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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

MARCH 3, 2011

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, March 3, 2011, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: C.A. Pantle, Chairman
- Ward Pedley, Vice Chairman
- Ruth Ann Mason, Secretary
- Gary Noffsinger, Director
- Madison Silvert, Attorney
- Rev. Larry Hostetter
- Marty Warren
- Sean Dysinger
- Shannon Raines

* * * * *

CHAIRMAN: Let me call the Owensboro Metropolitan Board of Adjustment to order. We start our meeting each night with a prayer and pledge of allegiance. We invite you to join us at this time. Madison will have our prayer tonight.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: At this time I want to welcome you all to the meeting this evening. If you have any comments on any of the items on the agenda, please come to one of the podiums, state your name so we can swear you in and have the information on record.

First item at this time is the minutes in the office of the February meeting. I don't think we

1 found any problems with it.

2 MR. NOFFSINGER: No, sir.

3 CHAIRMAN: With that I'll entertain a motion
4 to dispose of the minutes.

5 MR. PEDLEY: Motion for approval, Mr.
6 Chairman.

7 FATHER LARRY: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries.

12 Next item, please.

13 -----

14 CONDITIONAL USE PERMIT

15 ITEM 2

16 926 Maple Street, zoned I-1

Consider request for a Conditional Use Permit in order
17 to operate an outdoor storage facility.

Reference: Zoning Ordinance, Article 8, Section 8.2L8

18 Applicant: River City Industrial Services, Inc.

19 MR. SILVERT: Would you state your name,
20 please?

21 MS. EVANS: Melissa Evans.

22 (MELISSA EVANS SWORN BY ATTORNEY.)

23 ZONING HISTORY

24 The subject property is currently zoned I-1
25 Light Industrial. OMPC records indicate there was a

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1 zoning map amendment application approved for the
2 subject property from R-4DT to I-1 in 1989.

3 There was a Development Plan for 925 Maple
4 Street and the subject property approved in April of
5 2006. In conjunction with the Development Plan there
6 was an Administrative Appeal approved at the April
7 2006 OMBA meeting allowing trucks to back across the
8 right-of-way on a local street from the loading dock
9 at 925 Maple Street to the parking lot at 926 Maple
10 Street.

11 The applicant is requesting to use the
12 existing parking lot as outdoor storage for various
13 materials in addition to the uses previously approved
14 by the Administrative Appeal and Development Plan.

15 LAND USES IN SURROUNDING AREA

16 The property to the north, west and south are
17 zoned R-4DT Inner City Residential. The property to
18 the east is zoned I-1 Light Industrial.

19 ZONING ORDINANCE REQUIREMENTS

20 1. Parking - 5 spaces as required by the
21 previous Development Plan and shown on the site plan
22 submitted.

23 2. Landscaping - 1 tree for every 40 feet of
24 linear boundary between the subject property and
25 residentially zoned property, a 10 foot landscaping

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1 easement between the subject property and
2 residentially zoned property and a continuous 6 foot
3 high solid wall or fence around the perimeter of the
4 subject property.

5 SPECIAL CONDITIONS

6 1. Approval of an amended Final Development
7 Plan.

8 MS. EVANS: We would like to enter the Staff
9 Report into the record as Exhibit A.

10 CHAIRMAN: Thank you.

11 Have we had any opposition or comments in the
12 office?

13 MR. NOFFSINGER: Yes, sir, we have had some
14 comments registered in the office. I believe some of
15 those folks are here tonight.

16 CHAIRMAN: With that the applicant, you want
17 to present?

18 MR. SILVERT: State your name, please.

19 MR. WILSON: Bill Wilson.

20 MR. SILVERT: You're duly sworn.

21 MR. WILSON: Mr. Chairman and Members of the
22 Board, I'm here on behalf of River City Industrial
23 Services. The applicant isn't here, Mike Butler.
24 Mike got tied up. He's on his way down here now. I
25 apologize for him getting hung up. He's coming to

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1 explain anything that he might be able to.

2 Don Bryant is here. Don has done the work on
3 this. I know that there's some issues with the
4 screening and using this lot that's already paved and
5 Mike has probably used it. I understand he had some
6 shrubberies planted. I don't know how they
7 disappeared. I know we're talking about some type,
8 one of these fencing screening mechanisms. We're
9 certainly willing to do those things that were
10 recommended by the Staff. We would like to use this
11 in conjunction with the industrial use that's going on
12 with those other properties adjacent across the
13 street. I'll ask Don Bryant, if he would, to
14 generally describe what he intends to do.

