

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 NOVEMBER 7, 2013

3 THE OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

4 MET IN REGULAR SESSION AT 5:30 P.M. ON THURSDAY,

5 NOVEMBER 7, 2013, AT CITY HALL, COMMISSION CHAMBERS,

6 OWENSBORO, KENTUCKY, AND THE PROCEEDINGS WERE AS

7 FOLLOWS:

8 MEMBERS PRESENT: C.A. PANTLE, CHAIRMAN
9 RUTH ANN MASON, SECRETARY
10 GARY NOFFSINGER, DIRECTOR
11 TERRA KNIGHT, ATTORNEY
12 FRED REEVES
13 JUDY DIXON

14 * * * * *

15 CHAIRMAN: LET ME CALL THE OWENSBORO
16 METROPOLITAN BOARD OF ADJUSTMENT TO ORDER. WE WILL
17 START OUR PROGRAM THIS EVENING WITH A PRAYER AND
18 PLEDGE TO THE FLAG. WILL YOU PLEASE JOIN US.

19 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

20 CHAIRMAN: THE FIRST THING I WANT TO WELCOME
21 ONE OF THE NEW BOARD MEMBERS AT THIS TIME, JUDY DIXON.

22 GOOD TO HAVE YOU BACK, JUDY.

23 THEN OUR NEW ATTORNEY MRS. KNIGHT. WE LOOK
24 FORWARD TO WORKING WITH YOU FOR A LONG TIME.

25 MS. KNIGHT: THANK YOU.

CHAIRMAN: WITH THAT I WANT TO WELCOME YOU,
SIR. IF YOU HAVE ANY COMMENTS, COME TO THE PODIUM AND

1 STATE YOUR NAME.

2 WITH THAT THE FIRST ITEM WE'LL HAVE IS THE
3 MINUTES OF THE LAST BOARD MEETING. I HAVEN'T FOUND
4 ANY PROBLEMS IN THE OFFICE.

5 MR. NOFFSINGER: NO, SIR.

6 CHAIRMAN: IF NOBODY HAS ANY, I'LL ENTERTAIN A
7 MOTION TO DISPOSE OF THE ITEM.

8 MR. REEVES: MOTION TO APPROVE.

9 CHAIRMAN: A MOTION HAS BEEN MADE.

10 MS. MASON: SECOND.

11 CHAIRMAN: ALL IN FAVOR RAISE YOUR RIGHT HAND.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: MOTION CARRIES.

14 NEXT ITEM, PLEASE.

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16 VARIANCE

17 ITEM 2

18 2306 WINDHAVEN DRIVE, ZONED I-1, REMANDED BY DAVIESS
19 CIRCUIT COURT, DIVISION II
20 CONSIDER A REQUEST FOR A VARIANCE IN ORDER TO WAIVE
21 THE REQUIRED SIX FOOT HIGH SOLID WALL OR FENCE AROUND
22 AN OUTDOOR STORAGE LOT.

23 REFERENCE: ZONING ORDINANCE, ARTICLE 8,
24 SECTION 8.5.4(J), ARTICLE 17, SECTION 17.3114
25 APPLICANT: MID-SOUTH EQUIPMENT, LLC, CHAD WATTS,
JIM WATTS

MS. KNIGHT: STATE YOUR NAME FOR THE RECORD,
PLEASE.

MS. EVANS: MELISSA EVANS.

1 (MELISSA EVANS SWORN BY ATTORNEY.)

2 MS. EVANS: THE INITIAL VARIANCE REQUEST WAS
3 POSTPONED FROM THE OCTOBER 6, 2011 MEETING TO THE
4 DECEMBER 1, 2011 OWENSBORO METROPOLITAN BOARD OF
5 ADJUSTMENT MEETING. AT THE DECEMBER 1, 2011 OMBA
6 MEETING THE BOARD APPROVED A PORTION OF THE VARIANCE
7 REQUEST TO ELIMINATE THE SCREENING REQUIREMENT ALONG
8 THE SOUTHEAST BOUNDARY OF THE OUTDOOR STORAGE AREA
9 WHILE THE REMAINDER OF THE VARIANCE REQUEST WAS
10 DENIED.

