owensboro is
2 known for their high winds, we could have a whole lot
3 more wind between now and the end of April or whenever
4 you stop operations and move to your new facility.

5 CHAIRMAN: Mr. Tapp, what modification have
6 you made to prevent the wind from taking this thing
7 down? We have 30 to 40 mile an hour wind, especially
8 in that area down there, on a regular basis. Have you
9 made modifications to prevent that from taking that
10 down?

11 MR. TAPP: Yes, sir. The primary -- what is
12 happening the cables aren't breaking. It's the
13 devices that I was using to attach the cables to the
14 i-bolts. This last one we had -- what night was it?
15 New Year's Eve. We had straight line winds. They had
16 to be 60, 70 mile an hour. What it actually did was
17 it worked the three-eighths inch i-bolts back and
18 forth until they just snapped in two. Everything else
19 held together, but the bolts snapped in two. With
20 that kind of wind, you know, that's about as bad as it
21 gets.

22 With the new bolts that I bought, the same
23 type that they use to run the big guide wires from the
24 telephone pole and anchor them down into the ground,
25 you know, that you see. That's the type that I went

1 and paid the extra money to get. Something that isn't
2 going to snap a telephone pole. I don't foresee that
3 happening again.

4 MR. TAYLOR: I think my main question is, you
5 know, we've had this letter and complaints and stuff.
6 It seems that was with the old netting plan that was
7 actually never in existence. It didn't go across.

8 Now, it seems that you've made some
9 consultations and talked to people on how to do it.
10 What probably would be considered experts in the
11 netting company. They can see that the 20 foot and
12 the skirting would prevent that from happening.

13 Now, do we have people that have complained
14 while that 20 foot and skirting was there? It seems
15 like we've got somebody, and I'm just assuming by your
16 telephone conversation, that would know, just saying
17 that the 20 foot nets and the skirting would work to
18 prevent it. Do we have any complaints or anything on
19 the other side saying that didn't work? I think we're
20 basing all of this, it not working and all the paint
21 balls on how it's constructed right now.

22 MR. TAPP: Not with the skirts, no. No. I
23 still was getting some problems in the corners with
24 the 20 foot, but not with the skirts.

25 MR. MISCHEL: I might just add I think Ms.

1 Carter's letter came half the 20 foot was up. Now,
2 since then he's put it up again. I think originally
3 this letter she sent was sent after it went 20 feet
4 tall. Like he said, he hasn't put the skirts in the
5 corners yet.

6 MR. TAYLOR: Is her house one of those corner
7 houses that was affected by the --

8 MR. TAPP: Yes. She lives right next-door.

9 CHAIRMAN: Mr. Tapp, I would like to ask the
10 gentleman in the back if he has any comments or
11 questions of any kind?

12 MR. SILVERT: State your name, please.

13 MR. HAMILTON: Dallas Hamilton.

14 (MR. DALLAS HAMILTON SWORN BY ATTORNEY.)

15 MR. HAMILTON: Actually I come here to hear
16 what he said. They're leaving in March and they're
17 not going to be back. That's what I wanted to hear.
18 I wanted to come down and make sure I wasn't getting
19 jerked around is why I came down here.

20 MR. DYSINGER: Have you had more paint balls
21 in your yard?

22 MR. HAMILTON: A few, yes.

23 MR. NOFFSINGER: That's the end of April, I
24 believe. Not March. April.

25 CHAIRMAN: Thank you.

1 MS. MASON: Mr. Tapp, you said you did not
2 speak to Ms. Carter about your intentions of leaving
3 at the end of April?

4 MR. TAPP: No, I haven't had a chance to speak
5 to her since -- the 27th is the only time I've spoke
6 to her. The morning she was leaving I was up on the
7 lift. I actually got down off the lift and tried to
8 make it around and catch her and have a conversation
9 with her, but she had already drove off by the time I
10 got there. That's when I actually went over and
11 talked to Dallas.

12 MR. TAYLOR: Mr. Chairman, if we're ready for
13 a motion, I'm ready to make a motion.

14 CHAIRMAN: I have one other comment.

15 I'm not sure that the modifications that you
16 have made are adequate. We have no way of knowing if
17 the modifications you have made are adequate. If this
18 board approves the modification and it's not adequate,
19 then what is our procedure after that? Because we're
20 approving what he says he's modified, his
21 modifications. If that's not adequate, then where are
22 we?