15 MR. SILVERT: Could you state your name,
16 please?

17 MR. BRYANT: Don Bryant.

18 (DON BRYANT SWORN BY ATTORNEY.)

19 MR. BRYANT: The existing parking lot across
20 Maple Street is presently being used for some outdoor
21 storage in conjunction with the warehouse. The client
22 has found that does require a conditional use permit.
23 It is zoned industrial, but it doesn't allow for
24 outdoor storage and that's why he's requesting the
25 conditional use permit to allow that.

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1 We have submitted a site plan and we're in
2 agreement to comply with all the Staff's requirements
3 including the screening. There is a chain-link fence
4 around the property now and probably will bring that
5 into compliance by adding the slats to meet the
6 capacity requirements.

7 So we're in total agreement to meet all of the
8 conditions requested and if approved then we will
9 submit an amended final development plan to reflect
10 that.

11 CHAIRMAN: Board members have any questions of
12 Mr. Bryant at this time?

13 (NO RESPONSE)

14 MR. BRYANT: Mr. Butler is here so if you've
15 got any questions specific about the use or whatever
16 we can address those. I'm not sure what the concerns
17 are.

18 CHAIRMAN: Thank you.

19 Staff have any other comments at this time?

20 MR. NOFFSINGER: No, sir.

21 CHAIRMAN: Anyone in the audience, you all
22 have any comments or questions?

23 MR. ATWELL: Yes.

24 CHAIRMAN: Come forward and state your name,
25 please.

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1 MR. SILVERT: Would you state your name,
2 please?

3 MR. ATWELL: James Atwell.

4 (JAMES ATWELL SWORN BY ATTORNEY.)

5 MR. ATWELL: We have a real concern down there
6 about our backyards back up to that property. In the
7 case of Mr. Weaver, his front yard is facing that
8 property. There's tall stacks of food items out there
9 that draw all kinds of pests and in the summertime it
10 will take your breath if you walk out in your yard.
11 So we're really concerned about getting that taken
12 care of. Thank you.

13 CHAIRMAN: Anyone else have any other comments
14 at this time?

15 Come forward and state your name, please, sir.

16 MR. JIM WARREN: My name is Jim Warren.

17 (JIM WARREN SWORN BY ATTORNEY.)

18 MR. JIM WARREN: I'd just like to agree with
19 everything that he said. If he gets the conditional
20 use permit for storage type, I think right now it's
21 supposed to be vehicle only and there are a lot more
22 there now than just vehicles. If this conditional use
23 permit is agreed upon, I would like to know what type
24 of storage would be allowed there because my biggest
25 concern is this tomato waste product that comes, I

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1 think, from Ragu, if I'm not mistaken, that does have
2 a tremendous smell. If you put a 6 foot privacy fence
3 or landscaping of some sort, that's not going to
4 affect the smell. You may not see it, but you're
5 going to smell it.

6 I moved in there almost 30 years ago. I was
7 told when we asked about what was going on there that
8 I should have thought about that before I moved there.
9 When I moved there, there was residential property in
10 that parking lot. It was residential. There was no
11 parking lot and it wasn't I-1 industrial.

12 The tobacco warehouse owned it and they had it
13 paved and they used the parking lot maybe twice a year
14 for three or four days at a time when they were
15 selling tobacco. Since they've taken it on, I did
16 think about that when I moved there because down the
17 street there was a business at the time that was a lot
18 smaller than it is now, but there was no smell and
19 there's no smell now. But from this tomato stuff
20 there are pests, rodents, as well as smell.

21 My concern is my wife has multiple sclerosis
22 and she's very, very disable, highly disabled, and she
23 can't get out to go out walk around or whatever, but
24 she can get out on the back patio when the summer is
25 nice, weather permits, and you can't go out there

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1 because the smell is terrible. I think I have the
2 right, all of us I think have the right to go out into
3 our yard and enjoy our patio or barbecue or whatever
4 we want to do without having to smell that.

5 I'm concerned about, like I said, if he gets
6 this permit what can he store there. Because somebody
7 down here told me if this permit went through,
8 whatever it is he's going for, he can store anything
9 he chose to. That's my concern. Thank you.

10 CHAIRMAN: Anyone else have any other
11 comments?

12 State your name, please.

13 MR. WEAVER: Dennis Weaver.

14 (DENNIS WEAVER SWORN BY ATTORNEY.)

