

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 SEPTEMBER 6, 2012

3 The Owensboro Metropolitan Board of Adjustment
4 met in regular session at 5:30 p.m. on Thursday,
5 September 6, 2012, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

- 8 MEMBERS PRESENT: C.A. Pantle, Chairman
- 9 Ward Pedley, Vice Chairman
- 10 Ruth Ann Mason, Secretary
- 11 Gary Noffsinger, Director
- 12 Madison Silvert, Attorney
- 13 Fred Reeves
- 14 Marty Warren
- 15 Sean Dysinger
- 16 Shannon Raines

17 * * * * *

18 CHAIRMAN: We call the meeting of the
19 Owensboro Metropolitan Board of Adjustment to order.
20 Welcome you at this time. We start our program each
21 evening with a prayer and pledge to the allegiance.
22 We invite you to join us. Gary will have the prayer.

23 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

24 CHAIRMAN: Again, I want to thank you all for
25 coming and welcome you. If you have any item that you
wish to speak on, please come to one of the podiums
and state your name so we'll have a record.

With that the first item is consider the
minutes of the last meeting which was August 2nd.

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1 They're on record in the office. We have no problems
2 with them I don't think.

3 MR. NOFFSINGER: That's correct.

4 CHAIRMAN: Entertain a motion to dispose of
5 the item, please.

6 MR. PEDLEY: Motion for approval.

7 MS. MASON: 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 MR. PEDLEY: Mr. Chairman, I need to
14 disqualify myself on this next item.

15 CHAIRMAN: So noted.

16 MR. NOFFSINGER: Mr. Pedley, you'll also be
17 disqualifying yourself also on Item 2A; is that
18 correct, which is a related item?

19 MR. PEDLEY: Yes.

20 CHAIRMAN: So noted.

21 -----

22 CONDITIONAL USE PERMIT

23 ITEM 2

24 3425 New Hartford Road, zoned B-4

25 Consider a request for a Conditional Use Permit in
order to construct and operate an individual storage
facility in a B-4 zone in Daviess County

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1 Reference: Zoning Ordinance, Article 8,
2 Section 8.2L7/48

3 Applicant: Seth Stewart; Gilliland Group Partnership

4 MR. NOFFSINGER: Mr. Chairman, this
5 application was postponed from the last meeting due to
6 the disqualification by Mr. Pedley. At that time of
7 his disqualification we no longer had a quorum.

8 We do have three members present here tonight
9 on the board that were not present at the August
10 meeting. These three members, Mr. Dysinger, Ms.
11 Raines and Ms. Mason, have each been mailed a copy of
12 the transcript. I do believe that each one has read
13 the transcript in its entirety.

14 (ALL NOD IN THE AFFIRMATIVE.)

15 MR. NOFFSINGER: They're indicating that they
16 have read the transcript and that they are prepared to
17 listen to the remainder of the testimony and take
18 action as necessary.

19 With that Ms. Evans is here to describe just
20 briefly what took place at the last meeting.

21 MR. SILVERT: Would you state your name,
22 please?

23 MS. EVANS: Melissa Evans.

24 (MELISSA EVANS SWORN BY ATTORNEY.)

25 MS. EVANS: At our last meeting, as Mr.
Noffsinger stated, we heard this item read into the

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1 agenda. The Staff Report was read. Mr. Stewart then
2 got up and gave a brief description of what the
3 activity was going to be.

4 Then there were several neighbors that
5 expressed concerns for this use on the property. They
6 expressed concerns over security, increased traffic,
7 hazardous materials being stored and how those would
8 be policed, access to the property being 24 hours a
9 day, 7 days a week, their privacy, their property
10 values, the lighting for the property, noise and
11 possible rodents that can come from this use.

12 After some discussion on the item by the
13 concerned adjoining property owners and Mr. Stewart
14 and a few questions from the board members, Mr. Pedley
15 then did disqualify himself where we did not have a
16 quorum.

17 At that time we couldn't vote on the item and
18 we postponed this item and the next item, the related
19 item for the Variance that would be heard tonight.

20 CHAIRMAN: Thank you.

21 We have sent a copy of the minutes to each one
22 of the members. We have a copy to look at. If you
23 all have any new items or new information, come
24 forward at this time. We want to hear from that. We
25 do not need to listen to the minutes and everything we

1 had last time and the information. We've got that on
2 record.

3 The first thing, the applicant, do you have
4 anything else you would like to add at this time,
5 please, new information?

6 MR. STEWART: Yes, sir.

7 MR. SILVERT: Could you state your name,
8 please.

9 MR. STEWART: Seth Stewart.

10 MR. SILVERT: Seth, you're previously sworn
11 from the previous meeting.

12 MR. STEWART: Just wanted to address some of
13 the concerns that were brought up at the last meeting.
14 Taking some notes here.

15 There was a question on how many units will be
16 on the property. Approximately there will be 250
17 units. This includes larger units that are 20 by 60
18 feet up to smaller climate control units that are 5 by
19 5.

20 Question on what are the operational hours.
21 An employee will be on site from 8 to 5:30. This
22 could change depending on business hours when they're
23 busy, 9 to 5:30 week days, and 9 to 1 on Saturdays.
24 The facility will have a 24 access to customers that
25 are renting. Customers will be required to enter a

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1 pin number to enter the facility and again enter the
2 same pin number to exit. This lets the computer know
3 who was on the property and how long they were there.

4 A question of how to police hazardous
5 materials. To my knowledge there is no way to
6 completely police what someone stores from what I've
7 read and researched. Renting a storage unit is pretty
8 much like renting an apartment. There is no way to
9 police what goes in and out without a search warrant
10 or the renter falls behind on their rent. There will
11 be a surveillance cameras posted throughout the
12 property to monitor any suspicious activity after
13 enduring business hours.

14 A question on how the property is lit and how
15 will be effect the shining towards the surrounding
16 houses. The property will have lights on the side of
17 the buildings approximately every 20 to 40 feet. The
18 new buildings are a total height of 8'6" with lights
19 being on the side and not facing the houses, shining
20 into the houses. These lights will not be a nuisance
21 to the surrounding property.

22 Fencing concerns. The property in question is
23 in a very low area, also has to do with the lighting,
24 compared to the neighboring houses. In most cases the
25 lower level of the home is being higher than the roof

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1 of an existing building that is already on the
2 property which is approximately 20 feet tall. I could
3 build a 20 foot tall fence and still not eliminate the
4 few from the neighboring community. I have pictures
5 to show that. In most cases there's already an 8 foot
6 privacy fence in place where there is a very thick
7 tree line. By me replacing the already existing 6
8 foot fence that has another one foot of barbwire on
9 the top with an 8 foot chain-link fence does not do
10 anything to view of the neighboring community.

11 I've also included pictures of several
12 facilities currently operating in residential areas in
13 Owensboro that do not have anything more than what's
14 already on the property in question. One being no
15 fence at all, and these are in residential areas. I
16 have pictures of those buildings.

17 Security concerns. There will be an entry
18 gate where a customer has to enter their own personal
19 pen in which the gate to open. This tells the
20 computer who has just entered the property documents
21 the time. When a person exits, they will go through a
22 different gate for exit only and have to enter their
23 personal pin number again. This lets the computer
24 know when the person left and documents the time as
25 well. If any customer is on the property for an

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1 abnormal amount of time or more frequently than
2 normal, this will cause the system to send out a
3 notification to me or the site computer via e-mail.
4 Also the property will be monitored by a motion video
5 camera. Once a car or person triggers the motion
6 sensor, the camera will record until there is no more
7 motion detected. This will be saved in the computer
8 data base in the office. If anything suspicious were
9 to happen after or during hours, we will be able to go
10 back and watch for ourself.

11 Noise concerns. There should be no large
12 trucks on the property that have reverse alarms or any
13 other noise. I have large units that will be marketed
14 to large boat owners, RV owners and local businesses.
15 None of these removal or replacements of RV or boat
16 should take place after hours and very seldom at any
17 time.

18 I have been in contact with an owner of an
19 five acre facility in Bowling Green. Mine is less than
20 three acres. He tells me that he averages about 10 to
21 15 cars after hours per week.

22 Surrounding property value concerns. These
23 three acres have been growing up for the past three to
24 four years. The building are run down and falling
25 apart. It used to be a light industrial place when

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1 Atmos ran the property well after Copper Creek was
2 developed and the home surrounding were built. They
3 used it for welding, heavy trucks and equipment and
4 large storage. It is hard to believe by doing this
5 project, getting everything in shape and working to
6 make the property appealing to the public will hurt
7 the value to anyone's home.

8 Pest control concerns. I plan to have a
9 monthly contract with a local service to spray for
10 pests that might be a concern.

11 There was concern on my map that I drew, the
12 privacy fence in question was not to scale. I was
13 not -- the homeowner's privacy fence, I was not able
14 to get a definite measurement on that fence, but
15 everything else on that is to scale from Atmos's map
16 that they provided.

17 I would also like to make a point. Other
18 things that could develop this property is to remind
19 that this is not a bad project. Without going in
20 front of the board or hearing anybody's concerns this
21 property could be developed into a night club, a
22 16,000 square foot night club, a restaurant, a pawn
23 shop, home appliance, computer repair, a beauty salon
24 or banks with drive-thru facilities. That could go
25 forward without going in front of the board. I

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1 believe I'm correct. That's all I have.

2 CHAIRMAN: Any board members have a question
3 of the applicant at this time?

4 MR. DYSINGER: Mr. Chairman, I think the
5 applicant said he had photos to put into evidence.

6 MR. STEWART: Yes.

7 MR. DYSINGER: Could we see those, please?

8 (MR. STEWART PRESENT PHOTOGRAPHS.)

9 CHAIRMAN: Thank you. You want those entered
10 into the record?

11 MR. STEWART: Sure.

12 CHAIRMAN: Any other questions of the
13 applicant at this time?

14 (NO RESPONSE)

15 CHAIRMAN: Does anyone else have any comments
16 on the applicant's side at this time?

17 CHAIRMAN: State your name, please.

18 MR. MASON: Jim Mason.

19 (JIM MASON SWORN BY ATTORNEY.)

