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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

MARCH 7, 2002

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, March 7, 2002, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: C. A. Pantle, Chairman
- Gary Noffsinger,
- Planning Director
- Marty Warren
- Ruth Ann Mason
- Judy Dixon
- Tim Miller
- Ward Pedley
- Stewart Elliott
- Attorney

* * * * *

CHAIRMAN: Call the Owensboro Metropolitan Board of Adjustment to order. Want to welcome all of you here this evening. Set a couple of guidelines up the way we're going to operate the meeting.

Each one of you if you wish to speak on an item you have the opportunity to be heard. Come to the microphone, be sworn in by our attorney and then you can address the issues. All questions will be addressed to the chair and the board and not arguments among you all out in the audience.

1 With that the first item of business on
2 the agenda is the minutes of the last meeting.
3 They're on file in the office, on record. There's
4 been nothing found to be out of order. The Chair will
5 entertain a motion to pass without reading.

6 MS. DIXON: Move to approve.

7 MS. MASON: Second.

8 CHAIRMAN: Motion has made and a second.

9 All in favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries.

12 Next item, sir.

13 -----

14 CONDITIONAL USE PERMITS

15 ITEM 2

16 3415 Buckland Square, in an R-3MF zone
17 Consider request for a Conditional Use Permit to
18 construct and operate a public community center.
19 Reference: Zoning Ordinance, Article 8, Section
20 8.2B(7)
21 Applicant: Cliff Hagan Boys & Girls Club, William
22 O'Bryan Wright, O'Bryan Heirs

23 MR. NOFFSINGER: Mr. Chairman, this
24 application has been reviewed by the Planning Staff.
25 The application is in order. It's been advertised for
public hearing at this time and all adjoining property
owners have been notified.

This is an application to construct a

1 community center and in addition to the community
2 center building there will also be outdoor basketball
3 courts as well as an outdoor ball field. This
4 property is zoned R-3MF which is multi-family
5 residential. It is a use that is permitted in this
6 zone with a Conditional Use Permit. Meaning before
7 this activity can occur this board would have to
8 approve the Conditional Use Permit.

9 Mr. Chairman, with that it's ready for
10 your consideration

11 CHAIRMAN: Before we go any further, was
12 there any objections filed in the office?

13 MR. NOFFSINGER: There have not been any
14 objections filed. There has been one phone call to
15 the office regarding the use of the property and
16 screening that might be proposed with this
17 development, but to my knowledge there have been no
18 objections raised.

19 CHAIRMAN: Is anyone here representing the
20 applicant?

21 MR. WINKLER: Yes.

22 CHAIRMAN: State your name for the record.

23 MR. WINKLER: Steve Winkler.

24 (MR. STEVE WINKLER SWORN BY ATTORNEY.)

25 MR. WINKLER: Just here to answer any

1 questions anyone might have from the board.

2 CHAIRMAN: Anyone wishing to speak in
3 opposition to this item?

4 Any board members have any concerns?

5 MR. JAGOE: Bill Jagoe.

6 (MR. BILL JAGOE SWORN BY ATTORNEY.)

7 MR. JAGOE: Mr. Chairman, I'm not here to
8 oppose the project. Fact is I think that the Boys
9 Clubs would be very compatible with Heritage Park
10 which we're developing next-door; however, they do
11 have a ball field that the back, the out field is
12 right next to our lots that are along the south border
13 of their lot. I think that if they would propose to
14 put a solid wood fence six foot high or so along that
15 edge we would appreciate that. Just to keep
16 activities spilling over into the backyards, the whole
17 border on that side. I think it's kind of like living
18 next to a school. Ninety-nine percent of the people
19 wouldn't want to adjoin a school. They sure would
20 like to be a block away though. So I just feel like
21 this would help things out if they would put that
22 fence between us.

23 CHAIRMAN: You're wishing that they would
24 construct a fence next to your property?

25 MR. JAGOE: Yes.

1 CHAIRMAN: Thank you.

2 You want to address that?

3 MR. WINKLER: The baseball diamond is in
4 our plans and that's our Phase 2 of the concept.
5 Again, we haven't started our capital campaign on that
6 Phase 2 so that could be part of our project. It's
7 depending on the funding of Phase 2.

8 CHAIRMAN: That is a stipulation that the
9 board could place on the Conditional Use Permit if
10 they so desire.

11 Is there any other comments or concerns
12 from the board members or anyone else in the audience?

13 (NO RESPONSE)

14 CHAIRMAN: I have one question. When you
15 construct your baseball field will there be any
16 lighting to this?

17 MR. WINKLER: No, there will not.

18 CHAIRMAN: That has been stated for the
19 record. There will not be any lighting. Let that be
20 noted in the record.

21 What's the board's pleasure?

22 MR. WARREN: Could you kind of describe
23 your project a little bit? You're talking about
24 different phases.

25 MR. WINKLER: Yes. Our first phase of the

1 project is a 30,000 square foot facility that will be
2 open to the Boys and Girls Club members of the
3 community which consist of community educational
4 rooms. Also would acquire a fitness center, a teen
5 center, and also a health facility for screening
6 purposes for disadvantaged children. That's our first
7 phase of construction of the building. It's about a
8 \$3 million facility. Our second phase would be the
9 outside which we have two basketball courts, baseball
10 diamond, outdoor playground picnic shelter and water
11 spray park. So the whole concept of the property cost
12 about \$3 1/2 million, 4 million of whole Phase 1 and
13 2.

14 MR. WARREN: What is your time span?

15 MR. WINKLER: We hope to get started July
16 or August of this year and be completed by next year.

17 MR. WARREN: Just Phase 1?

18 MR. WINKLER: Just Phase 1.

19 CHAIRMAN: Any other board members have
20 any concerns?

21 (NO RESPONSE)

22 CHAIRMAN: Go to the microphone and be
23 sworn in please, ma'am.

24 MR. ELLIOTT: State your name, please.

25 MS. ALLISON:

1 A Althea Allison with Daymar
2 College.

3 (MS. ALLISION SWORN BY ATTORNEY.)

4 MS. ALLISON: I do not speak in opposition
5 to the building of club at all. My question is: With
6 Daymar College how will the playing fields and things?
7 I have not seen the plan being constructed. We have a
8 parking lot and everything. I believe that abuts up
9 to that. If the gentleman could explain exactly how
10 each item would be fixed on that property. That would
11 ease our mind a little.

12 CHAIRMAN: Mr. Winkler, could you kind of
13 answer that.

14 MR. WINKLER: She may want to look at the
15 plan there on Page 2. What we have facing the bypass
16 is two basketball courts. That would be basically on
17 the Daymar side.

18 On the other side facing Jagoe Homes will
19 be the picnic shelter or spray park or baseball
20 diamond, playground on that side.

21 So basically what you'll be seeing from
22 the bypass will be our facility and two basketball
23 outdoor courts.

24 CHAIRMAN: Thank you.

25 Any other questions?

1 (NO RESPONSE)

2 CHAIRMAN: Any board member have any other
3 comments?

4 (NO RESPONSE)

5 CHAIRMAN: Hearing none the Chair will
6 entertain a motion to dispose of the item.

7 MR. PEDLEY: Mr. Chairman, based on the
8 application, I make a motion for approval with the
9 condition that a fence be installed between the ball
10 field and the residential area and there will be no
11 lighting on the ball field.

12 CHAIRMAN: You've heard the motion. Is
13 there a second?

14 MS. DIXON: Second.

15 CHAIRMAN: Any other discussion?

16 MR. WINKLER: Yes. That is if the
17 baseball diamond is constructed; is that correct?

18 MR. WARD: Yes.

19 MR. WINKLER: Thank you.

20 CHAIRMAN: Any other comments from staff?

21 MR. NOFFSINGER: Mr. Chairman,
22 clarification for the record. Mr. Pedley spoke to
23 residential areas. Is that the residential areas on
24 the north and east side of the property or to the
25 north only?

1 MR. PEDLEY: Are there residential on both
2 sides?

3 MR. NOFFSINGER: On both sides.

4 MR. PEDLEY: Mr. Jagoe, are you on the
5 north or east?

6 MR. JAGOE: We're on the south.

7 MR. NOFFSINGER: I'm sorry. Excuse me.
8 The south side, south and east.

9 CHAIRMAN: You're requesting that it be at
10 the baseball site if constructed; is that right?

11 CHAIRMAN: Whether the baseball field is
12 constructed or not you want a fence. Is that your
13 wishes?

14 MR. JAGOE: Well, there is also a walking
15 path that comes right along the backyards. I don't
16 know whether that's in Phase 2 or not. Yes, we would
17 like to have a fence just to keep activities from
18 spilling over whether there's a baseball field or
19 whatever.

20 CHAIRMAN: You've heard Mr. Jagoe's
21 concern. You've heard the original motion.

22 Mr. Pedley, you want to add anything to
23 your motion?

24 MR. PEDLEY: I think I need to add to my
25 motion that it be screened from all residential area

1 at the beginning?

2 CHAIRMAN: Does that meet with the second?

3 MS. DIXON: Yes.

4 MR. WINKLER: Could you clarify that
5 again, please?

6 CHAIRMAN: The way the motion has been
7 made there will be a fence constructed when you start
8 construction to separate your property from the rest
9 of the community.

10 MR. WINKLER: That would be both the
11 neighborhoods from Arlington Drive to the back side of
12 the neighborhood?

13 MR. NOFFSINGER: Yes.

14 MR. WINKLER: Also you have a street that
15 comes in from that side from Jagoe Homes. Also I
16 think there is maybe a small natural buffer towards
17 the end which we would like to come to the city
18 sometime and look at putting a bike trail where that,
19 Arlington Drive I think stops. That runs behinds the
20 Boys & Girls Club. One of the things that we see with
21 kids is that transportation is tough time to get there
22 and bicycle trail can come right into the back of the
23 Boys & Girls Club.

24 CHAIRMAN: Well, I think the motion, what
25 you stated in your motion you want the fence on the

1 south and east side?

2 MR. PEDLEY: Correct.

3 CHAIRMAN: Constructed at the beginning of
4 the project before it's occupied?

5 MR. PEDLEY: Yes, a solid fence.

6 CHAIRMAN: You understand that, sir?

7 MR. WINKLER: So you're looking for a
8 solid wood fence?

9 MR. PEDLEY: Yes.

10 Mr. Jagoe, would you step back up, please?

11 Are you asking for a six foot fence or an
12 eight foot fence?

13 MR. JAGOE: Six foot solid wood fence.

14 MR. PEDLEY: Six food is okay.

15 MR. WINKLER: I guess terminology a lot of
16 screening could be a chain-link fence with some
17 screening or does it have to be a solid wood fence?

18 MR. PEDLEY: Solid wood fence at least six
19 feet high.

20 MR. WINKLER: That's quite a bit of fence.
21 We're trying to help the neighborhood. That's
22 something we have not looked at in our plans.

23 MR. PEDLEY: I understand that, but the
24 residential area was there first, plan residential
25 area. So I think it needs to be screened.

1 CHAIRMAN: I think we have one other
2 gentleman wish to be heard. State your name.

3 MR. HAIRE: My name is Steve Haire. I'm
4 the president of the Boys & Girls Club. I would like
5 to address Mr. Jagoe.

6 (MR. STEVE HAIRE SWORN BY ATTORNEY.)

7 MR. HAIRE: When you all first started
8 talking about objections and things like that, I think
9 his concern was about a ball field and balls coming
10 over and hitting skylights and hitting people's houses
11 and stuff like that. We don't want to be a detriment
12 to that community. We're not there to tear up
13 somebody's home or anything like that.

14 We'll do whatever we need to do as far as
15 that policy, but I would have some concerns if we had
16 to enclose our entire property with a fence. That
17 would restrict those kids in that back neighborhood
18 from getting over to the club. Once you put a fence
19 up, that's not going to stop them if they want to come
20 over, but at the same time we would like to be
21 accommodating to those kids, to get them into the
22 facility if we possibly could instead of having them
23 go all the way around, you know, when they've got
24 access to the back of our property.

25 As far as the ball field, if I lived there

1 I wouldn't want a ball come flying through and hit me
2 in the window either. So I think we could be very
3 accommodating to making sure that didn't happen. I
4 would have some concerns if we had to put a fence up
5 to keep those kids from getting to our facility.

6 CHAIRMAN: That be no problem. Add a gate
7 on the eastern and south side and that will take care
8 of it.

9 MR. HAIRE: I would have no problem if
10 there's a gate there.

11 MR. NOFFSINGER: For the record that fence
12 would not be along the total boundary or that eastern
13 boundary. It would only be a portion. I'd say about
14 half of that eastern boundary. So it would not
15 totally block that neighborhood from access to this
16 property.

17 MR. HAIRE: My question would be: What's
18 the purpose of the fence if his only concern was the
19 ball field? What is left that would effect those
20 houses?

21 MR. NOFFSINGER: What I'm speaking to is
22 the ball field. The fence would only be required in
23 the area of the ball field and that's about half of
24 that eastern.

25 MR. HAIRE: Then I'm confused. I thought

1 we were talking about enclosing that whole side where
2 the homes are at. Now you're saying the ball field
3 only. If that's the case, then I didn't really need
4 to come up here and say anything.

5 CHAIRMAN: His motion was the total east
6 side.

7 MR. PEDLEY: Right.

8 MR. NOFFSINGER: I stand to be corrected.

9 MR. HAIRE: That's why I'm standing up
10 here. I thought we were just talking about the ball
11 field and now we're talking about, you know, I don't
12 understand the purpose of that. His only concern was
13 the ball field.

14 CHAIRMAN: His concern was the whole
15 thing. So that's the way the motion was made, sir.

16 MR. WARREN: Mr. Haire, according to the
17 plans here you're planning on putting a walking track
18 or a bike riding track or something around the
19 facility?

