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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

APRIL 7, 2011

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, April 7, 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
- Brian Howard
- Mark Starnes, Attorney
- Shannon Raines
- Marty Warren
- Sean Dysinger

* * * * *

CHAIRMAN: Let me call the Owensboro Metropolitan Board of Adjustment to order. We start our meeting each evening with a prayer and pledge of allegiance. We invite you all to join us. Brian will give the prayer this evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: I want to welcome you all to the meeting this evening. If you have any comments on any item, please come to one of the podiums, state your name so we'll have record of it. We'll give you all a chance on anything you wish to add to the program.

With that the first item is consider the minutes of the March 3rd meeting. They're on record

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1 in the office. I don't think there's any additions
2 that need to be made to them. Entertain a motion to
3 dispose of the item.

4 MR. DYSINGER: Move to approve.

5 MS. MASON: Second.

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

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries.

10 Staff, give us first item, please.

11 -----

12 CONDITIONAL USE PERMIT

13 ITEM 2

14 926 Maple Street, zoned I-1 (Postponed from the March
15 3, 2011 meeting)

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

18 Reference: Zoning Ordinance, Article 8, Section 8.2L8

19 Applicant: River City Industrial Services, Inc.

20

21 MR. HOWARD: This item was postponed at the
22 March 3rd meeting when questions were raised at that
23 time about some potential nuisance issues within the
24 neighborhood. Odor, runoff, things like that. So the
25 item was postponed at that time to allow Staff and
everyone to gather some more information.

Since that time the Staff has gone out and
done daily site visits to see from our perspective

1 what the smell was like. We've also done some
2 research, contacted some people.

3 Melissa Evans and Jim Mischel from our office
4 are here tonight to give a brief overview of what
5 Staff has done on since the last meeting. Melissa is
6 here now to give us that overview.

7 MR. STARNES: Would you state your name,
8 please?

9 MS. EVANS: Melissa Evans.

10 (MELISSA EVANS SWORN BY ATTORNEY.)

11 MS. EVANS: First of all, we contacted Joe
12 Sublett, the house inspector for the City of
13 Owensboro, to see if he had received any complaints
14 about this property. He had received a complaint on
15 November 16th of 2010 for a smell.

16 Then he also received a second complaint on
17 November 29, 2010 for food smell and substance oozing
18 out of whatever was placed out there.

19 From his standpoint, he was unsure if he could
20 address this complaint or not because he didn't know
21 if the trash or rubbish out there, since it was
22 recycled, if it qualified as trash or rubbish.

23 He then e-mailed our office in December of
24 2010 and notified us that was the outdoor activity
25 going on on the site. At that time that's when we

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1 contacted the property owners and proceeded with
2 seeing what was going on and that's what resulted in a
3 Conditional Use Permit application being filed.

4 We've also contacted the health department,
5 David Miller who is the environmentalist there. He
6 had also visited the site in the fall. He found that
7 because there was a complaint about odor. He did
8 observe the material that was out there. There was no
9 nuisance at the site at that time. Odor is not
10 considered a public health nuisance as determined by
11 the Supreme Court. But if it did attract insects or
12 rodents, then it would be a public health nuisance.
13 At that time there would have to be another complaint
14 saying that there were insects or rodents. Then they
15 would go out and if it was warranted could issue the
16 property owners a Notice of Violation for nuisance at
17 that time.

18 We've also spoke when the EPA, the Division of
19 Air Quality and Division of Waste Management. Neal
20 Berry, an inspector with the Division of Waste
21 Management, went out and inspected the site as well.
22 He said there was a potential for a violation, but
23 there was no current violation. He said that he had
24 recommended to the property owners that they find a
25 different way to store the material if possible. They

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1 were supposed to figure out something and get back
2 with him.

3 Also Mr. Mac Cann from the Division of Air
4 Quality with the EPA is here to talk about their
5 inspection that they had performed and answer any
6 questions you have about that.

7 Jim Mischel, as Brian said, conducted daily
8 site evaluations of the site. It's on the spreadsheet
9 that we have included in your packet. Jim is going to
10 go over that a little more in detail.

11 Also upon visiting the site we did notice that
12 the materials were stacked above the fence that is
13 currently there. Since the property is surrounded by
14 three sides or since this property is surrounded on
15 three side by residentially zoned properties, it would
16 be appropriate for the board to make conditions on how
17 high that material could be stacked if the Conditional
18 Use Permit is approved. We just wanted to bring that
19 to the Board's attention.

20 I'll let Jim come up and explain what he found
21 on his spreadsheet.

22 MR. STARNES: Would you state your name,
23 please.

24 MR. MISCHEL: Jim Mischel.

25 (JIM MISCHEL SWORN BY ATTORNEY.)

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1 MR. MISCHEL: Like Melissa said, after the
2 meeting we started doing daily inspections. I went
3 out there each day to conduct the inspections. That
4 started on March 4th.