11 THE APPLICANT APPEALED THE OMBA'S DECISION TO
12 DAVIESS CIRCUIT COURT AND ON OCTOBER 12, 2012 JUDGE
13 JOE CASTLEN WITH DAVIESS CIRCUIT COURT, DIVISION II
14 RULED THERE WAS NOT A QUORUM PRESENT DURING THE
15 HEARING FOR THE ITEM AT OMBA MEETING ON DECEMBER 1,
16 2011 AND REMANDED THE ITEM BACK TO THE OMBA SO A VOTE
17 COULD BE CONDUCTED CONSISTENT WITH HIS DECISION WITH A
18 QUORUM PRESENT.

19 ON NOVEMBER 1, 2012, THE OMBA VOTED TO DENY
20 THE VARIANCE REQUEST IN ITS ENTIRETY. THE APPLICANT
21 ONCE AGAIN APPEALED THE OMBA DECISION.

22 THROUGH MEETINGS AND DISCUSSIONS BETWEEN LEGAL
23 COUNSEL FOR THE OMBA, THE APPLICANT'S LEGAL COUNSEL
24 AND THE STAFF, A COMPROMISE HAS BEEN REACHED WHICH IS
25 AGREEABLE TO ALL PARTIES. THE APPLICANT HAS AGREED TO

1 REMOVE THE GRAVEL AREA ALONG WINDHAVEN DRIVE RETURNING
2 IT TO GRASS, INSTALL THE REQUIRED LANDSCAPING OF A
3 THREE FOOT HIGH CONTINUOUS ELEMENT WITH ONE TREE EVERY
4 FORTY LINEAR FEET ALONG WINDHAVEN DRIVE, AND HAS PAVED
5 THE APRON OF THE ACCESS POINT ALONG WINDHAVEN DRIVE.
6 THE PROPOSED CHANGES ARE REFLECTED ON THE SITE PLAN
7 THAT IS PART OF THE VARIANCE REQUEST.

8 IF THE OMBA AGREES WITH THE COMPROMISE, THEY
9 MUST MAKE FINDINGS TO SUPPORT THE VARIANCE REQUEST.
10 STAFF WOULD RECOMMEND A CONDITION BE ADDED THAT
11 REQUIRES THE APPROVAL OF A FINAL DEVELOPMENT PLAN BE
12 AMENDED TO REFLECT THE ACTIONS TAKEN BY THE BOARD.

13 FINDINGS OF FACT:

14 GRANTING THIS VARIANCE:

15 1. WILL NOT ADVERSELY AFFECT THE PUBLIC
16 HEALTH, SAFETY OR WELFARE BECAUSE THE NATURAL
17 TOPOGRAPHY OF THE LAND AND THE TREE LINE SCREEN OF THE
18 OUTDOOR STORAGE AREA FROM PUBLIC VIEW ALONG PARRISH
19 AVENUE AND THE ELEVATION CHANGE EFFECTIVELY SCREENS
20 THE PROPERTY TO THE EAST;

21 2. WILL NOT ALTER THE ESSENTIAL CHARACTER OF
22 THE GENERAL VICINITY BECAUSE THE STORAGE IS AS
23 EFFECTIVELY SCREENED BY THE NATURAL ELEMENTS IN THIS
24 LOCATION AS OTHER SCREENED STORAGE IN THE VICINITY IN
25 COMBINATION WITH BEING SURROUNDED BY SIMILAR

1 INDUSTRIAL USES, AND NEIGHBORS PETITIONED THE OMBA TO
2 WAIVE THE SCREENING REQUIREMENT.

3 3. WILL NOT CAUSE A HAZARD OR A NUISANCE TO
4 THE PUBLIC BECAUSE IN THIS LOCATION THE OUTDOOR
5 STORAGE WILL BE SCREENED THROUGH NATURAL ELEMENTS ON
6 THE PROPERTY AND A PAVED APRON HAS BEEN INSTALLED THAT
7 WILL PREVENT GRAVEL FROM SPILLING INTO THE PUBLIC
8 RIGHT-OF-WAY.

9 4. WILL NOT BE AN UNREASONABLE CIRCUMVENTION
10 OF THE REQUIREMENTS OF THE ZONING REGULATIONS BECAUSE
11 THE CHANGE IN ELEVATION AND THE HEAVY TREE LINE
12 EFFECTIVELY PROVIDE SCREENING FOR THE PROPERTY, THE
13 CONCRETE APRON WILL PROTECT THE PUBLIC RIGHT-OF-WAY
14 FROM GRAVEL AND THE INSTALLATION OF THE THREE FOOT
15 SCREENING ELEMENT WITH TREES ALONG THE WINDHAVEN DRIVE
16 FRONTAGE IS CONSISTENT WITH THE INTENT OF THE ZONING
17 ORDINANCE REQUIREMENTS.

18 CONDITION:

19 AN AMENDED FINAL DEVELOPMENT PLAN BE APPROVED
20 TO REFLECT THE BOARD'S DECISION.

21 WE WOULD LIKE TO ENTER THE STAFF REPORT INTO
22 THE RECORD AS EXHIBIT A.

23 CHAIRMAN: THANK YOU.

24 WOULD THE REPRESENTATIVE OF THE APPLICANT COME
25 TO THE PODIUM, PLEASE.

1 MR. JOHNSON: TYLER JOHNSON, ATTORNEY FOR
2 MID-SOUTH.

3 MS. KNIGHT: YOU'RE SWORN AS AN ATTORNEY.

4 CHAIRMAN: SIR, YOU'VE HEARD THE REPORT THAT
5 SHE READ AND ALL THE ITEMS IN IT. DO YOU AGREE TO
6 THAT AS THE REPRESENTATIVE PERSON?

7 MR. JOHNSON: I DO HAVE ONE QUESTION OR POINT
8 OF CLARIFICATION THAT MAY JUST REFLECT MY IGNORANCE OF
9 THE PROCESS.

10 THE FINAL APPROVED FINAL DEVELOPMENT PLAN THAT
11 NEEDS TO BE AMENDED, IS THAT PART OF THE SITE PLAN
12 THAT WAS ATTACHED TO THE CIRCUIT COURT ORDER OR IS
13 THAT A SEPARATE DOCUMENT IN ITS ENTIRETY?

14 CHAIRMAN: WOULD STAFF ANSWER THAT, PLEASE?

15 MR. NOFFSINGER: I'M GOING TO ALLOW MELISSA TO
16 ANSWER THAT QUESTION.

17 MS. EVANS: THAT IS A SEPARATE DOCUMENT. THEY
18 HAVE A FINAL DEVELOPMENT PLAN ON FILE IN OUR OFFICE
19 CURRENTLY AND THE DEVELOPMENT PLAN NEEDS TO BE AMENDED
20 TO REFLECT THE CHANGES THAT ARE APPROVED TONIGHT.

21 MR. JOHNSON: I GUESS MY QUESTION IS, THAT IS
22 MID-SOUTH'S RESPONSIBILITY TO REDO THE FINAL
23 DEVELOPMENT PLAN?

24 MS. EVANS: YES, IT WOULD BE. IT'S THEIR
25 RESPONSIBILITY TO AMEND THE DEVELOPMENT PLAN THAT'S ON

1 FILE IN OUR OFFICE AND RESUBMIT THAT FOR APPROVAL. IT
2 WILL BE VERY SIMILAR TO THE SITE PLAN THAT'S ALREADY
3 BEEN PREPARED. IT WILL JUST HAVE ADDITIONAL SIGN OFF
4 FOR THE UTILITIES.

5 MR. JOHNSON: OKAY.

6 CHAIRMAN: ANY OTHER QUESTIONS OR COMMENTS?

7 MR. JOHNSON: NO, SIR.

8 CHAIRMAN: DO YOU UNDERSTAND ALL OF THE FACTS
9 AND THINGS THAT WE PUT IN?

10 MR. JOHNSON: YES, SIR.

11 CHAIRMAN: GOOD DEAL.

12 MR. NOFFSINGER: I DO HAVE ONE THING.

13 MR. JOHNSON, DO YOU HAVE ANY OBJECTIONS TO THE
14 PLANNING STAFF ENTERING THE TRANSCRIPTS FROM THE
15 OCTOBER 6, 2011, DECEMBER 1, 2011, AND THE NOVEMBER 1,
16 2012 BOARD OF ADJUSTMENT MEETING?

17 MR. JOHNSON: I DON'T. IS THERE A WAY WE CAN
18 ENTER THEM, THIS MAY HAVE ALREADY BEEN DONE, THE ORDER
19 THAT REFERENCES TODAY'S HEARING, THE CIRCUIT COURT
20 ORDER AS WELL?

21 MR. NOFFSINGER: YES. I WOULD BE GLAD TO DO
22 THAT. THE AGREED ORDER OF DISMISSAL.

23 MR. JOHNSON: FOR CLARITY'S SAKE I THINK THAT
24 TIES EVERYTHING TOGETHER.

25 MR. NOFFSINGER: THAT'S WHAT I'M TRYING TO DO.

1 I WANT TO MAKE SURE WE HAVE EVERYTHING TIED TOGETHER
2 SO THE FINDINGS OF FACT THAT THE PLANNING STAFF IS
3 RECOMMENDING AND THAT THIS BOARD MAY MAKE GOES BACK TO
4 THE EVIDENCE THAT'S BEEN PRESENTED IN THE PREVIOUS
5 RECORDS WITHOUT HAVING TO GO THROUGH ALL OF THAT
6 TESTIMONY AGAIN.

7 MR. JOHNSON: SURE.

8 CHAIRMAN: DOES ANY BOARD MEMBER HAVE ANY
9 QUESTIONS OF THE APPLICANT?

10 (NO RESPONSE)

11 CHAIRMAN: HEARING NONE I'LL ENTERTAIN A
12 MOTION TO DISPOSE OF THE ITEM, PLEASE.

13 MS. MASON: MR. CHAIRMAN, I MAKE A MOTION TO
14 APPROVE WITH THE FINDINGS OF FACT THAT GRANTING THIS
15 VARIANCE WILL NOT ADVERSELY AFFECT THE PUBLIC HEALTH,
16 SAFETY OR WELFARE BECAUSE THE NATURAL TOPOGRAPHY OF
17 THE LAND AND THE TREE LINES SCREEN THE OUTDOOR STORAGE
18 AREA FROM PUBLIC VIEW ALONG PARRISH AVENUE AND THE
19 ELEVATION CHANGE EFFECTS THE SCREENING OF THE PROPERTY
20 TO THE EAST; IT WILL NOT ALTER THE ESSENTIAL CHARACTER
21 OF THE GENERAL VICINITY BECAUSE THE STORAGE IS
22 EFFECTIVELY SCREENED BY THE NATURAL ELEMENT IN THIS
23 LOCATION AS OTHER SCREENED STORAGE IN THIS VICINITY IN
24 COMBINATION WITH BEING SURROUNDED BY SIMILAR
25 INDUSTRIAL USES AND NEIGHBORS PETITIONED THE OMBA TO