20 MR. MASON: I'm a real estate broker with L.
21 Steve Castlen Realtors. I represent the Gilliland
22 Group Partnership which is based in Amarillo, Texas.
23 I don't have a statement, but I'm here to answer any
24 questions that you may have on their behalf or respond
25 to any other comments that may come up this evening.

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1 CHAIRMAN: Any board members have any
2 questions of this gentleman?

3 (NO RESPONSE)

4 CHAIRMAN: Staff have any comments?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: Hearing none the opposition, do you
7 have anything else new that you would like to bring at
8 this time, please?

9 MR. SILVERT: Could you state your name,
10 please?

11 MR. RODNEY: Dean Rodney.

12 MR. SILVERT: Mr. Rodney, you were previously
13 sworn at the last meeting.

14 MR. RODNEY: That is correct. Thank you.

15 My wife and I live on Briar Cliff Trace, as I
16 mentioned last month. We've been there for over 18
17 years.

18 We have 178 feet of our backyard adjoins the
19 former Atmos Energy property that's in question
20 tonight.

21 At last month's meeting we had receivable
22 objections that were raised, concerns from our
23 neighborhood regarding the conditional use permit
24 that's being proposed to this board. I'm thankful
25 that you started this evening by looking at some of

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1 that information. The letter that was submitted by
2 Bob Hill you should have received, a neighbor in
3 Copper Creek subdivision who was unable to be here.
4 His property joined the Atmos Energy property. He let
5 out some reasons as to why you should deny this
6 conditional use permit.

7 In addition, Doug Black who is the president
8 of our homeowners association in the Copper Creek
9 neighborhood unfortunately for him and for us is
10 working tonight and unable to attend the meeting;
11 however, he sent a message to me that he wanted this
12 shared with this particular board.

13 That the Copper Creek Subdivision is united in
14 opposing the storage units being constructed on a
15 former Atmos Energy property as it affects
16 specifically those homeowners who adjoin this
17 property. It also affects all of us in this
18 neighborhood negatively. Single-family residential
19 homes border all of the south side and all of the east
20 side of this property in question. Also, the YMCA
21 borders part of the north side with several acres that
22 they have there that they're hoping to develop a kids
23 park. Security has been mentioned as an issue because
24 there's going to be a real problem for kids and for
25 our residential neighborhoods that are located next to

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1 storage units.

2 I think Mr. Stewart has already said that
3 there will be 24 hour access 365 days a year. That's
4 got to be a security nightmare for us as neighbors.
5 The unnecessary noise has been mentioned. Obviously,
6 there will be an infringement on our privacy.

7 Looking at the plan that he's presented here
8 to the board there's over 44,000 square feet of
9 storage units that he's looking to adapt and construct
10 that's going to be right up against the Copper Creek
11 neighborhood. Obviously, he's already mentioned
12 tonight that that will include several hundred storage
13 units that will be in our backyard.

14 Neighbors that will turn over frequently.
15 Neighbors who could store the hazardous materials.
16 We've mentioned this as a reason last month for our
17 real concern in the neighborhood of what could be
18 stored in these storage units. But since last month I
19 had the opportunity to research some of the items that
20 have been stored in storage units nationwide that
21 could be very problematic, especially when we're
22 dealing with kids and especially in a residential
23 neighborhood that's already established.

24 They include but they're not limited to the
25 following:

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1 In Michigan a live hand grenade was found in
2 an individual's storage unit.

3 In Florida, a family member decided to bury
4 another family member in an individual storage unit.

5 In San Diego, California a man murdered a
6 woman, rented a storage unit and stuffed her in there.

7 Stolen items, drugs, meth labs, firearms,
8 explosives, hazardous materials of all kinds have been
9 discovered numerous times in storage unit across the
10 country.

11 In Clay County, Minnesota 32 python snakes
12 were put in a storage unit and discovered there, and
13 so on. There's a long list.

14 Any one of these problems can prove to be
15 disastrous for kids and from an established
16 neighborhood that's located next to storage units. It
17 only takes one.

18 It has been said that there are three things
19 that determine real estate values. Location, location
20 and location.

21 Several hundred storage units, as have been
22 mentioned, are going to be in our backyard if you
23 approve this. If there's that potential for hazardous
24 material of any kind to be stored there, then that can
25 only reduce our property values. I'm probusiness. I

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1 worked over 33 years in business. I also volunteer as
2 many of you have in a lot of organizations like the
3 Chamber of Commerce, who is very probusiness, and I
4 support that. However, I would never nor would you
5 support that if there's any indication that it would
6 be at the detriment of kids or an established
7 residential neighborhood. There is a time and a place
8 for everything. In my opinion, tonight is the time
9 for the board to deny this conditional use permit for
10 this project because this property is not the place
11 for storage units. We in our neighborhood have tried
12 to itemize a lot of things for you to consider that we
13 have concerns over, as well as the noise we talked
14 about, the hazardous materials that have been
15 addressed, security would certainly be breached,
16 privacy would be compromised, property values have to
17 be declining if you're next to potentially storage
18 units that could have hazardous materials in them.
19 All of this would reduce the quality of life for us in
20 Owensboro, in this community, that are next to the
21 storage units.

22 So I would hope that this Board of Adjustment
23 would seriously consider our concerns and vote to deny
24 the conditional permit use for this particular
25 project. Thank you for listening.

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1 CHAIRMAN: Any board member have any questions
2 of this gentlemen at this time?

3 MR. DYSINGER: I do, Mr. Chairman.

4 Did opposition research crime rates in areas
5 maybe even in Owensboro around storage units and see
6 if any of these concerns? Is there any quantifiable
7 data to support that supposition?

8 MR. RODNEY: Have I done that?

9 MR. DYSINGER: Anyone in the opposition.

10 MR. RODNEY: I have not. All I have looked at
11 is the research that I have found of what could be and
12 has been stored in these storage units in terms of
13 being detrimental to someone next to it like a kids
14 park, or like a residential established neighborhood,
15 but certainly it's there. I don't know what the
16 statistics are.

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

18 CHAIRMAN: Any other board member have any
19 questions at this time?

20 (NO RESPONSE)

21 CHAIRMAN: Staff have anything you would like
22 to add on his comments?

23 MR. NOFFSINGER: No, sir.

24 CHAIRMAN: Does anyone have any other
25 comments?

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

3 MR. BALL: Manuel Ball.

4 (MANUEL BALL SWORN BY ATTORNEY.)

5 MR. BALL: Just for the record. I believe I
6 actually read into the record the last time, but
7 hazardous materials would not be allowed in an
8 individual storage per our zoning ordinance.

9 CHAIRMAN: Does anyone else have any other
10 comments at this time, new information?

11 MR. PACE: I wasn't here the last time, but I
12 don't think I'll be addressing anything that was.

13 MR. SILVERT: Could you state your name for
14 the record.

15 MR. PACE: Pat Pace, 1531 Cooper Creek Drive.

16 MR. SILVERT: You're sworn as an attorney, Mr.
17 Pace.

18 MR. PACE: It's true that these storage units
19 are not supposed to contain hazardous material, but
20 the applicant has told us there's no way that he can
21 actually police that. In fact, they're only there
22 during business hours and not at all on Sunday and
23 half a day on Saturday.

24 The concern is not only hazardous materials,
25 but flammable material or anything that could be a

1 health hazard. Your zoning ordinance defines those as
2 prohibited, but we have no way to assure that they
3 would not be located on these facilities.

4 The zoning ordinance also prescribes that you
5 should determine that the conditions would not have an
6 adverse influence on the surrounding neighborhood. I
7 think from what you've heard it clearly can and very
8 well might.

9 The highest court in Kentucky has also
10 addressed this with respect to conditional use
11 permits. In making a determination, you should
12 consider the affect of the proposed use on the public
13 health, safety and welfare of adjoining zones. That
14 would certainly include this residential neighborhood.
15 I think you've heard the reasons. I'm trying to give
16 you some reference to the ordinance and the law.

17 We would ask that you deny this permit
18 particularly when some the protections that are built
19 into the conditional use permit and the ordinance
20 they're already seeking to change such as the height
21 of the fence. The fence is not just for screening.
22 It's also for security, and lowering it could affect
23 security. Thank you.

24 CHAIRMAN: Any board member have any questions
25 for this gentleman at this time?

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1 MR. DYSINGER: I do, Mr. Chairman.
2 Counselor, if the applicant were proposing to
3 build say apartment buildings for low income tenants,
4 many of the same objections that opposition has put
5 forward would still be true. Why is storage units any
6 more of a threat or detriment than apartment
7 buildings, duplexes? In fact, any neighbors at all
8 could have hand grenades and dead bodies.

9 MR. PACE: That maybe true, but it's certainly
10 more unsupervised and less security.

11 MR. DYSINGER: Currently it's basically an
12 abandon building, a vacant lot, correct?

13 MR. PACE: That's my understanding. I don't
14 know that for a fact.

15 MR. DYSINGER: No further questions.

16 CHAIRMAN: Any other comments or questions
17 from the board members at this time?

18 (NO RESPONSE)

19 CHAIRMAN: Staff have anything else to add?

20 MR. NOFFSINGER: No, sir.

21 CHAIRMAN: Thank you.

22 Anyone else wishing to speak?

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

24 MR. HAYDEN: My name is Matt Hayden.

25 (MATT HAYDEN SWORN BY ATTORNEY.)

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1 MR. HAYDEN: I have a series of questions. I
2 don't know if they should actually -- I'm usually
3 represented when I'm here so if I speaking prior to
4 the next request, assuming this one passes, I'll be
5 happy to stand back up and ask them then if I'm going
6 out of sync here.

7 One question I have is all the questions that
8 he answered from the prior meeting which I wasn't able
9 to attend, will those be read into the variance if it
10 is accepted as part of the motion so that if it does
11 not meet those answers, how will that be monitored and
12 will his variance be taken away if he doesn't meet all
13 the questions that he has supplied answers for?