5 As you can tell by the headings, it's pretty
6 much self-explanatory. I will go over a couple of
7 things.

8 It seems like at all times there was a tarp on
9 the material. Each day I went out there. Starting
10 March 4th the first time the material was removed from
11 the site is probably March 21st. I noticed some
12 material being gone. Then again on April 1st I put
13 down approximately 70 percent of that material had
14 been taken away. Each day there was always some
15 material there whether they took some away or
16 whatever.

17 It was tarped each day. Some days there was
18 some liquid coming out. Some days not. I think in
19 this list there were seven days where some liquid was
20 coming out.

21 The temperature ranged from anywhere in the
22 low 40's up to 78, I think. I don't know if you have
23 any questions right now.

24 CHAIRMAN: Any board members have any
25 questions with the Staff at this time?

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1 MR. DYSINGER: Mr. Chairman, I was just
2 wondering if the photographs that were included in our
3 evidence packet, were those taken by Mr. Mischel?

4 MR. MISCHEL: I would say 98 percent of them
5 were. I would think all of them, but I would have to
6 look at all of them. I think Matt in our office might
7 have on that first day took some. Most days I was the
8 one taking pictures.

9 MR. DYSINGER: Mr. Chairman, does Mr. Mischel
10 have anything he'd like to add to the photographs,
11 talk about them at all?

12 CHAIRMAN: Jim.

13 MR. MISCHEL: No.

14 CHAIRMAN: Board members have questions of Jim
15 at this time?

16 (NO RESPONSE)

17 CHAIRMAN: Staff have anything else to present
18 at this time?

19 MR. HOWARD: Not at this time.

20 MR. MISCHEL: I might put a copy of that
21 report into the record.

22 CHAIRMAN: Do you have any comments at this
23 time?

24 MR. WILSON: Yes, Mr. Chairman. My name is
25 Bill Wilson. I'm here to speak on behalf of the

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1 applicant.

2 Since we were here a month ago, we've
3 attempted also to monitor the situation as far as
4 smell, air, water, waste management. We have
5 representatives. Some of these folks have been there
6 at our request also. We've had RWRA, the company it
7 uses, to test the water on the premises to see if any
8 of this leakage that you hear talk about, any runoff,
9 anything of any danger at all.

10 We're trying hard to correct any problems
11 that's out there, but no one tells us there's a
12 problem. We can't find anything from the water
13 people, the smell people or the waste management
14 people to correct. Now, occasionally, apparently on
15 some days there's some sensitivity to some odor. We
16 certainly don't concur with that, but apparently there
17 is some. As Jim said, he smelled it himself. I
18 certainly take him at his word. But not the gross
19 amounts that we were hearing about here last month.

20 We thought maybe there was something of an air
21 quality issue or something of that nature. We've done
22 everything that we can to address that situation.
23 They've told us there's no violations. There's
24 nothing that we can do to rectify that.

25 So we want to use our property. It's zoned

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1 I-1 and with a Conditional Use Permit it's available
2 for this open parking. It's a neat facility down
3 there. We don't mind being subjected to conditions of
4 the Board, if we're granted this Conditional Use
5 Permit, as to height or any other reasonable
6 conditions.

7 We really don't know what else we could do
8 other than not use our property. That's what we're
9 here asking this board to approve this Conditional Use
10 Permit. If there are conditions that Staff feel are
11 proper, we would certainly attempt adhere to those and
12 could be shutdown if we couldn't. We would ask the
13 board to vote on this tonight and approve this.

14 We just don't see the varmints and the rats
15 and the possums and the terrible smell that we heard
16 about last month. It's just not there. No one has
17 told us it is other than a couple of home owners that
18 testified last month. I'm sure they believe what they
19 had to say. No one else that we've sent out there,
20 and we've sent the right people we think, can find any
21 violations of nature.

22 We would ask this be approved.

23 I might add that we have folks here if you
24 have questions about the facility. I think we
25 addressed that the last time.

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1 The things that are down there are tarped
2 over. That's the way they run that facility. There
3 are things of that nature that probably could be
4 required that may help the situation some, but there's
5 just not any violations that we know of to cure.
6 Thank you, Mr. Chairman.

7 CHAIRMAN: Does any board member have any
8 questions of the applicant at this time?

9 MR. DYSINGER: Mr. Chairman, sir, you
10 mentioned the RWRA came out and conducted some tests.
11 Do you the results of those tests?

12 MR. WILSON: Yes, if you all would like. It's
13 a company that they use, SMR Laboratories. They've
14 done this before we even got, you know, right when we
15 got started with this process. At least this test
16 was.

17 CHAIRMAN: Mr. Wilson, one question for my
18 information and for the board. They may know and I
19 don't.

20 When is the first time that you all started
21 hauling these containers and compact them down there
22 at that location?

23 MR. WILSON: I can't answer that, but I have
24 Scott Steel here or Mike can answer that.

25 CHAIRMAN: Will one of you come forward and be

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1 sworn in and state what it was. If it was in hot
2 summer or not.

