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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

FEBRUARY 7, 2013

THE OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT  
MET IN REGULAR SESSION AT 5:30 P.M. ON THURSDAY,  
FEBRUARY 7, 2013, AT CITY HALL, COMMISSION CHAMBERS,  
OWENSBORO, KENTUCKY, AND THE PROCEEDINGS WERE AS  
FOLLOWS:

MEMBERS PRESENT: C.A. PANTLE, CHAIRMAN  
WARD PEDLEY, VICE CHAIRMAN  
RUTH ANN MASON, SECRETARY  
GARY NOFFSINGER, DIRECTOR  
MADISON SILVERT, ATTORNEY  
JERRY YEISER  
SEAN DYSINGER  
JASON STRODE  
FRED REEVES

\* \* \* \* \*

CHAIRMAN: LET'S CALL THE MEETING OF THE  
OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT TO ORDER.  
WANT TO WELCOME YOU BRIEFLY. WE START OUR PROGRAM  
EACH MEETING WITH A PRAYER AND PLEDGE OF ALLEGIANCE.  
WE INVITE YOU TO JOIN WITH US. RUTH ANN WILL HAVE OUR  
PRAYER THIS EVENING.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: AGAIN, I WANT TO WELCOME YOU TO THE  
MEETING THIS EVENING. IF YOU HAVE ANY COMMENTS ON ANY  
OF THE ITEMS, PLEASE COME TO ONE OF THE PODIUMS.  
STATE YOUR NAME SO WE'LL HAVE RECORD OF WHAT YOU HAD  
TO COMMENT ON.

1 WITH THAT THE FIRST ITEM IS TO CONSIDER THE  
2 MINUTES OF THE JANUARY MEETING. THEY'RE ON FILE IN  
3 THE OFFICE. I DON'T THINK WE'VE FOUND ANY PROBLEMS.  
4 ENTERTAIN A MOTION TO DISPOSE OF THE ITEM.

5 MR. PEDLEY: MOTION FOR APPROVAL.

6 MR. DYSINGER: SECOND.

7 CHAIRMAN: A MOTION HAS BEEN MADE AND A  
8 SECOND. ALL IN FAVOR RAISE YOUR RIGHT HAND.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: MOTION PASSES.

11 NEXT ITEM, PLEASE, SIR.

12 -----

13 CONDITIONAL USE PERMIT

14 ITEM 2

15 2031 EAST 10TH STREET, ZONED R-4DT  
16 CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT IN  
17 ORDER TO INSTALL A CLASS-2 MANUFACTURED HOME IN AN  
18 R-4DT ZONE.

19 REFERENCE: ZONING ORDINANCE, ARTICLE 8,  
20 SECTION 8.2A 10B/7

21 APPLICANT: MARTHA M. THOMPSON MCDANIEL

22 MR. SILVERT: COULD YOU STATE YOUR NAME,  
23 PLEASE?

24 MS. EVANS: MELISSA EVANS.

25 (MELISSA EVANS SWORN BY ATTORNEY.)

MS. EVANS: FIRST OF ALL, I WOULD LIKE TO SAY  
THAT APPROVAL OF ITEMS HERE TONIGHT DOES NOT ALLOW THE  
APPLICANT OR OWNER TO CONSTRUCT, ALTER OR MODIFY OR

1 OCCUPY A BUILDING ON THE SUBJECT PROPERTY. IT IS THE  
2 APPLICANT OR OWNER'S RESPONSIBILITY TO OBTAIN ALL  
3 APPROVALS AND INSPECTIONS AS NECESSARY BEFORE  
4 OCCUPANCY AS THE BUILDING WILL BE ALLOWED. PLEASE  
5 CONTACT THE BUILDING AND ELECTRICAL DIVISION OF THE  
6 OMPC PRIOR TO BEGINNING ANY WORK ON THE SUBJECT  
7 PROPERTY FOR APPLICABLE REQUIREMENTS.