14 CHAIRMAN: Staff answer that, please, sir.

15 MR. NOFFSINGER: If the conditional use permit
16 is approved, it would be more meaningful if the board
17 would set specific conditions and name those
18 conditions that they expect the applicant to meet.
19 That way it helps us enforcement and it makes it clear
20 to everyone as to what has been approved.

21 However, when the applicant steps up here and
22 puts forth an application, they're under oath. If
23 they make a commitment under oath, then I believe that
24 that commitment should be honored and we would be in
25 the position to enforce what they've said.

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1 Now, that has been challenged and we have been
2 directed that testimony that's given by either the
3 applicant or the opposition has to be trusted. I
4 think we can hold his feet to the fire in terms of
5 what he is committed to. However, it may take court
6 action beyond this board court action which takes time
7 in which then is out of our control to enforce.

8 MR. HAYDEN: I guess normally I do
9 developments around town, but most of my developments
10 are in the city. I think this property is in the
11 county; is that correct?

12 MR. NOFFSINGER: All property in Daviess
13 County, whether it be in the City of Owensboro or
14 Daviess County, is in the county. This property has
15 not been annexed into the City of Owensboro.

16 MR. HAYDEN: I'm sorry, so it's not in the
17 city was the direct question?

18 MR. NOFFSINGER: It has not been annexed into
19 the City of Owensboro.

20 MR. HAYDEN: With that being said, will it be
21 annexed into the city? The reason I ask that is
22 because obviously with it being in the county I assume
23 there's different regulations or mandates as to how
24 property has to be kept up because if that property
25 was in the city I'm the under assumption it would not

1 look like it does today. I guess back to jurisdiction
2 of how do you monitor these things? I mean the
3 property is in disarray. I guess my question is:
4 Being a neighbor, how did it get to this? I know if I
5 don't mow my grass on any of the properties we own, I
6 get a letter. If I don't fix it in ten days, I get a
7 fine.

8 MR. NOFFSINGER: The City of Owensboro
9 enforces their own property maintenance code. That's
10 not enforced by this board or the Planning Commission.
11 Daviess County, they have a property maintenance code
12 that they enforce that we do not have any control
13 over.

14 Any questions regarding the maintenance of
15 that property should be directed at this time to the
16 Daviess County Fiscal Court. In terms of whether he
17 intends to annex or not, I have not heard him say
18 whether he plans to do that or not.

19 MR. HAYDEN: Because it might be nice if he
20 does because then maybe he would have to keep the
21 grass up in the future.

22 The people in the neighborhood, as well as I,
23 I would like to know is there a contact for the county
24 because I'd love to try to get somebody to cleanup the
25 property that adjoins mine because obviously it's in

1 total disarray. Has been for some time.

2 MR. NOFFSINGER: Mike Hamilton with the
3 Daviess County Property Maintenance office, solid
4 waste. His name is Mike Hamilton.

5 MR. HAYDEN: Thank you.

6 Also, it's come up being that hazardous
7 materials, possible fire. Bottom line is the density.
8 Will it be increased on the property? I also have
9 concerns that because this isn't in the city I think
10 is the reason that I'm under the impression there will
11 be not be a development plan later that goes back to
12 the OMPC Board for approval of the actual improvements
13 that will be made on this property; is that correct?

14 MR. NOFFSINGER: There will be a requirement
15 of a development plan regardless of whether it's in
16 the City of Owensboro or outside the City of
17 Owensboro. Because you have multiple principle
18 structures on the property. That will be a
19 requirement to go before the Planning Office
20 regardless. It will not go before the Planning
21 Commission. It will be signed in-house by the
22 director to assist those developers in this community
23 that are trying to start a business.

24 MR. HAYDEN: I guess the concern is, is that
25 being that it won't be back into the public again,

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1 I've got concerns with the utilities that come to that
2 property, whether it's fire, sewer, etcetera. I think
3 the utilities are inadequately sized for that area,
4 especially since the density and the use is going to
5 be taxing, what is there and probably won't even allow
6 it to operate properly. How will we have a checks and
7 balance that they'll be upgraded so that it can, one,
8 protect the neighborhood if something bad was to
9 happen, etcetera? The reason I'm asking this is
10 because of the development plan not coming back. So
11 we won't have a chance to go and make sure that all of
12 this is being taken care of and notified of the
13 meetings etcetera. I mean most of these people have
14 jobs, etcetera. They won't even realize the process
15 is happening I guess is what I'm making notice. Also,
16 I want be aware of that as being a property owner that
17 adjoins this.

18 MR. NOFFSINGER: The development plan is
19 reviewed by all utility companies, as well as the
20 Planning Staff and the Engineering Department. You
21 certainly can contact those various agencies if you
22 have concerns about adequacy of utilities in the area,
23 but it's been my experience they do a fantastic job in
24 terms of reviewing plans and making sure that the
25 utilities and infrastructure is adequate prior to

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1 approving that development.

2 MR. HAYDEN: Not saying that they're not.
3 Being that it's not going to come back to that process
4 I don't want to miss it as being a property owner that
5 wasn't able to see if those things were being met.
6 Like, for example, having enough pressure to have a
7 fire hydrant installed so that if there is a fire that
8 they'll be able to take care of the issues at hand. I
9 just want to make sure that the bases are covered,
10 being a property owner that owns the property
11 next-door, on the opposite side of the neighborhood.
12 Thank you.

13 CHAIRMAN: Any questions of this gentleman
14 from the board?

15 (NO RESPONSE)

16 CHAIRMAN: Staff have any other comments?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: Anyone else have any new items?

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

21 MS. PATEL: Darshana Patel.

22 (DARSHANA PATEL SWORN BY ATTORNEY.)

23 MS. PATEL: The gentleman, Seth Stewart,
24 mentioned about multiple activities or multiple
25 entrance by one person entering the property, the

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1 storage units, he will be alarmed via e-mail. He said
2 the computer system would be notified of the entrance
3 or whatever, whoever enters. Who is going to monitor
4 that 24/7? If he said the computer would e-mail him,
5 I mean I don't understand that process.

6 CHAIRMAN: Would the applicant answer this
7 question for us, please.

8 MR. STEWART: The computer system will be on
9 24 hours a day. When somebody keys in to that gate,
10 they have their own personal four digit code that they
11 use. When that code gets enter, the computer
12 recognizes it and marks the time. When he leaves,
13 same thing happens, the customer leaves. If it's an
14 abnormal amount of time, I can set is up to anything,
15 I believe, it kicks me an e-mail. The computer system
16 will automatically send me an e-mail with, I believe,
17 I don't want this to be on record, but I believe with
18 the customer's ID number and everything right then.
19 It will be in the computer system once I can get to
20 it. The e-mail will come straight to my phone and I
21 will have it in ten minutes.

22 CHAIRMAN: In other words, you'll be on 24
23 hours a day, to be notified?

24 MR. STEWART: Yes.

25 CHAIRMAN: Thank you.

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1 Any questions?

2 (NO RESPONSE)

3 CHAIRMAN: Any other questions? I think we've
4 pretty well touched all the items, unless you have
5 something new.

6 (NO RESPONSE)

7 CHAIRMAN: With that the board have any other
8 questions right now?

9 (NO RESPONSE)

10 CHAIRMAN: We've got two items. The first one
11 is a conditional use permit. I'll entertain a motion
12 for that item at this time, please.

13 MR. REEVES: Mr. Chairman, I'll be glad to
14 make a motion.

15 While I'm not one that's ever going to
16 particularly swayed, they're not in my backyard, I
17 think there are issues they have merit to them.
18 Storage facilities certainly could be a necessary
19 evil. People have to have places to store. However,
20 I'm usually moved by is it going to be a disturbance
21 to the neighbors and more importantly what are the
22 safety issues.

23 I move that this conditional use permit be
24 denied based upon the testimony of the owner. He has
25 no ability to control safety on the site. Individuals

1 certainly could climb the fence. There would be any
2 number of ways. Somebody could go in legitimately and
3 still set up some sort of dangerous issue in the
4 storage facility. Secondly, there will certainly be
5 noise 24 hours a day. Someone could come in at 3:00
6 in the morning to load up one of these large rooms and
7 decide they want to play a jam box to keep themselves
8 entertain while they work. I certainly think that
9 both light and noise would impact the neighborhood and
10 their tranquility. So with those two facts I would
11 recommend that the motion be denied.

12 CHAIRMAN: We have a motion. Is there a
13 second?

14 MS. MASON: Second.

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

18 (NO RESPONSE)

19 CHAIRMAN: Staff have anything else at this
20 time?

21 MR. NOFFSINGER: No, sir.

22 CHAIRMAN: Hearing none all in favor of the
23 vote raise your hand.

24 (BOARD MEMBERS RUTH ANN MASON AND FRED REEVES
25 RESPOND AYE.)

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1 CHAIRMAN: All opposed.
2 (BOARD MEMBERS SHANNON RAINES, MARTY WARREN
3 AND SEAN DYSINGER RESPONDED NAY.)
4 CHAIRMAN: Two to three. The motion fails.
5 With that we'll have to have another motion.
6 MR. NOFFSINGER: You need another motion or --
7 you really need another motioned.
8 CHAIRMAN: To pass it?
9 MR. SILVERT: Either way. You need a motion
10 to dispose of the item one way or the other.
11 CHAIRMAN: Thank you.
12 Entertain a motion one way or the other again.
13 MR. DYSINGER: Mr. Chairman, given the
14 findings that there is no compelling evidence that the
15 proposed use presents a danger to the neighborhood, I
16 move that we grant the conditional use permit with the
17 following special conditions:
18 Structure to be used as individual storage
19 units shall not be located closer than 25 feet to any
20 residential zone. An 8 foot high solid wall or fence
21 shall be installed and maintain on all sides that
22 adjoin any other property, except those properties
23 zoned B-1, B-2, B-3, B-4, B-5, I-1 or I-2. Tree
24 plantings may also be required as per Article 17 of
25 the Zoning Ordinance. Building height shall not

1 exceed 15 feet measured from the first grade of the
2 loading doors to the top of the roof ridge or edge.
3 Outdoor storage shall be prohibited on the same
4 property as the individual storage structures. This
5 shall include vehicles, boats, personal items
6 etcetera. All other uses, all uses other than the
7 individual storage shall be prohibited with end
8 structures while those structures are being used for
9 individual storage, except for one office or
10 caretaker's residence which at present shall be
11 directly related to the management of the individual
12 storage units.