3 MR. STEEL: November. We started hauling in
4 November and started baling the material in November.

5 MR. STARNES: Would you state your name for
6 the record?

7 MR. STEEL: Scott Steel.

8 (SCOTT STEEL SWORN BY ATTORNEY.)

9 CHAIRMAN: But you all haven't been through a
10 summer yet, have you?

11 MR. STEEL: Right.

12 CHAIRMAN: That answers my question. Thank
13 you.

14 Any other questions from anybody else?

15 MR. HOWARD: I have one real quick question.

16 It was stated that the materials have been
17 tarped. Have they always been tarped since they were
18 first stored there in November?

19 MR. STEEL: No, not when we first started
20 because we weren't aware there was problem. This is
21 new to us too so we were just putting them out there.
22 Once someone said there was a problem, then we started
23 tarping them.

24 CHAIRMAN: Staff have anything else to add at
25 this time?

1 MR. HOWARD: Not at this time.

2 MS. RAINES: Mr. Wilson, I have a question
3 about the report from SMR Laboratories.

4 It's my understanding that a few of them or
5 maybe the barium, chromium and mercury were a little
6 high. Does it mean anything? Is that normal?

7 MR. WILSON: I'm going to have to defer to
8 Scott.

9 MR. STEEL: Those levels right there passed to
10 be dumped into RWRA. Where our baler is, where we
11 baler this material, the runoff that you guys are
12 talking about or whatever that's in the baler goes
13 into this tank that we have sucked out by a septic
14 tank service. In order for them to do that, RWRA has
15 to pass that material. This company comes out and
16 tests that material for them. So that's what -- it
17 doesn't mean anything to me. I don't understand it
18 either, but it pass.

19 MS. RAINE: They come and it's okay?

20 MR. STEEL: Yes. They come and pump it two or
21 three times.

22 MS. RAINES: So they come and pump it?

23 MR. STEEL: Right. Where the baler is, where
24 the tank that catches it that goes in there, they pump
25 that out and they take it to RWRA and dump it.

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1 MS. RAINES: Is that done, you say a couple of
2 times?

3 MR. STEEL: Yes.

4 MS. RAINES: Twice a year?

5 MR. STEEL: Probably, yes.

6 CHAIRMAN: How often, sir?

7 MR. STEEL: Maybe twice a year. We've done it
8 twice, I think. Maybe three or four times a year. So
9 every couple of months or so. It just depends how
10 much material comes in and how much they're baling and
11 how quick it fills up.

12 MS. MASON: I have question, Mr. Chairman.

13 CHAIRMAN: Go ahead.

14 MS. MASON: You said you started doing this in
15 November. Were you storing anything on that lot prior
16 to November?

17 MR. STEEL: Trailers.

18 MS. MASON: Trailers that did not have food
19 substance in them?

20 MR. STEEL: Right. I mean there's different
21 trailers out there. Compactors, roll-offs. You know,
22 different. The same stuff that you guys probably saw
23 when you drove by there is the same stuff that's been
24 out there forever.

25 MS. MASON: That stuff was in a trailer prior

1 to this?

2 MR. STEEL: No, ma'am. Just empty trailers
3 that we use in our business are sitting on that lot.

4 MS. MASON: Okay. So you started putting this
5 food substance from Ragu or whatever it's called now
6 back in November?

7 MR. STEEL: Correct.

8 MS. EVANS: We would like to remind you that a
9 representative from the Air Quality EPA is here to
10 answer any questions about it. They did do an
11 inspection on the site as well. If you would like to
12 ask them any questions, they're here.

13 CHAIRMAN: Would you all come forward and have
14 anything to say, please. State your name.

15 MR. CANN: My name is Mac Cann. I'm the
16 Environmental Control Supervisor for the Department of
17 Environmental Protection Division for Air Quality.

18 (MAC CANN SWORN BY ATTORNEY.)

19 MR. CANN: I guess you're wanting to be
20 enlightened as to the inspection that was conducted
21 approximately two to three weeks ago.

22 Within 24 hours of an anonymous phone call we
23 had somebody go out there. They conducted an odor
24 survey which is where we -- I've got a copy of our
25 odor regulation if you're interested in it. It

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1 mentions like one line.

2 The odor survey was conducted and there was
3 found to be no violations at that time.

4 However, I don't know how many of you
5 understand how odor works. Obviously, the warmer it
6 gets and the more rotten the substance the worse can
7 be.

8 The way that we actually do these odor surveys
9 is we have to stand at the property line. We have
10 instrument that dilutes the ambient air that you're
11 sniffing to a one to seven dilution. Simply put, if
12 you smell it through the box it's a violation. A
13 violation does carry up to a \$25,000 fine. This is
14 regardless of how this particular piece of property is
15 zoned.

16 If you all want, we've got copies of this
17 regulation and any sort of interpretation that you all
18 may want.

19 MS. MASON: What was the temperature on the
20 day you did this?

21 MR. CANN: I'll be honest with you. I was not
22 the person who did that. I can guess, but I'm going
23 to say probably in the 50s at that time.