23 MR. TAYLOR: I'm kind of basing this as a
24 modification of our old one. We kind of took with the
25 paint ball netting and how they say constructing it

1 would work. We didn't know for sure that that would
2 work, but we took the paint ball netting company
3 saying that that would work, on his word, and we
4 approved it then. If we based our findings before on
5 that, then them saying that this would work -- I know
6 there's no concrete way, but when we make a decisions
7 on a lot of things there's not going to be a concrete
8 way to know for sure that it's going to work. That's
9 kind of where I'm approaching it from.

10 CHAIRMAN: Let me ask: Are there any other
11 comments or questions from the board members?

12 MS. DIXON: I just feel like it's going to be
13 a trial and error and constant monitoring. I feel for
14 the neighbors around there. They should not have to
15 suffer an inconvenience of this or potential property
16 damage or pets or whatever. I wouldn't want it.

17 MR. DYSINGER: My concern at this point it is
18 a trial and error. I think that's exactly right.
19 While I think everybody seems to be getting along so
20 far, that's going to start wearing thin. The problem
21 I have at this point is it seems like the net itself
22 is now a problem. It's damaged a neighbor's property.

23 While I understand you've gotten different
24 hardware and things like that, I'm not an engineer. I
25 don't know if that's -- are we just going to end up

1 having larger hardware in this neighbor's property?

2 To me that's the issue at this point. Paint
3 balls are the least of your problems if you've got
4 this netting falling down.

5 You said it yourself, Mr. Chairman, those
6 winds get pretty crazy on Carter.

7 MS. DIXON: Between now and April a lot can
8 happen.

9 CHAIRMAN: That would be one of the issues
10 with me. I'm not totally clear of the modifications
11 you've made. I've listened to you. It's very
12 difficult to listen to what you've said. The
13 modifications you've made, whether it's adequate.
14 What we're doing is approving this based on the
15 modifications. You're asking for amended and you're
16 going to modify it. Now we're going to approve your
17 modification. We don't know whether it's adequate or
18 not. I'm not sure where we are if we approve this.
19 Then the neighbors immediately, Jim Mischel gets a
20 call and he goes down and you've still got the same
21 problem. We get a 40 mile an hour wind, it's taken it
22 down again. I really don't know at this point what
23 we're approving. I'm ready to ask for a motion.

24 MR. TAYLOR: I've kind of got a Staff question
25 now. I know that is a great concern with that.

1 Can you make a motion, you know, with a
2 revocation clause saying if the netting was to fall
3 into someone's yard then the conditional use permit
4 would be revoked? I'm assuming that would be to Staff
5 or counsel, whoever would know the answer to that. I
6 don't know if that would alleviate concerns or not.
7 It seems that would take a bunch of concerns away.
8 That we're acknowledging he's made steps to try to fix
9 this. We're not going to do trial and error so much.
10 If this one doesn't work, then we're saying we'll pull
11 it.

12 MR. DYSINGER: If we approve the net and the
13 net comes down, it's automatically not in compliance.
14 I mean it's automatic.

15 MR. TAYLOR: Right, but it wouldn't be an
16 automatic revocation. It would just be, he'd be in
17 noncompliance and then he would fix the net.

18 MR. SILVERT: He would be subject to the
19 procedure that he went through this time. Where he'd
20 be subject to a revocation hearing.

21 MR. NOFFSINGER: And I'll second that.

22 MR. SILVERT: Thank you.

23 MR. WARREN: If we put the revocation clause
24 in there.

25 MS. DIXON: Basically any conditional use

1 permit is subject to revocation, if they don't meet
2 the conditions, correct?

3 MR. SILVERT: Correct.

4 MR. NOFFSINGER: That's right. You go through
5 the process where we go through on Item 4.

6 MR. TAYLOR: So it would not be necessary to
7 make a special note in the motion to say that?

8 MR. NOFFSINGER: That's right. You have to go
9 through the statutory provisions for revoking the
10 conditional use permit. It just doesn't happen
11 automatically.

12 MR. TAYLOR: That was my question.

13 CHAIRMAN: Chair is ready for a motion.

14 MR. TAYLOR: Mr. Chairman, I move to approve
15 the conditional use permit based on several
16 conditions. One of the conditions being that the
17 conditional use permit is only granted until the end
18 of April. Also that the 20 foot netting that was
19 discussed is installed, the skirting is installed in
20 the corner in order to help prevent the paint balls
21 from going through. Obviously I know revocation is an
22 issue, but even if it's just for a minute the net
23 falls down that no business is obviously operational,
24 if any parts of this conditional use permit is not in
25 compliance. If anything happened against this permit,

1 that operation would not be able to go on.

2 I base those on the findings that we approved
3 this conditional use permit before based on somewhat
4 expert advice or what we thought was knowledge that
5 would prohibit the paint balls from excessively going
6 over the fence. I'm basing it upon that and the
7 injection of further advice that the installation of
8 the higher nets would help in that cause as well.