13 The owner of the individual storage structures
14 shall be responsible for policing the material and/or
15 items being stored. The owner shall notified zoning
16 administrator, calling discovering any storage not
17 meeting the requirement set forth herein, providing
18 the name, address and phone number of the renter
19 storage is in question, and also submission and
20 approval of final a development plan.

21 CHAIRMAN: Is there a second to this motion?

22 MR. WARREN: I'll second it.

23 CHAIRMAN: A motion has been made and a
24 second. Any other comments or questions from the
25 board at this time?

1 MR. DYSINGER: Mr. Chairman, I would just say
2 that I'm not insensitive to the issues that the
3 opponents brought up, having just had a storage
4 facility built within just 100 feet of my home.
5 However, the right of a property owner to develop
6 their property often should take some precedence.

7 CHAIRMAN: Any other comments from the board
8 or questions?

9 (NO RESPONSE)

10 CHAIRMAN: Staff have anything else to add at
11 this time?

12 MR. NOFFSINGER: Just one second.

13 No.

14 CHAIRMAN: You've heard the motion and the
15 second. All in favor raise your right hand.

16 (BOARD MEMBERS MARTY WARREN, SEAN DYSINGER AND
17 SHANNON RAINES RESPONDED AYE.)

18 CHAIRMAN: All opposed.

19 (BOARD MEMBERS RUTH ANN MASON AND FRED REEVES
20 RESPONDED NAY.)

21 CHAIRMAN: Motion passes.

22 You understand the conditions on the
23 conditional use permit?

24 MR. STEWART: Yes.

25 MR. NOFFSINGER: Mr. Chairman, before we move

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1 forward, the related item is a variance. The variance
2 that the applicant is proposing is in direct conflict
3 with the conditions you just placed. I would like to
4 ask the applicant if you would like to withdraw your
5 variance request or if you would like to proceed.

6 MR. STEWART: I would like to proceed.

7 RELATED ITEM

8 ITEM 2A

9 3425 New Hartford Road, zoned B-4

10 Consider a request for a Variance in order to reduce
11 the height of the solid wall or fence along the south
12 and east property boundaries from 8 feet tall to 6
13 feet tall and to increase the maximum building height
14 of an individual storage unit in a B-4 zone in the
15 County from 15 feet tall to 22 feet tall.

16 Reference: Zoning Ordinance, Article 8,

17 Section 8.2L7/48(b) and 8.2L7/48(c)

18 Applicant: Seth Stewart, Gilliland Group Partnership

19

20 MS. EVANS: The applicant is requesting a
21 Variance regarding Items B and C that were just
22 conditions placed on the Conditional Use Permit.

23 Currently there is a 6 foot tall chain-link
24 fence around the perimeter of the subject property.
25 The applicant is proposing to install slats into the
existing fence along the south and east property
boundaries where the subject property adjoins
residential property making the fence solid. The
portion of the south and east property boundaries are
screened with an intense line of existing trees. A

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1 portion of the southern property boundary is screened
2 with an 8 foot tall privacy fence; which is located on
3 the adjoining properties, not the subject property.
4 There is an elevation change from the subject property
5 to the adjoining properties where the subject property
6 sits lower than the adjoining properties to the south
7 and east.

8 The applicant is also proposing to utilize the
9 existing buildings located down the center of the
10 subject property, converting them to storage areas and
11 an office. The existing buildings are taller than the
12 required 15 foot height limitation for individual
13 storage units in a B-4 for zone in the County; the
14 existing buildings range in height but are not taller
15 than 22 feet. These buildings have been located on
16 the property for a number of years, as they were
17 constructed to serve Atmos Energy when their business
18 was located on the property. The existing building
19 have not generated complaints regarding their heights
20 with the previous use, which was Atmos service,
21 maintenance, welding shop and storage of service
22 trucks. The previous use appears to have been a more
23 intense use than the proposed individual storage which
24 is prohibited from having outdoor storage. The
25 elevation change from the adjoining properties to the

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1 subject property provides some buffer to the taller
2 buildings. The applicant states; any new storage unit
3 buildings to be constructed on the property will not
4 exceed 15 feet in height; the requested height
5 variance is limited to the existing buildings located
6 on the property. Because there will be more than one
7 principal building on the subject property, the
8 applicant will be required to submit a Final
9 Development Plan for the project to be reviewed by all
10 the appropriate agencies.

11 Granting the variance to reduce the height of
12 the solid wall or fence along the south and east
13 property boundaries from 8 feet to 6 feet will not
14 adversely affect the public health, safety or welfare
15 because the adequately screening will be provided; it
16 will not alter the essential character of the general
17 vicinity because this use will be less intense than
18 the previous use, utilizing existing screening; it
19 will not cause a hazard or a nuisance to the public
20 because it will be adequately screened with existing
21 elements in place; and it will not allow an
22 unreasonable circumvention of the requirements of the
23 zoning regulations because the use will be less
24 intense than the previous use and the screening will
25 meet the intent of the zoning ordinance.

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1 Granting this Variance to increase the maximum
2 building height of an individual storage unit will not
3 adversely affect the public health, safety or welfare
4 because it has not thus far and this use will not
5 increase the building height any further; it will not
6 alter the essential character of the general vicinity
7 because this use will be less intense than the
8 previous use, utilizing the existing buildings; it
9 will not cause a hazard or a nuisance to the public
10 because no new buildings will be constructed over the
11 15 foot height maximum and the existing building has
12 not caused any issues in the past; it will not allow
13 an unreasonable circumvention of the requirements of
14 the zoning regulations because this use will be less
15 intense than the previous use and because of the
16 elevation change and an increased building height will
17 meet the intent of the zoning ordinance.

18 Staff recommends approval with the following
19 Conditions:

20 1. If the existing fence or tree line is
21 affected in any way, reducing the screening from the
22 adjoining properties, the applicant shall install the
23 required 8 foot tall solid fence along the south and
24 east property lines;

25 2. Any new buildings constructed on the site

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1 shall not exceed 15 feet in height;

2 3. Submission and approval of a Final
3 Development Plan.

4 We would like to enter the Staff Report into
5 the record as Exhibit B.

6 CHAIRMAN: Thank you.

7 The Applicant, you understood you just got
8 approval on your Conditional Use Permit?

9 MR. STEWART: Yes, sir.

10 CHAIRMAN: Just wanted to be sure. Do you
11 have any comments at this time?

12 MR. STEWART: I can't think of anything from
13 what Ms. Evans said other than the already existing 8
14 foot fence that runs into the very thick tree lines
15 was to be changed, I would then add the extra two feet
16 to the fence that exist and continue the screening on
17 up. The 6 foot fence that is there in place will be
18 screened. It also has one foot of barbwire, three
19 runs on top of it.

20 CHAIRMAN: Board members have any other
21 questions at this time?

22 (NO RESPONSE)

23 CHAIRMAN: Staff have anything else?

24 MR. NOFFSINGER: No, sir.

25 CHAIRMAN: Opponent have anything else you

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1 would like to add at this time come forward.

2 MR. PACE: Pat Pace.

3 The Zoning Ordinance provides that this be 8
4 feet tall. There was a mention in the Staff Report
5 that the 6 foot fence would provide adequate
6 screening. That doesn't address the security issue
7 that we've addressed with this board. We would ask
8 that you follow suit on what you did in the previous
9 proceeding and require that this be 8 feet tall.
10 Thank you.

11 CHAIRMAN: Any board members have any
12 questions of this applicant or this gentleman at this
13 time?

14 (NO RESPONSE)

15 CHAIRMAN: Staff have anything else to add?

16 MR. NOFFSINGER: No, sir.

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

19 Come forward and state your name, sorry.

20 MR. HAYDEN: Matt Hayden.

21 MR. SILVERT: You're sworn.

22 MR. HAYDEN: Thank you.

23 We weren't privy to the pictures that were
24 produced. Were those new construction or renovation
25 of existing infrastructures for the record?

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1 MR. NOFFSINGER: Some of those would have
2 construction since the adoption of the ordinance.
3 Others would have been there. It's really mixed, Mr.
4 Hayden. One I believe was at the intersection of
5 Fifth and Castlen Street. Individual storage unit
6 constructed probably in the late '80s, early '90s by
7 Tom Hayden. That was in a residential area. It was
8 included. I recognized that one. Some others looked
9 like they had been there a while. Perhaps predated
10 the ordinance.

11 MR. HAYDEN: I was just curious if it was
12 going to be new construction, for my clarification, or
13 whether it was novation or possible renovation of
14 rundown facilities that currently exist.

15 MR. NOFFSINGER: I'm sorry, I'm not following
16 your question.

17 MR. HAYDEN: I'm trying, as being a neighbor,
18 there was a picture that was painted as to what's
19 going to happen to this facility. We all just said
20 that it was rundown. So is the improvements going to
21 be mandated that there may, which is -- my real
22 question is: Is he going to be able to occupy this as
23 a storage facility before the improvements are made
24 and the development plan comes to you all?

25 MR. NOFFSINGER: No. He cannot occupy the

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1 property until such time, for storage, as a final
2 development plan is approved.

3 MR. HAYDEN: So it will have to be brought up
4 to some standard prior to using it for storage to the
5 public?

6 MR. NOFFSINGER: That is correct.

7 MR. HAYDEN: That was my main question. I
8 just wanted to make sure that this couldn't all of a
9 sudden close on the property and start using it for
10 storage in its current state.

11 MR. NOFFSINGER: That's correct.

12 MR. HAYDEN: I guess the other question I have
13 since it's now proceeding as being that I do own the
14 adjacent property how will the shared access point
15 work and will it be required to have any public
16 improvements, etcetera, that the state or OMPC might
17 require?

18 MR. NOFFSINGER: I'm not prepared to answer
19 that question. Perhaps Ms. Evans has reviewed and
20 talked with the applicant and can address that. I
21 have not been involved in the discussions.