8 ZONING HISTORY

9 THE SUBJECT PROPERTY IS CURRENTLY ZONED R-4DT  
10 INNER-CITY RESIDENTIAL. OMPC RECORDS INDICATE THERE  
11 HAVE BEEN NO ZONING MAP AMENDMENTS FOR THE SUBJECT  
12 PROPERTY.

13 THERE WAS A PREVIOUS CONDITIONAL USE PERMIT  
14 APPROVED FOR THE SUBJECT PROPERTY IN 2007 TO INSTALL A  
15 14' BY 52' MANUFACTURED HOME. AT THAT TIME THE  
16 APPLICANT WAS GRANTED A WAIVER FOR THE REQUIRED  
17 SIDEWALKS SINCE THERE WERE NO SIDEWALKS IN THE AREA.

18 THE APPLICANT IS NOW WISHING TO INSTALL A  
19 LARGER, 14' BY 66', MANUFACTURED HOME ON THE PROPERTY  
20 AND IS STILL SEEKING THE WAIVER OF THE SIDEWALK  
21 REQUIREMENT. ALL OTHER REQUIREMENTS FOR THE  
22 MANUFACTURED HOME SITE WILL BE MET AS SHOWN ON THE  
23 SITE PLAN SUBMITTED.

24 LAND USES IN SURROUNDING AREA

25 THE PROPERTY TO THE NORTH, EAST AND WEST IS

1 ZONED R-4DT INNER-CITY RESIDENTIAL. THE PROPERTY TO  
2 THE SOUTH ACROSS EAST TENTH STREET IS ZONED I-2 HEAVY  
3 INDUSTRIAL.

4 ZONING ORDINANCE REQUIREMENTS

5 THE CLASS-2 MANUFACTURED HOME SITE STANDARDS  
6 BASED ON THE REQUIREMENTS OF THE ZONING ORDINANCE ARE  
7 AS FOLLOWS:

8 1. A CONCRETE OR ASPHALT PARKING PAD TO  
9 ACCOMMODATE TWO 9'X18' SPACES IS REQUIRED.

10 2. A MINIMUM 10'X10' DECK OR PATIO IS  
11 REQUIRED.

12 3. A CONCRETE SIDEWALK IS REQUIRED, BUT MAY  
13 BE WAIVED ALONG RURAL ROADS (WITHOUT CURBS).

14 4. THE DRIVEWAY APRON SHALL NOT EXCEED 40  
15 PERCENT OF THE LOT WIDTH.

16 5. THE PROPERTY IS REQUIRED TO HAVE AT LEAST  
17 THREE TREES.

18 6. THE MANUFACTURED HOME SHALL BE PERMANENTLY  
19 INSTALLED ON A PERMANENT FOUNDATION. A POURED  
20 CONCRETE OR MASONRY BLOCK SKIRTING WALL SHALL BE  
21 CONSTRUCTED BENEATH AND ALONG THE ENTIRE PERIMETER OF  
22 THE MANUFACTURED HOME.

23 7. ALL WHEEL, TRAILER-TONGUE AND HITCH  
24 ASSEMBLIES SHALL BE REMOVED UPON INSTALLATION.

25 8. THE MANUFACTURED HOME SHALL BE PERMANENTLY

1 CONNECTED TO AN APPROVED WATER AND SEWER SYSTEM WHEN  
2 AVAILABLE.

3 THE APPLICANT HAS REQUESTED A WAIVER OF THE  
4 REQUIRED SIDEWALK SINCE THERE ARE NO SIDEWALKS IN THE  
5 VICINITY OF THE PROPERTY ALONG EAST TENTH STREET AND  
6 BECAUSE THE SIDEWALK WAS WAIVED ON THE PREVIOUS  
7 CONDITIONAL USE PERMIT APPROVAL FROM 2007.