9 CHAIRMAN: Do we have a second?

10 (NO RESPONSE)

11 MR. DYSINGER: Mr. Chairman, what if this
12 doesn't solve the paint ball problem? The motion does
13 not deal with the original issue of stopping paint
14 balls.

15 CHAIRMAN: Then we're back where we are right
16 now. That's my opinion.

17 Mr. Noffsinger, do you have an opinion on
18 that?

19 MR. NOFFSINGER: I share your privity.

20 CHAIRMAN: If we have complaints again, Mr.
21 Mischel I would suspect, then he would have to come
22 back and we'd have to go through this procedure again.

23 If it comes back, we're going to have to have
24 detailed drawing by an expert engineer that thing will
25 stay. If it doesn't stay this time, then you bring

1 back with you a detailed drawing. It's very difficult
2 for us to sit here and understand what you're saying.
3 If you have your supplier or someone, an engineer,
4 that could give us a detailed drawing. If you come
5 back, you need to have that or you won't get it.

6 MR. TAPP: Sure.

7 MR. DYSINGER: If it stays up and everything
8 is fine, but the neighbors still have paint balls, we
9 will be back here next month. That wasn't overtly
10 stated in the motion.

11 MR. TAYLOR: I don't think I can state that
12 from what I asked earlier. It will have to go through
13 a complaint process where Jim would have to go out and
14 inspect it and then go through what it took to get to
15 this initially.

16 MR. NOFFSINGER: Based upon Mr. Taylor's
17 motion, paint balls in the adjoining yards would
18 become I think a civil matter and not a matter before
19 the Board of Adjustment because his motion does not
20 include any conditions regarding that. It only states
21 that he's to install a 20 foot netting and then the
22 skirting in the corners and they're not to operate if
23 the netting is down. It does not address paint balls.
24 He's making this motion believing that this design is
25 adequate. He's not saying it's 100 percent adequate.

1 I think what you're saying is you believe this
2 is adequate and with these conditions you're
3 comfortable in moving forward with it. It does not
4 address, you have no expert testimony. You have no
5 plan. You have no design plan. You have this
6 gentleman's word, this is what I think is going to
7 work and here is what I'm going to do. Mr. Taylor's
8 motion is based upon his testimony and the conditions
9 he feels would be necessary to protect the adjoining
10 properties.

11 Is that a fair statement?

12 MR. TAYLOR: Right. Pretty much except for
13 that we approved it the last time. Yes. Absolutely,
14 that's what I'm saying.

15 MS. DIXON: But it basically doesn't address
16 the original problem that we started with, with the
17 paint balls.

18 MR. NOFFSINGER: We don't know if it will or
19 not.

20 MR. TAYLOR: I don't know how to, maybe one of
21 you all know how to make an amendment, if you approve,
22 with what I said before to address that. I didn't
23 know how to address that so it was not included.

24 MR. DYSINGER: I don't want this to become a
25 civil matter if we -- I don't think that's fair to the

1 adjoining neighbors. I don't think that's what he
2 wants either.

3 If it's possible to amend, is it possible to
4 amend his motion?

5 MR. SILVERT: If he'll accept a friendly
6 amendment, you won't have to have a motion to do that.

7 MR. TAYLOR: I will most certainly accept a
8 friendly amendment.

9 MR. DYSINGER: I friendly suggest that we
10 amend that to allow the neighbors, the adjoining
11 neighbors to come to this board if the paint balls are
12 a problem. I don't know the best way to handle that.
13 Or complain to Staff or notify Staff if there's a
14 continued problem with paint balls in their yard.
15 Make this subject to revocation at that point.

16 CHAIRMAN: Do you accept his amendment to your
17 motion?

18 MR. TAYLOR: I do. That's kind of what I was
19 going for. Again, I don't know if that has to be
20 worded. That's kind of like what we were talking
21 about before. That's kind of their recourse anyway if
22 this was to happen.

23 MR. NOFFSINGER: The recourse before was
24 because it was not constructed as he said it would be.
25 That's why. It has to do with the paint balls, but

1 technically it's because of the way he said it would
2 be constructed. He didn't do it so he's got to come
3 up with a plan.

4 MR. DYSINGER: So did we just do that?

5 MR. WARREN: With the amendment we're saying
6 if there's anything wrong and you all get complaints
7 in the office, this can come back before this board
8 for a revocation?

9 MR. NOFFSINGER: It's probably going to be a
10 mute issue because by the time it gets to this board,
11 it's going to be April.