20 MR. HAIRE: Yes.

21 MR. WARREN: Which includes around the
22 ball park area as well, according to the map. My
23 concern would be if I lived in one of those houses,
24 privacy would be my biggest concern. Then another
25 concern is that my backyard is open to anyone who

1 happens to be walking along that path. If I were a
2 resident in one of those homes, I would certainly want
3 that fence there.

4 CHAIRMAN: Any other questions? You've
5 heard the motion the way it's been made. There was a
6 second. We have the concerns here.

7 MR. WINKLER: If we eliminate Phase 2 and
8 do not put anything on the outside, do we still need
9 the fence?

10 MR. PEDLEY: That's the way my motion was
11 stated. That there would be screening, a fence put
12 up. Screened from the residential area from your
13 project.

14 MR. WINKLER: So every residential area
15 that adjoins some type of a club or business would
16 have a screening facility from a residential area in
17 town?

18 MR. PEDLEY: We're talking about your
19 project.

20 MR. WINKLER: Yes. I'm just saying you
21 don't want to set a precedence over one project.

22 CHAIRMAN: We hear each one and weigh each
23 one on its own merit.

24 MR. WINKLER: Okay. I just have a feeling
25 that we're not being invited to children. I

1 understand the baseball diamond, but we're in an area
2 that's a big need for children and I feel like putting
3 the fence around would not be inviting to children. I
4 think that's the whole purpose of our Boys & Girls
5 Club is inviting children to come to our facility. I
6 understand the baseball diamond and from that housing.
7 We're putting a fortress around our building for not
8 invitation for children to come to our facility.

9 CHAIRMAN: Any other comments, Mr. Jagoe?

10 MR. JAGOE: I agree with you. Should make
11 it where the children could get over there. From our
12 area there will be sidewalks that come right around
13 the edge. Really wouldn't want anybody living right
14 there backing up to you. Wouldn't want other children
15 just flocking through their yards back and forth.
16 It's a matter of privacy. It's also a matter of
17 working that corridor out where those children do get
18 over there, they can get over there safely. Need to
19 put sidewalks to do that on.

20 MR. WINKLER: I see your concern. Also I
21 think if we look at a six foot wood fence, we're going
22 looking at strong winds. We're looking at rotting
23 surface. We're looking at maintenance of a wood fence
24 versus a chain-link fence because you get into, well,
25 two, three years ago a tornado come through and it

1 took down everybody's fence. If you look at just a
2 fence where air, wind can get through you're looking
3 at a long-term of trying to maintain a wooden fence, a
4 solid wooden fence versus a chain-link fence for the
5 maintenance of our building. We try to raise every
6 dollar we can for the Boys & Girls Club and now we're
7 raising another major expense for maintaining a six
8 foot wood fence completely around our facility.

9 CHAIRMAN: It's not totally around it.
10 It's just two sides.

11 MR. WINKLER: Which is a long distance.
12 It's six acres all the way around there. Again,
13 you're looking at long-term maintenance of a wood
14 fence. You have trees rotting and you're looking at
15 long-term of a wood fence.

16 CHAIRMAN: Any other comments from the
17 board?

18 Thank you, Mr. Winkler.

19 You've heard the motion and the second.
20 Hearing no other discussion or comments from the
21 audience, all in favor raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Next item.

25

1 ITEM 3

2 1501, 1647 Creek Haven Loop, in an R-1C zone
3 Consider request for a Conditional Use Permit to
4 construct a sign structure in a floodway.
5 Reference: Zoning Ordinance, Article 18, Section
6 18-6(b)(2)(a)
7 Applicant: Creek Haven Development, Inc.

8 MR. NOFFSINGER: Mr. Chairman, I have a
9 letter in the application requesting that this item be
10 postponed. This is from Creek Haven Development, Inc.

11 MR. PEDLEY: Mr. Chairman, I need to
12 disqualify myself.

13 CHAIRMAN: So noted in the record, please.

14 MR. NOFFSINGER: We do need to take a note
15 to post-pone.

16 CHAIRMAN: Is there anyone here wishing to
17 speak on this item by chance?

18 (NO RESPONSE)

19 CHAIRMAN: Seeing none the Chair will
20 entertain a motion to postpone it for 30 days.

21 MS. DIXON: Motion to postpone.

22 MS. MASON: Second.

23 CHAIRMAN: Motion been made and a second.

24 All in favor raise your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE

WITH THE DISQUALIFICATION OF MR. PEDLEY.)

CHAIRMAN: Motion carries.

1 Next item, please.

2 ITEM 4

3 383 East Harmons Ferry Road, in an A-R zone
4 Consider request for a Conditional Use Permit to
operate a beauty shop.
5 Reference: Zoning Ordinance, Article 8,
Section 8.2D(3)
6 Applicant: Linda Story, Johnny Story

7 MR. NOFFSINGER: Mr. Chairman, this
8 application has been reviewed by the Planning Staff.
9 The application is found to be in order. The
10 application has been advertised for public hearing at
11 this time and all adjoining property owners have been
12 notified.

13 There will be two operators at this
14 facility. The hours will be on or days looks like
15 will be Wednesday, Thursday, Friday and Saturday. The
16 building that is going to be used for the beauty salon
17 is an existing garage. The dimensions of the building
18 I'd like to get from Ms. Becky Watson.

19 MS. WATSON: 724 square feet.

20 MR. NOFFSINGER: The building is an
21 existing 724 square foot building. There are no
22 proposed expansions and with that it's ready for your
23 consideration.

24 CHAIRMAN: Has there been any objections
25 or concerns filed in the office?

1 MR. NOFFSINGER: Not to my knowledge, no,
2 sir.

3 CHAIRMAN: Anyone here wishing to speak in
4 opposition of this proposal?

5 (NO RESPONSE)

6 CHAIRMAN: Any board members have any
7 questions of the applicant?

8 (NO RESPONSE)

9 CHAIRMAN: Staff have anything else to
10 add?

11 MR. NOFFSINGER: No, sir.

12 CHAIRMAN: Hearing none the Chair will
13 entertain a motion to dispose of the item.

14 MR. MILLER: Motion to approve.

15 CHAIRMAN: Is there a second?

16 MS. DIXON: Second.

17 CHAIRMAN: There's a second. Any other
18 discussion by the staff, or board members, or
19 audience?

20 (NO RESPONSE)

21 CHAIRMAN: Seeing and hearing none, all in
22 favor of the motion raise your right hand.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries unanimously.

25 Next item, please, sir.

1 ITEM 5

2 8135 Haynes Station Road, in an A-R zone
3 Consider request for a Conditional Use Permit to
4 operate an existing automobile race track and to
5 expand the existing race track by the addition of two
6 concession stands, remodel of an existing concession
7 stand and modification of the track layout.
8 Reference: Zoning Ordinance, Article 8, Section
9 8.2F(3)
10 Applicant: Willie W. Stroup, Kentucky Motor Speedway.

11 MR. NOFFSINGER: Mr. Chairman, Planning
12 Staff has reviewed this application. The application
13 is found to be in order for this hearing. All
14 adjoining property owners have been notified. The
15 application has been advertised for public hearing at
16 this time.

17 Now, the consideration of this item is
18 also connected to Item Number 6 which is an
19 application for a Conditional Use Permit to conduct
20 these activities within the floodway. We do have
21 accompanying information from an engineer that will
22 tell us that it's safe to proceed with this project,
23 but the point I want to make is that if Item Number 5
24 is approved by this board that it should be approved
25 condition upon receiving a Conditional Use Permit for
26 construction of these activities in the floodway which
27 is Item Number 6.

28 CHAIRMAN: Have there been any objections
29 or comments filed in the office on this, Mr.

1 Noffsinger?

2 MR. NOFFSINGER: I don't think there has
3 really been any objections filed in the office, but I
4 do understand there are some concerns from adjoining
5 property owners that may be in the audience tonight.

6 CHAIRMAN: Is the applicant here?

7 MR. RILEY: Yes.

8 CHAIRMAN: Would you come forward and be
9 sworn in.

10 MR. ELLIOTT: State your name, please.

11 MR. RILEY: Don Riley.

12 (MR. DON RILEY SWORN BY ATTORNEY.)

13 CHAIRMAN: You have anything you want to
14 add?

15 MR. RILEY: No, other than exactly what he
16 read off. That's pretty well all that's going to be
17 there.

18 CHAIRMAN: If we have any questions we'll
19 get back to you.

20 Is there anyone wishing to talk in
21 opposition or ask questions of this item?

22 Please come to the microphone and be sworn
23 in, ma'am.

24 MR. ELLIOTT: State your name.

25 MS. AUD: Pauline Aud.

1 (MS. PAULINE AUD SWORN BY ATTORNEY.)

2 MS. AUD: I would like to know just the
3 floodway, just what does he plan to do with that since
4 we have adjoining farms around there, crop lands?

5 MR. NOFFSINGER: Ma'am, I have a detailed
6 flood study in the application for this report. I am
7 not an engineer and will not attempt to explain the
8 details of that report. I'm hoping that their
9 engineer is here tonight to speak to this, but I can
10 read a letter into the record that is from Project
11 Engineer, Allen L. Wang, with May Sudruth & Ethridge.
12 He states, "This is certified that I am a duly
13 qualified engineer licensed to practice in the State
14 of Kentucky. It is to further certify that the
15 attached report of our hydraulic analysis for Kentucky
16 Motor Speedway dated March 4, 2002, supports the fact
17 that proposed race track extension of two new
18 buildings for concession stands is specified in this
19 report will not impact the 100 year flood elevations.
20 Floodway elevations and floodway on north fork of
21 Panther Creek at published sections of the flood
22 insurance study for Daviess County, Kentucky, and
23 incorporated areas dated March 3, 1997, and will not
24 impact the 100 year flood elevations, floodway
25 elevations, and floodway widths at unpublished cross

1 sections in the vicinity of the proposed development."

2 I might add for the record that May,
3 Sudruth & Ethridge prepared the flood maps for this
4 community that have been adopted and dated March 3rd
5 of 1997.

6 CHAIRMAN: Anyone have any other
7 questions?

8 (NO RESPONSE)

9 CHAIRMAN: Seeing none does any board
10 member have any comments, questions?

11 (NO RESPONSE)

12 CHAIRMAN: Staff have anything else they
13 want to add?

14 MR. NOFFSINGER: Just want to add for the
15 record that provision has been approved by the
16 Division of Water. That's more applicable to the next
17 item, but I did miss that in answering your question.

18 CHAIRMAN: Chair will entertain a motion
19 to dispose of the item.

20 Let me ask one question of the
21 applicant. You will construct no type of dike or
22 anything connected with this in any way, will you?

23 MR. RILEY: No.

24 CHAIRMAN: Thank you.

25 Chair will entertain a motion at this

1 time.

2 MR. PEDLEY: Mr. Chairman, are we acting
3 on this individually?

4 CHAIRMAN: One item at a time. The first
5 item, Item 5, will be subject to approval of Item 6.

6 MR. PEDLEY: Mr. Chairman, I make a motion
7 for approval on Item 5 subject to approval of Item 6.

8 MR. WARREN: Second.

9 CHAIRMAN: Motion been made and a second.
10 Is there any other discussion?

11 (NO RESPONSE)

12 CHAIRMAN: Hearing none all in favor raise
13 your right hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries unanimously.

16 Now we'll consider Item 6.

17 ITEM 6

18 8135 Haynes Station Road, in an A-R zone
19 Consider request for a Conditional Use Permit to
20 allow a limited expansion in a floodway of an existing
21 automobile race track by the addition of two
22 concession stands, remodel of an existing concession
stand and modification of the track layout.

21 Reference: Zoning Ordinance, Article 18, Section
18-6(b)(2)(H), Section 18-5(b)(4), Section 18-4(3)

22 Applicant: Willie W. Stroup, Kentucky Motor Speedway

23 MR. NOFFSINGER: Mr. Chairman, this
24 application has been advertised for public hearing at
25 this time. All adjoining property owners have been

1 notified. I did address the floodway issues in
2 previous Item Number 5.

3 CHAIRMAN: Anyone in the audience have any
4 other comments or questions relating to this item?

5 (NO RESPONSE)

6 CHAIRMAN: Seeing none the Chair will
7 entertain a motion to dispose of the item.

8 MR. PEDLEY: Mr. Chairman, make a motion
9 for approval based on the engineering certification.

10 MR. WARREN: Second.

11 CHAIRMAN: Any other discussion?

12 (NO RESPONSE)

13 CHAIRMAN: Hearing none all in favor raise
14 your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries unanimously.

17 Next item, sir.

18 ITEM 7

19 5464 KY 144, in a B-4 zone
20 Consider request for a Conditional Use Permit to
21 construct and operate mini-storage warehouses for
22 individual storage.

21 Reference: Zoning Ordinance, Article 8,
22 Section 8.2L(7)

22 Applicant: Wholesale Petroleum, Inc.

23 MR. NOFFSINGER: Mr. Chairman, this
24 application has been advertised for public hearing at
25 this time. All adjoining property owners have been

1 notified. A development plan has been approved for
2 the subject property and this is basically a revision
3 to a previously approved Conditional Use Permit
4 application for the construction of mini-warehouses in
5 a B-4 zone.

6 CHAIRMAN: Been any objections or comments
7 in the office?

8 MR. NOFFSINGER: No, sir.

9 CHAIRMAN: Is there anyone here wishing to
10 speak on this particular item, the applicant?

11 (NO RESPONSE)

12 CHAIRMAN: Anyone objecting or have any
13 comments on it?

14 (NO RESPONSE)

15 CHAIRMAN: Seeing none the Chair will
16 entertain a motion to dispose of the item.

17 MS. DIXON: Move to approve.

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

20 MR. MILLER: Second.

21 CHAIRMAN: A motion has been made and a
22 second. Any other discussion?

23 (NO RESPONSE)

24 CHAIRMAN: Hearing none all in favor raise
25 your right hand.

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries unanimously.

3 Next item, please.

4 ITEM 8

5 2208 Tamarack Road, in an R-1A zone
6 Consider request for a Conditional Use Permit to
7 construct and operate a church.
8 Reference: Zoning Ordinance, Article 8,
9 Section 8.2B(4)
10 Applicant: West Congregation of Jehovah's Witnesses

11 MR. NOFFSINGER: Mr. Chairman, this
12 application has been reviewed by the Planning Staff.
13 Found to be in order. All adjoining property owners
14 have been notified and it has been advertised for
15 public hearing at this time.

16 This is for the construction of a new
17 church building that will be 48 by 94 feet. The
18 property is proposed to have a single driveway off of
19 Tamarack Road. If the application is considered
20 favorably, it should be conditioned upon a revised
21 plat of the property to change the location of the
22 approved driveway. That would be consistent with this
23 Conditional Use Permit. They are proposing to screen
24 the vehicular use areas, the parking areas of this
25 church from the adjoining residential properties and
that would be pretty much screening on all sides of
this property. With that it is ready for your

1 consideration.

2 CHAIRMAN: Any objections or comments
3 filed in the office?

4 MR. NOFFSINGER: No, sir.

5 CHAIRMAN: Anyone in the audience wishing
6 to speak on behalf of the item?

7 (NO RESPONSE)

8 CHAIRMAN: Anyone wishing to object to the
9 item?

10 (NO RESPONSE)

11 CHAIRMAN: Seeing none the Chair will
12 entertain a motion to dispose of the item.

13 MR. WARREN: Motion to approve this
14 Conditional Use Permit.

15 CHAIRMAN: Are you putting the conditions
16 on it stated by the Staff?

17 MR. WARREN: Yes.

18 CHAIRMAN: Is there a second?

19 MR. PEDLEY: Second.

20 CHAIRMAN: Any discussion?

21 (NO RESPONSE)

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

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: Motion carries.

1 Next item, please.

2 ITEM 9

3 3925 West Fifth Street Road, in an A-U zone
4 Consider request for a Conditional Use Permit to
5 construct and operate a landscaping service facility.
6 Reference: Zoning Ordinance, Article 8,
7 Section 8.2H(8)/33a
8 Applicant: Charles T. Jarboe, Superior Landscape Srvc.

9 MR. NOFFSINGER: Mr. Chairman, this
10 application has been advertised for public hearing at
11 this time. All adjoining property owners have been
12 notified and it's ready for your consideration.

13 CHAIRMAN: Any objections or comments in
14 the office?

15 MR. NOFFSINGER: I have not received any
16 objections filed in the office that are in this
17 application.

18 CHAIRMAN: Is the applicant here?

19 MR. JARBOE: Yes.

20 CHAIRMAN: Come forward and state your
21 name for the record.

22 MR. JARBOE: Charles Jarboe.

23 (MR. CHARLES JARBOE SWORN BY ATTORNEY.)

24 CHAIRMAN: Do you have any comments you
25 would like to make?

MR. JARBOE: Answer any questions that
anybody would have.

1 CHAIRMAN: Is there anyone in the audience
2 that has any questions of the applicant?

3 Come forward, sir, and be sworn in.
4 Address your concerns to the Chair and we'll try to
5 get you an answer.

6 MR. HAMILTON: Mike Hamilton.

7 (MR. MIKE HAMILTON SWORN BY ATTORNEY.)

8 MR. HAMILTON: Again, my name is Mike
9 Hamilton. I'm Daviess County's haul away coordinator
10 and property maintenance inspector for the rural parts
11 of the county.

12 I'm here tonight on behalf of Daviess
13 County Fiscal Court and people of Owensboro, Daviess
14 County.

15 Since July of 2001 I have worked
16 diligently with Mr. Charles Jarboe to remove a
17 delapidated mobile home and clean up his property. I
18 have offered assistance, compromise, suggestions and
19 to no avail Mr. Jarboe has been adamant to all the
20 property maintenance issues brought before him.

21 If I may approach the bench, I have some
22 photographs of the property and affidavits from other
23 agencies stating my claim.

24 CHAIRMAN: Bring them forward. Do you
25 want those submitted in the record for evidence?

1 MR. HAMILTON: Yes, I do.

2 CHAIRMAN: So noted.

3 (MR. HAMILTON APPROACHES BOARD AND HANDS
4 OUT PHOTOGRAPHS.)

5 CHAIRMAN: Go ahead.

6 MR. HAMILTON: I understand that Mr.
7 Jarboe has applied for a Conditional Use Permit to
8 operate and continue his landscape business. I would
9 like to request before this board that stipulations be
10 put in place to remove the mobile home, keep this
11 property free of weeds, trash and accumulation and
12 maintain it in a neat and orderly fashion. This
13 request will not only benefit Mr. Jarboe himself, but
14 it can add esthetic appeal to his business and
15 surrounding environment in which we all can enjoy.
16 Your assistance to this matter is very appreciated and
17 hopefully this proceeding will accommodate the people
18 of Owensboro, Daviess County.

19 CHAIRMAN: Thank you. Any other comments?

20 State your name for the record, please.

21 MISCHEL: Jim Mischel.

22 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

23 MR. MISCHEL: I might just add the main
24 reason that Mr. Jarboe is here tonight is in the
25 course of Mr. Hamilton's inspection he discussed a

1 compromise to go with him on inspection. We do
2 building electrical inspections. When we went on that
3 inspection we found zoning violation of the landscape
4 business in this zone. We have talked with Mr. Jarboe
5 and in the best interest he filed a Conditional Use
6 Permit to operate this business in A-U zone.

7 CHAIRMAN: Staff have any other comments?

8 MR. NOFFSINGER: I have a question of Mr.
9 Jarboe.

10 CHAIRMAN: Will you come back.

11 MR. NOFFSINGER: Mr. Jarboe, on your site
12 plan there is shown here an existing 14 by 60 mobile
13 home.

14 MR. JARBOE: Yes.

15 MR. NOFFSINGER: Is that the unit - -

16 MR. JARBOE: No. That's a different
17 mobile home. I have a mobile home sitting down there
18 that I use my equipment in. It's been sitting there
19 for several years without a permit. They have
20 required that I put a concrete foundation under it and
21 some work to it that will make it not feasible to do.
22 So I'm willing to get rid of the mobile home and build
23 a building, but I can't get a permit until I get the
24 Conditional Use Permit.

25 CHAIRMAN: Mr. Jarboe, is the mobile home,

1 is that unit that's in question shown on the site plan
2 that is submitted?

3 MR. JARBOE: It is not.

4 MR. NOFFSINGER: So it is your intention
5 if this Conditional Use Permit is approved then you
6 will abide by the site plan and that unit will be
7 removed?

8 MR. JARBOE: Correct.

9 MR. NOFFSINGER: Now, this pole building I
10 see proposed 40 by 80, that's the new building you're
11 proposing to construct?

12 MR. JARBOE: Yes. That's correct.

13 MR. NOFFSINGER: Mr. Jarboe, I would add
14 for the record that on your site plan it shows that
15 your vehicular use areas are proposed to be gravel.
16 The Planning Staff would recommend that if the Board
17 of Adjustment does approve your Conditional Use Permit
18 that all vehicular use areas be paved. This property
19 is located in A-U Urban Agricultural zone and that
20 zone is such that it allows for transition of rural
21 activities into more urban type activities.

22 Given the development within that area and
23 the anticipated development within the area as well as
24 the city park, it will be Staff's recommendation that
25 the Board of Adjustment should require paving of all

1 vehicular use areas. That will be consistent with the
2 surrounding developments. That would be consistent
3 with what this board has done to other landscape
4 nursery lawn care services that have appeared before
5 this board in the past. So that would be the Planning
6 Staff's recommendation and that we limit access to
7 West Fifth Street Road to a single driveway. For the
8 record, that's what is shown on this plan, a single
9 driveway.

10 MR. JARBOE: Can I reply to that?

11 CHAIRMAN: Yes, sir.

12 MR. JARBOE: On putting blacktop pavement
13 area in there, I'm not running a very large
14 corporation maintenance company. I work a full-time
15 job at another place and I mow one yard. I want to
16 stay small. I don't want to do a large landscape
17 maintenance business or landscape business. I work it
18 one day a week. To say I have to blacktop a large
19 portion of that will make it unfeasible to do. How
20 many parking spots are you talking? I've got 1,000
21 feet of blacktop already there. Can't I park my
22 vehicles on my blacktop I'm already on?

23 MR. NOFFSINGER: Mr. Jarboe, this site
24 plan does not show any paved parking on this.

25 MR. JARBOE: The whole length of the

1 property is blacktopped, 1,000 feet by 10 foot area.
2 I own all of that.

3 MR. NOFFSINGER: You're speaking of a
4 blacktop drive that's about, what, 12 feet wide.

5 MR. JARBOE: 10 to 12 feet wide. You
6 know, I own that. Why couldn't I park my vehicles on
7 that?

8 MR. NOFFSINGER: You're proposing to add a
9 driveway onto West Fifth Street Road.

10 MR. JARBOE: Right.

11 MR. NOFFSINGER: That new driveway - - you
12 might not have to pave anything with what you have out
13 there right now, but you're proposing to build a new
14 building plus you're proposing to add a driveway and
15 gravel on to West Fifth Street Road. In doing that,
16 we're going to recommend that that be paved. Now, if
17 that's not necessary to meet your business needs and
18 you do not put the gravel down, you would not be
19 expected to pave that area. So long as it remains in
20 grass, you wouldn't have to pave it, but this proposed
21 gravel access that I see in any of your vehicular use
22 areas we're recommending that those be paved. So if
23 you don't intend to use them as vehicular use areas,
24 have vehicles on them, then they wouldn't have to be
25 paved. If they are used for vehicular use areas,

1 we're recommending that they be paved.

2 MR. JARBOE: I park trucks all over.
3 That's a three acre lot and I park my vehicles on all
4 of it. It's all dirt.

5 MR. NOFFSINGER: That's part of what we're
6 trying to address here tonight in terms of use of the
7 property. So that you know that this site plan is
8 what you're going to be bound by. If you're parking
9 vehicles in grassed areas and areas that are not shown
10 as vehicular use areas or work areas, then you may be
11 found as in violation of your Conditional Use Permit.
12 That's what we're trying to address.

13 MR. JARBOE: So do I need to remove that
14 off of there, the extension of that driveway from
15 Fifth Street Road? Do I need to remove that off that
16 plan?

17 MR. NOFFSINGER: That's up to you. We're
18 recommending that if you're going to do it that it be
19 paved. I don't know what this board will do or
20 require, but that's our recommendation. Now, if you
21 don't intend to do it, I'd rather not construct it.

22 MR. JARBOE: I'm not going to pave it.

23 MR. NOFFSINGER: That's fine.

24 MR. JARBOE: I'm not going to pave it. I
25 can assure you that. I don't know what it would cost

1 to pave it.

2 CHAIRMAN: In other words, you're saying
3 you want to change your application to remove the
4 entrance from Fifth Street Road?

5 MR. JARBOE: Correct, if I have to pave
6 it. Now, if it's gravel, I will put gravel there
7 because I'm the one that uses it.

8 CHAIRMAN: Well, that's consistent with
9 what we would require of it and whatever the Board
10 desires. So whatever their decision will be is what
11 you will have to live by, sir.

12 State your name again.

13 MR. MISCHEL: Jim Mischel.

14 I think in the past sometimes we've tied
15 that to a building permit. If he wishes to build that
16 structure there and do that drive, and that building
17 permit state that paving will be done. If he doesn't
18 plan on doing it, he shouldn't put the gravel out
19 there. If he does plan on building that building, we
20 could make a stipulation that the building permit
21 states he has to pave that vehicular use area.

22 MR. NOFFSINGER: Which would cover us for
23 the proposed building, but we also have to address the
24 existing vehicular use area which is graveled now.

25 MR. MISCHEL: If it's going to be used, it

1 should be paved. If it's not going to be used, then
2 it should be left in grass and not used.

3 MR. NOFFSINGER: In other words, what
4 you're saying is all vehicular use areas should be
5 paved whether existing or proposed. If you're not
6 going to gravel it, if you're not going to use them,
7 then you wouldn't have to pave them, but don't gravel
8 it.

9 MR. MISCHEL: If he can use the existing
10 paved area he has, that should take care of your
11 operation right now.

12 CHAIRMAN: Do you have any question
13 address it to the Chair, please, sir.

14 Board have any questions of the applicant
15 or the staff?

16 (NO RESPONSE)

17 CHAIRMAN: Chair will entertain a motion
18 to dispose of the item.

19 MR. PEDLEY: Mr. Chairman, I make a motion
20 to approve with condition that all vehicular use areas
21 be paved and that he will remove existing mobile home
22 and maintain the property to meet the property
23 maintenance ordinance and to limit access to Fifth
24 Street Road only.

25 CHAIRMAN: State that last part. Only

1 from Fifth Street Road?

2 MR. NOFFSINGER: A single driveway.

3 MR. PEDLEY: A single driveway to - -

4 MR. NOFFSINGER: To West Fifth Street.

5 MR. PEDLEY: - - West Fifth Street Road

6 only.

7 CHAIRMAN: Is there a second to the

8 motion?

9 MS. MASON: I'll second it.

10 CHAIRMAN: Any other discussion or any

11 questions?

12 MR. JARBOE: When you say entrance to
13 Fifth Street, the part where my blacktop comes in from
14 Fifth Street, the actual entrance to my property I
15 don't own that, but there's a point to where it picks
16 up on my driveway and then I do own that part. I have
17 no access at all from Fifth Street Road to my property
18 currently. When you say access to Fifth Street Road,
19 are you talking about the existing one that's there
20 now?

21 MR. NOFFSINGER: We're speaking of the
22 proposed driveway that you have on this drawing.

23 MR. JARBOE: When he says that I have to
24 use that, does that mean I can't use the other?

25 MR. NOFFSINGER: I got myself in trouble

1 trying to speak for Mr. Pedley earlier. Mr. Pedley.

2 MR. PEDLEY: According to your plat that
3 blacktop driveway it's showing an entrance onto Fifth
4 Street Road.

5 MR. JARBOE: But I do not own that
6 entrance.

7 MR. PEDLEY: Then how do you propose to
8 get on your property?

9 MR. JARBOE: I've been using that entrance
10 for the ten years I've owned it. That's what it has
11 been there for. I've been using it all along. It
12 belongs to the gas company. I'm pretty sure it
13 belongs to the gas company. OMU has the right-of-way
14 use of it too.

15 MR. PEDLEY: Is it paved?

16 MR. JARBOE: It's paved, yes, sir.

17 MR. PEDLEY: What other access do you have
18 other than that?

19 MR. JARBOE: That is it. See, on my
20 proposal I've got another section that I propose that
21 I want to put in there eventually. It's not there
22 now, but when I put that proposal in there I didn't
23 put it on there to do it right now. Eventually I
24 would like to have my own entrance off of Fifth Street
25 Road.

1 CHAIRMAN: That's in your plan that you
2 submitted and that's what we got to consider, what you
3 have here. Not what you plan maybe.

4 MR. JARBOE: So what I guess I need to do
5 is remove that off of it and just forget what I'm
6 proposing on there and just continue using the access
7 that I have or the one that's there.

8 MR. NOFFSINGER: Excuse me. Let me
9 explain it the way I understand the situation and what
10 I'm trying to convey.

11 On his site plan he has a blacktop drive
12 that looks like goes out to West Fifth Street Road,
13 but he does not own that blacktop drive is what you're
14 saying?

15 MR. JARBOE: Right. The entrance part.

16 MR. NOFFSINGER: That access point could
17 continue and you could use that and whatever rights of
18 access you enjoy there, that's fine. What I'm
19 speaking of is that there should be no more than one
20 direct access point or driveway access to West Fifth
21 Street Road from your property. That would be the
22 proposed gravel driveway you have shown here.

23 MR. JARBOE: Okay.

24 MR. NOFFSINGER: Would be limited to one
25 driveway only. If you choose not to do that, then

1 that's fine. Just continue access. That's the way I
2 understand it.

3 MR. PEDLEY: That's the way I stated my
4 motion, to have one access, whichever he chooses.

5 MR. NOFFSINGER: So we're on the same
6 page.

7 MR. PEDLEY: Yes.

8 CHAIRMAN: Do we have a second?

9 MS. MASON: Yes.

10 CHAIRMAN: Any other discussion or
11 questions?

12 (NO RESPONSE)

13 CHAIRMAN: All in favor of the motion
14 raise your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries.

17 You understand and the Staff will work
18 with you?

19 MR. JARBOE: Yes.

20 CHAIRMAN: Be sure that you comply, sir.

21 Next item.

22 ITEM 10

23 2017 West Tenth Street, in an R-4DT zone
24 Consider request for a Conditional Use Permit to
operate a church.
25 Reference: Zoning Ordinance, Article 8,
Section 8.2B(4)

1 Applicant: Rev. Malcolm E. Walker, Mary L. Walker

2 MR. NOFFSINGER: Mr. Chairman, this
3 application has been reviewed by the Planning Staff.
4 It's found to be in order. It has been advertised for
5 public hearing at this time. All adjoining property
6 owners have been notified.

7 Mr. Chairman, if this item is approved by
8 the Board of Adjustment, it should be approved subject
9 to the consolidation of the two properties that are a
10 part of this application. That would be necessary in
11 order that the existing building not be located across
12 a property line and if there's adequate parking on the
13 church site to meet requirements.

14 CHAIRMAN: Has there been any objections
15 or comments in the office?

16 MR. NOFFSINGER: No, sir.

17 CHAIRMAN: Is the applicant here this
18 evening?

19 REV. WALKER: Yes.

20 CHAIRMAN: Come forward and be sworn in,
21 sir. State your name for the record, please.

22 REV. WALKER: I'm Reverant Malcolm Walker.

23 (REV. WALKER SWORN BY ATTORNEY.)

24 REV. WALKER: Sir, if you don't mind, I
25 would like to say that I agree to tell the truth.

1 Swearing is not in my vocabulary.

2 CHAIRMAN: We'll recognize that, sir. Do
3 you have any comments you want to make?

4 REV. WALKER: Not that I know of.

5 CHAIRMAN: You understand the conditions
6 that the Staff put on it?

7 REV. WALKER: I don't believe I heard it
8 correctly.

9 CHAIRMAN: Would you restate it?

10 MR. NOFFSINGER: Yes, sir.

11 There will be a stipulation. Right now
12 you have two separate lots of record. That they be
13 combined into a single lot by a survey.

14 REV. WALKER: Yes, I understand that.

15 MR. NOFFSINGER: Thank you.

16 CHAIRMAN: Is there anyone in the audience
17 wishing to object or comment on this?

18 (NO RESPONSE)

19 CHAIRMAN: Does the board have any
20 comments or questions of the applicant?

21 (NO RESPONSE)

22 CHAIRMAN: Staff have anything else to
23 add?

24 MR. NOFFSINGER: No, sir.

25 CHAIRMAN: Thank you, sir.

1 Chair will entertain a motion to dispose
2 of the item.

3 Do you have any comment? State your name.

4 MR. MISCHEL: Jim Mischel.

5 I might just add that Mr. Walker has
6 worked with us and they have agreed to do the
7 necessary paving and landscaping for this church. The
8 site plan they turned in was good. I think it will
9 work out good for them.

10 CHAIRMAN: Thank you.

11 Chair will entertain a motion to dispose
12 of the item.

13 MS. MASON: I make a motion for approval.

14 CHAIRMAN: Is there a second?

15 MR. PEDLEY: Second.

16 CHAIRMAN: Any other discussion?

17 (NO RESPONSE)

18 CHAIRMAN: Hearing none all in favor raise
19 your right hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries unanimously.

22 Next item, sir.

23

24

VARIANCE

25

1 ITEM 11

2 2684 Landing Terrace, in an R-1C zone
3 Consider request for a Variance to reduce the front
4 building setback line from 25 feet to 24 feet.
5 Reference: Zoning Ordinance, Article 8,
6 Section 8.5.7(c)
7 Applicant: Jagoe Homes, Inc.

8 MR. NOFFSINGER: Mr. Chairman, this
9 application has been advertised for public hearing at
10 this time. All adjoining property owners have been
11 notified. The application is in order.

12 The home has been constructed. It has
13 been given final occupancy by the Building Department;
14 however, during I believe a mortgage inspection it was
15 noted that the corner of the home encroaches upon the
16 setback by about just a little under a foot.

17 This property is located in a planned
18 residential development; however, in this particular
19 area, there was a 25 foot setback given to the lots.
20 On some lots of this development they had a lesser
21 setback.

22 There are probably two options here. The
23 developer probably could have amended the development
24 plan to show a reduced setback on this particular lot,
25 but it was felt that the best way to approach this
26 would be to seek a variance for the particular lot in
27 question and not get into adjusting the setbacks on

1 particular lots on the development plan.

2 So with that the item is in order. The
3 property is located on a cul-de-sac. It's unfortunate
4 that we cut it that close. It did happen, but Staff
5 is looking at a favorable recommendation on this
6 particular item in that it will not adversely affect
7 the public health, safety or welfare; will not alter
8 the essential character of the general vicinity; will
9 not cause a hazard or a nuisance to the public; will
10 not allow an unreasonable circumvention of the
11 requirements of the zoning regulations.

12 The Staff makes that recommendation hoping
13 that the developer is not back before us at least any
14 time in the near future with a similar problem and we
15 hope to work closer with the developer to make sure
16 that these setbacks are met.

17 CHAIRMAN: The applicant have anything to
18 add? Come forward and state your name, please.

19 MR. JAGOE: William R. Jagoe, IV.

20 (MR. JAGOE SWORN BY ATTORNEY.)

21 MR. JAGOE: May I approach the bench with
22 some additional information here?

23 CHAIRMAN: Yes, sir, please do. You want
24 that entered in the record?

25 MR. JAGOE: That's fine.

1 I guess first of all I want to, you know,
2 this is quite embarrassing for our company to present
3 this tonight. It just came through human error.
4 Coming to this board, just in case this ever happened
5 again I want to show you what Jagoe Homes has looked
6 at here to try to keep this from happening.

7 The number of homes we've built I don't
8 think this has been a normal circumstance. You see
9 here on the second page the survey that was done by
10 HRG that shows the corner that's out. My office came
11 back in - - that's out in the front setback. What we
12 did at my office is we gave you the street scape as it
13 exist there to show you that actually the second house
14 from the right as you can see that's sitting over to
15 the setback, the one in question here. The first
16 house of the right exist. The second house passed it
17 does not exist, but that's where that home will sit.
18 The house on the flag lot on the end is under
19 construction right now.

20 What I wanted to show you here is that we
21 haven't presented any safety problems, site view or
22 anything as far as maintaining the distance. The dash
23 lines are five foot setback lines as far as meeting
24 building codes for fire hazards.

25 Then if we flip this over we took some

1 pictures out there just to show you how the home does
2 setback. On the second one, would be as you are
3 driving down the street. You can barely see that
4 window behind that garage door. That's the actual
5 corner that's over. We come back to the next picture.
6 Come on up closer to the street. Then from the other
7 end of the cul-de-sac it shows how this home sets back
8 in behind the house to the right of it. The subject
9 property is the home with the blue car in front of it
10 there. Then standing back on that flag site actually
11 it shows what has happened here.

12 The other thing, you know, since we don't
13 really like to ask for these type of variances, but we
14 did want to tell the board is that once we became
15 aware of this, that Jagoe Homes put the procedure in.
16 Hopefully won't happen in the future. We kind of
17 detailed that on the end there as well.

18 It gets down to basically management
19 decided. If the lot is critical, how that's critical
20 defined and whether or not we'll have the civil
21 engineer out to check these sites as they're being
22 constructed once the blocks is laid. The city does
23 check it. We check it. Our superintendents check
24 it. Even out there on the site right now we don't
25 come up with the same measurement by checking it with

1 what Mr. Riney has, but we know he's using the
2 instruments.

3 The other thing that Mr. Riney has done to
4 with Jagoe Homes is to identify that center point in
5 all of our cul-de-sacs as well as the inspectors can
6 get that radius as well. If you look at the original
7 plat here, the measurement didn't even show 25 feet
8 because of how you measure off the pens and how those
9 radius.

10 That's all, unless you have any other
11 questions.

12 CHAIRMAN: Any board members of the staff
13 have any questions of Mr. Jagoe?

14 (NO RESPONSE)

15 CHAIRMAN: Anyone in the audience have any
16 comments or questions?

17 (NO RESPONSE)

18 CHAIRMAN: Hearing none the Chair will
19 entertain a motion to dispose of the item.

20 MS. DIXON: Move to approve the variance.

21 CHAIRMAN: Is there a second?

22 MR. PEDLEY: Second.

23 CHAIRMAN: Motion been made and a second.

24 Any other discussion or comments?

25 (NO RESPONSE)

1 CHAIRMAN: Hearing none all in favor raise
2 your right hand.

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: Motion carries unanimously.

5 Next item, please.

6 -----

7 ADMINISTRATIVE APPEALS

8 ITEM 12

9 8100 Block Curdsville-Delaware Road, in an A-R zone
10 Consider request for an Administrative Appeal to
11 appeal the zoning administrator's interpretation that
12 a multi-family structure is not a permitted use in an
13 A-R zone.

14 Reference: Zoning Ordinance, Article 8, Section 8.2A3

15 Appellant: Jerry W. O'Bryan

16 MR. NOFFSINGER: Mr. Chairman, this is an
17 Administrative Appeal. It is your duty to consider
18 whether or not the zoning administrator made the
19 proper interpretation of the zoning ordinance. The
20 applicant is here tonight to present his case as well
21 as Mr. Jim Mischel is here tonight to defend his
22 position as the zoning administrator with the City of
23 Owensboro and Daviess County.

24 MR. WARREN: Mr. Chairman, I need to
25 remove myself from this proceeding.

 CHAIRMAN: So noted in the record.

 Mr. Mischel, you want to come forward and
state your name. You are sworn in.

1 MR. MISCHEL: My name is Jim Mischel.

2 I would like to hand out a little handout
3 I have here concerning this. I think it will help the
4 situation. I would like to put one into the record
5 here.

6 Essentially what I could do is just read
7 what the ordinance has as far as Administrative
8 Appeal.

9 Under Section 7.34 Administrative
10 Review. "The Board of Adjustment shall have the
11 power to hear and decide cases where it is alleged by
12 an applicant that there is an error in any order,
13 requirement, decision, grant, or refusal made by the
14 Zoning Administrator in the enforcement of this Zoning
15 Ordinance. Appeals under this Section must be taken
16 within sixty (60) days of the date of official action
17 by the Zoning Administrator."

18 The reason I wanted to read that is
19 essentially this is saying that that really this board
20 doesn't have the authority to change the ordinance.
21 It's just to interpret this ordinance and I just
22 wanted to put that into the record.

23 If we go to Page 2, this is the Zone And
24 Use Tables and have the different uses that we have.

25 Essentially Mr. O'Bryan would like to

1 build a multi-family four-plex. If you look under
2 Residential, and I have it marked under 3) Dwelling;
3 Multi-Family. You go across the chart there you'll
4 see under A-R, which the property is zoned, and it's
5 not permitted. P at the top, which I have marked,
6 "Principally Permitted Uses: Uses listed and other
7 uses (not otherwise listed in table) substantially
8 similar to those listed are deemed permitted."

9 You'll see that box is empty. It's not
10 permitted in this zone. So I feel like it's a correct
11 interpretation that multi-family is not allowed in an
12 agricultural ruled zone at this time. I don't believe
13 there's anything else in the ordinance that would
14 permit that.

15 If you have any questions, I'll try to
16 answer them for you.

17 CHAIRMAN: Any member of the board have
18 any questions?

19 (NO RESPONSE)

20 CHAIRMAN: Thank you, Jim.

21 The applicant come forward and be sworn in
22 and state your reasoning and reference.

23 MR. ELLIOTT: State your name, please.

24 MR. O'BRYAN: Jerry O'Bryan.

25 (MR. JERRY O'BRYAN SWORN BY ATTORNEY.)

1 MR. O'BRYAN: This started a few years
2 ago. I thought about doing this.

3 I should probably introduce myself. I'm a
4 farmer. I run a grain and livestock operation in the
5 west end of the county close to Curdsville. I have a
6 fairly good size hog operation. We keep 14, 16
7 full-time employees all the time.

8 Anyway, over time and even when I grew up
9 it's always been beneficial to keep your farm
10 employees on the farm and it's been common practice to
11 provide housing. We have several houses scattered on
12 the farms that we have now. We have a few mobile
13 homes, but we need to add a few more. We'd like to
14 add about four more units. So we thought a lot of
15 things. Just everything came back to just
16 multi-family dwelling.

17 If you look at the reasons for wanting to
18 construct something like that, it's just the economics
19 of the construction, the economics of the utilities
20 for the employees, people living there, and that's a
21 big one. It's better land use than what - - you know,
22 we're allowed to do about anything here that you can
23 think of. We can build individual houses. We can put
24 in mobile homes. You can build a dormitory. I guess
25 if we could fall back on one of those options, but

1 multi-family dwelling seemed like the most practical
2 thing to do because of the two main we've already
3 mentioned, the economics and construction, economics
4 of operation.

5 It's better land use. We've got a spot, I
6 don't know if you can tell much from my plat there or
7 not. We've got a spot right on the front of the
8 center of our farm there that's kind of isolated by a
9 tree line and rolls. We've already got a couple of
10 other dwellings right there close. The land is not
11 going to be taken out of production. So we don't have
12 to use quite as much land. We don't have to get
13 outside of this area to construct this housing. The
14 location is good. We don't have any neighbors.
15 Neighbors are over half a mile on either side. To the
16 back of us, we own back a mile so there's nothing back
17 there. In front of it sits an abandon county road.
18 So I'm a little bit isolated. You can if you drive
19 down Curdsville-Delaware Road see the property.

20 I think that we can build something a lot
21 more esthetically pleasing than what we could. I
22 think about this, if you guys say we can't do this,
23 and I hate to ask for you all to change rules. I know
24 it's hard for you all. When the next guy comes along
25 he's going to have a good reason too.

1 I am myself concerned about esthetics.
2 Our next alternative is probably put in modular homes.
3 I guess, according to the size of the property we can
4 put in 20 of them. We wouldn't do that. We would
5 probably put in four. I've got two. They're not,
6 it's just hard to keep them looking nice. It's hard
7 to maintain them. They're just not durable
8 structures. Whereas this thing we can face the front,
9 the blacktop. We can give people backyards and
10 privacy fences and keep everything with more eye
11 appeal to the public and ourselves too. You might not
12 think that a hog farmer would care too much about the
13 way things look, but I do.

14 Right now that's all I can think of. If
15 you all have got some problems with this, ask me and
16 maybe I can give some answers other than it's just
17 against the rules.

18 CHAIRMAN: That's where we're caught at.
19 We can't change the ordinance or the regulations where
20 it's not permitted. That's kind of where we're caught
21 at.

22 The Staff or the attorney have anything to
23 add?

24 MR. ELLIOTT: It's not permitted and
25 that's the ordinance. We're bound by that.

1 MR. O'BRYAN: I guess I didn't understand
2 that. Jim told me it was against the rule. I thought
3 that's what the Board of Adjustment was to make the
4 variance or whatever you call it. If you can't, you
5 know, I'm not going to walk away even mad. I won't be
6 able to do what I want to do. I really don't, you
7 know, it doesn't really make - - yes, it makes more
8 sense really. Common sense it's a good idea.

9 CHAIRMAN: We can change dimensional
10 variances. We can change Conditional Use Permits in
11 some permitted areas, but when you read the way the
12 ordinance and building codes are written up by the
13 approval by the court and the city, we're caught
14 between a rock and a hard place here. No
15 interpretations that we can give a variance from it.

16 Is that correct, Mr. Attorney?

17 MR. ELLIOTT: Yes.

18 CHAIRMAN: Unless you can come up with a
19 loophole that we don't know about.

20 MR. O'BRYAN: I don't know anything about
21 the law.

22 CHAIRMAN: Staff have any other comments?

23 MR. NOFFSINGER: No, sir, not any comments
24 other than, Mr. O'Bryan, have you talked to the health
25 department in terms of what their requirements might

1 be?

2 MR. O'BRYAN: Well, I talked to Ed Cecil
3 yesterday and actually I meant to get him to get out
4 and do a preliminary. I didn't want to do a whole lot
5 of work. Just like that sketch on how we were going
6 to build it. It's just a sketch. We didn't spend
7 much money to get something real elaborate until we
8 knew we were going to be able to do it. In talking to
9 him, he told me that if allowed on the state level
10 they had not ever done anything like that here
11 locally. He kind of grunted a little bit when he
12 talked. I could tell he might not like it. I put up
13 four mobile homes. It's going to be the same thing.
14 We'll put them in the same location. We've got enough
15 land mass there for the septic system, for the sewers.
16 He said, we would like to have those things on a
17 sewer system, public sewer system, which I'd like to
18 have it on public sewer system. I don't like septic
19 tanks either. That's going to be under option. It
20 would save me a lot of money. I could probably put
21 four mobile homes up there 50, 60,000. This thing
22 might cost 160,000. We were going to try to make it
23 attractive.

24 MR. NOFFSINGER: If you look at the zones
25 where multi-family is allowed, it's in R-2MF, R-3MF

1 and then R-4DT. These are urban type zoning
2 classifications. Where you find that zoning you have
3 sanitary sewers and multi-family, it's necessary for
4 multi-family to be connected to the sanitary sewer
5 system. The state has gotten away from approving
6 these package plans that they used to promote and
7 approve. They moved away from that. The reason
8 there's nothing this board can do. Just to give you
9 an idea in terms of the thinking behind it, is that
10 with multi-family it would have to be tied or located
11 in an area where sewers are available. What you want
12 to do may not be a problem on a large farm with sewage
13 disposal, but if you allow this type of activity to
14 occur in A-R zones, which you're zoned A-R Rural
15 Agricultural, someone might want to do that on one
16 acre and they might want to build a multi-family unit.
17 Then we have problems with the septic tanks. So it's
18 very, very hard to control through zoning, you know,
19 when you allow it and when you don't. That's not
20 helping your case, but I hope maybe that will at least
21 help you understand some of the thinking behind it and
22 why it is. It's tied to urban locations where
23 sanitary sewers are available.

24 CHAIRMAN: You have anything you want to
25 add?

1 MR. MISCHEL: Jim Mischel.

2 Basically I talked to Ed Cecil a couple of
3 days ago too. He's with the health department. I
4 think that's his main concern. He had stated that he
5 would not approve it. He called it a cluster
6 development, multi-family. He would not approve that
7 in this county. His theory is that if we approve that
8 what are we going to do the next time when another
9 person comes in and wants to do that. You're going to
10 have these cluster developments around here with
11 multi-family and agricultural zone. Essentially he
12 said he would not approve it for this county. They
13 would have to go to the state to try to do something.

14 CHAIRMAN: Everything in the rural area
15 can only be single-family dwelling, correct, by the
16 way the zoning is.

17 MR. MISCHEL: That's right. When you get
18 into the urban is where you have the multi-family
19 because sanitary sewer is available.

20 CHAIRMAN: Does the applicant have
21 anything else you want to say, sir?

22 MR. O'BRYAN: No. I'm done. Thank you.

23 CHAIRMAN: We need to have a motion to
24 support the administrative decision.

25 MR. MILLER: Mr. Chairman, since the

1 multi-family structure is simply not permitted, the
2 zoning ordinance, I make a motion that we uphold the
3 zoning Administrator's interpretation and deny the
4 Administrative Appeal.

5 CHAIRMAN: Is there a second?

6 MS. DIXON: Second.

7 CHAIRMAN: Any other discussion or
8 comments?

9 (NO RESPONSE)

10 CHAIRMAN: All in favor raise your right
11 hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE
13 WITH THE DISQUALIFICATION OF MR. WARREN.)

14 CHAIRMAN: Motion carries unanimously.

15 Next item.

16 ITEM 13

17 3808 Fogle Drive, in an R-1C zone
18 Consider request for an Administrative Appeal to
19 appeal the zoning administrator's interpretation that
20 the driveway access point on Tamarack Road must be
21 closed and the access point to the property be located
22 on Fogle Drive and that a fence cannot be constructed
23 on the public right-of-way.

Reference: Zoning Ordinance, Article 13, Section
13.21 and Article 3, Section 3-6(d)

Appellant: Dale Carraway, Rose Carraway

23 MR. NOFFSINGER: Mr. Chairman, this is an
24 Administrative Appeal in which the Board of Adjustment
25 is charged with finding that the zoning administrator

1 did correctly interpret the zoning ordinance or he did
2 not correctly interpret the zoning ordinance.

3 The applicant is represented by counsel
4 and Mr. Jim Mischel and Becky Watson will be
5 representing the building department and the Planning
6 Staff.

7 CHAIRMAN: Staff present.

8 MR. MISCHEL: My name is Jim Mischel. I'd
9 like to pass out a handout. I would like to put one
10 in the record too.

11 Essentially what I would like to go over
12 first is the fence issue. If you will see on the
13 first page there, it comprises of a survey. This
14 property at 3808 is on a corner. Essentially it's on
15 the southwest corner. That section I have marked in
16 orange is a fence. I believe I'm stating this
17 correctly. That fence was there prior to the tornado.
18 It was destroyed. In some recent time that fence has
19 been reinstalled. As you can see, I have it marked.
20 It goes past the property line. It's established on
21 public right-of-way.

22 I'm not sure this is the correct place for
23 this issue. If you look at the second page, there's a
24 letter from the city engineer's office. Essentially
25 they take care of public right-of-ways. I might read

1 that in the record.

2 "To: Jim Mischel, Associate Director,
3 Building/Electrical. From: Marwan Rayan, City
4 Engineer. Date: March 6, 2002. RE: Property at
5 3808 Fogle Drive. It was brought to our attention
6 that the owner of the referenced property has
7 installed a fence that encroaches upon the
8 right-of-way for Tamarack Road. Such encroachment is
9 in violation of Owensboro Municipal Code; Zoning
10 Ordinance; Article III, Section 3-6(d). Therefore the
11 said fence must be removed and relocated on private
12 property. Please call me if you have any question."

13 I believe this section of this fence
14 should really pertain to the city engineer's office
15 since it is encroaching on public right-of-way and not
16 private property. I don't know if they would like to
17 have a comment about that before we go on with the
18 access point or not.

19 MR. ELLIOTT: Stated your name for the
20 record, please.

21 MR. SULLIVAN: Mike Sullivan.

22 (MR. MIKE SULLIVAN SWORN BY ATTORNEY.)

23 MR. SULLIVAN: Good evening. I represent
24 Rose and Dale Carraway. The city engineer - -

25 CHAIRMAN: Just a second. Let me get a

1 clarification from the attorney whether we are
2 qualified to listen to this being it's on public
3 property.

4 MR. ELLIOTT: Well, it's on public
5 property. It's been our position that we cannot grant
6 permission to build anything on public property. I
7 think this would be a matter for the city to take up.
8 They have written a letter and said you're in
9 violation, for you to remove it. We've had this
10 problem before on like granting variances where people
11 have wanted a variance where it allow them to
12 construct on public property and we have not allowed
13 it and we just can't do it.

14 CHAIRMAN: We've not even been able to
15 hear it.

16 MR. ELLIOTT: Right.

17 MR. SULLIVAN: Mr. Chairman, where I was
18 getting is I think Jim Mischel cited us for - - here
19 my problem is. You all cited us for this fence issue
20 or it's come up somehow. If we're dropping anything
21 that has to do with the fence tonight and then
22 somebody from the city is going to contact us about
23 that and we deal through it that way, then fine. I
24 just want to clarify that. From here forward we're
25 not dealing with the fence.

1 CHAIRMAN: I want to get clarification for
2 the board to be sure where we were at. That's the
3 reason I interrupted you, sir.

4 MR. SULLIVAN: No problem.

5 CHAIRMAN: Being our counsel has ruled and
6 we should not listen to this, this particular item is
7 being disposed of.

8 Jim, you don't have anything to add on
9 this, do you?

10 MR. NOFFSINGER: Not on the fence. On the
11 driveway.

12 CHAIRMAN: Then the driveway we'll go from
13 there.

14 MR. MISCHEL: I'm just going to try to
15 give you a little history on this access point of the
16 driveway that's proposed on Tamarack Road. I've got a
17 handout here. I'd like to put one in the record.

18 Just to give you a little history, I
19 believe it was February 21, 2001, we issued a building
20 permit for a detached garage at this residence which
21 is 3808 Fogle Drive. I believe at the time the owner
22 was Jerry Butler, builder here in town. I think he
23 had sold it to the Carraways here. Essentially when
24 Mr. Butler came in I discussed the access issue. We
25 talked about the access issue of Tamarack Road. I

1 told him at that time when we issued that permit that
2 Tamarack is what we call minor arterial street and
3 there is access controls on that street and it would
4 have to come off Fogle Drive.

5 I believe at the time we said, well,
6 that's not in my contract. I'm just building a
7 garage. I said, well, we need to pass that on and
8 take care of the situation.

9 So at the time we issued a building
10 permit. Did the inspections and so forth. It came
11 recently that there was a drive opposed, was in the
12 process of being constructed out on Tamarack Road. We
13 contacted the Carraways and told them they needed to
14 stop until we clarified this, and that's why we're
15 here tonight.

16 If you look at the first page I gave you,
17 on Page 13-3 you'll see where it has 13.21 Access
18 Management for Major Streets. Its says, I'll read
19 for the record, "Access to building developments
20 located along arterial or major collector streets in
21 the Owensboro Urban Service Area shall be subject to
22 the driveway spacing standards and the policies for
23 applying those standards, as specified in the adopted
24 'Access Management Manual for the Owensboro-Daviess
25 County Urban Area.'"

1 As I've stated, this portion of Tamarack
2 Road is what we call minor arterial. The spacing
3 standard on these streets are 250 feet. This lot
4 along Tamarack Road, if my mistaken is correct, I
5 think 110 feet which would not meet the 250 foot
6 spacing.

7 If you go to that second page, we have a
8 heading called Sufficient Frontage NOT Available.
9 This comes under it. If you go down to Number 4 it
10 says, "For corner lots, access will be limited to
11 intersecting side street with the lower functional
12 classification", which would be Fogle Drive in this
13 case.

14 This has come up over and over again in a
15 lot of things we develop. I know we run into this on
16 Tamarack Road, Southtowne Boulevard, Ford Avenue. A
17 lot of different streets. We have denied those access
18 points to these people. We try to be consistent with
19 this and that's why I don't feel like we can allow
20 this one just to be consistent, our office to be
21 consistent.

22 Mr. Carraway did get, on that third page
23 you'll see that he got a permit from the City of
24 Owensboro, Department of Engineers for access point.
25 Now, at the time I think Mr. Carraway had talked to

1 Debbie Price about this project. She doesn't remember
2 anything about Tamarack Road. She went on vacation
3 and Mr. Carraway came in to get that access point. He
4 had talked with other folks in engineering, and at the
5 time I think Jeff King was there and Kathy Schrecker
6 was there. At no time did they discuss about this
7 access being on Tamarack Road. In fact, if you'll
8 read that permit, I've highlighted in blue it says, In
9 front of premises at 3808 Fogle Drive. He said to me,
10 that if it had been Tamarack he would have put that
11 down on there Tamarack Road, but he said right there,
12 clear the permit is for this new access in front of
13 3808 Fogle Drive. So I think that's being consistent
14 throughout on this.

15 If there are any questions at this time.

16 (NO RESPONSE)

17 CHAIRMAN: Any board member have any
18 questions of Staff at this time?

19 MR. MISCHEL: I think there was some
20 question about maybe one of the inspectors from the
21 engineering department, maybe Jeff, being out there
22 not saying anything about it. You've got to
23 understand not only the engineering inspectors, but
24 you might have building inspectors. Plus if they go
25 on a job site, they don't always understand - -

1 they're going out there to just look at the site.
2 They don't know if it's right or wrong. They assume
3 that you're doing it right. That you got it approved.
4 That's not his decision to make. He's out there to
5 make sure the concrete is a certain thickness, make
6 sure that it's not going past a certain size or
7 whatever. He's not out there to decide you can do it
8 on this street or you can do it on that street or
9 whatever. Same way for setback. Sometimes they don't
10 know should it be five feet or ten feet. They're just
11 going by what the sheet says.

12 CHAIRMAN: Board member have any questions
13 of Mr. Mischel?

14 (NO RESPONSE)

15 CHAIRMAN: Mr. Sullivan, you want to
16 present your side now, please, sir?

17 MR. SULLIVAN: Yes, sir.

18 Either this morning or yesterday I brought
19 over to the office the Affidavit of Mark Wedding who
20 is the contractor for this, who actually did the work
21 on this driveway, and all we're talking about is this
22 driveway now.

23 I don't know if you got a copy of that or
24 not, but it's the only sworn testimony of anybody who
25 was personally involved in this incident that's in the

1 record before Mr. Mischel red-tagged the property.

2 My clients did not own the property when
3 Jerry Butler did this garage work. They were not
4 party. If Mr. Mischel, and I don't doubt him, had a
5 conversation with Mr. Butler about don't you be
6 putting in a driveway off of Tamarack Road, it was not
7 conveyed to my client. They moved in. They saved up
8 the money to put in a driveway. They hired Mr.
9 Wedding. He submitted the invoice which was attached
10 to this Affidavit. Basically \$4,300 for the driveway.
11 \$2,100 for the fence.

12 After a couple of days Mr. and Mrs.
13 Carraway told Mr. Wedding to proceed. Mr. Wedding
14 then went to the City Engineering Department, as
15 stated in his Affidavit, and talked with Ms. Price and
16 told her about the location of this driveway. Then
17 went out and - - the city inspector came out.
18 Apparently he showed him the fence line at the site.
19 Showed him where the driveway was going. No one said
20 anything. Other than the inspector did tell him about
21 certain requirements for reconstruction of the
22 driveway near the sidewalk area. He goes ahead and
23 begins the work. He digs up the necessary grounds.
24 Puts the forms. Pours the concrete to the sidewalk
25 because apparently you've got to call them back out

1 there to get a permit when you're going to tear up a
2 sidewalk or do work near the sidewalk.

3 The driveway, and to this day the driveway is
4 done all the way up to the sidewalk along Tamarack
5 Road. They then go and get it bonded. Mr. Carraway
6 goes to city hall and obtains a bond and gets the
7 permit you've seen.

8 I would say that part of that language
9 that says, "In front of premises No." is a form, and
10 whoever filled out this, the inspector did was just
11 simply write in the address for the property. I think
12 it's a stretch to get "In front of premises No. 3808
13 Fogle Drive" to what Mr. Mischel has stated.
14 Depending on where you're headed. If you're on
15 Tamarack Road, it's right front of you off there.

16 In any event, the permit was issued.
17 Inspectors came out again. Did not say anything. He
18 then dug up the sidewalk and got it ready and placed
19 forms. The inspectors came out again. Did the same
20 thing. He called the concrete truck to come in on
21 November 16 to pour the concrete, but before the
22 concrete truck got there I think Mr. Mischel may have
23 come by in the morning or in the afternoon on November
24 16 and put the stop work order on it.

25 So those are the facts. We've got my

1 clients who have done nothing intentionally wrong; yet
2 have paid their contractor over \$6,000 of their hard
3 earned money to do this work. There have been
4 inspectors come out there on three separate occasions
5 before Mr. Mischel came out there and didn't say a
6 thing to them and here they are with this driveway
7 built and this money out. Basically as a result of
8 the negligence of the city, are left here before you
9 pleading for your help. This is a type of situation
10 where we need you folks to come in and help these
11 people if they're allowed to complete the construction
12 of this driveway. I understand that under the access
13 guides you're not suppose to let this be done, but I
14 think this is a very exceptional circumstance. If the
15 error had been caught earlier enough, we wouldn't be
16 here, but because of the errors of the city we are and
17 we would ask you to in this very exceptional
18 circumstance to permit this driveway to be
19 completed. Thank you very much. Anybody have any
20 questions?

21 CHAIRMAN: Does the Staff have any
22 questions or comments?

23 MR. NOFFSINGER: Yes, sir.

24 Mr. Sullivan, you stated that this garage
25 building was constructed prior to the current owner,

1 the appellant, purchased the property?

2 MR. SULLIVAN: Yes.

3 MR. NOFFSINGER: So they purchased this
4 property. Seen there's a garage there without
5 driveway access to it at that time?

6 MR. SULLIVAN: It was part of the
7 negotiation that Mr. Butler agreed to put that in. I
8 think it was their plans to, it was their plan to
9 finish. There's an attached garage and I think
10 they're going to turn that into a room and use it.
11 They told Mr. Butler that they would only buy the
12 property if it had an attached garage.

13 MR. NOFFSINGER: Was a site plan submitted
14 with the permit application?

15 MR. SULLIVAN: For the driveway? I have
16 no idea what was submitted, if anything, with the
17 application. I would suspect that anything that was
18 submitted would be in the city records somewhere.

19 MR. NOFFSINGER: And there was no site
20 plan submitted with the permit. The permit was issued
21 off the Fogle Drive. You indicated the only portion
22 of the driveway that was constructed was between the
23 curb and the sidewalk; is that correct?

24 MR. SULLIVAN: No. The only portion not
25 constructed. Basically from that driveway - -

1 basically, I don't know, most of it has been
2 constructed. From that garage that was built all the
3 way to the Tamarack Road sidewalk.

4 Really we've just got some innocent folks
5 over here who are in a very bad situation and we're
6 asking for your help. I'll be happy to answer any
7 question and also Mr. Carraway is here to answer any
8 questions.

9 CHAIRMAN: Any board member have any
10 questions at this time?

11 (NO RESPONSE)

12 CHAIRMAN: Mr. Mischel.

13 MR. MISCHEL: I would like to make a
14 couple of comments.

15 I don't think the city, as far as talking
16 about the engineering inspector, really neglect. When
17 they go out they're not looking at all of this.
18 They're looking at the performance standard, how the
19 work is being done. So they're not really out there
20 saying that this street is minor arterial. When they
21 go out there they assume everybody is doing what they
22 agree to do when they get a permit. I don't think
23 that's neglecting their duties.

24 Essentially, again, I would say like I did
25 last time, this is really not a variance procedure.

1 This is an Administrative Appeal to see if the
2 interpretation is right or wrong as far as the street
3 classification, access point. I think the engineering
4 department takes it pretty seriously. When they write
5 this permit they write them directly as stated. There
6 was not a drawing showing an access going to Tamarack.
7 They wrote the permit in front of premises of 3808
8 Fogle Drive.

9 MR. SULLIVAN: I'll admit that I have not
10 read word for word the rule in the ordinance for why
11 we're here, but there has got to be a mechanism for
12 someone to challenge an action such as this. If this
13 isn't it, there has to be some other way.

14 I called the office and was told this is
15 the only way that I can challenge Mr. Mischel's
16 decision to stop work on this driveway. I asked if
17 the variance was the appropriate procedure and was
18 told, no, by Mr. Mischel. Like I said these guys
19 don't have any money. I wasn't going to go to the
20 library and spend three hours, four hours on it. I
21 was told the variance is not the way for me to get
22 before you right now. The only thing I can do is file
23 whatever form, the Form 190, and plead your mercy
24 based on the circumstances of this case.

25 If there is another mechanism, there's got

1 to be a mechanism where these folks can seek justice.
2 If this isn't it, I would be happy to pursue the other
3 avenue, but I would hate for this to go away simply
4 unprocedural matter.

5 All I know is on the bottom of the
6 application that I completed, - -

7 CHAIRMAN: Mr. Sullivan, while you're
8 looking at that, and I sympathize and understand that
9 different ones get caught in the cracks every once in
10 awhile, but I want to get an interpretation of what we
11 can do from our counsel legally at this time, please.

12 MR. ELLIOTT: I think our hands are pretty
13 well tied. I know it's a hardship on these folks.
14 Again, we have an ordinance and we're not in the
15 position to grant in this particular situation. It
16 would be like a variance to grant them permission to
17 vary from the ordinance. I don't think we have that
18 authority. We're talking about an access point and if
19 you uphold, if you overrule the zoning administrative
20 decision, then in effect you are granting an access
21 point off Tamarack Road.

22 Isn't that right, Gary?

23 MR. NOFFSINGER: I'm just throwing this
24 out for discussion. I think they are in the proper
25 arena in terms of did Mr. Mischel take the appropriate

1 action and enforce the zoning ordinance as he was
2 suppose to do as it reads. I think that's what we're
3 here to do and that's what we're doing. You may find
4 that he didn't. This is somewhat complicated in that
5 the city engineer's office and their inspector was
6 involved.

7 Tonight there's been said one person
8 stated this and then someone else is giving you the
9 opinion that maybe it was said a certain way. Of
10 course, those folks aren't here tonight, engineering
11 department and their represented. The city
12 engineering department is charged with issuing curb
13 permits. That does not mean that that driveway access
14 point is being approved. There are other agencies
15 that you have to go through to seek that approval.

16 Did the city follow proper procedure? I
17 don't know. Maybe they didn't. That might be
18 something that, Mike, you want to consider, pursue,
19 but I think you are here to determine whether or not
20 Jim Mischel took the appropriate steps in enforcing
21 the ordinance and whether or not this driveway should
22 have been approved by him or not been approved by him.
23 You can certainly I think address that.

24 MR. ELLIOTT: If you were to find that he
25 was not correct, and his decision was not correct,

1 aren't you in effect allowing the access point off
2 Tamarack Road?

3 MR. NOFFSINGER: Yes.

4 MR. ELLIOTT: Now do we have the authority
5 to do that? That would be my question.

6 MR. SULLIVAN: Mr. Sullivan would say,
7 yes.

8 MR. NOFFSINGER: I would say you do
9 because you are interpreting the zoning ordinance and
10 the access management manual here in that it is
11 included in the zoning ordinance by reference and by,
12 well, by actual access standards are incorporated. I
13 would say in effect this board could hear this case
14 and determine whether Mr. Mischel applied the
15 appropriate measures in enforcing the zoning
16 ordinance. I hear what Mr. Sullivan is saying. If
17 we're not suppose to be here, then why are we here and
18 where should we be.

19 CHAIRMAN: One other question. If we rule
20 that he was correct, they still have to go through the
21 other, through the city to get it corrected.

22 MR. ELLIOTT: I don't think so.

23 MR. NOFFSINGER: The city cannot grant the
24 access point. There might be other issues with the
25 city. I think Mr. Sullivan understands that.

1 CHAIRMAN: Proceed, Mr. Sullivan.

2 MR. SULLIVAN: I really hope I don't have
3 to go down to circuit court and have to deal with
4 this. My clients cannot afford for me to do much more
5 than what I'm doing right here tonight. I would say
6 that it's your job to make interpretations on the
7 ordinances, on the access guidelines. That's why
8 we've got you folks here. You have the Staff to make
9 that strict instruction that you need to have them do,
10 like Mr. Mischel does, so you have an orderly society,
11 but exceptions come up every now and then.

12 I hope that this board is here to see that
13 sometimes the rules don't take into account every
14 situation and that hopefully you have some flexibility
15 and can interpret them in this case to help these
16 people. I don't think the public will be seriously
17 harmed if these folks are allowed to have that
18 driveway access. Thank you.

19 CHAIRMAN: For my clarification I want to
20 be sure where we're at before we proceeded too far.

21 Staff have anything else to add?

22 MR. PEDLEY: I have a couple of questions.
23 All up and down Tamarack, isn't there a lot of
24 driveways that are much - -

25 MR. SULLIVAN: I can answer that question.

1 There are 123 driveways off of Tamarack Road between
2 Carter and Frederica.

3 MR. NOFFSINGER: Mr. Sullivan, would you
4 address how many access points there are to new
5 developments and new driveways that have been
6 permitted?

7 MR. SULLIVAN: I suspect there are very
8 little, if any.

9 MR. NOFFSINGER: Including Heritage Park.
10 We've been there.

11 MR. SULLIVAN: I've been there. I've seen
12 Lake Forest out on 54 and all those other places. We
13 did make a count. I asked them to count how many
14 access points there are off Tamarack Road, from
15 Frederica to Carter and there's 123.

16 MR. MISCHER: I did have a gentleman talk
17 about this. I did have a gentleman come in the other
18 day wanting to build a garage in Heritage Park and
19 he's on the corner lot and he's not allowed to have
20 that access either. Like I said, we're just trying to
21 stay consistent. He wasn't allowed to have it. He's
22 trying to go back and redesign his garage so it can
23 fit within these guidelines. This is pretty close to
24 this. That's why I brought that up.

25 CHAIRMAN: Do any board members have any

1 other comments or questions?

2 MR. PEDLEY: I'm not sure exactly what
3 power we have here.

4 MR. NOFFSINGER: Me neither.

5 MR. PEDLEY: Seems like the key person is
6 not here tonight, Mr. Jerry Butler. He seems to have
7 got these people in this situation. You read some
8 statements, I believe, that Jerry said. He's the
9 person that had contact with city hall and
10 engineering. Was there any attempt get him here
11 tonight?

12 MR. MISCHEL: I don't think Jerry Butler
13 had any contact with the city engineer's office. I
14 think Mr. Carraway is the one that went into city
15 engineer to get the permits or whatever. I don't
16 think - -

17 MR. PEDLEY: For the curb cut?

18 MR. MISCHEL: Yes. He didn't have anything to do
19 with that. He built the garage and then they did the
20 access point to the drive.

21 MR. PEDLEY: Who contracted to have the
22 driveway put in?

23 MR. MISCHEL: Mr. Carraway contracted with
24 Mark Wedding to do that.

25 MR. PEDLEY: Did Mark Wedding get the

1 permit?

2 MR. MISCHEL: No. Mr. Carraway did from
3 from the city engineering office.

4 MR. PEDLEY: Mr. Sullivan, would you step
5 back up.

6 MR. SULLIVAN: Mark Wedding is the name of
7 the contractor. Mark Wedding's Affidavit states that
8 he works for the union and they've got him working
9 night shift at Paradise Power Plant. That's why he
10 was not here today and that's why I had to get him to
11 sign the Affidavit and get it filed of record, because
12 he couldn't get off work tonight because he's working
13 at the power plant.

14 Mark Wedding is the one involved with the
15 driveway work, except Mr. Carraway went up there and
16 posted a bond on November 14th, got the permit. Had
17 absolutely - - well, he can tell you. He says he had
18 absolutely no conversations with anybody other than,
19 I've got to pay a bond and get a permit. He can
20 answer that. When the permit was filled out he says
21 he didn't tell anybody anything. He just went up
22 there and got it.

23 MR. NOFFSINGER: That's the point that
24 we're trying to make. That the property owner came
25 into the city engineer's office to get the permit.

1 Spoke with I believe Ms. Debbie Price and stated would
2 like a driveway permit for 3808 Fogle Drive. Okay.
3 We'll take a look at it.

4 Then she issues, she goes on vacation, I
5 believe, and then the next day or shortly thereafter
6 the applicant comes in to pick up the permit and
7 there's a different individual there. This
8 individual, Mr. Doug Fulkerson, issues the permit for
9 3808 Fogle Drive. I contend that the engineering
10 department didn't know that driveway was going to be
11 on Tamarack Road. That they believed that it was
12 going to be on Fogle.

13 Then when their inspector goes out, that
14 inspector doesn't know. That inspector is going out
15 to look at a driveway that is being constructed. That
16 inspector goes out and takes a look at it for
17 construction. Not location, but for construction to
18 make sure it has proper base and depth.

19 That's where we come in. We notice what's
20 going on and we get in touch with the property owners
21 to try to correct it before it went any further. I
22 think that's what happened. There wasn't a permit
23 issued to Tamarack Road. It was intended for Fogle.
24 Unfortunately that's why we're here tonight.

25 MR. SULLIVAN: Mr. Wedding, the

1 contractor, went in before Mr. Carraway went in to get
2 the permit. He had to go in or call Ms. Price before
3 then and the inspector came out before construction
4 was even started. Mr. Wedding in his Affidavit says
5 he discussed the project with Ms. Price at that time.
6 There was no discussion when Mr. Carraway went back on
7 November 14th and actually Ms. Price was not there on
8 November 14th.

9 MR. PEDLEY: I understand most of the time
10 there is no discussion with engineering. If I need to
11 permit a curb cut, I can merely call and do exactly
12 what Gary says. I give the address. That's all I
13 have to do. I don't have to go down there and do
14 anything. They will mail me my permit. I feel
15 reasonably sure the engineering did not know that this
16 curb cut was on Tamarack Road. Assume it was on that
17 address. That's what they ask you when you call or go
18 down for a permit. They ask you for the address.

19 MR. SULLIVAN: Well, the people in the
20 office didn't know, but the three inspectors that came
21 out to the site saw it and that's what we're, that's
22 our problem. People from city engineers were on site
23 and saw where the driveway was going to go and didn't
24 say anything until we had already done 85 percent of
25 the work.

1 MR. NOFFSINGER: That had already been
2 done at the time they went out or did they go out
3 before any work?

4 MR. WEDDING: No. Mark Wedding's
5 Affidavit states that he first, when called Debbie
6 Price the first time he had done no work and a city
7 inspector came out. He showed him the fence line and
8 he showed him where the driveway was going to be. The
9 inspector actually told him about certain requirements
10 for the sidewalk at that time. That when you tear the
11 sidewalk up and put it back you're going to have to do
12 certain things. He had not done any work yet. Then
13 after that inspector came out, he started work.

14 CHAIRMAN: Mr. Sullivan, you have that
15 Affidavit with you?

16 MR. SULLIVAN: I gave it to Mr.
17 Noffsinger.

18 CHAIRMAN: We need to be sure to get one
19 of those in the record.

20 MR. PEDLEY: My question on Mr. Butler.
21 When he got a permit to build the garage, did he have
22 a plan showing the driveway and access to that drive?
23 Is there a permit like that?

24 MR. SULLIVAN: We have no knowledge of
25 anything Mr. Butler did and he never said anything to

1 my clients one way or the other about permit. Of
2 course, they had no idea what's going on down here.
3 They don't know anything about Mr. Butler having a
4 conversation with Mr. Mischel. I don't doubt that
5 happened, but they don't know anything about it. They
6 don't know anything about how Mr. Butler went about
7 the legal process he's suppose to go through. All
8 they know is they said, we need a garage, and he built
9 the garage, and then they closed on the house after
10 that.

11 MR. WARREN: I have a question about the
12 inspection, and it's because I don't understand the
13 process maybe. You're telling me that an inspector, I
14 call and get a permit and an inspector has to come out
15 and look at my property. He doesn't know what he is
16 actually looking at other than whether it's a driveway
17 or not? He doesn't know, that inspector doesn't know
18 where that driveway is suppose to be?

19 MR. MISCHEL: I think basically the
20 inspector, they're going out - - I don't want to speak
21 for engineering.

22 I believe they go out and they're more
23 concerned about the base support. If it's going to be
24 a driveway it's got to be so thick. A sidewalk has to
25 be so thick, if you have a radius on it. They're

1 concerned with construction and concrete, things of
2 that nature. They're not - - the layout permitting
3 that's done in the office. They're out in the field.
4 They're just out there to make sure that everything
5 goes in and inspects as far as fits.

6 MR. WARREN: My opinion would be that
7 there needs to be some communication between the two
8 then. I can't believe that an inspector would go out
9 and worry about the thickness of the concrete and how
10 wide and deep and density and all of that and not have
11 any idea where it needs to go. That should be the
12 very first contact person's job regardless of who it
13 is.

14 MR. MISCHEL: That's the point that we
15 could bring up to engineering. At the same time I
16 would think the owner should come to our office and
17 ask about access point too. I mean there's a lot of
18 gaps here, a lot of things that fell through the
19 crack.

20 MS. MASON: At what point did your office
21 come into this picture?

22 MR. MISCHEL: When we saw this drive
23 coming out there. I think one of our drivers were out
24 there and knew about access.

25 MS. MASON: So nothing was ever filed in

1 your office for this?

2 MR. MISCHEL: Not for the drive.

3 MS. MASON: Well, did it have to be filed?
4 Did something have to be filed? A permit did not have
5 to be filed for the driveway. It's only building the
6 garage itself?

7 MR. MISCHEL: We don't permit driveways.
8 We permit construction.

9 MS. MASON: Okay.

10 MR. NOFFSINGER: Excuse me. The garage
11 was constructed and permitted by our office without a
12 driveway because Mr. Butler I believe was informed by
13 Mr. Mischel they couldn't get a driveway off Tamarack
14 Road. Mr. Butler went ahead and constructed the
15 garage and it's sitting there without a driveway.
16 These folks buy it and then they put the driveway in.

17 MR. MISCHEL: Also this is not unusual.
18 We issue a lot of permits. People come in and in
19 their case he said, that's not part of his contract.
20 A lot of people build these so-called garages and
21 really they're workshops. They don't have drives.
22 You can find a lot of these in the city and the county
23 to where a garage is constructed and you won't see a
24 drive period. It might have a garage door and
25 everything, but it's meant to be a workshop.

1 CHAIRMAN: Or storage building or
2 something.

3 MR. MISCHEL: Yes. It happens more than
4 you think.

5 MR. SULLIVAN: For purposes of the record
6 I would like Mr. Carraway to be sworn and tell you
7 what he did on November 14 when he came down to get
8 the permit at the city engineer's office.

9 CHAIRMAN: State your name for the record,
10 please, sir.

11 MR. CARRAWAY: Dale Carraway.

12 (MR. DALE CARRAWAY SWORN BY ATTORNEY.)

13 MR. CARRAWAY: On the particular day that
14 I came down here to get the bond, it was a situation
15 where when I came down I found out that the individual
16 that I was looking for was on vacation. In all
17 honesty I didn't know what my contractor had, who he
18 had communicated with other than he asked me to come
19 down and speak to I think Ms. Price, and she wasn't
20 here. So I'm going about downstairs trying to find,
21 you know, is there somebody that can give me a bond
22 here. Want to go ahead and get this thing done.
23 There's kind of a state of confusion going on because
24 nobody knows what's going on. When we were talking
25 about it, I remember specifically mentioning the fact

1 that we were going to go out on Tamarack, but that's
2 either here nor there I suppose. The situation was I
3 did get the bond and I contacted my contractor and we
4 went from there.

5 CHAIRMAN: Any board member have any
6 questions of Mr. Carraway?

7 (NO RESPONSE)

8 CHAIRMAN: Do you have anything else you
9 want to add?

10 MR. CARRAWAY: We would like to go home
11 sometime tonight. When we went and looked at the
12 house we liked the layout of the house. My wife liked
13 it a lot. Since my wife liked it a lot, I liked it a
14 lot. One of the conditions that we had was that there
15 is an attached garage and our intention was when we
16 talked to the contractor that actually owned the house
17 he repaired it from the tornado damage.

18 When I talked to him I said one of the
19 conditions that I need here is I need a garage.
20 Pretty much we built the same size garage built
21 outside the house as we have attached on the house.
22 Purpose of that was because I wanted to additionally
23 add to our house. My wife's mother, planning for the
24 future and everything. Nobody wishes ill-health or
25 anything, but the intention was to go ahead and

1 convert the attached garage without having detach
2 garage.

3 In all honesty I've got to say as much as
4 I like the layout of the house, had I known we'd never
5 be able to have this driveway we wouldn't have bought
6 the house. There is a lot of cracks in this story
7 here where little things fell through, but
8 unfortunately we spent a lot of money here,
9 unfortunately right up to the very end before we found
10 out that we weren't suppose to do it. I don't know.
11 Certainly would appreciate your assistance in this.

12 CHAIRMAN: Thank you.

13 Any board member have any other questions
14 or comments?

15 (NO RESPONSE)

16 CHAIRMAN: Staff?

17 MR. NOFFSINGER: No.

18 MR. PEDLEY: Still have the same question.

19 Do we have the power to do it?

20 MR. NOFFSINGER: Yes, sir.

21 MR. SULLIVAN: May I address that?

22 I think Mr. Elliott and I know that the
23 person who tells you whether or not you have the power
24 to do it is Judge Griffin or Judge Castlen and that's
25 if something goes over there. If somebody disagrees

1 with Judge Griffin or Judge Castlen, they go up to
2 John Miller, and two other guys on the court of
3 appeals, and then it goes from there. You can act how
4 you wish here and it could be that we go over there
5 and it could be that we don't. I think it's up to you
6 all to make that decision.

7 MR. NOFFSINGER: I was speaking to
8 subpoena power when I said, yes, we do, in terms of
9 subpoena power. If you want to subpoena Mr. Butler or
10 someone from the engineering department, yes, we do
11 have that ability.

12 MR. MISCHEL: If I read the law correctly,
13 Stewart, can answer this, I believe the board has the
14 authority that someone, either the applicant or
15 someone, needs to make a case of why that's a wrong
16 decision, why. They need to state something I think
17 in the zoning ordinance that allows that to happen,
18 that access point. Everybody is talking do we have
19 the authority. I think you do, but I think at the
20 same time somebody needs to states why or whatever.

21 MR. ELLIOTT: That is correct. Once you
22 make the decision, then the function of this board is
23 more a fact finding. This is a place where a person
24 that's agreed by that decision gets to put on evidence
25 for you to consider, to see whether or not the zoning

1 administrator's decision was correct, a correct
2 interpretation of the ordinance. Because when it goes
3 to the circuit court, there's no further evidence
4 heard. So they put their case on here. This board
5 can do really what it chooses to do as far as this
6 proceeding is concerned.

7 CHAIRMAN: We only have two things to do.
8 One, either uphold the Administrative Appeal or oppose
9 it saying it's wrong, correct?

10 MR. ELLIOTT: Yes. Based upon what you've
11 heard here.

12 CHAIRMAN: From there they can go, proceed
13 higher if they disagree with the decision made by the
14 board.

15 MR. ELLIOTT: Right.

16 MS. MASON: Do we have to do it based on
17 the zoning ordinance or based upon what we're hearing
18 that happened?

19 MR. ELLIOTT: Based upon - - Mr. Mischel
20 was right. There has to be some precipitation by the
21 personal appeal that this decision was wrong, his
22 decision and interpretation of the ordinance was
23 wrong. If you read the ordinance in the strictest
24 form - - well, I'm getting my personal opinion, but
25 they haven't met that standard to overturn his

1 decision.

2 CHAIRMAN: But the decision that we make
3 can still be appealed to the next court?

4 MR. ELLIOTT: Yes. Yes. Very tough
5 decision to make. These are tough cases because most
6 people that it effect comes before you have hardship
7 situations and they have something out of the
8 ordinary. For instance, this case. May not even be
9 their fault, but yet was the zoning administrator
10 correct in saying this under the ordinance can not be
11 allowed.

12 MR. SULLIVAN: Well, that's a tough
13 question. My question is: How do I get an access
14 point? If you rule against my clients, how do I get -
15 - there's got to be a way for someone to get an
16 exception when an exceptional circumstance occur. I
17 know that somebody has violated it, and I'm not an
18 expert on these ordinances. I come up here and talk
19 every now and then, but I'm not an expert on it. I'll
20 admit that. But Jagoe comes in and get a variance
21 from a building setback line requirement, but my guy
22 can't come in here and get an exception or variance
23 from the access point.

24 MR. ELLIOTT: The statute, KRS 100 allows
25 variances for setback. You have to meet certain

1 standards. There's four part criteria that you have
2 to meet in order to get that. I don't see any such
3 standard to grant variances to access points.

4 MR. SULLIVAN: So the statute is specific
5 enough that it says setbacks but not situation such as
6 this. It actually excludes these?

7 MR. ELLIOTT: Well, it says for this
8 sufficient frontage not available for corner lots
9 access will be limited to intersecting site street
10 with lower functional classification. This already
11 has that access point on Fogle Drive. This is on
12 Tamarack. To say that the interpretation was wrong in
13 effect grants an access point and I don't know of any
14 procedure where this board can grant an access point.

15 MR. SULLIVAN: My problem is what do you
16 do, what's one to do when they want a variance from
17 the zoning ordinance?

18 MR. ELLIOTT: You get a variance from the
19 zoning ordinance in those particular cases where the
20 ordinance allows you to do that.

21 MR. SULLIVAN: You're saying the zoning
22 ordinance does not allow a variance for access point?

23 MR. ELLIOTT: Right.

24 MR. NOFFSINGER: The statutes for the
25 zoning ordinance allow for the variance on access.

1 MR. ELLIOTT: You heard the one right
2 before you where it was a permitted use. It was not a
3 permitted use. There wasn't a provision for
4 conditional use. We were without power to do anything
5 about that.

6 MR. SULLIVAN: Right. Like I said he had
7 not spent a considerable amount of money and had been
8 subject to mistake after mistake which were not his
9 fault that led him to this situation.

10 MR. ELLIOTT: Suppose he had of already
11 constructed it. We couldn't allow it.

12 MR. SULLIVAN: Like I said, I mentioned
13 other things. He had already constructed. I
14 mentioned several mistakes that leads us to where we
15 are here. I think you have the freedom to interpret
16 this. You know, we can let the chips fall where they
17 may. It makes it a lot harder for my folks if they're
18 on the appeal side than on the non-appeal side if we
19 go from here. I appreciate you all staying late and
20 giving us your time and attention.

21 MR. NOFFSINGER: If I might for the record
22 in terms of expense, Mr. Sullivan. Around \$6,500.
23 \$2,100 of that was for construction of the fence.
24 Take that out and then the portion of the driveway
25 that has not been constructed it may be less than 4.

1 MR. SULLIVAN: The contractor has money.
2 It's gone. I'll stand by 4,200, 4,300 instead of
3 6,000, what I said. It's a lot of money to speak of.

4 MR. PEDLEY: Gary, would you explain to us
5 how this ordinance relates to a subdivision
6 regulations and access manual?

7 MR. NOFFSINGER: In terms of subdivision
8 regulations, I don't think it relates to the
9 subdivision regulations because we're not proposing to
10 subdivide the property here. We're not proposing to
11 create properties or lots. We're not proposing to
12 consolidate the property. So I don't think it's
13 addressing the subdivision regulations.

14 I think where it is addressed is the
15 access management. The access management manual
16 directs spacing standards for new development and
17 existing development upon major roadways. Tamarack
18 Road I believe, and I'll clarify this for the record
19 because I think we have a misstatement. Tamarack Road
20 is classified as minor arterial. Now, minor arterial
21 the spacing for new development is 500 feet.

22 Now, there's not sufficient frontage here
23 to meet that 500 foot spacing standard, nor would
24 there be sufficient frontage here to meet a 250 foot
25 standard if you consider this to be existing

1 development. So what the access management manual
2 does is it states in those situations, access on
3 corner lots is limited to the side street that has a
4 lower classification, meaning Fogle Drive. I know
5 money has been spent to construct a driveway on this
6 property, but the driveway could be continued on Fogle
7 Drive and intersect Fogle Drive instead of Tamarack.
8 I understand that's greater expense. I throw that out
9 as an option, but it just means more expense for the
10 applicant. So there are other avenues in which to get
11 access to this property.

12 We're not dealing with the subdivision
13 regulations here. We're dealing with the zoning
14 ordinance and the access management manual. Since we
15 do not have a plat to direct the access, then we go by
16 the zoning ordinance and access management manual.
17 Mr. Mischel has to make an interpretation. Mr.
18 Mischel has done that. These folks have challenged
19 him. I think this board is in a position of either
20 upholding Mr. Mischel's interpretation of the
21 ordinance as it's written and as the access management
22 manual as it's written and to consider the testimony
23 that's been given here tonight in terms of what has
24 taken place.

25 They could also - - you know, you either

1 uphold it based upon what's been presented tonight in
2 the ordinance and the access management manual or you
3 agree with the applicants, that Mr. Mischel in his
4 enforcement of the zoning ordinance and access
5 management manual did this. Based upon the testimony
6 presented here tonight, we choose to side with the
7 applicant and agree that what has taken place should
8 be upheld.

9 I say that without giving you particulars
10 really either way. Like Stewart I have my
11 professional opinion of it. Stewart has his personal
12 opinion on it, but you as the board members are in a
13 position of what you've heard here tonight of making a
14 decision. I think you can make a decision either way.
15 I'm not saying that if you sided with the applicant it
16 would be the best decision to make because I'm
17 somewhat bias, but I think given the testimony you've
18 heard here tonight, I think you can form a finding
19 either way and I think that would hold up in circuit
20 court or whoever.

21 MR. SULLIVAN: Is there a copy of the
22 ordinance that I should have read before I came here
23 that's the basis of my appeal that I can look at?

24 MR. NOFFSINGER: Yes.

25 MR. SULLIVAN: In summary, we are here I

1 would say based on 7.34 asking for administrative
2 review on the grounds that there was an error in the
3 decision of the zoning administration and given the
4 special circumstances of this case an exception should
5 have been made, but we are also here I would say under
6 7.4 Grievances because we have been aggrieved by an
7 official action. There is some time limitations in
8 there that I don't know if you could waive or not.
9 We've got a big time grievance and we're just hoping
10 that you all can address it.

11 CHAIRMAN: Thank you.

12 Does any other board member have any
13 questions? I think we've discussed it and rehashed
14 it. We all sympathize with the applicants I'm sure.

15 Chair will entertain a motion to dispose
16 of it one way or the other.

17 MR. WARREN: I have a comment or two that
18 I would like to make and then will make a motion.

19 First off I am extremely dishardening that
20 it gets to this point before anything can be done.
21 That our system is set up to not protect our public
22 any better than it is, but that's not for this board
23 to decide. That's just my personal thing that I get
24 to put in the record I guess because I'm making a
25 motion.

1 CHAIRMAN: I think you stated the opinion
2 of most everybody on the board.

3 MR. WARREN: It's ridiculous, but other
4 than that I feel that Staff made an appropriate
5 interpretation of the statutes and standards that are
6 in place and therefore I make a motion to deny this
7 Administrative Appeal.

8 CHAIRMAN: Support the Administrative
9 Appeal.

10 MR. WARREN: Support.

11 CHAIRMAN: Is there a second to the
12 motion?

13 MS. DIXON: Second.

14 CHAIRMAN: Any other discussion or
15 comments?

16 (NO RESPONSE)

17 CHAIRMAN: Hearing none all in favor raise
18 your right hand.

19 (MR. WARREN AND MS. DIXON RESPONDED AYE.)

20 CHAIRMAN: Two. Oppose like sign.

21 (MS. MASON, MR. MILLER AND MR. PEDLEY
22 RESPONDED NAY.)

23 CHAIRMAN: Three to two. The
24 Administrative Appeal has been overruled.

25 Next item on the agenda - -

1 MR. ELLIOTT: We need to go the other
2 direction and have a motion.

3 MR. SULLIVAN: The motion was overruled.

4 CHAIRMAN: The motion was overruled.

5 MR. ELLIOTT: Is that a denial or a
6 finding that the zoning administrator made the wrong
7 decision?

8 CHAIRMAN: That's saying the zoning
9 administrator didn't make the right decision according
10 to the motion.

11 MR. SULLIVAN: What was your motion, Mr.
12 Warren?

13 MR. WARREN: My motion is that the Staff
14 did make the right decision and did uphold the
15 statutes, the standards.

16 CHAIRMAN: The vote was three to two
17 against his motion. The board is saying that the
18 Staff didn't make the right decision.

19 MR. SULLIVAN: Did you say did or did not.

20 CHAIRMAN: Did not.

21 One other item. The next meeting of April
22 11th will be 5 p.m. and noted that the date is changed
23 from the first to the second Thursday due to KEA
24 vacation or something. We'll start the meeting at 5
25 p.m. because we'll be meeting before the zoning board.

1 Am I correct?

2 MR. NOFFSINGER: You got it.

3 CHAIRMAN: Mr. Stewart, you have a
4 comment?

5 MR. ELLIOTT: No. I'm still struggling
6 with that last one.

7 CHAIRMAN: I stated it the way the motion
8 was made.

9 Any other item come before the meeting?

10 MS. DIXON: Move to adjourn.

11 MR. MILLER: Second.

12 CHAIRMAN: Meeting is adjourned.

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

3 I, LYNNETTE KOLLER, Notary Public in and for
4 the State of Kentucky at Large, do hereby certify that
5 the foregoing Owensboro Metropolitan Board of
6 Adjustment meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 104 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this
17 the 26th day of March, 2002.

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25

LYNNETTE KOLLER, NOTARY PUBLIC
OHIO VALLEY REPORTING SERVICE
202 WEST THIRD STREET, SUITE 2
OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES:
23 DECEMBER 19, 2002

24 COUNTY OF RESIDENCE:
25 DAVIESS COUNTY, KENTUCKY