1 WAIVE THE SCREENING REQUIREMENT; IT WILL NOT CAUSE A
2 HAZARD OR NUISANCE TO THE PUBLIC BECAUSE IN THIS
3 LOCATION THE OUTDOOR STORAGE WILL BE SCREENED THROUGH
4 NATURAL ELEMENTS ON THE PROPERTY AND A PAVED APRON HAS
5 BEEN INSTALLED THAT WILL PREVENT GRAVEL FROM SPILLING
6 INTO THE PUBLIC RIGHT-OF-WAY; IT WILL NOT BE AN
7 UNREASONABLE CIRCUMVENTION OF THE REQUIREMENTS OF THE
8 ZONING REGULATION BECAUSE THE CHANGE IN ELEVATION AND
9 THE HEAVY TREE LINE EFFECTIVELY PROVIDES SCREENING FOR
10 THE PROPERTY, THE CONCRETE APRON WILL PROTECT THE
11 PUBLIC RIGHT-OF-WAY FROM GRAVEL AND THE INSTALLATION
12 OF THE THREE FOOT SCREENING ELEMENT WITH TREES ALONG
13 THE WINDHAVEN DRIVE FRONTAGE IS CONSISTENT WITH THE
14 INTENT OF THE ZONING ORDINANCE REQUIREMENT.

15 I ALSO WANT A CONDITION TO BE ADDED THAT
16 REQUIRES THE APPROVED FINAL DEVELOPMENT PLAN BE
17 AMENDED AND RESUBMITTED FOR APPROVAL.

18 MR. NOFFSINGER: IF I MAY INTERJECT JUST FOR A
19 SECOND. I WANT TO BE FAIR TO MR. JOHNSON.

20 I'M NOT CERTAIN THAT A FINAL DEVELOPMENT PLAN
21 IS ON FILE IN OUR OFFICE. I BELIEVE IT MAY ONLY BE A
22 SITE PLAN. I DO NOT WANT MID-SOUTH TO HAVE TO DO
23 ANYTHING OTHER THAN AMEND THE OFFICIAL DOCUMENT THAT
24 THEY HAVE IN OUR OFFICE.

25 IN MAKING THAT CONDITION, IF YOU WOULD MAKE IT

1 A REVISED FINAL DEVELOPMENT PLAN OR A REVISED SITE
2 PLAN, WHICHEVER IS APPROPRIATE IN TERMS OF THE
3 DOCUMENT THAT WE HAVE IN THE OFFICE. I THINK THAT
4 WOULD BE FAIR TO THE APPLICANT. WE WANT TO GET THIS
5 RIGHT. I BELIEVE IT'S A SITE PLAN. I DON'T THINK
6 IT'S A DEVELOPMENT PLAN, BUT IF IT IS, THAT'S WHAT WE
7 NEED TO DO.

8 MR. JOHNSON: I THINK THAT'S ACCURATE. THAT'S
9 WHERE A LITTLE OF MY CONFUSION STEM FROM WHEN I SAW
10 THAT FINAL DEVELOPMENT PLAN IN THERE.

11 MS. MASON: SO I WANT TO CHANGE MY CONDITION
12 THEN TO BE AN APPROVED REVISED FINAL DEVELOPMENT PLAN
13 OR A REVISED SITE PLAN BE SUBMITTED IN THE OFFICE.

14 CHAIRMAN: IS THERE A SECOND?

15 MR. REEVES: SECOND.

16 CHAIRMAN: A MOTION HAS BEEN MADE AND A
17 SECOND. IS THERE ANY OTHER QUESTIONS OR COMMENTS FROM
18 THE BOARD?

19 (NO RESPONSE)

20 CHAIRMAN: STAFF HAVE ANYTHING ELSE?

21 MR. NOFFSINGER: NO, SIR.

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

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: MOTION CARRIES.

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NEXT ITEM IS TO LEAVE.

MS. DIXON: 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 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 STENOGRAPHY AND
 12 ELECTRONICALLY RECORDED AND WAS THEREAFTER, BY ME,
 13 ACCURATELY AND CORRECTLY TRANSCRIBED INTO THE
 14 FOREGOING 11 TYPEWRITTEN PAGES; AND THAT NO SIGNATURE
 15 WAS REQUESTED TO THE FOREGOING TRANSCRIPT.

16 WITNESS MY HAND AND NOTARY SEAL ON THIS THE
 17 1ST DAY OF DECEMBER, 2013.

18

19

LYNNETTE KOLLER FUCHS
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 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