12 MR. TAYLOR: Can you put a 30 day review or so
13 on the permit? Is that a possibility? That's kind of
14 keeping this existing. We approve this and in a 30
15 day review that it will be on the agenda of the next
16 meeting. Then if there were problems, those people
17 could come forward. Then at that point we would
18 determine the overall fate of the motion. That's kind
19 of like a 30 day risk free trial. However you want to
20 say it. I don't know if that's legal or not.

21 MR. SILVERT: If I might interject. I think
22 the suggestion there may be, may be to make it subject
23 to the 30 day review and postpone Item 4, which is the
24 revocation.

25 MR. NOFFSINGER: A 30 day review, but the 30

1 day review has to be on conditions.

2 MR. SILVERT: Yes.

3 MR. NOFFSINGER: So therefore you have to have
4 a condition addressing --

5 MR. TAYLOR: And that was his friendly
6 amendment.

7 MR. DYSINGER: I would go even further as to
8 saying that we review it monthly, since we're just
9 talking about since April. I wouldn't want to keep
10 something hung up like this forever. Reviewed
11 monthly, postpone Item 4, so that these neighbors have
12 an outlet short of calling an attorney. I just don't
13 think that's reasonable to -- with the conditional
14 permit that it's reviewed monthly.

15 MR. TAYLOR: Is that good, Gary?

16 MR. NOFFSINGER: Two things.

17 Number one, Madison, why do we need to revoke
18 the conditional use permit if this is approved?
19 Because the approval of this conditional use permit
20 supercedes the original one. So we're no longer
21 considering that.

22 Two, I think you need a condition to address
23 what you want reviewed. It's not just a 30 day
24 review. We don't want to go through this every 30
25 days. We need a 30 day review of the specific

1 conditions so that Jim Mischel can appear before this
2 board each month and say, this conditional use permit
3 has been reviewed. Condition 2, 3, 4, whatever,
4 they're in compliance or they're not. We need a
5 specific condition in which to review and to report to
6 you. Not just leave it open.

7 So if your issue is paint balls on adjoining
8 properties, you need to address paint balls on
9 adjoining properties.

10 MR. DYSINGER: I thought we already did that.
11 That was part of the friendly amendment.

12 MR. NOFFSINGER: What was the friendly
13 amendment? I didn't understand, I guess, the friendly
14 amendment.

15 MR. SILVERT: The motion is whether the
16 mechanism that is being constructed is effective to
17 prevent paint balls from leaving the field and going
18 into the neighbors yards.

19 The question and condition you may want to add
20 is that in 30 days the mechanism is reviewed to
21 determine whether or not paint balls in fact were able
22 to go over the new mechanism. If so, then this would
23 be in compliance. The idea behind the mechanism is
24 that it prevents paint balls from going into people's
25 yards.

1 MR. NOFFSINGER: So you're saying in terms of
2 mechanism is to capture all paint balls?

3 MR. TAYLOR: That's my question. I agree with
4 everything he said. Is one paint ball? Is it like a
5 three paint ball per yard minimum? I know it's
6 getting a little bit weird and keeps going on.

7 MS. DIXON: To be honest, at this point I
8 don't think the neighborhoods ought to have to put up
9 with one paint ball.

10 MR. DYSINGER: My only desire is to prevent
11 what Mr. Noffsinger referred to. If we don't put a
12 mechanism in there for the neighbors to come back to
13 us next month, whether that's a review or whatever,
14 their only hope is civil suit and nobody wants that.
15 Nobody wants that.

16 MS. DIXON: They shouldn't have to bear the
17 expense of an attorney.

18 MR. DYSINGER: Exactly.

19 MR. NOFFSINGER: If you say "no paint balls,"
20 then I think you've covered the neighbors being able
21 to come back here. The neighbor in the back, I don't
22 think you're going to hear from the gentleman in the
23 back next month if there's a paint ball or two in his
24 yard. He's looking forward to the end of April. We
25 don't know about Ms. Carter. You just need to give us

1 specific conditions in which Mr. Mischel can report to
2 you. Okay, we've had no reports of paint balls, or
3 we've had one report and they said they had five or
4 whatever. You need to be specific.

5 MR. DYSINGER: Friendly amendment, with the
6 condition that the fence as described prevents any
7 paint balls from entering adjoining neighbors yards.
8 If the neighbors don't want to report it, it's on
9 them. If we hear about it we can -- I want to be
10 clear about this. If we hear about it, if it gets
11 reported to us by a neighbor that it's still a
12 problem, we can revoke at that time. We don't have to
13 add anything to be able to revoke that. He would not
14 be in compliance; is that correct?