8 WE WOULD LIKE TO ENTER THE STAFF REPORT INTO  
9 THE RECORD AS EXHIBIT A.

10 CHAIRMAN: THANK YOU.

11 HAVE THERE BEEN ANY COMMENTS IN THE OFFICE?

12 MR. NOFFSINGER: NO, SIR.

13 CHAIRMAN: IS THE APPLICANT HERE AND DO YOU  
14 HAVE ANYTHING YOU WOULD LIKE TO ADD AT THIS TIME?

15 MR. MARKSBERRY: SHE'S NOT HERE. I'M THE  
16 GENERAL CONTRACTOR.

17 MR. SILVERT: COULD YOU STEP TO THE  
18 MICROPHONE, PLEASE.

19 CHAIRMAN: STATE YOUR NAME, PLEASE.

20 MR. MARKSBERRY: BILLY JOE MARKSBERRY.

21 (BILLY JOE MARKSBERRY SWORN BY ATTORNEY.)

22 MS. MARKSBERRY: SHE'S ACTUALLY PURCHASING THE  
23 HOUSE FROM US AT FREEDOM HOMES. I'M THE GENERAL  
24 CONTRACTOR OVERSEEING THE PROJECT. SHE ASKED ME TO  
25 COME TONIGHT ON HER BEHALF.

1 CHAIRMAN: DO YOU HAVE ANY COMMENTS YOU WANT  
2 TO ADD FOR OR AGAINST?

3 MR. MARKSBERRY: NO. BASICALLY SHE COVERED  
4 IT. THEY'RE TAKING A 2004 OUT AND REPLACING IT WITH A  
5 2013. BLOCK FOUNDATION. SHE'S GETTING MORE SPACE.

6 CHAIRMAN: ANY BOARD MEMBERS HAVE ANY  
7 QUESTIONS OF THE APPLICANT AT THIS TIME?

8 MR. DYSINGER: MR. CHAIRMAN, THIS IS FOR THE  
9 APPLICANT OR STAFF, EITHER ONE.

10 WHEN THE WAIVER OF THE SIDEWALK REQUIREMENT  
11 WAS ORIGINALLY GRANTED, IT WAS FOUND THAT IT WOULD BE  
12 APPROPRIATE BECAUSE THERE WEREN'T SIDEWALKS IN THE  
13 AREA AT THE TIME. IS THAT STILL APPROPRIATE AND HOLD  
14 TRUE?

15 MS. EVANS: YES. THE AERIAL PHOTO DOESN'T  
16 SHOW SIDEWALKS IN THE AREA STILL.

17 MR. DYSINGER: THANK YOU, MR. CHAIRMAN.

18 CHAIRMAN: STAFF HAVE ANY COMMENTS?

19 MR. NOFFSINGER: NO, SIR.

20 CHAIRMAN: ANYBODY IN THE AUDIENCE WISHING TO  
21 SPEAK FOR OR AGAINST?

22 (NO RESPONSE)

23 CHAIRMAN: HEARING NONE I'LL ENTERTAIN A  
24 MOTION TO DISPOSE OF THE ITEM.

25 MS. MASON: MR. CHAIRMAN, I MOVE FOR APPROVAL

1 OF THE CONDITIONAL USE PERMIT BASED ON THE FINDINGS OF  
2 FACT THAT IT'S COMPATIBLE WITH THE PREVIOUS  
3 CONDITIONAL USE PERMIT AS THE APPLICANT IS ASKING TO  
4 INSTALL A LARGER MANUFACTURED HOME. ALSO, THAT THEY  
5 MEET THE ZONING ORDINANCE REQUIREMENTS THAT WERE  
6 MENTIONED EARLIER WITH THE EXCEPTION OF NO SIDEWALKS  
7 SINCE THERE ARE NO SIDEWALKS IN THE VICINITY OF THE  
8 PROPERTY AND THE SIDEWALK WAS WAIVED IN THE PREVIOUS  
9 CONDITIONAL USE PERMIT.