24 MR. DYSINGER: Do you know the date, sir, when
25 the test was done?

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1 MR. CANN: I do not have a copy of the report
2 on me. It's probably actually not finished at this
3 time because when you're doing an odor survey there's
4 several different points you've got to come out.
5 We've got a GPS. If you all want a copy of the report
6 when the time comes, you're welcome to it. We'll send
7 it to you.

8 CHAIRMAN: Any questions of the gentleman?

9 MR. DYSINGER: One point of clarification.
10 If I understood what you said correctly,
11 regardless of what this board does, the EPA may still
12 get complaints and will do assessments and so forth?

13 MR. CANN: That is correct.

14 MS. MASON: But you have to receive a
15 complaint?

16 MR. CANN: Yes. The way that this odor
17 regulation is worked and has been through the court
18 system is we cannot be driving by and smell something
19 and use the sampler to see what we smell. We have to
20 receive a complaint to use this regulation. Anybody
21 and everybody can make a complaint to my office.

22 MR. DYSINGER: You don't have to tell us that.

23 CHAIRMAN: Any other questions from anybody?

24 (NO RESPONSE)

25 CHAIRMAN: We thank you.

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1 MS. EVANS: I spoke with the actual inspector
2 that went out to that site. He told me that he did
3 the inspection. He couldn't remember the exact date
4 because it was a few days after he had done it when I
5 spoken with him, but he said he thought it was the
6 29th or 30th. So it was sometime about a week and a
7 half ago or so when he did the inspection.

8 CHAIRMAN: Board have any other questions?

9 (NO RESPONSE)

10 CHAIRMAN: Anyone close to the area you have
11 any information you would like to present at this
12 time?

13 MR. ATWELL: Yes, we would.

14 MR. STARNES: Would you state your name,
15 please?

16 MR. ATWELL: James Atwell.

17 (JAMES ATWELL SWORN BY ATTORNEY.)

18 MR. ATWELL: We have a photograph history of
19 what's been going on in that parking area if you would
20 like to look at them. They don't quite jive with what
21 we're hearing today.

22 CHAIRMAN: Will you present them?

23 MR. ATWELL: These have been taken over a
24 period of time. Some of the color ones were made
25 right after our last meeting here.

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1 CHAIRMAN: Do you have any other comments?

2 MR. ATWELL: Not at this time.

3 CHAIRMAN: Any our other gentlemen have
4 anything else to add?

5 MR. ATWELL: No. I think the pictures will be
6 sufficient.

7 CHAIRMAN: Mr. Wilson, while we're looking at
8 this, do you have anything else you want to present at
9 this time?

10 MR. WILSON: I would just like to say, Mr.
11 Chairman, that as we've heard there's plenty hanging
12 over the head of the applicant if this situation were
13 to be anywhere near as bad or get as bad as we have
14 heard it was a month ago. Monetary situation from the
15 EPA are a continual threat to them to make sure it
16 doesn't happen that way. There's plenty of safeguards
17 here. If something wrong is done, it's obvious how it
18 can be rectified monetarily real quick.

19 So we would ask that we be allowed to go
20 forward and continue using our property the way we're
21 using it now. We'll keep it clean and violation free
22 as possible. We feel it's that way now. We'd ask
23 that you vote to approve this Conditional Use Permit
24 so we can continue with that use. Thank you.

25 MR. MARTY WARREN: I have a question.

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1 CHAIRMAN; go ahead.

2 MR. MARTY WARREN: I noticed in these pictures
3 there are several of these large dumpsters, you know,
4 the big trash haulers or whatever you want to call
5 them. Is there any reason really why you couldn't
6 store these bales in one of those containers and tarp
7 it that way where the dumpster would kind of contain
8 some of the runoff?

9 MR. WILSON: I would assume it has to do with
10 the picking up and delivery. I can have someone with
11 the business. That's more of a business question.

12 If you want to address that, Scott.

13 MR. STEEL: The reason we haven't done that is
14 exactly what Mr. Wilson said. Due to loading trucks
15 and unloading trucks. Those things you can only fit
16 probably eight or ten bales in there. It just
17 wouldn't work.

18 MR. DYSINGER: Mr. Chairman, on this one
19 particular photo, I wonder if the applicant could take
20 this and identify this material that's laying around?
21 I don't know the procedure for that perhaps.

22 CHAIRMAN: Would you come forward and
23 identify.

24 MR. WILSON: We've not seen any of these
25 photographs.

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1 MR. DYSINGER: Understood. Take whatever time
2 you feel necessary.

3 MR. WILSON: I don't know if we can identify
4 it or not. I don't know who took them, when they were
5 taken or anything else.