22 MS. EVANS: It's my existing that it's an
23 existing shared access point and it can continue to be
24 a shared access point. We have not contacted the
25 state to know if there are any requirements that they

1 would have for it.

2 CHAIRMAN: Do you have anything else, sir?

3 MR. HAYDEN: How will I know how that gets
4 addressed? I mean will I get notification as to how
5 it will proceed?

6 MR. NOFFSINGER: If you have a right to that
7 access.

8 MR. HAYDEN: I own the property that is the
9 shared access.

10 MR. NOFFSINGER: Then the applicant should be
11 working with you and you communicating with the
12 applicant before any improvements are made to that
13 property. We will be taking a look at it from the
14 standpoint of what the state requires and any
15 improvements made. If he's going to effect the shared
16 access point, that development plan may require your
17 signature in terms of improvements only to that access
18 point. I can't tell you that for certain because that
19 becomes a legal question, if it's a shared access
20 point. It will have to be improved to a certain
21 standard that meets the requirements of the zoning
22 ordinance. That means it can't be gravel. It can't
23 be dirt. It's going to have to be approved with the
24 hard surface such as concrete, blacktop. We don't
25 have that information at this point.

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1 MR. HAYDEN: So I will be notified and asked
2 to sign on the development plan? I mean I just want
3 to make sure that I come home one day and it's all
4 happened.

5 MR. NOFFSINGER: We will not notify you. When
6 the development plan is submitted to us, the
7 development plan is to be signed by the property
8 owner. If it affects your access and you have the
9 right of access to that property, then it becomes a
10 legal question as to whether or not you'll have to
11 sign off on that plan. There's no notification of
12 adjoining landowners on any final development plan.

13 MR. HAYDEN: Who do I ask the legal question
14 of: Will I be notified?

15 MR. NOFFSINGER: You will not be notified.

16 MR. HAYDEN: That brings up my concerns. How
17 does that work and then how will I know that the
18 public improvements are going to be made; the water
19 will be upgraded, the retention system be met?
20 There's a list of things that improvements to that
21 site were substandard. One of the reasons Atmos left
22 that site was because they could not continue to do
23 that operation if they ever rebuilt, etcetera, on that
24 site. The process, I just don't want to be left
25 behind and all of a sudden now my neighbor has

1 devalued my property. I don't have adequate access to
2 my property and the utilities going to the site are
3 never brought up to standards so that, you know, the
4 area can actually even perform. I don't the process
5 as to -- because it's not coming back to the Board of
6 a development plan, I don't know other than calling
7 everybody and checking in. How do you even monitor
8 the process?

9 MR. NOFFSINGER: Well, as you're aware as a
10 developer in this community, development plans used to
11 come before the Planning Commission for approval;
12 however, to make this community more business friendly
13 we removed, this community removed the requirement of
14 the development plans going before the Planning
15 Commission in a public hearing. Really it wasn't a
16 public hearing on a development plan anyway because as
17 long as the development plans meets the minimum
18 requirements of the zoning ordinance, it's to be
19 approved.

20 The process that you go through as a developer
21 on a routine basis is the same process that you should
22 follow here. You should be in communication with this
23 gentleman. He should be in communication with you
24 because you have sounds like a shared interest, and
25 that's the access into the property. You can also

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1 communicate with the planning office. You can
2 communicate with the utility companies and the county
3 engineer as well as the State of Kentucky as to how
4 the process is going. I'm sure that you can be
5 involved in that process in some way. The public is
6 not involved in the final development plan process.
7 The public was taken out of that process to make us
8 more business friendly. So that's where we are today.

9 MR. HAYDEN: I know when I develop projects
10 I'm asked and the only way I get to proceed is when I
11 go get development adjacent signatures and I'm also
12 held accountable on doing millions of dollars of
13 public improvements. I just hope that the same level
14 of standard is held to accountability of this project.
15 That's the main focus here. If that happens, my
16 shared access will work nicely and the utilities will
17 all be there. The protocol, I'm just wanting to make
18 sure that it's there and there's no assurance unless
19 me monitoring it, which by the way I plenty to do just
20 like everybody else in this room. So I don't like the
21 process because I know in the past I didn't get the
22 luxury of just running things through.

23 MR. NOFFSINGER: Well, your notification
24 process of adjoining property owners comes from a
25 rezoning. You've not been required to notify

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1 adjoining landowners on a final development plan.
2 This gentleman is not going through the rezoning
3 process. The property is zoned B-4 General Business.
4 So he's not going through a rezoning process. That
5 has a requirement that all adjoining landowners be
6 notified, and that's a state requirement. There is no
7 notification requirement for a final development plan.

8 MR. HAYDEN: Actually if you wanted one, it
9 could just be read into the motion and approved as an
10 additional condition on the plan. So it can be solved
11 if the Board elects to take that process. It happens
12 all the time. So it should all -- the burden should
13 not be put back on citizens in the community to
14 monitor every move that this board makes.

15 CHAIRMAN: Sir, I think being this is a joined
16 entrance there, you're going to have to sign off so
17 you've the right.

18 MR. HAYDEN: Can you put that in the record as
19 a condition and I'll feel good about it?

20 MR. SILVERT: Here is the problem right now,
21 Mr. Hayden. The conditions on the previous item have
22 been made. It's been voted on and that wasn't one of
23 the conditions. Had you brought this up 15 minutes
24 ago, it would have been a different issue. I know
25 that almost sounds smug to say it that way. I hate to

1 say it that way, that motion has come and gone now.

2 That much being said, if the variance is
3 anything but defeated, that might be something that
4 could be added as a condition to the Variance
5 potentially or some type of notification. If you want
6 to continue to have communication with myself or the
7 office, I'm sure that we'd be more than happy to let
8 you know where we are in the process and do that.

9 MR. HAYDEN: Based upon Gary's comments, the
10 notification was not going to come to me.

11 I appreciate your clarification that it could,
12 Mr. Pantle.

13 You can see where my concern is. Is the
14 burden is being put back on me.

15 My next question now is: If the appeal is
16 filed to reject that, would it come back to where that
17 recommendation could it be added so that all of our
18 concerns actually have a chance to be met, as meaning
19 the utilities, the improvements made to the
20 facilities, etcetera? I'm not trying to block this.
21 I just want a level of standard to make sure it
22 happens next to this property and make it as good as
23 it can be for all that are involved. Right now the
24 burden is 100 percent continuously put on the
25 homeowners or the adjacent property, which I don't

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1 feel is fair. I don't know how to mediate through the
2 process here. Good news is there's plenty of
3 attorneys in the neighborhood so we'll see how we work
4 through it.

5 CHAIRMAN: Any other comments?

6 Please, ma'am.

7 MR. SILVERT: State your name.

8 THE WITNESS: Could you state your name,
9 please.

10 MS. RODNEY: Sandra Rodney.

11 (SANDRA RODNEY SWORN BY ATTORNEY.)

12 MS. RODNEY: I have just a couple of comments
13 in regard to the variance.

14 I heard in the Staff Report less than intense,
15 less intense, less intense. Having been a resident in
16 the area and having been a neighborhood of Atmos, I
17 would say that their functioning was certainly less
18 intense than what the proposal that has been accepted
19 will be. Certainly Atmos and their workers were there
20 from maybe 9 in the morning, coming and going, and a
21 very limited basis a handful of workers. They maybe
22 would arrive, pick up a truck, and leave. Return it
23 4:30 or 5 they were gone. They were not there 24/7.
24 So certainly I would say that that is the less intense
25 of the two uses of the property.

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1 Also, my understanding is that in a B-4 zone
2 that it's incumbent upon the owner of the property to
3 put the taller fence, a solid fence, and also
4 landscaping; is that correct; when you read the B-4
5 ordinance online? Is that correct?

6 CHAIRMAN: Staff.

7 MR. NOFFSINGER: The requirement would be for
8 the solid wall or fence --

9 MS. RODNEY: Eight foot. And also
10 landscaping. The tree lines --

11 MS. EVANS: It's a tree every 40 feet, but you
12 can count trees that are existing if they're on his
13 property and they can be clustered as well.

14 MS. RODNEY: Those trees are not on his
15 property.

16 CHAIRMAN: Then he can't touch them if they're
17 not on his property.

18 MS. RODNEY: Okay. Is it incumbent upon him
19 as a property owner to establish landscaping?

20 MR. NOFFSINGER: Yes, ma'am, it is. He will
21 be required on his property to place trees one per
22 every 40 feet that he has. He can group those. He
23 may choose to group them out near New Hartford Road or
24 he may choose to group them to the rear. That's just
25 so we can get the number.

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1 MS. RODNEY: The discussion that I heard to
2 this point is indicating that there is existing
3 landscaping. There are existing trees. There is an
4 existing fence. Those are property owners in the
5 Copper Creek subdivision who have the landscaping
6 items, who have -- one property owner has a solid
7 fence. The rest is 6 foot chain-link that you've made
8 reference to. That is not is solid.

9 Also, in the Staff Report I heard words about
10 elevation. I believe Mr. Hayden's property and the
11 Weise property is identical elevation of this
12 property. It is not raised in any fashion from where
13 these units will be going in. I think that point
14 needs to be made. Do you not have a letter from the
15 Y?

16 MR. NOFFSINGER: We do not.

17 MS. EVANS: No.

18 MS. RODNEY: Staff does not. In our
19 discussion with the Y, it was our understanding that
20 they had sent the Staff a letter saying that in
21 particular they were concerned because the proposed
22 use of their property would be to have day camps for
23 children and whatever and a six foot fence would not
24 for safety reasons for these children be adequate. I
25 think all of these points, when you consider a

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1 variance and you consider the neighborhood surrounding
2 with children in these neighborhoods, you consider the
3 exact same elevation of those two property owners and
4 even the Creek Haven area that is on the same
5 elevation, that needs to be kept in mind before you
6 make this choice.

7 MR. NOFFSINGER: Mr. Chairman, for the record
8 the only thing we have in the file from the YMCA is a
9 fax transmittal statement of waiver of notice. There
10 was a discrepancy on the notification to the Y back
11 prior to the first meeting. They sent us a waiver
12 stating the unsigned waives statutory requirements of
13 14 days notice and acknowledges receipt, a copy of
14 which is attached hereto. They had received notice.
15 We have not received anything else from the Y.