10 MR. PEDLEY: SECOND.

11 CHAIRMAN: A MOTION HAS BEEN MADE AND A  
12 SECOND. ANY OTHER COMMENTS FROM THE BOARD MEMBERS?

13 (NO RESPONSE)

14 CHAIRMAN: STAFF HAVE ANY OTHER?

15 MR. NOFFSINGER: NO, SIR.

16 CHAIRMAN: DO YOU UNDERSTAND ALL OF THE  
17 REQUIREMENTS THAT WE PRESENTED?

18 MR. MARKSBERRY: I DO.

19 CHAIRMAN: ALL IN FAVOR RAISE YOUR RIGHT HAND.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: MOTION CARRIES.

22 MR. SILVERT: THIS WILL BE A RELATIVELY SHORT  
23 MEETING. DO YOU HAVE A MOMENT AFTER THE MEETING, I'D  
24 LIKE TO SPEAK TO YOU FOR JUST A MOMENT.

25 MR. MARKSBERRY: YES.

1 MR. SILVERT: THANKS.

2 -----

3 VARIANCE

4 ITEM 3

5 615 CRABTREE AVENUE, ZONED B-5  
6 CONSIDER A REQUEST FOR A VARIANCE IN ORDER TO REDUCE  
7 THE REAR YARD BUILDING SETBACK LINE FROM 20 FEET FROM  
8 THE PROPERTY LINE TO 5 FEET FROM THE PROPERTY LINE AND  
9 TO REDUCE THE FRONT YARD BUILDING SETBACK LINE FROM 75  
10 FEET FROM THE STREET CENTER LINE TO 52 FEET FROM THE  
11 STREET CENTER LINE.  
12 REFERENCE: ZONING ORDINANCE, ARTICLE 8,  
13 SECTION 8.5.17(C), 8.5.17(E)  
14 APPLICANT: JAMES PHILLIP EDGE, SR.

15 MS. EVANS: THIS PROPERTY WAS REZONED TO B-5  
16 BUSINESS INDUSTRIAL IN THE DECEMBER 2005 OMPC MEETING,  
17 AND THERE HAS BEEN A VARIANCE GRANTED FOR ANOTHER  
18 STRUCTURE ON THIS PROPERTY AT THE JANUARY 2006  
19 MEETING.

20 THE APPLICANT IS NOW WISHING TO REPLACE AN  
21 EXISTING NONCONFORMING BUILDING WITH A LARGER  
22 BUILDING, BUT IT'S ONLY 30 FEET FROM THE PROPERTY LINE  
23 WHICH IS THE SAME LOCATION THAT THE EXISTING STRUCTURE  
24 THAT WILL BE TORN DOWN SITS.

25 THE NEW STRUCTURE WOULD SIT NO CLOSER TO THE  
FRONT PROPERTY LINE THAN THE CURRENT BUILDING ON THE  
SITE. THE NEW BUILDING STRUCTURE CANNOT BE ENLARGED  
OR ALTERED IN A WAY WHICH INCREASES ITS NONCONFORMITY  
WITHOUT A VARIANCE. ALTHOUGH, ANOTHER BUILDING ON THE



1 SITE WAS ABLE TO USE AN AVERAGED BUILDING SETBACK LINE  
2 OF 35.2 FEET FROM THE PROPERTY LINE AS PERMITTED IN  
3 THE ORDINANCE, THE NEW BUILDING IS PROPOSED TO BE  
4 CLOSER THAN THAT AND THEREFORE MUST SEEK A VARIANCE  
5 FROM THE PRESCRIBED BUILDING SETBACK LINE OF 75 FEET  
6 FROM THE STREET CENTER LINE AND 20 FEET FROM THE REAR  
7 PROPERTY LINE WHERE IT ADJOINS RESIDENTIALLY ZONED  
8 PROPERTY.