6 CHAIRMAN: Applicant come forward and identify
7 them please, sir.

8 MR. WILSON: Can you tell when that was taken
9 or what it depicts?

10 MR. STEEL: I'm not sure.

11 MR. WILSON: Are there dates on these that
12 we're addressing?

13 MS. RAINES: Here's another one. I'm curious
14 what the substance is on the ground.

15 MR. STEEL: That's where the bales were.

16 MS. MASON: That's where they were when they
17 were picked up?

18 MR. STEEL: Yes.

19 MS. RAINES: It has to be rinsed off with a
20 hose? Is it an easy clean up?

21 MR. STEEL: Usually there's not that much out
22 there. Yes, I'm sure water.

23 MS. MASON: Where would the rinse go to?

24 MR. STEEL: It's in the yard there.

25 MS. RAINES: Drainage.

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1 MR. STEEL: It goes back to the laboratory.
2 The materials is approved.

3 MR. WILSON: It goes back to what was tested.
4 RWRA standard.

5 MS. RAINES: My concern with all the
6 conversations we've had is odor and substance rotting
7 and then having rodents and insects and that sort of
8 thing.

9 MS. MASON: And heat. Temperature.

10 MS. RAINES: If there's a way to eliminate
11 that or reduce the rotting, cleaning that off, things
12 like that.

13 MR. STEEL: This stuff right here, this comes
14 from the school systems. Out of their trailers. That
15 was probably there. Not long at all. As soon as that
16 comes in, it's thrown in that and then processed.

17 MS. MASON: Now, this is not picked up by the
18 garbage or whatever?

19 MR. STEEL: Right. It's metal and it comes in
20 from the schools. They have recycle trailers at the
21 Daviness County School System. We take that out of
22 there and put it into this and then it's taken
23 next-door to Dahl & Groezinger. It's a scrap yard.

24 MR. WILSON: They pick up the waste.

25 CHAIRMAN: Any other questions from the board

1 at this time?

2 (NO RESPONSE)

3 CHAIRMAN: You all have any other comments?

4 MR. ATWELL: I have one other comment.

5 CHAIRMAN: Come forward and state your name,
6 please, sir.

7 MR. ATWELL: James Atwell.

8 These are clearly misstated in a couple of
9 places. We had problems last summer before November
10 with the smell. That's when we really had a problem.
11 We couldn't sit outside during that period of time.
12 We brought that up at the last meeting.

13 My problem is under the current zoning for
14 that particular area, if it's been done like what
15 you're looking at now, which should be illegal, what's
16 it going to be if you say it's okay for them to do it?
17 You think we'll have a worse problem?

18 MR. DYSINGER: The smell that you describe, do
19 you attribute it to the food byproduct storage that's
20 going on now? You say you smelled that before.

21 MR. ATWELL: We had it in the hot summer
22 months too. They may have just checked it in
23 November, but we had it previous to that.

24 Did you see what was in the yellow roll off
25 totes? The big roll off totes is where we had the

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1 problem.

2 MR. DYSINGER: Are you talking about the cans,
3 the tin cans and so forth?

4 MS. MASON: They said that that was school
5 system.

6 MR. JIM WARREN: No. The large green roll off
7 totes. Last summer the large green roll off totes
8 they had, the Ragu product was not there.

9 MS. RAINE: That's the one that has all the --

10 CHAIRMAN: Come forward and state your name,
11 please.

12 MR. WARREN: My name is Jim Warren.

13 (JIM WARREN SWORN BY ATTORNEY.)

14 MR. JIM WARREN: Last summer the smell was,
15 and I grant the Ragu product was not there last summer
16 or the bales of product was not there, but the odor
17 was there. It smells like -- what it reminds me of is
18 if you go to a restaurant and you have like rotten
19 cooking oil. It's very offensive. It was there last
20 year with the green roll-off dumpster before the Ragu
21 product came. Then the Ragu products started coming
22 and then these waste totes with the cross, you know,
23 the guys hand burning up with the acid on it, it
24 started showing up.

25 Like I say, the pictures that were shown there

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1 is what we had prior to them being given the okay to
2 do whatever it is. That's in violation obviously.

3 MR. DYSINGER: What's in violation?

4 MR. JIM WARREN: The way that it's zoned right
5 now, I-1 Light Industrial. That property is zoned for
6 vehicles only. Not for storage. Not for garbage.
7 Not for food product. Not for any type of product.
8 Anything that's there it's not zoned for that. So
9 that would have been in violation. Those pictures
10 were taken just a few days before this meeting, the
11 last meeting that we had. Then when the meeting came
12 then the product was tarped up and cleaned up. It is
13 cleaned up and straightened up and nice now.
14 Obviously if the EPA issue is there, that if --
15 because I'm going to complaint. If there's an odor,
16 I'm going to complain because I'm a property owner and
17 I've got the right to be there on my property and
18 enjoy it without feeling like I'm in a dumpster. So I
19 will complain.

20 MS. RAINES: Does anyone know what that
21 substance was last summer, if it was before November?
22 What was in the green?

23 CHAIRMAN: State your name.

24 MR. STEEL: Scott Steel.

25 All of those dumpsters that he's talking about

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1 are empty. It's just a lot where they swap them out.
2 So all of those are empty. There's no material in
3 those except for the one we use for ourself. That's
4 mostly just scrap plastic. Nothing that stinks or
5 anything like that.