16 MS. EVANS: One thing that I wanted to clear
17 up a little bit. The reason that the condition of the
18 8 foot solid fence is along Copper Creek and the back
19 part there is because it adjoins residential property.
20 That is not a requirement along between Mr. Hayden's
21 property and the YMCA property. That is only a
22 requirement for residentially zoned properties. So
23 that's why we said the elevation difference. That
24 elevation difference doesn't -- that's not referring
25 to those properties because that 8 foot requirement

1 doesn't exist there.

2 MS. RODNEY: Please take into consideration
3 that our discussion with members who are on the board
4 of the Y indicated that a 6 foot fence would not be
5 adequate because of their concerns for the welfare of
6 children who might be in that park as it is developed.
7 They would prefer the 8 foot fence, solid fence to
8 stay as is current in the B-4 zone. Thank you.

9 CHAIRMAN: Staff.

10 MS. EVANS: It's not a requirement on that
11 side with the YMCA's property, that there be any fence
12 6 foot or 8 foot.

13 MS. RODNEY: According to the --

14 MS. EVANS: According to the conditions, a
15 storage unit in the county in a B-4 zone it is an 8
16 foot solid fence for property that adjoins
17 residentially zone property. So that's why it's along
18 the Copper Creek side and doesn't affect the YMCA's
19 property or Mr. Hayden's property.

20 MS. RODNEY: But please acknowledge that that
21 is a concern.

22 CHAIRMAN: Thank you.

23 Any other?

24 MR. PACE: Yes. I would just like to address
25 what was raised about the fence.

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1 Under the Conditional Use Permit ordinance, it
2 says an 8 foot high solid wall or fence shall be
3 installed and maintained on all sides that adjoin
4 other properties except B-1, B-2, B-3, B-4, B-5, I-1
5 or I-2. That was a condition on the approval of the
6 Conditional Use Permit. Again, we ask you to make
7 that a condition of this Variance if it's granted for
8 denial.

9 MR. NOFFSINGER: I believe what we're saying
10 is the properties that adjoin on the opposite side of
11 Copper Creek meet that exception. So there's not a
12 fence requirement along the north property line or the
13 west property line. Only the south and east property
14 lines where it adjoins agricultural, and I think
15 Copper Creek may be A-U Urban Agriculture as well.

16 MR. PACE: But as I understand the motion that
17 was made on the Conditional Use Permit, it was 8 foot
18 tall around the property.

19 MS. RAINES: Excuse me, but I thought the
20 motion listed the 8 foot solid except for -- it
21 actually included the exception.

22 MR. SILVERT: I think the point that Mr. Pace
23 is trying to make that it was 8 feet. It's not the
24 exceptions that he's pointing out. It's that the --

25 MS. RAINES: So we're not requiring the 8

1 feet all the way?

2 MR. NOFFSINGER: Right. The ordinance
3 requires 8 feet. The applicant is asking for a
4 variance to go down to 6 feet. That's what he's
5 pointing out. Staff is recommending, as we typically
6 do, unless there's opposition. Since there's
7 opposition, the Board has in the past taken that into
8 consideration and generally have not granted the
9 variance on the landscaping or the buffering.

10 This variance happens to include two items.
11 The fence height and then the building height. The
12 building height part of this variance is only for the
13 existing buildings. Any new buildings could not
14 exceeds the 15 foot maximum height.

15 MS. MASON: Let me make sure I understand
16 something, Mr. Chairman. We cannot, as a Board we
17 cannot make the applicant put a fence up on the area
18 of Mr. Hayden's property and the area of the Y
19 property; is that correct?

20 MR. NOFFSINGER: You could have on the
21 Conditional Use Permit, but you did not. You can't do
22 that on a variance because -- you can negotiate I
23 guess with him as a part of granting other variances
24 to the property, but you can't go in and just place a
25 condition. The ordinance doesn't require the fence.

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1 CHAIRMAN: I think we've pretty well discussed
2 this. I'll entertain a motion.

3 MR. WARREN: I have another question on the
4 building height variance.

5 I'm really a little bit confused why he even
6 needs it. Is it because the buildings aren't
7 currently being used, that if we don't grant this
8 Variance he'll have to tear those building over 15
9 feet tall down?

10 MR. NOFFSINGER: Yes.

11 MR. WARREN: Thank you.

12 MR. NOFFSINGER: Yes, that's correct.

13 CHAIRMAN: Entertain a motion to dispose of
14 the item.

15 MR. REEVES: Kind of piggyback off Marty's
16 questions.

17 The way I read it says the maximum building
18 height of an individual unit. Is he using existing
19 buildings as units?

20 MR. NOFFSINGER: Yes.

21 MR. REEVES: Okay.

22 CHAIRMAN: Any other questions?

23 (NO RESPONSE)

24 CHAIRMAN: Entertain a motion to dispose of
25 the item.

1 MR. WARREN: I'm ready to make a motion. Make
2 sure I get it right here.

3 On granting the Variance for the height of the
4 solid wall or fence along the south and east property
5 boundaries from 8 to 6 feet I'm making a motion that
6 we deny that variance. I feel that it will adversely
7 affect the public health, safety and welfare. I do
8 feel like that this use can possibly be more intense
9 than the past use. That an 8 foot fence would be more
10 in line with the screening. I just feel like that it
11 will alter the essential character of the general
12 vicinity because a 6 foot fence would open it up for
13 people to be able to view into these backyards. Even
14 though they're at a higher elevation it's still a
15 little more secured I feel like.

16 The granting of the variance on the maximum
17 building height of an individual storage unit from 15
18 to 22 feet, I want to allow that variance on the
19 current buildings only for the same reasons. The
20 buildings are already there. They've been used for
21 years. It's not going to alter the general character
22 of the area, but no new buildings can be taller than
23 15 foot.

24 With a condition that a submission of an
25 approval of a final development plan and once again

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1 that any new buildings constructed on this site shall
2 not exceed 15 feet in height.

3 MS. RAINES: I'll second.

4 CHAIRMAN: Before I take the second, I think
5 for clarification we need to make two different
6 motions.

7 MR. WARREN: Two different motions. That's
8 what I was afraid of.

9 Let's go with the first motion with the fence.
10 That was for denial for the reasons that I stated.

11 CHAIRMAN: And you were stating because
12 lowering it from 8 foot to 6 foot being denied on
13 that?

14 MR. WARREN: Yes.

15 MS. RAINES: Second.

16 CHAIRMAN: A motion has been made and a
17 second. Is there any other questions or comments from
18 the board on this motion?

19 (NO RESPONSE)

20 CHAIRMAN: Staff have anything else?

21 MR. NOFFSINGER: No, sir.

22 CHAIRMAN: All in favor raise your right hand.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries.

25 Now I'll entertain a motion for the building

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1 height.

2 MR. WARREN: On the second, the variance on
3 increase the maximum building height of an individual
4 storage unit from 15 feet to 22 feet, I make a motion
5 to approve that variance for the existing buildings
6 only. The buildings that are already there, that are
7 already 22 feet high, that it will not adversely
8 affect the public health, safety and welfare. The
9 buildings were already there and have been for several
10 years. It will not alter the character of the general
11 vicinity. Once again, the buildings have been there
12 for several years. This is only for buildings that
13 are there.

14 The conditions would be the submission and
15 approval of a final development plan. Once again,
16 only new buildings not to exceed 15 feet in height. I
17 think that's it.

18 CHAIRMAN: You've heard the motion. Is there
19 a second?

20 MR. DYSINGER: Can I ask for a friendly
21 amendment before the second or wait for the second?

22 MR. SILVERT: You can ask for a friendly
23 amendment if the author of the motion accepts it.

24 MR. DYSINGER: Do I need to wait for a second?

25 MR. SILVERT: No.

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1 MR. DYSINGER: I would wonder if the maker of
2 the motion would consider a friendly amendment to make
3 one of the conditions applying 8 foot screening fence
4 around the entire property line so that it can
5 integrate more easily into the neighborhood.

6 MR. NOFFSINGER: Do you want that around all
7 property lines or do you want to exempt the street
8 frontage or do you want it all around? You would end
9 up with an 8 foot wood fence, solid fence around the
10 frontage as well. I just want to make sure that
11 that's what you mean.

12 MR. DYSINGER: With the condition that the
13 applicant apply the 8 foot screened fencing
14 requirement around the entire property with the
15 exception of the street frontage.

16 MR. WARREN: I accept that addendum to my
17 motion.

18 CHAIRMAN: Your motion is stating 8 foot solid
19 everywhere except on the front part, and that still
20 will be 8 foot tall there.

21 MR. WARREN: Yes.

22 CHAIRMAN: Is there a second to this motion?

23 MR. DYSINGER: Second.

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

1 board?

2 MR. SILVERT: Mr. Chairman, I would like to
3 make sure that the applicant understands the
4 conditions as they've been stated.

5 CHAIRMAN: Do you understand the motion that's
6 just been made?

7 MR. STEWART: Yes, I understand the motion.
8 The question why the fence on the YMCA's property and
9 Mr. Hayden's property needs to be 8 feet and screened?
10 We're talking about quite a -- you're fencing three
11 acres. That's quite a bit.

12 MR. DYSINGER: Mr. Chairman, conditional
13 permits, generally speaking, the burden is on
14 opposition to say why the use should not be allowed.
15 A Variance is different. A Variance is asking to
16 depart from the zoning ordinance entirely; and
17 therefore the burden is more so on the applicant and
18 more weight should be given to the opposition. The
19 argument about integration into the neighborhood, an
20 opposition to a Variance that was made earlier, the
21 point regarding that, is very valid. There doesn't
22 necessarily have to be evidence why neighbors don't
23 want something to be a certain way. They can just be
24 against it. That's different with a Variance than it
25 is for a Conditional Use Permit. That's why that

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1 requirement, the amendment that I offered and it was
2 accept is above and beyond what might be required by
3 the ordinance because it's an attempt to make the use
4 that you have been conditionally permitted integrate
5 more easily into the neighborhood and be more
6 sensitive to the concerns of the neighbors.