9 GRANTING THE VARIANCE TO REDUCE THE REAR YARD  
10 BUILDING SETBACK LINE FROM 20 FEET FROM THE PROPERTY  
11 LINE TO 5 FEET FROM THE PROPERTY LINE:

12 \* WILL NOT ADVERSELY AFFECT THE PUBLIC HEALTH,  
13 SAFETY OR WELFARE BECAUSE THE NEW BUILDING WILL BE IN  
14 LINE TO THE REAR WITH OTHER BUILDING CONSTRUCTED ON  
15 THE PROPERTY THAT RECEIVED A VARIANCE.

16 \* IT WILL NOT ALTER THE ESSENTIAL CHARACTER OF  
17 THE GENERAL VICINITY BECAUSE BUILDINGS ALREADY  
18 ENCROACH INTO REAR SETBACKS IN THIS AREA.

19 \* IT WILL NOT CAUSE A HAZARD OR A NUISANCE TO  
20 THE PUBLIC BECAUSE BUILDINGS ON THIS PROPERTY ARE  
21 ALREADY LOCATED CLOSER TO THE PROPERTY LINES THAN  
22 PRESCRIBED SETBACKS WOULD TYPICALLY ALLOW AND HAVE YET  
23 TO CAUSE A HAZARD OR NUISANCE.

24 \* IT WILL NOT ALLOW AN UNREASONABLE  
25 CIRCUMVENTION OF THE REQUIREMENTS OF THE ZONING

1 REGULATIONS BECAUSE A REAR YARD VARIANCE HAS ALREADY  
2 BEEN GRANTED FOR ANOTHER STRUCTURE ON THE PROPERTY.

3 STAFF WOULD RECOMMEND APPROVAL OF THE FIRST  
4 VARIANCE TO REDUCE THE BUILDING SETBACK LINE FROM 20  
5 FEET TO 5 FEET.

6 GRANTING THE VARIANCE TO REDUCE THE FRONT YARD  
7 BUILDING SETBACK LINE FROM 75 FEET FROM THE STREET  
8 CENTER LINE TO 52 FEET FROM THE STREET CENTER LINE:

9 \* IT WILL NOT ADVERSELY AFFECT THE PUBLIC  
10 HEALTH, SAFETY OR WELFARE BECAUSE THE NEW BUILDING  
11 WILL SIT NO CLOSER TO THE ROAD THAN THE EXISTING  
12 BUILDING.

13 \* IT WILL NOT ALTER THE ESSENTIAL CHARACTER OF  
14 THE GENERAL VICINITY BECAUSE BUILDINGS ALREADY  
15 ENCROACH INTO FRONT SETBACKS IN THIS AREA.

16 \* IT WILL NOT CAUSE A HAZARD OR A NUISANCE TO  
17 THE PUBLIC BECAUSE BUILDINGS ON THIS PROPERTY ARE  
18 ALREADY LOCATED CLOSER TO THE PROPERTY LINES THAN THE  
19 PRESCRIBED SETBACKS WOULD TYPICALLY ALLOW AND HAVE YET  
20 TO CAUSE A HAZARD OR NUISANCE.

21 \* IT WILL NOT ALLOW AN UNREASONABLE  
22 CIRCUMVENTION OF THE REQUIREMENTS OF THE ZONING  
23 REGULATIONS BECAUSE THE NEW BUILDING IS REPLACING AN  
24 EXISTING BUILDING THAT ALREADY ENCROACHES INTO THE  
25 PRESCRIBED AND AVERAGED BUILDING SETBACK LINES ON THE

1 SITE AND WILL NOT BE CLOSER THAN THE BUILDING IT IS  
2 REPLACING.

3 STAFF WOULD RECOMMEND APPROVAL OF THE VARIANCE  
4 TO REDUCE THE BUILDING SETBACK LINE FROM 75 FEET FROM  
5 THE STREET CENTER LINE TO 52 FEET FROM THE STREET  
6 CENTER LINE.