6 MR. JIM WARREN: What is in them when they
7 leave your property and go to another one?

8 MR. DYSINGER: Sir, address any questions you
9 have to the Chair.

10 MR. JIM WARREN: What is in those dumpsters
11 when they leave your property and they go from their
12 property and they go somewhere? What's put in them?
13 Anything a person wants to put in them? It's not
14 metal smell. It's not.

15 CHAIRMAN: Sir.

16 MR. STEEL: What they are is we have several
17 roll-off containers at different businesses. The
18 empty ones stay at our lot. When we go to swap those
19 out, the driver picked up an empty one, takes it to
20 the facility, picks their full one up. It never comes
21 to our place. It goes straight to the landfill or the
22 transfer station. So all of ours are empty. The
23 roll-offs that he's talking about.

24 MR. DYSINGER: Are they steamed or power
25 washed? What's the process there?

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1 MR. STEEL: Yes. There could be a stench from
2 the roll-off. As far as like any kind of material in
3 there, there's nothing in there.

4 MR. JIM WARREN: I would agree that when they
5 get there they're empty, but the stench is there.

6 That's what I say, I wonder what's in them
7 when they leave his property where do they go and
8 what's put in them? Because there is a stench.

9 MS. RAINES: Mr. Chairman, if they are empty,
10 then it would just normal. They're not in violation.

11 CHAIRMAN: They're not cleaned when they bring
12 them back.

13 MS. RAINES: Right. If they're empty, whether
14 they comply for a Conditional Use Permit or not, would
15 that be in violation of the current zoning?

16 MR. HOWARD: The site was approved, as he
17 mentioned, for a parking lot. Since that time it has
18 been used for outdoor storage. That's why they've
19 applied for the Conditional Use Permit. To basically
20 make what they're doing correct in the eyes of the
21 zoning ordinance.

22 That's what your all's job as the Board of
23 Adjustment. Is to listen to both sides of the
24 testimony and try to determine with what's happening
25 out there can properly be integrated into the

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1 neighborhood based on the evidence that's presented at
2 the meeting.

3 It has come here tonight to address the fact
4 that the site has been used for outdoor storage.

5 CHAIRMAN: If you have any new information?

6 MR. JIM WARREN: No, but I'd like to also just
7 state that if the property looked like that, like the
8 pictures show with the products untarped, product
9 obviously on the ground, put in there in a haphazard
10 manner, do you think that's being -- they may have
11 thought that it needed to be tarped. They may know
12 now that it needs to be tarped. Looking at the
13 pictures prior to being advised that they need to be
14 tarped, do you think that is a good situation? Do you
15 think they're aiming to be a good neighbor?

16 CHAIRMAN: We'll take everything you have to
17 say in consideration.

18 Do you have anything new to add?

19 MR. STARNES: Sir, please state your name.

20 MR. CAMBRON: My name is Chris Cambron.

21 (CHRIS CAMBRON SWORN BY ATTORNEY.)

22 MR. CAMBRON: They said that they had some
23 material that they had pump into a tank that they had
24 to have pumped out every week. Assuming they're
25 paying for that. Assuming they're legally bound to do

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1 that. Is that the material that's leaking out of
2 those containers? If so, isn't that not right? If
3 it's the same material that they're paying to have
4 pumped out of this tank, how is that right? Is that
5 the same material is what I'm trying to get at.

6 CHAIRMAN: We'll get an answer for you.

7 You've heard the question.

8 MR. STEEL: Yes, it is the same material. But
9 that's not being pumped out because there's anything
10 wrong with it. It's being pumped out because we're
11 containing the leakage out of the balers as we're
12 baling this material and it goes into this tank. So
13 then they come and empty the tank and take it to RWRA.
14 It's not because there's anything wrong with it. It's
15 just that it has to have a place to go. It's just a
16 holding tank.

17 I would like to say something else. Unilever
18 Foods is also, they're working to get a ringer. What
19 that is is these bags will go through a ringer, like a
20 squeezer, and it will squeeze these bags dry. It'll
21 pretty much eliminate any kind of leakage or anything
22 like that. I'm not sure when they're going to get to
23 it, but that is in their plans to purchase one of
24 those. So that will cut down on the leakage.

25 MS. EVANS: We would like to remind the board

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1 that if this is approved, a Conditional Use Permit for
2 the outdoor storage on the site, then the site would
3 have to be screened. So the pictures that you saw
4 previously with the stuff strung out everywhere, you
5 wouldn't be able to see that necessarily from the
6 street because the site would have to be screened,
7 solid screened all the way around on all four sides.

8 CHAIRMAN: Put these in the record, please.

9 MS. MASON: I have another question for Mr.
10 Cann.

11 When you went out and inspected the property
12 for the smell, is that the only time you've ever done
13 that or someone from your office?