7 CHAIRMAN: You understand the motion at this
8 time?

9 MR. ELLIOTT: Yes, I understand.

10 CHAIRMAN: Is there any other comments or
11 question from the board?

12 (NO RESPONSE)

13 CHAIRMAN: Staff have anything else?

14 MS. RAINES: May I, Mr. Chairman.

15 I know we have the residential property on one
16 side and we have Mr. Hayden on one and the YMCA.

17 Mr. Hayden, can I direct a question to him?

18 CHAIRMAN: You can.

19 MS. RAINES: Do you want a fence? Is that
20 something that you want? I feel like I haven't really
21 heard, you know, Mr. Hayden or the YMCA stated they
22 would like to have the fence, barbwire or whatever.

23 MR. HAYDEN: I haven't had any of my
24 recommendations warranted or granted so I don't know
25 why we'd care at this point. I'm just being perfectly

1 honest. I guess the thing I hope we're stressing is
2 not only the development plan before he occupies any
3 of the property for storage use, is that part of this
4 round of motions that's being said?

5 CHAIRMAN: That's correct.

6 MR. HAYDEN: Because it was not said prior to
7 being occupied. It was prior to a development plan.

8 MR. WARREN: That goes without saying. That's
9 just part of it.

10 MR. HAYDEN: I mean I thought we were going to
11 make public improvements and now we're worried about
12 what a fence cost, an extra 50 feet. I mean I don't
13 think we're going to have any improvements made to be
14 honest with you.

15 CHAIRMAN: You're going to have a solid fence
16 all the way around it.

17 MR. HAYDEN: I don't even know what my access
18 is going to look like. Why do I care about a fence at
19 this point? I mean my property is being devalued 20
20 minutes ago. At this point I mean fence it all the
21 way around. Foreclose on it.

22 CHAIRMAN: Any other comments?

23 MR. DYSINGER: I'm just wondering if Board
24 Member Raines had her question answered.

25 CHAIRMAN: Are you satisfied?

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1 MS. RAINES: I'm satisfied.

2 MR. NOFFSINGER: Let me also throw this out in
3 terms of the shared access point and the fence along
4 Mr. Hayden's property. It can conflict with that
5 shared access point. So you can't run it all the way
6 down the boundary. You couldn't get into the
7 property. There has to be a cutoff there of that
8 fence so far. We don't know how he's going to access
9 his property in the future and what rights -- I don't
10 know what rights either side has to that shared access
11 point aside from what they used to adjoin in the past,
12 what they have always adjoined. I don't know.

13 MR. DYSINGER: Mr. Noffsinger, for this
14 variance to be approved it could not cut Mr. Hayden
15 off on the property. We don't have the power to do
16 that. So imposing the Variance up to where Mr.
17 Hayden's rights exist seems to me would be a matter of
18 course.

19 MR. HAYDEN: Where do my rights exist to?

20 MR. DYSINGER: The same way it's always been.
21 I mean the shared access to these properties has been
22 in existence. Is that not correct?

23 MR. HAYDEN: You don't know.

24 MR. DYSINGER: It's been entered into evidence
25 by testimony. I have to assume that it's true.

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1 MR. HAYDEN: You haven't listened to the
2 testimony thus far.

3 CHAIRMAN: I think --

4 MR. HAYDEN: You don't have enough facts to
5 know how to address these things.

6 CHAIRMAN: We can't argue that. That's
7 between attorneys to take care of. Your attorney and
8 the gentleman that he has will have to work that out.

9 MR. HAYDEN: And here we go.

10 CHAIRMAN: That's the only legal way we can do
11 that property because we can't practice attorney like
12 we'd like to at times on some of the items.

13 MR. HAYDEN: It seems to me you don't have
14 enough information to proceed.

15 MS. MASON: Mr. Chairman, we've still got some
16 discussion.

17 MS. RODNEY: Obviously I'm not an attorney.
18 Common sense would tell me that an 8 foot solid fence
19 would be advisable if you are trying to maintain the
20 value of your property.

21 CHAIRMAN: That is the motion that you have in
22 front of you now.

23 MS. RODNEY: Exactly. Exactly. I think we
24 were saying what are the wishes. We have not heard
25 from the Y. We didn't know what Mr. Hayden was

1 saying. I'm saying common sense would say to me, not
2 an attorney. I do not own property. In those two
3 locations, I do own adjacent property that is somewhat
4 elevated that would cause us to be looking down upon
5 these facilities. I appreciate your hearing what
6 we're saying. Just speaking from the common sense
7 perspective, not only as a property owner but as a
8 citizen of this community, an 8 foot solid fence
9 should be incumbent upon the property owner around the
10 perimeter. Perhaps not facing the roadway, but on the
11 south, on the east, and on the north for common sense
12 safety and visual screening that should be incumbent
13 as well as landscaping. Thank you.

14 MR. NOFFSINGER: Mr. Chairman, in order for
15 the applicant to proceed, they first have to have a
16 conditional use permit. Then they have to address the
17 Variance issue. Then they can proceed with their
18 final development plan in putting that together.
19 Until you know that your use is approved, you're not
20 going to the expense of engineering to know to put
21 that together. So that's where we are right now.

22 What I don't want to happen is for you to
23 place a condition of fencing along that entire side or
24 property line that he shares with Mr. Hayden and that
25 condition not be able to be met because of access

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1 limitations. Maybe we have to keep it 25 feet or 50
2 feet from the edge of the right-of-way on New Hartford
3 Road to prevent access. At this point in time, I
4 don't know what is necessary there. Certainly you can
5 require the condition that the fence be installed, but
6 we just need to come up with a way that we don't put
7 either side in a compromised position in terms of not
8 being able to construct the fence as far as we need to
9 or we can construct the fence.

10 MR. DYSINGER: Mr. Chairman, I'm of the
11 opinion that this board lacks the power to compel an
12 applicant to put something in someone else's
13 right-of-way. I'm also of the opinion that we don't
14 have the ability to determine what this access is.
15 But the two things should be able to co-exist. The
16 only alternative is a postponement and more testimony,
17 which I'm not opposed to, if that's what it takes to
18 see that within the confines of the ordinance the best
19 thing is done. We don't have the power to compel the
20 applicant to build a wall across somebody else's
21 right-of-way. I believe that that fact would keep
22 what you described as happening, Mr. Noffsinger, but I
23 would always defer to your experience.

24 MR. NOFFSINGER: I think we word the condition
25 in that way to protect the rights of both parties.

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1 We've been in this situation before where someone was
2 required to construct a fence all the way down the
3 property line, but then it interfered with the site
4 triangle. I just don't want to get into that position
5 where we can't move forward and we have to come back
6 before the board to amend conditions.

7 If you could amend your condition to state
8 that the fence be constructed along that north
9 property line to the extent that it does not interfere
10 with the adjoining property owners rights of access.

11 MR. DYSINGER: Do I have to prove that or does
12 he?

13 CHAIRMAN: Let me make this simpler. Let me
14 make one statement. Would the applicant that made the
15 motion withdraw your motion and the second withdraw
16 your motion, and I'll recognize that and then we can
17 get a new motion and start over.

18 Mr. Warren, will you withdraw your motion?

19 MR. NOFFSINGER: You might also include a
20 condition that the adjoining landowner be notified by
21 the applicant prior to submission of the final
22 development plan to the planning office. Given the
23 fact that there are issues, pressing issues regarding
24 access to that property. Not the entire neighborhood.
25 I'm sure word could get out that one is being

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1 proposed, but given the fact that we have an issue
2 regarding access and very legitimate that that
3 landowner be notified by the applicant prior to
4 submittal to our office and that that evidence of that
5 notification be submitted with the final development
6 plan.

7 CHAIRMAN: Mr. Attorney, am I correct?

8 MR. SILVERT: It would only require a withdraw
9 by the author of the motion. There aren't two here.
10 There's only one. So it would just be Mr. Warren that
11 would have to withdraw his motion if he so chose.
12 That's his personal privilege.

13 CHAIRMAN: Second doesn't have to withdraw
14 too?

15 MR. SILVERT: It was taken as a friendly
16 amendment. If it was taken as an actual amendment it
17 require both do a set, but it was taken as a friendly
18 amendment.

19 CHAIRMAN: But he seconded the motion.

20 MR. SILVERT: From that perspective you just
21 have to agree.

22 CHAIRMAN: Mr. Warren.

23 MR. WARREN: Sure. I'll be glad to withdraw
24 my motion.

25 CHAIRMAN: Entertain another one.

1 MR. WARREN: In regards to the Variance to
2 increase the maximum building height of an individual
3 storage unit from 15 to 22 feet, approve that Variance
4 for the existing buildings only. So that no other
5 buildings could be constricted for more than 15 feet
6 because I do feel like they will not adversely affect
7 the public health, safety or welfare because the
8 buildings have been there for several years. That it
9 will not alter the essential character of the general
10 vicinity. These buildings have been there. The use
11 is essentially the same for the buildings. I would
12 like to also add a condition that an 8 foot fence,
13 solid wall fence be added to all sides of the property
14 except for road frontage and allow for the adjoining
15 property owners to the immediate north of Mr. Hayden,
16 that those two be able to work that out, and that Mr.
17 Hayden be notified prior to the submittal of the
18 development plan, and that receipt be given to the
19 Planning Office as a part of that financial
20 development plan. Receipt of notification to Mr.
21 Hayden.