7 WE WOULD LIKE TO ENTER THE STAFF REPORT INTO  
8 THE RECORD AS EXHIBIT B.

9 CHAIRMAN: THANK YOU.

10 HAS THERE BEEN ANY COMMENTS FILED WITH THE  
11 OFFICE?

12 MR. NOFFSINGER: NO, SIR.

13 CHAIRMAN: IS THE APPLICANT HERE AND DO YOU  
14 HAVE ANY COMMENTS YOU WOULD LIKE TO BRING AT THIS  
15 TIME?

16 APPLICANT REP: NO.

17 CHAIRMAN: ANY BOARD MEMBER HAVE ANY QUESTIONS  
18 OF THE APPLICANT?

19 (NO RESPONSE)

20 CHAIRMAN: HEARING NONE I'LL ENTERTAIN A  
21 MOTION TO DISPOSE OF THE ITEM.

22 MR. PEDLEY: MR. CHAIRMAN, I MAKE A MOTION FOR  
23 APPROVAL TO GRANT THE VARIANCE BASED ON FINDINGS OF  
24 FACT THAT IT IS COMPATIBLE IN THE NEIGHBORHOOD SINCE  
25 ALREADY A SETBACK SIMILAR HAS BEEN GRANTED.

1 THE FIRST VARIANCE OF GRANTING THIS VARIANCE  
2 TO THE REAR YARD SETBACK FROM 20 FEET FROM THE  
3 PROPERTY LINE TO 5 FEET FROM THE PROPERTY LINE AND  
4 WITH STAFF FINDINGS OF FACT 1 THROUGH 4.

5 THEN APPROVAL OF GRANTING THIS VARIANCE TO  
6 REDUCE THE FRONT YARD BUILDING SETBACK LINE FROM 75  
7 FEET FROM THE STREET CENTER LINE TO 52 FEET FROM THE  
8 STREET CENTER LINE WITH STAFF FINDINGS OF FACT 1  
9 THROUGH 4.

10 CHAIRMAN: IS THERE A SECOND?

11 MR. DYSINGER: SECOND.

12 CHAIRMAN: A MOTION HAS BEEN MADE AND A  
13 SECOND. DOES THE STAFF OR BOARD HAVE ANY OTHER  
14 COMMENTS OR QUESTIONS AT THIS TIME?

15 MR. NOFFSINGER: NO, SIR.

16 CHAIRMAN: HEARING NONE ALL IN FAVOR RAISE  
17 YOUR RIGHT HAND.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: MOTION CARRIES.

20 NEXT ITEM, PLEASE.

21 ITEM 4

22 4700-4900 BLOCKS, 4821 FREE SILVER ROAD, ZONED EX-1  
23 CONSIDER A REQUEST FOR A VARIANCE IN ORDER TO REDUCE  
24 THE MINIMUM BUFFER FOR COAL MINING ACTIVITIES FROM A  
25 NEIGHBORING RESIDENTIALLY DEVELOPED PROPERTY FROM 300  
FEET TO 100 FEET FROM THE RESIDENCE AT 4840 FREE  
SILVER ROAD AND FROM 300 FEET TO 200 FEET FROM THE  
RESIDENCE AT 4920 FREE SILVER ROAD.  
REFERENCE: ZONING ORDINANCE, ARTICLE 12,

1 SECTION 12A.52  
2 APPLICANT: WESTERN KENTUCKY MINERALS, INC.

3 MS. EVANS: THE APPLICANT DOES HAVE A SIGNED  
4 WAIVER FROM EACH OF THE PROPERTY OWNERS GRANTING THEM  
5 PERMISSION TO MINE WITHIN 100 AND 200 FEET  
6 RESPECTIVELY. THESE WAIVERS HAVE BEEN SUBMITTED TO  
7 THE DEPARTMENT OF MINING RECLAMATION AND ENFORCEMENT.

8 ACCORDING TO THE APPLICANT, IT IS NECESSARY TO  
9 MINE CLOSER TO THE ALLOWED 300 FEET TO MAXIMIZE THE  
10 COAL RECOVERY FOR THE APPLICANT AND THE PROPERTY  
11 OWNERS.

12 GRANTING THIS VARIANCE:

13 \* IT WILL NOT ADVERSELY AFFECT THE PUBLIC  
14 HEALTH, SAFETY OR WELFARE BECAUSE ACCORDING TO THE  
15 APPLICANT, MINING ACTIVITIES REGULARLY TAKE PLACE  
16 WITHIN 100 FEET OF STRUCTURES WITHOUT CAUSING HARM OR  
17 SAFETY CONCERNS.

18 \* IT WILL NOT ALTER THE ESSENTIAL CHARACTER OF  
19 THE GENERAL VICINITY BECAUSE COAL MINING ACTIVITIES  
20 ARE ALREADY TAKING PLACE IN THIS AREA.

21 \* IT WILL NOT ALLOW AN UNREASONABLE  
22 CIRCUMVENTION OF THE REQUIREMENTS OF THE ZONING  
23 REGULATIONS BECAUSE THE PROPERTY OWNERS HAVE SIGNED  
24 WAIVERS GRANTING THE APPLICANT PERMISSION TO COME  
25 CLOSER TO THE STRUCTURES LOCATED ON THEIR PROPERTIES.

1 STAFF WOULD RECOMMEND APPROVAL.

2 WE WOULD LIKE TO ENTER THE STAFF REPORT INTO  
3 THE RECORD AS EXHIBIT C.

4 CHAIRMAN: HAVE WE HAD ANY COMMENTS IN THE  
5 OFFICE FOR OR AGAINST?

6 MR. NOFFSINGER: NO, SIR.

7 CHAIRMAN: THE APPLICANT IS HERE AND DO YOU  
8 HAVE ANY COMMENTS YOU WANT TO BRING AT THIS TIME?

9 MR. WRIGHT: NO.

10 CHAIRMAN: ANY BOARD MEMBERS HAVE ANY  
11 QUESTIONS OF THE APPLICANT?

12 MR. PEDLEY: YES, I DO.

13 IS THE HOMEOWNER IN AGREEMENT TO -- WOULD YOU  
14 STEP UP TO THE MIKE, PLEASE?

15 CHAIRMAN: STATE YOUR NAME, PLEASE.

16 MR. WRIGHT: TIMOTHY WRIGHT.

17 (TIMOTHY WRIGHT SWORN BY ATTORNEY.)

18 MR. PEDLEY: IS THE HOMEOWNER IN AGREEMENT OF  
19 YOU MINING WITHIN 100 FEET OF HIS HOME?

20 MR. WRIGHT: YES. WE HAVE SIGNED WAIVERS FROM  
21 EACH OF THE HOMEOWNERS TO COME WITHIN 100 FEET.

22 MR. PEDLEY: THE STATE AND COUNTY IS OKAY WITH  
23 YOUR VARIANCE ON 300 FEET -- YOU'RE MINING 100 FEET  
24 FROM THE HOME. THE APPLICANTS HAVE SIGNED WAIVERS  
25 FROM EACH PROPERTY OWNER SIGNING PERMISSION, AND ALSO

1 THE STATE AND COUNTY IS OKAY WITH THE VARIANCE?

2 MR. WRIGHT: THE COUNTY IS OKAY WITH MINING UP  
3 TO THE RIGHT-OF-WAY OF FREE SILVER ROAD.

4 MR. PEDLEY: THEY HAVE APPROVED THAT?

5 MR. WRIGHT: YES.

6 MR. PEDLEY: THAT'S THE ONLY QUESTION. I JUST  
7 WANTED TO MAKE SURE THAT'S BEEN APPROVED BY THE  
8 HOMEOWNERS.

9 MR. WRIGHT: YES.

10 MR. PEDLEY: THANK YOU.

11 CHAIRMAN: ANY OTHER BOARD MEMBERS HAVE ANY  
12 QUESTIONS?

13 (NO RESPONSE)

14 CHAIRMAN: STAFF HAVE ANY OTHER COMMENTS?

15 MR. NOFFSINGER: NO.

16 CHAIRMAN: IS THERE ANYONE IN THE AUDIENCE FOR  
17 OR AGAINST THE ITEM?

18 (NO RESPONSE)

19 CHAIRMAN: HEARING NONE ENTERTAIN A MOTION TO  
20 DISPOSE OF THE ITEM.

21 MR. PEDLEY: MR. CHAIRMAN, I MAKE A MOTION FOR  
22 APPROVAL BASED ON FINDINGS THAT THE STATE AND COUNTY  
23 HAS APPROVED THE SETBACK ON THE ROAD AND THE  
24 HOMEOWNERS HAS APPROVED THE SETBACK WITH THE FINDINGS  
25 OF FACT STATED BY THE STAFF THAT IT WILL NOT ADVERSELY

1       AFFECT THE PUBLIC HEALTH, SAFETY OR WELFARE BECAUSE  
2       ACCORDING TO THE APPLICANT, MINING ACTIVITIES  
3       REGULARLY TAKE PLACE WITHIN 100 FEET OF STRUCTURES  
4       WITHOUT CAUSING HARM OR SAFETY CONCERNS; IT WILL NOT  
5       ALTER THE ESSENTIAL CHARACTER OF THE GENERAL VICINITY  
6       BECAUSE COAL MINING ACTIVITIES ARE ALREADY TAKING  
7       PLACE IN THIS AREA; IT WILL NOT CAUSE A HAZARD OR A  
8       NUISANCE TO THE PUBLIC BECAUSE PROPERTY OWNERS OF THE  
9       RESIDENCES IN QUESTIONS HAVE SIGNED A WAIVER GRANTING  
10      THE APPLICANT TO COME CLOSER TO THEIR STRUCTURES; IT  
11      WILL NOT ALLOW AN UNREASONABLE CIRCUMVENTION OF THE  
12      REQUIREMENTS OF THE ZONING REGULATIONS BECAUSE THE  
13      PROPERTY OWNERS HAVE SIGNED WAIVERS GRANTING THE  
14      APPLICANT PERMISSION TO COME CLOSER TO THE STRUCTURES  
15      LOCATED ON THEIR PROPERTIES.  THERE ARE NO CONDITIONS  
16      APPLIED TO THAT.

17               CHAIRMAN:  IS THERE A SECOND?

18               MR. DYSINGER:  SECOND.

19               CHAIRMAN:  A MOTION HAS BEEN MADE AND A  
20      SECOND.  ANY OTHER QUESTIONS OR COMMENTS FROM THE  
21      BOARD OR THE STAFF?

22               (NO RESPONSE)

23               CHAIRMAN:  HEARING NONE ALL IN FAVOR RAISE  
24      YOUR RIGHT HAND.

25               (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)



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CHAIRMAN: MOTION CARRIES.

ONE FINAL MOTION.

MR. DYSINGER: MOVE TO ADJOURN.

MS. MASON: SECOND.

CHAIRMAN: ALL IN FAVOR RAISE YOUR RIGHT HAND.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: WE ARE ADJOURNED.

-----

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

3 I, LYNNETTE KOLLER FUCHS, NOTARY PUBLIC IN AND  
4 FOR THE STATE OF KENTUCKY AT LARGE, DO HEREBY CERTIFY  
5 THAT THE FOREGOING OWENSBORO METROPOLITAN PLANNING  
6 COMMISSION 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 STENOGRAPHY AND  
12 ELECTRONICALLY RECORDED AND WAS THEREAFTER, BY ME,  
13 ACCURATELY AND CORRECTLY TRANSCRIBED INTO THE  
14 FOREGOING 17 TYPEWRITTEN PAGES; AND THAT NO SIGNATURE  
15 WAS REQUESTED TO THE FOREGOING TRANSCRIPT.

16 WITNESS MY HAND AND NOTARY SEAL ON THIS THE  
17 11TH DAY OF FEBRUARY, 2013.

18

19

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

23 COMMISSION EXPIRES: DECEMBER 16, 2014

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

25