14 MR. CANN: That is the only time that any
15 representative from my office has been there. We were
16 made aware of a potential problem approximately a
17 month ago, that this might be coming down the pipe to
18 us. Until then we did not know anything about it.

19 CHAIRMAN: Thank you.

20 Do you have anything new to add.

21 MR. CAMBRON: No.

22 CHAIRMAN: Mr. Wilson.

23 MR. WILSON: Really nothing new, Mr. Chairman.

24 In closing, we're cognizant of the screening
25 and certainly we agree to do that. We're also

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1 cognizant of the EPA watching our activities daily and
2 any of these folks or anyone else having the right to
3 bring them in at any time. We're subject to that and
4 they have the enforcement. That's their job and we
5 understand that. We don't intend to be crossways with
6 them, but we do ask that we be given the opportunity
7 to go forward with the project and bring it into
8 compliance. The parking lot, it's a very nice
9 concrete parking lot, but it apparently was being used
10 for storage parking instead of vehicular parking and
11 that's why we're here asking for this Conditional Use
12 Permit.

13 CHAIRMAN: Any Staff or any board members have
14 any other questions at this time?

15 MR. DYSINGER: I would just ask question of
16 Staff.

17 Do you know how many adjacent homeowners there
18 are? How many folks are affected by this directly?

19 MR. HOWARD: Looking at the property
20 identification map, it appears as though there are
21 five property owners to the south that are zoned
22 R4-DT, and then two that would be immediate adjoiners
23 to the north that are zoned R4-DT. Doesn't show
24 residents across Moreland Avenue. There would also be
25 some residents on that side of the road that are also

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1 zoned residential.

2 CHAIRMAN: Any other board member have any
3 questions at this time?

4 (NO RESPONSE)

5 CHAIRMAN: Staff have anything else to add?

6 (NO RESPONSE)

7 CHAIRMAN: I think we've discussed it pretty
8 well. I'll entertain a motion to dispose of the item,
9 please.

10 MR. PEDLEY: Mr. Chairman, I'm going to make a
11 motion for approval based on it should provide
12 integrate into the neighborhood because with the
13 screening and landscaping it will enhance the property
14 and the applicant has agreed to screening and
15 landscaping buffers according to the zoning ordinance.
16 That screening you can put slats in that chain-link
17 fence, but it must be 80 percent solid. You
18 understand that? That's what the zoning ordinance
19 says. You also have the landscaping.

20 We have conditions approval of amended final
21 development plan.

22 Number two, any foul odors occurring after
23 inspected by the proper agency must be corrected
24 immediately. Any run off from the lot appearing to be
25 hazardous or pollution after being checked by the

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1 proper agency must be corrected immediately. No
2 material over ten feet high, stacked over ten feet
3 high. Any material on the asphalt surface must be
4 cleaned and kept in containers. Failing to meet these
5 conditions may result in revoking the Conditional Use
6 Permit. You must meet all of the conditions. All
7 your foul odor, runoff or any must be checked by the
8 proper agency. Whether it be the health department or
9 EPA or RWRA. If they find you're in violation, you
10 must correct it immediately. If you do not, this
11 board has the power and authority to revoke your
12 Conditional Use Permit.

13 MS. RAINES: May I amend it? I don't know if
14 I can do that. Instead of ten foot, we can we limit
15 it six feet high since that's the height of the six
16 foot high solid wall or fence around the perimeter?

17 MS. MASON: She wants to amend it to six foot
18 because that's the height of the wall that's around
19 the perimeter. In other words, it says it has to be a
20 six foot high solid wall. She doesn't want the ten
21 foot. She wants the six foot. She wants to see if
22 she can amend your motion.

23 MR. PEDLEY: I think that chain-link fence is
24 an eight foot fence?

25 MR. WILSON: Six foot.

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1 MR. PEDLEY: Six foot is the minimum height.
2 It can be eight foot high.

3 MS. MASON: She's asking that you amend it.

4 MR. PEDLEY: That's pretty difficult to limit
5 it to eight foot stacking. Normally we limit it ten
6 feet.

7 MR. MISCHEL: For clarification.

8 As far as enforcement, I guess the minimum is
9 six feet, but if you allow eight feet or ten feet,
10 does that mean the screening has to go up to where you
11 can't see it or can material be above the solid fence?

12 MR. PEDLEY: We were seeing pictures here of a
13 lot of material that was up near the top of the fence.
14 If you're looking at an eight foot fence and material
15 two foot higher than that, I can amend my motion to be
16 nothing above eight feet. I will amend my motion. No
17 material above eight feet high above the fence.

18 MR. MISCHEL: It would be an eight foot solid
19 fence then?

20 MR. PEDLEY: Yes.

21 CHAIRMAN: Are you withdrawing your amendment,
22 which we hadn't accepted?

23 MS. RAINES: Yes.

24 CHAIRMAN: Is there a second to the motion?

25 MR. DYSINGER: I'll second the motion.

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1 CHAIRMAN: A motion has been made and a
2 second.

3 Any staff member have anything else?

4 MR. MISCHEL: I guess just to clarification.

5 If they don't want it to go eight, are you
6 saying it has to go to eight feet? If they want to
7 keep it at six, which is minimum.

8 You all might not want to go eight feet. I
9 don't know.

10 I guess they need to be clear on that.

11 MR. WILSON: Are we talking the stackage
12 that's six feet or eight feet or the fence that's six
13 feet or eight feet?

14 MR. MISCHEL: Right now I think he's saying
15 that the fence would go up to eight feet tall, a solid
16 fence.

17 MR. WILSON: Materials could be stacked how
18 high?

19 MR. MISCHEL: Eight feet.

20 MR. WILSON: There's a good fence around that
21 property that needs to have the slats and all put in
22 it, but is it a six foot.

23 MR. STEEL: Six foot.

24 MR. WILSON: It's a six foot fence already
25 there. Brand new fencing.

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1 MR. DYSINGER: Around the entire property?

2 MR. WILSON: Except the street side on Maple
3 or whatever. Three-fourths of the way around it right
4 now.

5 MR. MISCHER: So in this case you have to add
6 two feet to it. So that's why I'm asking.

7 MR. DYSINGER: Mr. Chairman, perhaps Staff or
8 could counsel address this. Is it possible to make
9 the motion in such a way that the material not be
10 stacked above the height of the fence regardless of
11 whatever that height might be and allow these -- I
12 mean these gentlemen have already put a fence in.

13 CHAIRMAN: The board has the authority to say
14 that, yes.

15 Am I correct?

16 MR. HOWARD: Yes.

17 MR. DYSINGER: Understood that there is a
18 motion that has been seconded on the floor. That was
19 just my two cents worth.

20 MR. WILSON: Mr. Chairman, our trucks, you
21 know, all the things that are in there, the structures
22 that are in there are over six feet. I don't know
23 what you call those items. Storage units or whatever,
24 they're way over six feet.

25 CHAIRMAN: Dumpsters.

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1 MR. WILSON: Yes, dumpsters. They're way over
2 six feet tall. We can't block that out with a six
3 foot fence obviously. We just want to be clear what
4 the commission is requiring.

5 MR. MISCHEL: Typically when we look at these
6 sites, if you have a truck, like a trailer truck
7 shows, that would be allowed to be above it. That's
8 more than a vehicle. Now, other storage material like
9 plastic --

10 MR. WILSON: Things that we're stacking we can
11 control.

12 MR. MISCHEL: That would be six feet or less,
13 but a truck that's a vehicle licensed to be on the
14 road or whatever I would feel like that would be okay
15 to do.

16 MR. PEDLEY: That is not at issue.

17 MR. WILSON: The stackable things, what the
18 motion is that it be limited to six feet or whatever
19 the height of the fence is.

20 MR. PEDLEY: Six feet or whatever the height
21 of the fence is, but you have an eight foot fence.

22 MR. WILSON: No. We only have a six foot
23 fence.

24 MR. PEDLEY: I asked the question and I
25 thought you said you had an eight foot fence.

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1 MR. WILSON: No. It's six. He just told me
2 it's six. That's our problem. It's only a six foot
3 fence. We'd have to tear it out and put a new fence
4 up.

5 MR. PEDLEY: Well, the ordinance doesn't
6 require that. What I said was that you would meet the
7 zoning ordinance requirements on screening. I asked
8 the question, do you have an eight foot fence. I
9 thought one of you said, yes.

10 MR. WILSON: If I did, I didn't mean to. It's
11 a six foot fence. Which is the minimum which is okay.
12 What I'm worried about is our stacking above that six
13 foot. I don't want to be in violation. If the
14 condition placed on it is that we cannot stack things
15 higher than whatever the height of the fence is, which
16 shall be at least six feet, I think we can live with
17 that. If we need to go higher, we may have to put in
18 more fence.

19 MR. PEDLEY: I think I need to just amend the
20 motion to allow you to stack the height of the fence.

21 MR. WILSON: That's fine.

22 CHAIRMAN: Second?

23 MR. DYSINGER: If the motion is so amended,
24 then I second that.

25 CHAIRMAN: Can you restate to be sure we're

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1 correct, Ward? Would you state your motion to be sure
2 we're correct?

3 MR. PEDLEY: I'll restate my amended motion to
4 allow a six foot fence. No material stacked higher
5 than the top of the fence, whether it's six feet or
6 eight feet.

7 CHAIRMAN: You have all understand?

8 MR. WILSON: Yes, sir.

9 CHAIRMAN: Board have any other comments?

10 (NO RESPONSE)

11 CHAIRMAN: All in favor raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 One more motion.

15 MS. MASON: Move to adjourn.

16 MR. DYSINGER: 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)

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

16 WITNESS my hand and notary seal on this the
17 1st day of May, 2011.

18

19

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

22

23 COMMISSION EXPIRES: DECEMBER 16, 2014

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25

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