15 MR. NOFFSINGER: At that point from the
16 review, I think we still have statutory requirements
17 that we have to properly notify revocation. We can do
18 the review, but then it's going to be another month
19 before we get to the revocation.

20 MS. MASON: It would be the March meeting.

21 MR. TAYLOR: I accept that amendment.

22 CHAIRMAN: So we get this in the record.

23 Mr. Taylor, you accept Mr. Dysinger's friendly
24 amendment?

25 MR. TAYLOR: I do accept Mr. Dysinger's

1 amendment.

2 MR. DYSINGER: In that case, I second Mr.
3 Taylor's motion.

4 CHAIRMAN: We have a motion and a second. Any
5 question on the motion?

6 (NO RESPONSE)

7 CHAIRMAN: All in favor raise your right hand.

8 (BOARD MEMBERS - MARTY WARREN, RUTH ANN MASON,
9 SEAN DYSINGER, WARD PEDLEY AND CLAY TAYLOR - RESPONDED
10 AYE.)

11 CHAIRMAN: All opposed.

12 (BOARD MEMBER JUDY DIXON RESPONDED NAY.)

13 CHAIRMAN: Motion carries six to one.

14 MR. NOFFSINGER: On Item 4, perhaps we should
15 read that into the record and make it clear that that
16 conditional use permit is superceded by the one just
17 approved is no longer in affect.

18 MR. DYSINGER: But we amend it. We did not
19 replace. We didn't supercede. We amended. That is
20 the conditional use permit that's in affect.

21 MS. DIXON: Counsel.

22 MR. SILVERT: The problem with the conditional
23 use permit was the conditional use permit. The
24 question was whether or not it was in compliance. The
25 question of compliance was whether or not there was a

1 net going across the top of it. A net going across
2 the top is no longer required by that conditional use
3 permit. So the question is whether or not the
4 conditional use permit is in compliance. In other
5 words, the question of it having a top -- because it's
6 not longer required.

7 MR. NOFFSINGER: So legally we don't have to
8 do anything at this point is what you're telling us.

9 MR. SILVERT: You probably need to dispose of
10 the item.

11 ITEM 4

12 3905 Carter Road, zoned B-4, (Postponed from December
13 6, 2007 meeting)
14 Consider revocation of the Conditional Use Permit
15 issued to Atlantis Swim and Sport Complex, Inc. and
16 Floyd D. Tapp approved at the September 6, 2007,
17 Owensboro Metropolitan Board of Adjustment meeting.
18 Reference: KRS 100.237(4)

19 MR. NOFFSINGER: Mr. Chairman, Planning Staff
20 would recommend that you vote to revoke this
21 conditional use permit based upon the evidence
22 presented at the December Board of Adjustment meeting
23 of 2007, as well as the evidence presented here
24 tonight in reference to Item 4A on the agenda, and
25 given the fact that you have approved a new
26 conditional use permit for the property which
27 supercedes the conditional use permit you're revoking.

28 CHAIRMAN: Do we need to vote on that?

1 MR. TAYLOR: Are we revoking? I thought we
2 were just disposing of the item.

3 MR. DYSINGER: Mr. Chairman, based on the
4 findings that we've amended the conditional use
5 permit, I move that we do not revoke the conditional
6 use permit.

7 MR. TAYLOR: I second.

8 CHAIRMAN: We have a motion and a second. Any
9 question on the motion?

10 (NO RESPONSE)

11 CHAIRMAN: All in favor raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 We need one final motion.

15 MS. DIXON: Move to adjourn.

16 MR. WARREN: Second.

17 CHAIRMAN: All in favor raise your right hand.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: We are adjourned.

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

4 I, LYNNETTE KOLLER FUCHS, Notary Public in and
5 for the State of Kentucky at Large, do hereby certify
6 that the foregoing Owensboro Metropolitan Board of
7 Adjustment meeting was held at the time and place as
8 stated in the caption to the foregoing proceedings;
9 that each person commenting on issues under discussion
10 were duly sworn before testifying; that the Board
11 members present were as stated in the caption; that
12 said proceedings were taken by me in stenotype and
13 electronically recorded and was thereafter, by me,
14 accurately and correctly transcribed into the
15 foregoing 55 typewritten pages; and that no signature
16 was requested to the foregoing transcript.

17 WITNESS my hand and notary seal on this the
18 26th day of January, 2008.

19

20 _____
21 LYNNETTE KOLLER FUCHS
22 OHIO VALLEY REPORTING SERVICES
23 202 WEST THIRD STREET, SUITE 12
24 OWENSBORO, KENTUCKY 42303

25 COMMISSION EXPIRES: DECEMBER 19, 2010

COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY