

**OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT**

**JUNE 5, 2014**

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, June 5, 2014, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Ward Pendley, Chairman  
Jerry Yeiser  
Sean Dysinger  
Judy Dixon  
Fred Reeves  
Claud Porter, Attorney  
Jim Mischel

\* \* \* \* \*

CHAIRMAN: Call the Owensboro Metropolitan Board of Adjustments June 5th, 2014, meeting to order. We will begin our meeting with a prayer and pledge allegiance to the flag. Mr. Reeves will lead us. Would you stand, please.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Like to welcome everyone. And anyone wishing to speak on any item may do so. We ask that you come to one of the podiums, state your name, and be sworn in. Please, if you will, speak into the microphone.

With that, the first item on the agenda is to consider the minutes of the May 1, 2014, meeting. Board members you have a copy of the minutes in your packet. Are

1 there any additions or corrections?

2 (NO RESPONSE)

3 MS. DIXON: Move to approve.

4 MR. REEVES: Second.

5 CHAIRMAN: We have a motion and a second. All in  
6 favor of the motion, raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED.)

8 CHAIRMAN: Motion carries. Minutes are approved.

9 Next item, please.

10 -----

11 **CONDITIONAL USE PERMITS**

12 ITEM 2

13 3283 Alvey Park Drive East, zoned B-4.  
14 Consider a request for a **Conditional Use Permit** in order to  
15 operate a child daycare facility.  
Reference: Zoning Ordinance, Article 8, Section 8.2B3  
Applicant: R.A.S. Enterprises, LLC; Reba L. Flaim

16 MR. PORTER: State your name, please.

17 MS. EVANS: Melissa Evans.

18 (Melissa Evans sworn by attorney.)

19 **ZONING HISTORY**

20 The subject property is currently zoned B-4. A  
21 Zoning Map Amendment was approved for the subject property  
22 in May 2014 to rezone the property from I-1 to B-4. The  
23 applicant is proposing to operate a child daycare facility  
24 for up to 45 children, ages six weeks and up, including a  
25 preschool program and an afterschool program Monday through

1 Friday from 6:30 a.m. to 6:00 p.m. with occasional evening  
2 and weekend hours as needed.

3 **LAND USES IN SURROUNDING AREA**

4 The properties to the north are zoned B-4 General  
5 Business. The properties to the south and west are zoned  
6 I-1 Light Industrial. The property to the east is zoned  
7 B-3 Highway Business Center. This area is a  
8 Business/Industrial Plan area with a mix of business and  
9 industrial uses, including a child daycare center to the  
10 west.

11 **ZONING ORDINANCE REQUIREMENTS**

12 1. Parking -- Childcare facility is two plus one  
13 for every ten children under care. They are proposing up  
14 to 45 children. The application states that their site  
15 plan does show parking.

16 2. Landscaping -- Vehicular use area screening  
17 consisting of a three-foot continuous element with one tree  
18 every 40 feet where adjoining the public right-of-way. And  
19 they do show that on their site plan as well.

20 We would like to enter the staff report into the  
21 record as Exhibit A.

22 CHAIRMAN: Is there anyone here who represents  
23 the applicant?

24 (NO RESPONSE)

25 CHAIRMAN: Does anyone here have any comments or

1 questions on this application?

2 (NO RESPONSE)

3 CHAIRMAN: Any board members have any comments or  
4 questions?

5 (NO RESPONSE)

6 CHAIRMAN: If not, the Chair is ready for a  
7 motion.

8 MR. DYSINGER: Mr. Chairman, given the findings  
9 that it is in keeping with the general nature of the  
10 neighborhood and will be a contribution to our community, I  
11 move we grant the conditional use permit.

12 CHAIRMAN: We have a motion for approval by Mr.  
13 Dysinger.

14 MS. DIXON: Second.

15 CHAIRMAN: A second by Ms. Dixon. Any comments  
16 or questions on the motion?

17 (NO RESPONSE)

18 CHAIRMAN: All in favor of the motion, raise your  
19 right hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries unanimous.

22 Next item, please.

23 ITEM 3

24 11028 Saint Joseph Lane, zoned R-1A  
25 Consider a request for a **Conditional Use Permit** in order to  
construct a parish hall for an adjoining church.  
Reference: Zoning ordinance, Article 8, Section 8.2B4

1 Applicant: St. Alphonsus Parish of St. Joseph, Kentucky,  
2 Inc.

3 **ZONING HISTORY**

4 The subject property is currently zoned R-1A  
5 Single Family Residential. OMPC records indicate there was  
6 a Zoning Map Amendment for a portion of the subject  
7 property in January of 2014, rezoning it from B4 to R-1A.

8 St. Alphonsus Church is located across Highway  
9 500 from the subject property. It is proposing to  
10 construct an approximately 10,200-square foot parish hall  
11 to be used by the church. The applicant is proposing to  
12 utilize the existing parking on the church property across  
13 Highway 500, along with new parking on the subject  
14 property. The parish hall is an accessory use to the  
15 church located across the street; therefore, a development  
16 plan is required for both properties. A development plan  
17 has been submitted to the planning office for approval.

18 **LAND USES IN SURROUNDING AREA**

19 The properties to the north, south, and east are  
20 zones R-1A Single Family Residential and are either vacant  
21 or residential structures. The property to the west is  
22 zoned B-4 General Business and is the is the St. Alphonsus  
23 Church.

24 **ZONING ORDINANCE REQUIREMENTS**

25 1. Parking -- Churches and Sunday Schools -- one

1 for every five seats in the main auditorium.

2 2. Landscaping -- a three-foot continuous  
3 element with one tree per every 40 linear feet of the  
4 vehicular use area boundary where adjoining the public  
5 right-of-way.

6 **SPECIAL CONDITIONS**

7 We would recommend a condition of the approval of  
8 a Final Development Plan.

9 We would like to enter the staff report into the  
10 record as Exhibit B.

11 CHAIRMAN: Is anyone here representing the  
12 applicant?

13 (NO RESPONSE)

14 CHAIRMAN: Anyone here have any comments or  
15 questions on the application?

16 (NO RESPONSE)

17 CHAIRMAN: Board members have any comments or  
18 questions?

19 (NO RESPONSE)

20 CHAIRMAN: If not, chair is ready for a motion.

21 MR. REEVES: Mr. Chairman, based upon the  
22 findings that were presented by the staff, this would not  
23 seem to be inconsistent with any other development in the  
24 general neighborhood there. And with the approval of the  
25 Final Development Plan, I recommend approval.

1 MR. YEISER: Second.

2 CHAIRMAN: We have a motion for approval by Mr.  
3 Reeves and a second by Mr. Yeiser. Questions on the  
4 motion?

5 (NO RESPONSE)

6 CHAIRMAN: All in favor of the motion, raise your  
7 right hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries unanimous.

10 Next item, please.

11 ITEM 4

12 4129 Vincent Station Drive, zoned B-4  
13 Consider a request for a **Conditional Use Permit** in order to  
14 construct and operate a child daycare facility.  
15 Reference: Zoning Ordinance, Article 8, Section 8.2B3  
16 Applicant: Charlotte's Web Preschool and Nursery; Hayden  
17 Development Company, LLC

16 **ZONING HISTORY**

17 The subject is currently zoned B-4. A Zoning Map  
18 Amendment was recommended for approval in May of 2014 at  
19 the OMPC meeting, rezoning the property from I-1 to B-4  
20 with a condition to install sidewalks along the road  
21 right-of-way.

22 The applicant is proposing to construct an  
23 approximately 7,500-square foot building to operate a child  
24 daycare facility and preschool for up to 120 children.

25 **LAND USES IN SURROUNDING AREA**

1           The properties to the north, south, and east are  
2 zoned I-1 Light Industrial. The properties to the west are  
3 zoned B-4 General Business. This area is a  
4 Business/Industrial Plan area with a mix of business and  
5 industrial uses.

6           **ZONING ORDINANCE REQUIREMENTS**

7           1. Parking -- Childcare facility -- two plus one  
8 for every ten children under care. The applicant is  
9 proposing 42 parking spaces.

10           2. Landscaping -- Vehicular use area screening  
11 consisting of a three-foot continuous element with one tree  
12 every 40 feet where adjoining public right-of-way, as shown  
13 on the site plan submitted.

14           **SPECIAL CONDITIONS**

15           We would also like to recommend a condition with  
16 the application, that was a condition on the rezoning, for  
17 the installation of sidewalks along the road right-of-way.

18           We would like to enter this staff report into the  
19 record as Exhibit C.

20           CHAIRMAN: Anyone here represent the applicant?

21           (NO RESPONSE)

22           CHAIRMAN: Anyone have any comments or questions  
23 on the application?

24           (NO RESPONSE)

25           CHAIRMAN: Board members have comments or



1 questions?

2 (NO RESPONSE)

3 CHAIRMAN: If not, the Chair is ready for a  
4 motion.

5 MR. DYSINGER: Mr. Chairman, given the findings  
6 that it is compatible with the surrounding neighborhood, I  
7 move to approve the conditional use permit with the special  
8 condition of installation of sidewalks along the road  
9 right-of-way.

10 MR. YEISER: Second.

11 CHAIRMAN: We have a motion for approval by Mr.  
12 Dysinger. A second by Mr. Yeiser. Comments, questions on  
13 the motion?

14 (NO RESPONSE)

15 CHAIRMAN: All in favor of the motion, raise your  
16 right hand.

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: Motion carries unanimous.

19 Next item, please.

20 ITEM 5

21 5664, 5712 Highway 56, zoned R-A  
22 Consider a request for a **Conditional Use Permit** in order to  
operate an existing church and related facilities,  
including a daycare.

23 Reference: Zoning Ordinance, Article 8, Section 8.2B4  
24 Applicant: Pleasant Grove Baptist Church; Roy Howard --  
Trustee

25 **ZONING HISTORY**

1           The subject properties are currently zoned R-A  
2 Rural Agriculture. OMPC records indicate there have been  
3 no Zoning Map Amendments for the subject properties.

4           The church at 5664 Highway 56 has been in  
5 operation for 60-plus years. A conditional use permit was  
6 approved by the OMBA in 2005 and 2011 to operate a daycare  
7 at 5712 Highway 56.

8           The applicant is proposing to construct a  
9 baseball field with dugouts and press boxes on the  
10 property. This outdoor recreational use and the existing  
11 daycare and Sunday School classes being offered in the  
12 structure at 5712 Highway 56 are accessory uses to the  
13 church in operation at 5664 Highway 56. In an effort to  
14 bring the properties into compliance with the zoning  
15 ordinance, the applicant has applied for the conditional  
16 use permit for the church and related existing and proposed  
17 accessory uses on the property.

#### 18 **LAND USES IN SURROUNDING AREA**

19           All surrounding properties are zoned A-R Rural  
20 Agriculture.

#### 21 **ZONING ORDINANCE REQUIREMENTS**

22           1. Parking for Churches, Sunday Schools and  
23 Parish Houses is one for every five seats in the main  
24 auditorium. And child daycare centers is two plus one for  
25 every ten persons under care. Each property meets their

1 parking requirements for their respective uses.

2 We would like to enter the staff report into the  
3 record as Exhibit D.

4 CHAIRMAN: Anyone here representing the  
5 applicant?

6 (NO RESPONSE)

7 CHAIRMAN: Anyone here have any comments or  
8 questions on the application?

9 MR. LAND: Good evening, Mr. Chairman.

10 MR. PORTER: Before we begin, would you state  
11 your name for me record.

12 MR. LAND: My name is Sean Land, and I'm  
13 representing Jerry and Virginia Bailey.

14 Before I start, if it's okay, I'd like to pass  
15 out some supplemental documents that I'll be addressing.

16 Mr. and Mrs. Bailey own real estate located at  
17 5804 Highway 56. This adjoins the church's property at  
18 5712 Highway 56. The church's property at 5712 56 is a  
19 portion of the property subject to the conditional use  
20 application.

21 At the outset, I'd like to make very clear that  
22 Mr. and Mrs. Bailey are in no way adverse to the church,  
23 nor are they troublemakers in any way. In fact, the  
24 Baileys, since they acquired the property in 2006, for the  
25 most part have enjoyed a very amicable relationship with

1 the church and its members. In fact, Mr. Bailey, for  
2 several years, actually farmed a portion of the church's  
3 property next to his property for the church without  
4 charge.

5 MR. BAILEY: I planted it and combined it.

6 CHAIRMAN: If you need to speak, come to one of  
7 the podiums.

8 MR. LAND: But it appears that the conditional  
9 use permit application, or the conditional use permit  
10 that's requested, would apply to two pieces of property.  
11 The application itself is very vague as to the church's  
12 proposed use of the two parcels. In fact, it merely states  
13 "to operate an existing church and related facilities,  
14 including a daycare." However, close inspection of the  
15 site plan that was submitted with the application includes  
16 a drawing of the proposed ball field on what used to be a  
17 separate seven-acre tract right next to Mr. Bailey's  
18 property.

19 The Baileys strongly oppose construction and  
20 operation of this new ball field on the church's property.  
21 That said, they have no objection to the continued  
22 operation of the church and its daycare center as actually  
23 set forth in the application submitted by the church. And  
24 to the extent the church also seeks continued use of the  
25 existing ball field that's been there for many, many years,

1 the Baileys merely request that reasonable conditions be  
2 attached, such as time limitations, frequency of games,  
3 issues with lights, things like that.

4 But again, the Baileys oppose the construction  
5 and operation solely of this new ball field. Their  
6 opposition is based on two grounds. One are deed  
7 restrictions set forth in the deed where the church  
8 acquired the property. And the second is the adverse  
9 effect we believe construction and operation of a new ball  
10 field would have on the Baileys' property and their use and  
11 enjoyment.

12 In fact, if I may, we've blown up a couple of  
13 things. First is a blow-up of the actual site plan  
14 submitted with the application that shows the new ball  
15 field. The Baileys home is to the west there of the ball  
16 field. And to give a better perspective, we've also taken  
17 an excerpt of division and consolidation plat. And all  
18 this is included in the packet.

19 CHAIRMAN: Mr. Land, would you space those two  
20 out?

21 MR. LAND: Yes.

22 CHAIRMAN: And go back to the podium so that the  
23 court reporter can hear. Also, people at home watch a lot  
24 of these meetings, so I want to make sure everyone hears  
25 what you're saying.

1 MR. LAND: Thank you, Mr. Chairman.

2 To your right, the first enlarged item there is  
3 just a blow-up of the site plan submitted with the  
4 application. It shows all the existing structures and the  
5 new proposed ball field.

6 The second item is an excerpt from division and  
7 consolidation plat done in 2006 where a seven-acre tract -  
8 the one I mentioned that's subject to deed restrictions -  
9 was consolidated with existing property owned by the  
10 church. It also shows Mr. and Mrs. Bailey's property as it  
11 lays. It's a better picture of the lay of the land, so to  
12 speak.

13 But again, our first argument is really a legal  
14 argument. We believe that the proposed ball field would be  
15 prohibited under deed restriction. I would respectfully  
16 submit that this board lacks the legal authority to grant  
17 anything beyond or that would contravene restrictions set  
18 forth in a deed. Now, the church's application includes  
19 the required certification of no deed restrictions. It  
20 says there are no deed restrictions. I suspect that  
21 certification was based on the vague proposed use set forth  
22 in the church's application; that being, to operate an  
23 existing church and related use, including a daycare.

24 But the church acquired a seven-acre tract  
25 adjoining Mr. and Mrs. Bailey's property in 2006. A copy

1 of the deed from Brenda and Richard Ford included in the  
2 packet that I passed out - I believe it was also included  
3 with the application materials - it includes a very clear  
4 restriction that states that the property may be used by  
5 the second party, being the church, for its various  
6 religious programs and purposes.

7 I love ball. My boys play ball. But I don't  
8 know that adding a new ball field would qualify as meeting  
9 that restriction.

10 Now, the second ground that Mr. and Mrs. Bailey  
11 object here is the adverse effect construction of this ball  
12 field would have on their property. And again, I believe  
13 the supplemental documents include the two deeds where Mr.  
14 and Mrs. Bailey acquired their portion of the property  
15 shown on the plat. They acquired a 2 1/2-acre tract in  
16 2006 and then an almost 8 1/2-acre tract later in 2012.

17 Mr. Bailey is going to speak in a moment about  
18 the personal side of what he believes the construction and  
19 operation of this ball field would have, but the last thing  
20 we've included in our documents is a letter from an opinion  
21 of value prepared by Steve Castlen. Again, it's in the  
22 packet. But Mr. Castlen - I believe based on his market  
23 analysis review of the property itself, the improvements  
24 made inside the home, outside, additions made, and  
25 prevailing market conditions - suggests that if it were to

1 sell today, the property would sell for in the range of  
2 \$500,000. The opinion of Mr. Castlen at least, the effect  
3 of this ball field being so close - again, it's shown on  
4 the site plan - you know, could cause a decrease in value  
5 of \$100,000 to \$150,000 to the Baileys' property. That's a  
6 decrease of 20 to 30 percent.

7           Again, Mr. Bailey is going to speak more on the  
8 effect this will have on his use and enjoyment of his  
9 property. But I believe the financial impact that this  
10 ball field would have, particularly in light of the fact  
11 that there's an existing ball field that's been around for  
12 many years and is still there. That ball field should be  
13 sufficient for any purposes the church might need for ball.  
14 To add another field, I think the impact that would have on  
15 Mr. and Mrs. Baileys' financial impact would greatly  
16 outweigh the benefit that the additional ball field, a  
17 second ball field, would have for the church.

18           I think Mr. Bailey is - -

19           CHAIRMAN: Mr. Land, I have a question for you.  
20 Can you tell us when the deed restrictions were placed on  
21 the land and filed in the land records?

22           MR. LAND: Yes, sir. It was all done about the  
23 same time in 2006. The plat that I've enlarged here - -  
24 and I think a full copy of the plat - Plat 35, Page 129, I  
25 believe - is in the materials. The plat was recorded on



1 June 6, 2006. That's the same day that Mr. and Mrs. Bailey  
2 acquired the property, also from Brenda and Richard Ford,  
3 where their home is. A few weeks later, the Ford then  
4 conveyed a 7.05, I believe, acre tract, shown, to the  
5 church. I believe that deed was dated - - I'm not sure of  
6 the date, but I know it was recorded June 15, 2006. So a  
7 matter of weeks from the day that the Baileys acquired the  
8 property. After that - I don't have the date handy - the  
9 seven-acre tract the church acquired from Ford was  
10 consolidated with an existing tract that the church owned,  
11 that essentially fronts Highway 56 and sort of dog-legs  
12 behind the old school.

13 CHAIRMAN: Was that land purchased from Brenda  
14 and Richard Ford?

15 MR. LAND: The seven-acre tract was. I believe  
16 the other - - the smaller tract that was consolidated with  
17 the seven acres, it was a four-acre parcel that was  
18 acquired earlier, and I believe that was acquired in maybe  
19 - - no, maybe 2008. I could be wrong there. I cannot say  
20 with certainty, Mr. Chairman, when the four-acre tract that  
21 was consolidated with the seven-acre tract was acquired.

22 CHAIRMAN: Did Brenda and Richard Ford put those  
23 restrictions on that piece of land?

24 MR. LAND: Yes, they did, sir.

25 CHAIRMAN: That was their request and they put it

1 on?

2 MR. LAND: Yes, sir. Those restrictions were not  
3 included in a prior deed. In fact, that property had been  
4 in the Ford family - - it was originally, I guess, Crabtree  
5 property. As I understand, goes back to the original land  
6 grant.

7 CHAIRMAN: But the question is: Was the  
8 restrictions put on when it was purchased in 2006, or did  
9 that restriction go back many, many years?

10 MR. LAND: That restriction was put on, to my  
11 knowledge, in 2006, evidenced by the deed from Brenda and  
12 Richard Ford to the church.

13 CHAIRMAN: Okay. Thank you, sir.

14 Mr. Bailey, are you wanting to come up and make  
15 some comments?

16 MR. PORTER: Mr. Bailey, for the record, would  
17 you tell us your name, please.

18 MR. BAILEY: My name is Jerry Bailey.

19 MR. PORTER: And your address.

20 MR. BAILEY: 7435 Wayne Bridge Road.

21 (Mr. Bailey sworn by attorney.)

22 MR. BAILEY: My name is Jerry Bailey. I'm the  
23 owner of the property adjoining the Pleasant Grove proposed  
24 ball field.

25 We've talked about property values. I think the

1 building of this field, according to Castlen's opinion,  
2 would decrease the value of my property from \$100,000 to  
3 \$150,000. I mean, how many people would want to buy a  
4 house next to a ball field? No one at Pleasant Grove has  
5 any property value to lose by the building of this field.  
6 It doesn't affect anybody at Pleasant Grove. It just  
7 affects my property values. They could go home to their  
8 property and do whatever they want to. It's beside of me.

9           One of the things that I have a problem with are  
10 the lights. Pleasant Grove will not agree to a lights-out  
11 policy. They say they have rented it to the West  
12 Louisville Playground Association and they have no control  
13 of it.

14           On May 4th I spoke to Mark Atherton, president of  
15 the West Louisville Playground Association. He said he  
16 would not adhere to any lights-out policy, basically  
17 stopping and starting whenever they please. Some games  
18 could continue until after 11:00. Some games would not  
19 even start until 9:00.

20           Twice the lights were aimed directly at my house  
21 and kept on until after 11:00. One Pleasant Grove member  
22 said he thought it was kind of funny when Mark had the  
23 lights pointed at my bedroom window. With the new ball  
24 field, it would be much worse.

25           The noise. At night in the country, noise

1 travels very far. The yelling and screaming is very loud.  
2 I feel I should have the right to enjoy my property without  
3 the noise of others. And again, with the new ball field it  
4 would be much worse.

5 Pleasant Grove already has a ball field that  
6 doesn't even extend to their property line. Why do they  
7 need two? I bought this house with seven acres beside me  
8 zoned agricultural with restrictions, and now others want  
9 to change it.

10 I went to Sorgho school. I've admired this house  
11 since I was six years old. I've always said if it was for  
12 sale, I would buy it. I've spent a lot of time and money  
13 on this property. It means a lot to me. Please remember a  
14 very important legal matter: I was here first and I should  
15 have the right to enjoy my property the way I bought it.  
16 Thank you.

17 CHAIRMAN: Sir, just wait a second. Mr. Castlen  
18 estimated devalue of your property. Is that documented or  
19 just a verbal - - did he give you a document?

20 MR. BAILEY: It's in the pamphlet you have, sir.

21 CHAIRMAN: Okay.

22 MR. BAILEY: It's one of the last documents  
23 there.

24 MR. LAND: Mr. Chairman, it's the final document,  
25 number ten.

1           CHAIRMAN: All right. Thank you, Mr. Bailey.

2           Anyone else who'd like to speak in opposition of  
3 this application?

4           (NO RESPONSE)

5           CHAIRMAN: Would the applicant's representative  
6 step forward.

7           MR. PORTER: State your name for the record,  
8 please.

9           MR. TAYLOR: My name is Seth Taylor.

10          (Mr. Taylor sworn by attorney.)

11          MR. TAYLOR: I am the minister of youth and  
12 families at Pleasant Grove Baptist Church. I've served  
13 there for about three and a half years now. Part of my job  
14 description is to oversee recreation at Pleasant Grove  
15 Baptist Church. That includes the ball fields. That  
16 includes the gymnasium. That includes our leagues that  
17 play outside of the church.

18                 A couple of things that I just would like to  
19 address. One is the deed restriction. Apparently, the  
20 deed restriction lists that the seven acres must be used  
21 for religious activities and, you know, the activities of  
22 the church. The ball field is something that we use as an  
23 outreach. It is a religious activity that we use that area  
24 for. We have a Little Sluggers T-ball league that we  
25 started last year that is much like Upward basketball, but

1 it's for T-ball, ages three to six. We had about 150 kids  
2 that signed up for that our first year. And really, that's  
3 where we wanted to add another field, you know. Mr. Bailey  
4 asked why we need two fields. It's something that - - as  
5 we want to reach the community religiously and outreach and  
6 share the love of Jesus Christ, we want to have more  
7 opportunities for kids to come and play in our T-ball  
8 league. Last year we had to close the door and turn kids  
9 away because we only had one field. We weren't capable of  
10 holding more than 150 children. So our goal is to reach  
11 more children than we did last year, and that's the purpose  
12 of adding an additional ball field.

13           You know, a lot of churches in the area have  
14 recreational leagues. They use ball fields for religious  
15 activities. They have gymnasiums that they use for  
16 religious activities. It's not outside the realm of  
17 possibility in Owensboro for a church to use recreation  
18 facilities for religious outreach or fellowship or  
19 discipleship. It's very common in our community today for  
20 that to happen. So I really don't feel the deed  
21 restriction plays a part in what we are trying to do. We  
22 are using that land for religious activities.

23           Another thing that I would like to address is Mr.  
24 Castlen, that gave his opinion of the devalue of the land.  
25 I'm not really sure if he's a licensed appraiser. I'm not

1 sure that he's someone that does that for a living. So I'm  
2 not sure how much weight that that opinion would hold as  
3 someone who doesn't do that full-time.

4           There's a lot of other questions that I would  
5 love to answer. Another one was that Mr. Bailey said that  
6 no one in the church is affected by this, they can go home  
7 to their property. We actually have a man here tonight,  
8 and I hope that he's going to speak here in a second. Joe  
9 Daugherty is a member of our church. He's an integral part  
10 of us adding this ball field. And he lives exactly across  
11 Highway 56 from Mr. Bailey, so he is in fact directly  
12 influenced by a ball field being added across the road from  
13 him.

14           You also see on the site plan, you know, the ball  
15 field is - - the closest point is right field foul pole,  
16 and it's about 150 feet from the property line. There's  
17 also several trees along the property line that would block  
18 out any light or sound that might travel from those two  
19 fields.

20           It's also - - something that I wanted to mention  
21 is that the conditional use permit is actually for  
22 buildings only. And I know, you know, the members of the  
23 planning and zoning commission can tell you that. The  
24 reason we're doing this is specifically for the buildings  
25 of the ball field, you know. We can continue to put the

1 fencing and the lighting up without any conditional use  
2 permit. So, you know, the ball field, in a way, isn't  
3 really effected by the conditional use permit. Just the  
4 actual building, press box, and the two dugouts are what  
5 are really in question here.

6 So if you guys don't have anymore questions, I  
7 want to defer to - -

8 MR. REEVES: I have a question.

9 CHAIRMAN: State your name again, please.

10 MR. TAYLOR: Seth Taylor.

11 CHAIRMAN: Okay. I was correct on that. Okay,  
12 Mr. Taylor.

13 Board members, do you have questions?

14 MR. REEVES: I have several questions for Mr.  
15 Taylor.

16 MR. TAYLOR: Yes, sir.

17 MR. REEVES: Living in close proximity to the  
18 three ball fields, I understand. Are you willing to move  
19 forward on this project if this committee places  
20 restrictions on the time of use and who would be allowed to  
21 use the field?

22 MR. TAYLOR: Yes, we are. We would definitely be  
23 willing to negotiate the conditions of that.

24 MR. REEVES: Okay.

25 MR. TAYLOR: And as far as lighting goes,



1 something that we already adhere to is the Daviess County  
2 Parks Department lighting policy, which, if you're not  
3 familiar with that, in school days the lights have to be  
4 shut off at 9:30, and in the summertime it's 10:30.  
5 There's not a game that's allowed to start past 9:00.

6 MR. REEVES: Thank you.

7 MR. DYSINGER: Mr. Chairman, I have a question.  
8 Do you currently have an agreement with outside  
9 groups to use the new fields already?

10 MR. TAYLOR: The new field, no. Our existing  
11 field - - West Louisville Playground Association lost their  
12 use of the field at the old West Louisville school, and  
13 they are currently leasing our existing field.

14 CHAIRMAN: Mr. Taylor, did you have an attorney  
15 to check this deed restrictions and give you an  
16 interpretation of exactly what it means?

17 MR. TAYLOR: Yes.

18 CHAIRMAN: And it's clearly just church-related  
19 and it's permissible?

20 MR. TAYLOR: Yes, sir.

21 CHAIRMAN: Do you have your attorney here?

22 MR. TAYLOR: No, sir. He had other engagements  
23 tonight. It's Brian Flaherty, though. In the conditional  
24 use application, he wrote in the letter that he checked all  
25 the deeds back 60-plus years and there were no restrictions

1 on the land.

2 CHAIRMAN: Mr. Porter, you have any comments on  
3 this?

4 MR. PORTER: Yes, sir. As far as restrictions,  
5 if I were examining this, I would not consider it a  
6 restriction. The paragraph says the property may be used  
7 by the church in its various religious programs and  
8 purposes. The remaining part of it is the condition that  
9 if property is subsequently divided or sold, it can be  
10 subdivided into no more than six lots and used only for  
11 single family purposes, without commercial or other  
12 businesses. So I would not actually consider that a  
13 restriction. It was just a permissive use that a church  
14 may be permitted to continue its operation.

15 MR. DYSINGER: Mr. Chairman, if I could ask Claud  
16 a question along those lines. I read that clause the same  
17 way. It doesn't prescribe what the church can do as long  
18 as the church is doing it. It goes on to specifically  
19 state things that cannot happen. So the implication to me  
20 is that if they had wanted to include more things that were  
21 restrictive, they would have, and therefore to err on the  
22 side of the property owner.

23 That said, the use of the field and the new field  
24 by a group that is not the church, especially under the  
25 lease arrangement, which is a separating - you know, it's

1 not an active mission necessarily. It's a business  
2 arrangement - does seem to get a little bit into the weeds  
3 on that part to me.

4 CHAIRMAN: You're saying the church wouldn't have  
5 the ability to lease that to another organization?

6 MR. DYSINGER: I'm saying if there's a  
7 restriction in there anywhere, that would be where it would  
8 seem to fall to me.

9 CHAIRMAN: Mr. Porter?

10 MR. PORTER: I'm not sure I would go quite that  
11 far, Mr. Chairman. The way I read it is that the property  
12 may be used by the second party, the church, for its  
13 various religious programs and purposes. I think we have  
14 to interpret that - - given it's a religious organization,  
15 we have to interpret that fairly broadly, and I don't know  
16 that allowing another entity to use that for a purpose  
17 would be a restriction or a violation of any of the intent  
18 of that transfer.

19 CHAIRMAN: Mr. Mischel?

20 MR. MISCHEL: I'd just like to say for the record  
21 - and a lot of people know this, but evidently not everyone  
22 - before we receive an application for a conditional use  
23 permit, we require an attorney to do a no deed restriction  
24 or we don't accept that application. The church did do  
25 that. Mr. Flaherty turned it in.

1 MR. TAYLOR: Yes, sir.

2 MR. MISCHEL: And it was looked at, so that's the  
3 reason why it's before this board tonight.

4 Just one other item just for the record. There  
5 was a comment made about the phrase it was for a church and  
6 related activities and the ball field wasn't mentioned,  
7 which is correct.

8 Typically, the church, when they bought the  
9 field, they opened up the daycare in 1995 and got a  
10 conditional use permit. Then later on they started using -  
11 - a Sunday school using that property. And they came in  
12 about the ball fields, I believe, and that's when we found  
13 out about the Sunday School activity.

14 At that time we said, really you need to get a  
15 conditional use permit, clean this up, get one for the  
16 church and this second activity, the Sunday School.  
17 Basically, with that, we consider this ball field to be an  
18 accessory use and that goes along with the conditional use  
19 permit. So that's why it was phrased that way.

20 CHAIRMAN: Okay. Board members, anyone else?

21 MR. REEVES: Another question.

22 With regard to the term "purpose," that's like  
23 what's the meaning of the word "at"? Could a purpose be to  
24 generate income?

25 MR. PORTER: I think that's a fair

1 interpretation.

2 MR. REEVES: This is kind of difficult.

3 MR. DYSINGER: If there is anything in there - -  
4 I'm like you, Fred. If there's anything in there, that  
5 would be it. As far as baseball being a religious  
6 experience, I can assure you, growing up at my house, it  
7 was.

8 CHAIRMAN: Mr. Taylor, do you have anyone else to  
9 speak in favor of this?

10 UNIDENTIFIED SPEAKER: Would you mention the  
11 lease - -

12 CHAIRMAN: Sir?

13 MR. TAYLOR: He just wanted me to mention that  
14 the lease that we have with West Louisville is not profit  
15 or anything.

16 CHAIRMAN: Okay. Sir, would you - -

17 MR. DAUGHERTY: My name is Joe Daugherty. 5771  
18 Highway 56.

19 (Mr. Daugherty sworn by attorney.)

20 MR. DAUGHERTY: I want to come up and look at  
21 this real quick.

22 Directly to the north of the proposed ball field  
23 is my address, 5771 Highway 56. And I would just like to  
24 make a comment about the adverse effect on property values.  
25 When the church bought that property, that the other

1 person, as I understand, that was interested in that  
2 property to purchase from Mr. Ford, was wanting to  
3 subdivide that and put in six modular homes. So I am  
4 immediately affected. I live nearly as close as Mr. Bailey  
5 to this field. And to be honest with you, I'm in a unique  
6 situation. I'm involved in both sides. It affects me.  
7 When I go home, I'm still close as, you know, right at the  
8 field. But as my property value, I feel at ease with that,  
9 that the church is not going to sell this property and  
10 something go in that would really affect our values.

11 CHAIRMAN: Anyone have any questions of this  
12 gentleman?

13 (NO RESPONSE)

14 CHAIRMAN: If not, thank you, sir, if that's all  
15 you have.

16 Anyone else like to speak in favor of this  
17 application?

18 Mr. Land, you have additional?

19 MR. LAND: Mr. Chairman, if I may respond to a  
20 few points.

21 Mr. Taylor made a number of very good points.  
22 We're familiar with the T-ball league. It's for three- to  
23 six-year-olds. The site plan, if you look at it, the size  
24 of this proposed ball field, it's a full-size field. The  
25 distance between home plate and first base, first to

1 second, second to third, third to home is 90 feet. This is  
2 a much larger field than the existing field. My boys are  
3 currently in Little League, and they're still on 60-foot  
4 bases. And this is a huge field.

5 Sure, the deed restrictions would be up to  
6 debate. My feeling is, Mr. Flaherty, in preparing the  
7 certification and no deed restrictions, saw the application  
8 itself. And I've prepared these certifications. It's  
9 often based on what the application says. It was to  
10 operate an existing church and related facilities,  
11 including a daycare. Certainly no mention of creating  
12 anything new. I think the word "existing" there to be  
13 awkward. But as to those restrictions, I don't know that  
14 anyone would think that maybe there would be a ball field.  
15 Mr. Flaherty could have been aware of that. We don't know.  
16 He's not here.

17 Again, the issue is not with the - - that the  
18 Baileys have is not with the church. The T-ball league, as  
19 I understand it, begins, I think, in July or August, runs  
20 through September. It's only on Saturdays. Its the other  
21 use of the existing field right now to West Louisville or  
22 whatever group might be using it, for profit or for no  
23 profit, whether it's with or without payment on the lease.  
24 That's where it gets dicey because that doesn't - - I mean,  
25 it may have financial benefit for the church, and it could

1 serve as religious purposes.

2 Now, Mr. Daugherty, as he had stated, is kind of  
3 on both sides here. But I would point out, just by looking  
4 at the site plan and the plat that we've provided here,  
5 that this proposed ball field - - again, there's no issue  
6 other than we're asking that reasonable conditions be  
7 attached to the existing ball field. The opposition is to  
8 creating a new ball field. Just looking at these diagrams,  
9 the proposed ball field would be constructed on the back  
10 portion of the seven-acre tract, so there's - - from what  
11 appears to be a power line on the site plan and plat, all  
12 the way to 56, across 56, to wherever Mr. Daugherty's home  
13 actually might be situated in relation to the road. And on  
14 the other hand, the Baileys' home is right next door to a  
15 ball field.

16 Now, T-ball league, maybe it's thriving, and I  
17 hope it is. I know at my church, when the Upward  
18 basketball took off, how fortunate we felt. But I believe  
19 Mr. Taylor indicated that they had to cut off last year at  
20 150 children. Again, I don't know that T-ballers, ages  
21 three to six, are going be playing on a full-size that  
22 would be comparable to Kentucky Wesleyan, according to the  
23 site plan and the scale given on the site plan, that three-  
24 to six-years-old would be playing on that type of field.  
25 It would be more appropriate probably for at least



1 post-Little Leaguers up through high school.

2 But even if there were more than 150 children, we  
3 have to consider - - I'm going to Southern right after this  
4 to watch my son's game. I know both sets of grandparents  
5 are going to be there, both of his parents. Multiply that  
6 times 150. To even enlarge that use more provides a much  
7 greater detriment, I think, to the Baileys' property, to  
8 their use and the value of it.

9 MR. REEVES: Mr. Land, before you leave, please,  
10 are you, in addition, requesting that we would place  
11 restrictions on the existing baseball field?

12 MR. LAND: Yes. Only time restrictions.

13 MR. REEVES: I'm not sure. I'd have to ask the  
14 attorney. We wouldn't have any authority to do something  
15 that's already - -

16 MR. PORTER: Well, the conditional use is for the  
17 whole area because they've asked for conditional use. So  
18 conditions can be placed on the permit that would be  
19 granted here on the conditional use.

20 MR. REEVES: Even though they have an existing  
21 ball field that they're using legally.

22 MR. PORTER: Yes.

23 MR. REEVES: Okay.

24 MR. DYSINGER: Part of this is to get in  
25 compliance.

1 MR. REEVES: I didn't understand. Okay.

2 MR. DYSINGER: And along those same lines, I  
3 would like counsel and staff to both respond to that issue,  
4 that the application does specifically state existing  
5 church and related facilities. It does not mention any  
6 proposed expansions, extra construction. It does in the  
7 staff report, but it does not in the application itself.  
8 And the issue before us here tonight may not be as wide a  
9 scope as what we might be biting off.

10 MR. PORTER: I think Melissa has a comment.

11 MR. DYSINGER: She looks mad, Mr. Chairman.

12 MS. EVANS: I would like to address why the  
13 description is so vague. About two to three years ago - -

14 MR. DYSINGER: In the application? Sorry to  
15 interrupt, but in the application itself?

16 MS. EVANS: In the application and in the  
17 description that was advertised for the agenda and for the  
18 staff report.

19 Two to three years ago we realized that under the  
20 Kentucky Revised Statutes that a conditional - - once a  
21 conditional use permit has been granted and all of the  
22 conditions placed on that have been met, that use becomes a  
23 permitted use. So we changed the way we were doing and  
24 advertising conditional use permits so that we fell in  
25 compliance with KRS. We used to advertise conditional use

1 permits for a specific size church, a specific building on  
2 a church property, or - in the cases of a daycare - a  
3 specific number of children that a daycare could have, or  
4 even hours of operation for a daycare. And so that we were  
5 more in compliance with KRS, we changed that to a vague  
6 description so that if this church came back in six months  
7 and wanted to now construct a picnic shelter behind their  
8 church, they wouldn't have to come back through this costly  
9 conditional use permit again. If they had met all the  
10 conditions that are placed on their original conditional  
11 use permit, they are now permitted use and enjoy the  
12 luxuries of that permitted use and can construct that  
13 picnic shelter with the appropriate building permits.

14           So that's where we advised the church, when they  
15 came in and approached us about constructing the dugouts  
16 and the press box that, well, as your church is a legal  
17 nonconforming use because it's been there for so many years  
18 and predates the zoning ordinance, you've never had a  
19 conditional use to do any additions onto the church, so we  
20 need to bring the entire property into compliance with a  
21 conditional use permit and therefore, if in six months they  
22 want to do something else as far as a picnic shelter or an  
23 addition to the church or a building, if they get the  
24 property building permits, they're allowed to do that  
25 because they've gotten their conditional use permit.

1           So that's why the description doesn't outright  
2 say that they're doing a ball field. There's already a  
3 ball field on the property. That's an existing use for the  
4 church. The ball field is accessory to the church use.  
5 The conditional use permit is for the church, and the  
6 daycare and the Sunday School classes. The ball fields are  
7 accessory to that church use.

8           MR. DYSINGER: Mr. Chair, it's the opinion of the  
9 staff that if we grant this conditional use permit, saying  
10 that what they have been doing is okay based on the  
11 grandfather issue, etc., etc., and the fact that it's not a  
12 problem, even based on testimony of neighbors, what they're  
13 doing now is not a problem. It's the opinion of the staff  
14 that an additional ball field would just be an accessory  
15 use.

16           MS. EVANS: An accessory use, and they would have  
17 to get the proper building permits for the press box and  
18 the dugouts that are being constructed, which that's the  
19 entire reason that they came in in the first place, to get  
20 those building permits.

21           MR. DYSINGER: So the application tonight - -  
22 okay. I got you. I got you.

23           MR. MISCHER: We did that just to be in  
24 compliance with KRS.

25           CHAIRMAN: Does that answer your question, Mr.

1 Reeves?

2 MR. REEVES: Yes, it does. Yes.

3 MR. DYSINGER: So tonight's application, Mr.  
4 Chair, really has nothing to do with the new baseball  
5 field. It has to do with what's been going on so far.  
6 And, Staff, feel free to chime in on this. It's based on  
7 what's going on right now and testimony to that effect.  
8 What happens after tonight is not before us, as I see it,  
9 necessarily.

10 MR. MISCHEL: Once that conditional use permit is  
11 granted.

12 MS. EVANS: Yes. Once their conditional use  
13 permit is granted, they would be free to do construction of  
14 an accessory use to the church.

15 MR. DYSINGER: Because they already have a ball  
16 field, another one would, by definition, be another  
17 accessory.

18 MR. MISCHEL: When you get the conditional use  
19 permit, it's seen as a permitted use after that.

20 MR. DYSINGER: Right.

21 MR. PORTER: So anything accessory to that would

22 - -

23 MR. DYSINGER: Don't lawyer this up for me. I  
24 understand it right now.

25 CHAIRMAN: Okay. I'm going to wrap it up here.

1 I'm going to give Mr. Bailey or Mr. Land a few seconds  
2 here, and Mr. Taylor. I'm going to wrap it up and ask for  
3 a motion.

4 MR. LAND: If I may just respond to Ms. Evans'  
5 final comments there. I would disagree with the  
6 interpretation of the Kentucky Revised Statutes. Part and  
7 partial, one of the most fundamental issues, not only of  
8 the Kentucky Revised Statutes, but under the constitution  
9 of Kentucky and the United States is due process. Part of  
10 due process is notice. What we're dealing with here - -  
11 there's no objection to the church's use of a ball field.  
12 We question the need for a second ball field for the  
13 church's use when we're dealing with, from the church's  
14 standpoint, three- to six-year-olds playing T-ball.

15 The operative part that I believe you first asked  
16 about was the significance of the word "existing." Ms.  
17 Evans spent time discussing - - but the word "existing" is  
18 certainly significantly different than creating, building.  
19 And we have to remember that it shown on particularly the  
20 plat with the Baileys' property - I forget the color, not  
21 seeing it - I believe, is blue. The church's property, I  
22 believe, is red. This seven-acre tract came along later.  
23 Surely that original ball field behind the old Sorgho  
24 school had been there and it had been used and continually  
25 it's been used. But the seven-acre tract was consolidated

1 with that tract. And again, aside from what I would  
2 consider a strict legal issue, it didn't have a - - I would  
3 argue that this is contrary to the zoning ordinance. It's  
4 ruled by agriculture.

5 I understand the staff's interpretation of an  
6 accessory use, but I question how far an accessory use can  
7 go. Can one permitted use then acquire additional  
8 property, adjoin it, consolidate it? Does that then allow  
9 for additional under the accessory use umbrella? That's  
10 really what we're dealing with here. That permitted use of  
11 the original ball field been in existence for years, but  
12 it's now a new ball field. We also have to consider -  
13 weigh, I guess - the need for this additional ball field  
14 relative to the impact it would have on Mr. and Mrs.  
15 Bailey, both to the value of their property and their  
16 enjoyment of the property.

17 Mr. Bailey, I believe, said the issues with  
18 lights from the existing field weren't based on the church.  
19 This T-ball league is Saturdays, late summer, early fall,  
20 three- to six-year-olds. It was others using the field.

21 Lights. I understand there might be requirements  
22 on lights out from the county league, things like that.  
23 But Mr. Bailey, I believe, mentioned that that wasn't  
24 always followed. So that's a major concern. And what  
25 we're looking at now is what's been an issue. And I must

1 admit, I think the church, after discussion, took steps to  
2 resolve some of the light issues with those using the  
3 field, third parties using the field.

4 But the distance from the original field to the  
5 Baileys' home, not his property line, but actually to the,  
6 I guess, eastern wall of the house itself is evident from  
7 the site plan. You know, the original field is not too  
8 far, but now we're putting another field inside. And, you  
9 know, again, under this accessory use umbrella that's been  
10 suggested, you know, just north of this power line that  
11 traverses the seven-acre tract, there would be enough room  
12 for another large baseball field. It's a slippery slope  
13 that I think should be avoided, absent showing of need.

14 Thank you.

15 CHAIRMAN: Okay. Thank you, sir.

16 Melissa, yes.

17 MS. EVANS: Where we came up with the  
18 determination that a baseball field is an accessory use to  
19 a church is under Zoning Ordinance, Article 8.2, Section  
20 K8/33. Its recreational uses, accessory outdoor. They are  
21 permitted in every zoning classification. If you turn to  
22 43, it says "accessory outdoor recreational uses, including  
23 swimming pools, tennis courts, putting greens, and other  
24 similar recreational uses." And that's where we came to  
25 the determination that a baseball field would be an



1 accessory use in an A-R zone. This is an A-R zone. The  
2 church is conditionally permitted. That's an accessory use  
3 to the church.

4 MR. REEVES: One final question, Mr Chairman, if  
5 I could.

6 CHAIRMAN: Yes.

7 MR. REEVES: Question, I think, probably for Mr.  
8 Mischel. When a conditional use permit is granted with  
9 conditions, if those conditions are violated, is that  
10 conditional use voided?

11 MR. MISCHEL: We go out and - - someone from my  
12 office, we would go out and check those. Not  
13 automatically. We would deal with it in the office to try  
14 to take care of those issues, and most of the time we're  
15 successful with that. If it gets to a point where we  
16 can't, it can come back in front of the board. The zoning  
17 administrator can ask that it be brought back in front of  
18 the board for the time period.

19 MR. REEVES: Thank you. Appreciate it.

20 CHAIRMAN: Mr. Bailey, you have anything else?

21 MR. BAILEY: Well, I'm not a speaker, but I would  
22 just like to plead with you gentlemen. I have a beautiful  
23 place, a historic place. I've got a lot of money, I've got  
24 a lot of time in this place. I feel like I should have the  
25 right to enjoy my property without the lights, without the

1 screaming, without the hollering. I had my property first.  
2 This is a beautiful historic place. And once their foot is  
3 in the door, they will do what whatever they want to do  
4 whenever they want to do it, like I've already been told.  
5 I'm pleading with you not to let them build this ball field  
6 right next to my house.

7 CHAIRMAN: Okay. Thank you, sir.

8 Mr. Taylor.

9 MR. TAYLOR: Just a couple of things on the  
10 proposed site plan. I know Bryant Engineering used a  
11 drawing of the baseball field just to place there. The  
12 base links may represent 90 feet, but they will actually be  
13 60 feet in order to accommodate the T-ball league. The  
14 T-ball league doesn't only use the field on Saturday. They  
15 actually have practices Monday, Tuesday, Thursday,  
16 sometimes Friday nights as well.

17 And the lights, the existing field, I know Mr.  
18 Bailey had some trouble with those. And when he approached  
19 our church members with those concerns, we did take care of  
20 that. I'm not certain about his conversation with Mr.  
21 Atherton, the president of the West Louisville Playground  
22 Associate, but I know we are trying to enforce the Daviess  
23 County Parks Department lighting policy on West Louisville  
24 to make sure that they adhere to that as well. We would be  
25 willing to adhere to that as well if the new field - - when

1 lights are available on that. So that's something that we  
2 are willing to have that condition placed on the ball  
3 fields, if you guys see fit.

4 CHAIRMAN: Board members, any questions of Mr.  
5 Taylor?

6 (NO RESPONSE)

7 CHAIRMAN: Okay. Thank you, Mr. Taylor.

8 MR. TAYLOR: Thank you.

9 MR. LAND: Mr. Pedley, if I may, one last thing.  
10 Just brought up.

11 CHAIRMAN: Wrap it up.

12 MR LAND: The issue with perhaps the site plan  
13 does not show the correct size of this proposed ball field,  
14 I think, poses a major problem. The planning application  
15 itself - and I've included a copy of the packet that I  
16 passed out of the application - on the second page, one of  
17 the requirements, of course, is that a site plan drawing be  
18 submitted. And there are very specific requirements that  
19 have to be included on that site plan drawing. Distances  
20 by dimensions, for example, of buildings and property  
21 lines, proposed parking facilities, shape and dimensions of  
22 all existing and proposed buildings, location of streets.  
23 Of course, that's shown. Location sketch for  
24 identification purposes. But, you know, we don't have any  
25 actual dimensions then, so what's shown on the site plan

1 would not even be accurate. It makes it very difficult to  
2 even suggest appropriate restrictions or conditions that  
3 might be placed if we don't know what's being built.

4 CHAIRMAN: Okay. We'll get some answers from Ms.  
5 Evans.

6 MS. EVANS: As far as there may not be dimensions  
7 on the site plan, there is a scale on the site plan. You  
8 can take a scale and measure it.

9 It has always been our position in the office and  
10 at the meetings that you could do less than what is shown  
11 but you couldn't do more than what is shown. So if their  
12 ball field is actually smaller than what is shown on that  
13 site plan, that would, you know, still - - because they're  
14 being approved for - - if the site plan is approved,  
15 they're approved for a larger ball field, the ball field  
16 could then be smaller without a problem, as far as the  
17 staff is concerned.

18 CHAIRMAN: Mr. Mischel?

19 MR. MISCHEL: That's what we've done for years.  
20 Typically, if somebody's going to construct a building and  
21 they don't know the size, we make sure that it's a larger  
22 building so they can go down in size. But we tell them,  
23 you cannot go up in size. So ball fields, buildings,  
24 historically we've done that over the years.

25 CHAIRMAN: Mr. Taylor, final comment.

1           MR. TAYLOR: Yes, sir. The actual field size is  
2 drawn to scale. Base length might be wrong, but I don't  
3 know many fields that don't have multiple base length  
4 options. Once you build the field, most fields put plugs  
5 in and you can have 60-foot, 65-foot bases, 90-foot bases  
6 all on the same infield. So I don't see that that's a  
7 major issue.

8           CHAIRMAN: Board members, you have any final  
9 comments or questions?

10           (NO RESPONSE)

11           CHAIRMAN: If not, the Chair is ready for a  
12 motion.

13           MR. REEVES: I'll make a motion, Mr. Chairman.  
14 I'm going to move approval of this conditional use permit,  
15 as accessory uses of various church properties are often  
16 used for outreach and for other religious-related purposes  
17 of the church. However, I'm going to ask that these  
18 conditions be placed on it: that should any athletic field,  
19 current or in the future, be operated on this property,  
20 that they must adhere to the Daviess County Recreation  
21 Park's time constraints; that they must make sure that the  
22 lights are directed to the field and to the parking; and if  
23 those become misguided, that they further direct them back  
24 to the correct place. Finally, if there are six or more  
25 documented violations of these conditions in any given

1 year, this conditional use permit come back to this board  
2 for reconsideration.

3 CHAIRMAN: We have a motion for approval by Mr.  
4 Reeves.

5 MS. DIXON: Second.

6 CHAIRMAN: And a second by Ms. Dixon. Any  
7 comments and questions on the motion?

8 (NO RESPONSE)

9 CHAIRMAN: If not, all in favor of the motion,  
10 raise your right hand.

11 (ALL BOARD MEMBER PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries unanimous.

13 Next item, please.

14 -----

15 **VARIANCES**

16 ITEM 6

17 315 Worthington Road, zoned I-1, postponed from the May 1,  
18 2014 meeting.

19 Consider a request for a **Variance** in order to waive a  
20 portion of the required six-foot solid element around the  
21 perimeter of an outdoor storage yard as shown on the site  
22 plan submitted with the variance application.

Reference: Zoning Ordinance, Article 17, Section 17.311

Applicant: ERB Equipment Company; Sara Jane McNulty

22 **CONSIDERATIONS**

23 The subject property is a seven-acre parcel on  
24 the southeast corner of US Highway 60 West and Worthington  
25 Road. The land uses in the vicinity include an elementary

1 school, single-family residences, and agricultural land.

2 The applicant proposes to construct a contractor  
3 equipment sales, service, and rental business on the  
4 subject property.

5 A zoning map amendment request to rezone the  
6 subject property from A-U Urban Agriculture to I-1 Light  
7 Industrial was recommended for approval at the February 13,  
8 2014, Owensboro Metropolitan Planning Commission meeting.  
9 An appeal was filed and the application was heard by the  
10 Daviess County Fiscal Court for final action.

11 Daviess County Fiscal Court approved the rezoning with  
12 the following conditions:

13 1. Install gray or beige slats on the  
14 six-foot-tall chain link fence.

15 2. Extend southern assess point 100 feet from  
16 the edge of the Worthington Road pavement to the assess  
17 gate.

18 3. Add a three-foot high berm to the southwest  
19 corner of the property, extending a minimum of 150 feet  
20 along the southern property line as measured from the  
21 southwest corner, and a minimum of 195 feet along the  
22 southwestern line as measured from the southwestern corner.

23 The applicant may change the angle at the berm to allow  
24 placing the retention basin south of the berm to allow the  
25 applicant to mow and maintain the berm.

1           4. Construct a six-foot-high solid fence on the  
2 berm.

3           5. And construct the required retention basin in  
4 the southwest corner to create a vegetative buffer on the  
5 property.

6           The applicant is proposing a single building for  
7 the sales and services area, two access points to  
8 Worthington Road, customer parking, and a large gravel  
9 outdoor storage yard around the building.

10           Based on the current zoning ordinance  
11 requirements, gravel outdoor storage yards are required to  
12 be screened by a continuous six-foot solid element around  
13 the property. However, text amendments to the zoning  
14 ordinance that were approved by the Daviess County Fiscal  
15 Court on Monday are extending the paving exception,  
16 currently applied to large farm equipment and manufactured  
17 home dealers, but now to contractor equipment dealers also.  
18 And this exception would change the gravel equation of the  
19 outdoor storage area instead of pavement and allow  
20 different buffering standards.

21           When an adjoining property that is zoned residential,  
22 manufactured housing park, professional/service, or  
23 agricultural zone that's under ten acres with a residence,  
24 a ten-foot easement with a six-foot solid wall or fence  
25 with one tree every 40 linear feet is required. The



1 screening, when adjoining road righty-of-way, requires a  
2 continuous three-foot-tall element with one tree every 40  
3 linear feet. If the contract dealer adjoins commercial,  
4 industrial, or coal mining or large agricultural parcels,  
5 the screening requirement may be waived.

6 The site plan submitted by the applicant  
7 addresses all of the conditions that were put forth by  
8 Daviess County Fiscal Court and meets the requirements of  
9 the approved , recently approved text amendments by the  
10 Fiscal Court.

11 Granting this variance request will not adversely  
12 affect the public health, safety, or welfare or cause a  
13 hazard or nuisance to the public because, with the  
14 conditions placed by Fiscal Court for the berm and  
15 clustered trees in the southwest corner of the property,  
16 the residential neighborhood will be buffered from the  
17 proposed use. It will not be an unreasonable circumvention  
18 of the requirements of the zoning regulations because,  
19 although the proposed site does not meet the current - -  
20 well, I guess it does meet the current requirements now.  
21 And it does meet the requirements of the proposed ordinance  
22 with the special conditions placed by Fiscal Court. And  
23 the OMBA has approved similar variance requests in the  
24 past.

25 Staff would like to recommend approval of this

1 variance request with the following conditions. And those  
2 conditions are the ones that were set forth by Daviess  
3 County Fiscal Court on the rezoning application.

4 We would like to enter the staff report into the  
5 record as Exhibit E.

6 CHAIRMAN: Anyone here representing the  
7 applicant?

8 MR. KAMUF: Charles Kamuf. We agree to answer  
9 any questions. We agree to the conditions.

10 CHAIRMAN: Okay. Thank you. Let's see if we  
11 have any questions.

12 Anyone here like to speak in opposition or have  
13 any questions of Mr. Kamuf?

14 (NO RESPONSE)

15 CHAIRMAN: Any board members have any comments or  
16 questions?

17 MR. DYSINGER: I'm going to miss this one when  
18 it's gone. We've had it for a very long time.

19 CHAIRMAN: If not, then the Chair is ready for a  
20 motion.

21 MR. DYSINGER: Mr. Chairman, given the change in  
22 circumstances and given the findings it will not adversely  
23 affect the public health, safety, or welfare because the  
24 proposed screening will buffer the school and residential  
25 neighborhood adequately, and with the conditions as set out

1 in the staff report and the Fiscal Court ordinance, move to  
2 approve.

3 MR. YEISER: Second.

4 CHAIRMAN: We have a motion for approval by Mr.  
5 Dysinger and a second by Mr. Yeiser. Is that correct, Mr.  
6 Yeiser?

7 MR. YEISER: Yes.

8 CHAIRMAN: Comments or questions on the motion?

9 (NO RESPONSE)

10 CHAIRMAN: All in favor of the motion, raise your  
11 right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimous.

14 One more motion.

15 MS. DIXON: Move to adjourn.

16 CHAIRMAN: We have a motion to adjourn.

17 MR. DYSINGER: Second.

18 CHAIRMAN: All in favor, raise your right hand.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: We are adjourned.

21 (The meeting adjourned at 6:39 p.m.)

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