15 MR. WEAVER: I agree with everything they
16 said. He just made a comment the smell is not bad
17 now. I was trying to work in my yard last week. I
18 couldn't stay out there. It gave me a headache it
19 smelled so bad. It was like that about two or three
20 days. Something was running out of the parking lot.
21 I don't know what it was, but the stench was
22 terrible.

23 Semi trailers they have sitting out there, the
24 doors are not always -- they leave them open. I don't
25 guess they lock the doors or whatever. The wind

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1 blows. They will slam. You can hear them at night.

2 The landscaping and whatnot, I don't know what
3 they're going to do to the front. I've been there 30
4 years too. Now, the screening they're talking about
5 they just put down the sides. They didn't put
6 anything in the front. My front yard looks right into
7 that lot. So I'm seeing all this stuff. The
8 landscaping that they have is -- they did clean it up
9 here recently. I'll give them that, but it was just
10 grown up and looked bad. It was terrible. I want to
11 make sure something is done to the front of it. Well,
12 I guess it's their back, but my front. I want to make
13 sure something is done to that as well.

14 CHAIRMAN: Any other comments?

15 MR. ATWELL: If I may.

16 CHAIRMAN: State your name. You're already
17 sworn.

18 MR. ATWELL: James Atwell.

19 MR. SILVERT: You're sworn.

20 MR. ATWELL: We've been told over and over by
21 the staff at the warehouse that they want to be good
22 neighbors for us down there. We're still waiting for
23 that to happen. Hopefully we will tonight figure out
24 what they're going to do. Something will have to be
25 done to enclose those rafters that they put out there.

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1 I understand that they have a business to run, but we
2 can't even use our yards. We'll have to address that
3 problem one way or the other.

4 CHAIRMAN: Any board members have any
5 questions of the opposition at this time?

6 FATHER LARRY: Reference was made to the
7 front. Is that the area upon Moreland, when you say
8 the front?

9 MR. ATWELL: Well, that's their back, my
10 front.

11 FATHER LARRY: That's the part you were
12 talking about?

13 MR. ATWELL: Yes.

14 MR. WILSON: Mr. Chairman, the screening that
15 we talked about will be on all four sides including
16 the frontage. There will be an entrance. The
17 screening will be down both sides, across the back,
18 and across the front.

19 MS. MASON: I have a question. You're saying
20 that the smell is really bad. Is it because they're
21 leaving the trailers open or even with the trailers
22 closed it's bad?

23 CHAIRMAN: State your name again please, sir.

24 MR. ATWELL: James Atwell.

25 Ma'am, they leave these -- they're bundles

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1 about this tall from Unilever and it's food stuff.
2 There's open containers of cans that have food stuff
3 in them and it sits out there all the time. Recently
4 they've been picked up prior to us coming to this
5 meeting. In the heat of the summer, it's unbelievable
6 out there. It smells like something dead. Honestly.

7 MS. MASON: It's not from the trailers there.
8 It's from the --

9 MR. ATWELL: No. They're sitting stacked in
10 the parking lot with nothing around them.

11 MS. RAINES: Is there a way to reduce that
12 odor?

13 MR. SILVERT: If you're going to answer, I
14 need you to come forward. State your name, please.

15 MR. BUTLER: Mike Butler.

16 (MIKE BUTLER SWORN BY ATTORNEY.)

17 MS. RAINES: Is there anything you can do to
18 reduce or eliminate the odor? That seems to be the
19 biggest issue.

20 MR. BUTLER: I have talked to Unilever. It's
21 a recycling program that they have. We bale for them.
22 It's their product.

23 MS. RAINES: Does it sit on the property for
24 a short period of time?

25 MR. BUTLER: We bale big tomato bags that come

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1 with tomato sauce, Ragu sauce. They hired us to bale
2 them. It's like 2000 pound bale of these things.
3 Every time there's 20 of them they're picked up,
4 supposed to be picked up. Haven't been picked up
5 sometime in a timely manner, but every time there's 20
6 out of them. They're coming out of Florida to make
7 railroads ties out of them and they pick them up.

8 CHAIRMAN: You pick them up, you bring them
9 down. You don't disinfect or anything to eliminate
10 the smell?

11 MR. BUTLER: Well, I don't know how you can
12 disinfect tomatoes. It's just a bag that used to
13 contain tomato sauce. It's a big heavy plastic
14 thing.

15 CHAIRMAN: But it's pollutant and smelly when
16 you pick it up?

17 MR. BUTLER: We bag sauce every day. I don't
18 know if you call it pollutant.

19 CHAIRMAN: Any other board members have any
20 questions of the applicant?

21 FATHER LARRY: I'd like to be clear too on
22 what exactly is in these tall stacks of food items.
23 Are they empty plastic bags that had tomato sauce?