22 MR. DYSINGER: Second.

23 CHAIRMAN: We have a motion and we've got a
24 second. Does everybody understand that motion?

25 MR. STEWART: May I make a comment, sir?

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1 CHAIRMAN: Just a minute, sir.
2 All board members understand how the motion
3 was made?
4 (ALL BOARD MEMBERS NODS YES.)
5 CHAIRMAN: Do you have a comment on the
6 motion, sir?
7 MR. MASON: Yes, sir. Jim Mason. I just want
8 to address the situation on the shared access point.
9 I'm probably the most familiar person in the room with
10 the property having been on the property on a weekly,
11 sometimes daily basis for the past three years.
12 Shared access point between the Gilliland
13 Group Partnership property and Mr. Hayden's property
14 is equally divided between the two parties. Neither
15 one can block the other one, even if they took the
16 fence all the way out to the highway, which they can't
17 do. Mr. Hayden cannot be blocked from utilizing his
18 property next-door to it.
19 The other comment I wanted to make was the
20 adjoining property owners should be careful what they
21 wish for because if you put a solid wall completely
22 around that property it's going to be less appealing
23 esthetically than it would if it was a chain-linked
24 fence there. It's going to look more like a junk yard
25 than a storage facility. I don't know of any other

1 storage facilities in the county that have a solid
2 wall all the way around them.

3 CHAIRMAN: You've heard his comments. Is
4 there any other comments or questions from the board?

5 MR. REEVES: Just clarify one thing for sure
6 because I noticed Mr. Mason continued.

7 Does the applicant currently own the property
8 or is this contingent upon approval of this?

9 MR. MASON: He does not own the property. The
10 Gilliland Group Partnership out of Amarillo, Texas
11 owns the property. We have a contract to sell the
12 property to the applicant pending approval of the
13 Conditional Use Permit and the Variance.

14 MR. REEVES: Okay.

15 CHAIRMAN: Any other questions from the board?

16 (NO RESPONSE)

17 CHAIRMAN: Staff have anything else?

18 MR. NOFFSINGER: Only just a clarification on
19 the fence along Mr. Hayden's boundary that he shares
20 on the north. I believe I understood that the fence
21 would extend to the right-of-way line at New Hartford
22 Road unless Mr. Hayden determines that a shorter
23 distance would be required.

24 MR. HAYDEN: This is on the prior issue
25 actually. I just want clarification because I don't

1 know how it works.

2 How long is the variance granted if the
3 property never closes? Is it conditional,
4 unconditional, forever?

5 MR. NOFFSINGER: The Variance runs with the
6 land. So it would run from here on out.

7 MR. HAYDEN: So even if this person doesn't
8 buy it, it is now granted on whoever buys it maybe in
9 the future?

10 MR. NOFFSINGER: Yes, to the degree -- that's
11 a very good question. I'm trying to think this out.
12 The only variance they are granting would be to the
13 building height for individual storage units. If you
14 wanted to construct a business office here, you could
15 go much higher. So this variance would only apply to
16 someone if they were going to create individual
17 storage units and keep the existing structures, but
18 any new structures could not be -- it only applies to
19 the existing structure. So it runs with the land, but
20 it only applies to the existing structures. I don't
21 know of any other use, I could be wrong, but I don't
22 know of any other use at this time that would require
23 a height variance because those buildings are 22 feet.

24 MR. HAYDEN: I was just curious if the
25 property didn't close, if the prior issue that was

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1 addressed would actually --

2 MR. SILVERT: The Conditional Use Permit does.

3 MR. HAYDEN: So this doesn't become an issue
4 because the first thing doesn't close, it's not
5 grandfathered to the next person that comes and
6 possibly wants to buy it. They have to come and apply
7 also?

8 MR. SILVERT: The Variance runs with the land,
9 but the Conditional Use is sunset.

10 MR. NOFFSINGER: Within a year. Another group
11 could come in and do individual storage units, meet
12 the same conditions within a year. A Conditional Use
13 Permit has to be exercised within one year. I'm sorry
14 to confuse. We've got a motion on the floor, but on
15 the Variance -- well, I'm sorry, I tried to answer
16 that one.

17 CHAIRMAN: Before we go forward on this
18 motion, I want to ask the attorney, our attorney one
19 question.

20 Am I correct, if somebody else buys this
21 property they can come back and apply for a Variance
22 and Conditional Use down the road; is that correct, or
23 does this stop down the road?

24 MR. NOFFSINGER: Someone else could come in
25 and ask for a completely new Conditional Use Permit or

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1 a completely new variance. I remembered what I wanted
2 to state.

3 That if the applicant decides to tear down
4 those existing structures, then the condition for the
5 fence along these property lines goes away because
6 they would not exercise the Variance. The only way
7 the fence, the conditions have to be met that you
8 place on it is if they exercise the variance.

9 There's a denial on reducing the fence height
10 from 8 foot down to 6. That's recommended for denial.

11 MS. RODNEY: But should the existing building
12 come down --

13 MR. NOFFSINGER: If this Variance is granted
14 to allow the existing buildings to maintain their
15 height, then the applicant will have to construct the
16 fence along Mr. Hayden's property and the Y's
17 property. If he tears those buildings down or reduces
18 the height of them to meet the 15 foot requirement,
19 then he would not have to put a fence along that
20 boundary because he would not exercise the Variance.

21 MS. RODNEY: Along the north?

22 MR. NOFFSINGER: Be along the north boundary.

23 MS. RODNEY: But still on the east and on the
24 south the 8 foot would remain?

25 MR. NOFFSINGER: Yes.

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1 MS. RODNEY: Thank you.

2 CHAIRMAN: Ma'am, you have something?

3 MS. PATEL: I just want the board to consider
4 that when you make this decision, Mr. Berry and other
5 properties, but Mr. Hill and my property is at a
6 higher elevation. So any activity which goes in this
7 proposed property we see everything. If you go
8 upstairs, that's where my children's bedroom is and
9 the master bedroom. You can see everything even with
10 an 8 foot fence. So when he puts those lights, it
11 will be shining on my house.

12 CHAIRMAN: Thank you.

13 Any other comments from the Board or Staff?

14 (NO RESPONSE)

15 CHAIRMAN: You've heard the motion. All in
16 favor raise your right hand.

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: Motion carries.

19 Next item, please.

20 -----

21 VARIANCES

22 ITEM 3

23 1201 Pleasant Valley Road, zoned P-1

Consider a request for a Variance in order to increase
24 the allowable 150 square feet per sign to 256 square
feet each for two (2) entrance monument signs and
25 increase the allowable square feet from 150 to 210
square feet, 377 square feet and 210.14 square feet

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1 for three (3) building identification signs.

Reference: Zoning Ordinance, Article 9,

2 Section 9-5(b)(1)

Applicant: Adelphia Graphic Systems; Owensboro

3 Medical Health System

4 MS. EVANS: The subject property was rezoned
5 in 2009 to P-1 and at that time a Conditional Use
6 Permit was approved for the construction and operation
7 of a hospital in November of 2009. A revised
8 Conditional Use Permit including a building envelope
9 was approved in May of 2010 and several development
10 plans have been approved for the subject property as
11 well.

12 Unlike a typical P-1 zoned property, the
13 subject property is over 150 acres with a campus like
14 setting for the main hospital building and support
15 office buildings. Pleasant Valley Road and Daniels
16 Lane, both roads used to access the subject property,
17 are minor arterial and major collectors roads,
18 respectively, with heavy traffic likely once roadway
19 improvements are complete around the subject property.

20 With the classification of Pleasant Valley
21 Road and Daniels Lane and the increased traffic
22 anticipated, larger entrance signs would be
23 appropriate to identify the entrances to the hospital
24 campus making it easier for vehicle traffic to
25 identify the entrances to the property.

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1 At 150 plus acres, the subject property is
2 much larger than the typical P-1 zoned property. The
3 large size of the property coupled with the campus
4 like setting with many buildings make it appropriate
5 for larger signage on the facade of the buildings.

6 Granting this Variance will not adversely
7 affect the public health, safety or welfare because
8 the larger signs will make it easier to identify the
9 property. It will not allow an unreasonable
10 circumvention of the requirements of the zoning
11 regulations because of the large size and campus like
12 setting of the property uncharacteristic of properties
13 similarly zoned.

14 Staff would recommend approval with the
15 following Conditions:

16 1. Obtain necessary building, electrical and
17 mechanical permits, inspections and certificates of
18 occupancy and compliance.

19 2. No signs shall be located in an easement
20 without approval from the appropriate agencies.

21 We would like to enter the Staff Report into
22 the record as Exhibit C.

23 CHAIRMAN: Thank you.

24 Does the applicant have comments at this time?

25 MS. BRENNAN: Not really. I believe you've

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1 summed it up.

2 MR. SILVERT: Would you state your name and
3 let me get sworn in, please?

4 MS. BRENNAN: Marilyn Brennan.

5 (MARILYN BRENNAN SWORN BY ATTORNEY.)

6 MS. BRENNAN: Basically I'm here to answer any
7 questions regarding the signs, the size, the use.

8 Very straight forward. One of the size
9 difference in the monument, which is the largest, it's
10 because of encompassing the glass. It's illuminated.
11 It's behind the illuminated box and that's what really
12 increased the size of the square footage that we're
13 requesting.

14 CHAIRMAN: Any board members have questions of
15 the applicant?

16 (NO RESPONSE)

17 CHAIRMAN: Do you have some pictures or
18 something you want to show?

19 MS. BRENNAN: I wasn't sure if there would be
20 anyone from the community to have the same drawings
21 that you have in front of you set up. Those are only
22 based on where the proposed easement agreements that
23 have to be made for the utilities issued. That's the
24 proposed locations.

25 CHAIRMAN: Any board members have any

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1 questions of the applicant?

2 (NO RESPONSE)

3 CHAIRMAN: Mr. Chairman, given the finding
4 that granting the Variance will not adversely affect
5 the public health, safety or welfare because of the
6 larger signs will make it easier to identify the
7 property and due to the general uniqueness of the
8 property and the size of the property, I move that we
9 grant the Variance.

10 CHAIRMAN: Is there a second?

11 MS. MASON: Second.

12 CHAIRMAN: A motion has been made and a
13 second. Any other comments or questions from the
14 Board?

15 (NO RESPONSE)

16 CHAIRMAN: Staff have anything else?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: All in favor raise your right hand.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries.

21 Entertain one more motion, please.

22 MR. WARREN: Motion to adjourn.

23 MR. DYSINGER: Second.

24 CHAIRMAN: All in favor raise your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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

16 WITNESS my hand and notary seal on this the
17 25th day of September, 2012.

18
19

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

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23 COMMISSION EXPIRES: DECEMBER 16, 2014
24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25

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