24 MR. BUTLER: They're not completely empty.
25 I've never been out there. They have a process they

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1 get these out of California. They come in a wooden
2 box. They sit them out there forever. They have them
3 in a wooden box. There's a 300 gallon plastic, heavy
4 duty plastic container inside. They come in on rail
5 cars and they take them in and process them when
6 they're making Ragu sauce and they dump all of that.
7 There's a little still left in the bags.

8 FATHER LARRY: So the residue is what's
9 causing the smell?

10 MR. BUTLER: Yes. There's a little residue in
11 them. They send them over to us and we bale them in
12 this big baler, this 2000 pound bale. Every time
13 there's 20 of them they're supposed to pick them up
14 and they sell them to a company down in Florida that
15 makes railroads ties.

16 MS. MASON: You bale the plastic, is that what
17 you're saying?

18 MR. BUTLER: Yes. But there is a little
19 residue of tomato sauce left in them. I don't have
20 any control over that.

21 CHAIRMAN: As they say, in the summertime when
22 it's hot and smelly, then they get to smelling pretty
23 good, correct?

24 MR. BUTLER: Well, everybody has smelled
25 tomatoes, I guess. We're used to it. I can

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1 understand their fight a little bit. It's just
2 something we don't have a whole lot of control over.
3 Those bags have to be loaded on a flatbed trailer. If
4 we put them inside and have to come out on a dock to
5 load them onto a truck with a forklift, you know, it's
6 not a very good safety practice.

7 CHAIRMAN: Any other board members have any
8 questions of the applicant?

9 MR. WARREN: So you bale them right there on
10 site?

11 MR. BUTLER: Yes.

12 MR. WARREN: And then you store them out there
13 in this parking lot until you get your 20?

14 MR. BUTLER: They pick them with a flatbed
15 trailer.

16 MR. WARREN: So when you're baling them in the
17 warehouse, I guess, what's the process there? You
18 just stack these things on top of each other and
19 whatever is inside runs out?

20 MR. BUTLER: No. They go in a baler. It will
21 make a 2000 pound bale. Takes about 20 galore of them
22 to make a bale. Then they're compressed real tight
23 where you can get 40,000 pounds on a truck to go to
24 Florida.

25 CHAIRMAN: And whatever is in it happens to be

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1 smelly or liquid you press it?

2 MR. BUTLER: Yes. If you don't do a good job
3 getting all that stuff out, you know, there is going
4 to be a little. They try to do the best they can.

5 CHAIRMAN: But you're not containing, when you
6 bale it you don't have a container, a containment area
7 to keep the stuff from running out on the ground
8 around the area?

9 MR. BUTLER: Well, there is some drain, I
10 think. You can go out and look at it. It's not -- I
11 don't think it's that bad personally.

12 CHAIRMAN: Thank you.

13 Somebody else have any questions of him?

14 FATHER LARRY: What's the average turnaround
15 time to get to 20?

16 MR. BUTLER: They probably pick up the truck,
17 it's probably, we probably do 40,000 pounds a week.
18 It's a huge savings for Unilever, as far as the waste.
19 Week to ten days.

20 CHAIRMAN: Any other board members have any
21 questions or comments?

22 (NO RESPONSE)

23 CHAIRMAN: Staff have any other comments of
24 the applicant?

25 MR. NOFFSINGER: No, sir.

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1 MR. PEDLEY: I have some comments.

2 I think at this point we do not have enough
3 information to properly address this and maybe put
4 conditions on this Conditional Use Permit to address
5 these neighbors concerns. They have some very valid
6 concerns here that must be addressed. I think it
7 needs to be investigated. Let's find out what they
8 are. We may need to put additional conditions on the
9 permit. I'm in favor of postponing this until the
10 next meeting so we can investigate.

11 CHAIRMAN: You put that in a motion?

12 MR. PEDLEY: Yes. I make a motion we
13 postpone.

14 CHAIRMAN: Is there a second to the motion?

15 MS. MASON: Second.

16 CHAIRMAN: Any other comments or questions?

17 MR. NOFFSINGER: The only comment I would have
18 is that with the postponement realize that this
19 activity is currently taking place right now that's a
20 violation of the zoning ordinance. That's why they're
21 here, is to bring it into compliance. So this would
22 continue that for another 30 days, if they continue to
23 use the property in violation.

24 MR. PEDLEY: I understand that, but at the
25 same time we do not know what the problem is. We do

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1 not know the proper conditions to put on this to take
2 care of these neighbors concerns. If there's concerns
3 out there that must be addressed, we need to put the
4 conditions to that, that it be addressed. I don't
5 know what they are. It sounds to me like it needs to
6 be taken a look at to find out what it is. My motion
7 still stands.

8 CHAIRMAN: There's a motion and a second. Any
9 other discussion?

10 MR. NOFFSINGER: Mr. Pedley, I appreciate
11 that. I just want to make sure that we all understand
12 that it's likely this activity that is not in
13 compliance with the zoning ordinance will continue for
14 at least another 30 days.

15 MR. PEDLEY: I understand that. We can either
16 postpone it or deny it.

17 CHAIRMAN: We've got a motion. Any other
18 comments?

19 MR. ATWELL: Could I just ask you one question
20 real quick?

21 We have pictures of it, if you want to see.
22 She's got it on a camera here right now.

23 CHAIRMAN: You have pictures of it?

24 MR. ATWELL: It's on the camera.

25 MR. SILVERT: We'll need to be able to have

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1 those printed to admit into evidence.

2 CHAIRMAN: State your name.

3 MR. JIM WARREN: Jim Warren.

4 MR. SILVERT: You've been sworn.

5 MR. JIM WARREN: I don't think -- I'm not sure
6 you all understand exactly what we're dealing with
7 here.

8 There's several things that I would like to
9 point out. He just made the statement that they were
10 being picked up, turned over every week to ten days.
11 If that be the case, I'm sure they have paperwork
12 showing when the company from Florida comes to pick
13 these up. I would like to see if they picked them up
14 a week ago, I would like to see the manifest from the
15 company because they have not been picked up every ten
16 days.

17 What we're dealing with here is pallets of
18 rotten tomatoes or tomato juice, tomato sauce,
19 whatever. He says that there is not that much smell,
20 but his statement before that was that he hasn't been
21 down there. Have you ever smelled rotten tomatoes
22 outside for any period of time?

23 I took a friend of mine down there that I work
24 with the other day to my house to help me take a TV in
25 the house and it was cool. It wasn't freezing, but it

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1 was less than 40 degrees. When he got out of the
2 truck, the first thing he said was, what is that
3 smell?

4 What we're dealing with, like I said, is
5 pallets that are as tall as I am or taller. They're
6 four foot by four foot squares of rotten tomato or
7 tomato bag, big plastic bags. I've got a good friend
8 of mine that works at Unilever and I know exactly what
9 they are. They empty them. They don't squeeze them
10 out. They don't wash them out. There are tomatoes or
11 tomato product, byproduct just falling out of them.
12 They're in no containment other than just smashed and
13 baled together. This stuff is running down the sides
14 out onto the parking lot. Whether you would believe
15 this or not, I've been there 30 years and I've never
16 had a mouse in my house ever. There are mice all
17 over.

18 He thinks that's funny. His point was or I
19 would like to ask him, if I could, would you like that
20 in your backyard?

21 MR. WILSON: We're not here for that, Mr.
22 Chairman.

23 CHAIRMAN: We're not going to get into that.

24 MR. JIM WARREN: The bottom line is, there has
25 been no effort to clean this up prior to knowing that

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1 this hearing was going to be made tonight. Now in the
2 past couple of days they've gone out there and cleaned
3 up quite a bit. So you if you go and look it is
4 cleaned up to some degree, but there's still, the
5 trash and stuff is still there. I just want you to
6 have a full picture of what we're talking about. Not
7 go down there now and see a cleaned up, neat little
8 deal, and then if they get this permit given to them
9 to turn right around and do the same thing again.
10 Thank you.

11 CHAIRMAN: Thank you. I think we've discussed
12 it enough.

13 We've got a motion and a second. All in favor
14 raise your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries. It has been
17 postponed until the next meeting.

18 The Staff is instructed to do some
19 investigation to see.

20 Entertain one other motion.

21 MR. PEDLEY: Motion to adjourn.

22 MR. WARREN: Second.

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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CHAIRMAN: We are adjourned.

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

16 WITNESS my hand and notary seal on this the
17 21st day of March, 2011.

18

19

20 LYNNETTE KOLLER FUCHS
21 NOTARY ID 433397
22 OHIO VALLEY REPORTING SERVICES
23 202 WEST THIRD STREET, SUITE 12
24 OWENSBORO, KENTUCKY 42303

23 COMMISSION EXPIRES: DECEMBER 16, 2014

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25

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