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

MS. DIXON: Move to approve.

MS. MASON: Second.

CHAIRMAN: Motion has made and a second.

All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, sir.

CONDITIONAL USE PERMITS

ITEM 2

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

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff. 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
community center and in addition to the community center building there will also be outdoor basketball courts as well as an outdoor ball field. This property is zoned R-3MF which is multi-family residential. It is a use that is permitted in this zone with a Conditional Use Permit. Meaning before this activity can occur this board would have to approve the Conditional Use Permit.

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

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

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

CHAIRMAN: Is anyone here representing the applicant?

MR. WINKLER: Yes.

CHAIRMAN: State your name for the record.

MR. WINKLER: Steve Winkler.

(MR. STEVE WINKLER SWORN BY ATTORNEY.)

MR. WINKLER: Just here to answer any
questions anyone might have from the board.

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

Any board members have any concerns?

MR. JAGOE: Bill Jagoe.

(MR. BILL JAGOE SWORN BY ATTORNEY.)

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

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

MR. JAGOE: Yes.
CHAIRMAN: Thank you.

You want to address that?

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

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

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

(NO RESPONSE)

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

MR. WINKLER: No, there will not.

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

What's the board's pleasure?

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

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

MR. WARREN: What is your time span?

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

MR. WARREN: Just Phase 1?

MR. WINKLER: Just Phase 1.

CHAIRMAN: Any other board members have
any concerns?

(NO RESPONSE)

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

MR. ELLIOTT: State your name, please.

MS. ALLISON:

Ohio Valley Reporting
(270) 683-7383
A A Althea Allison with Daymar College.

(MS. ALLISON SWORN BY ATTORNEY.)

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

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

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

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

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

CHAIRMAN: Thank you.

Any other questions?

Ohio Valley Reporting
(270) 683-7383
CHAIRMAN: Any board member have any other comments?

(MO RESPONSE)

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

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

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

MS. DIXON: Second.

CHAIRMAN: Any other discussion?

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

MR. WARD: Yes.

MR. WINKLER: Thank you.

CHAIRMAN: Any other comments from staff?

MR. NOFFSINGER: Mr. Chairman, clarification for the record. Mr. Pedley spoke to residential areas. Is that the residential areas on the north and east side of the property or to the north only?
MR. PEDLEY: Are there residential on both sides?

MR. NOFFSINGER: On both sides.

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

MR. JAGOE: We're on the south.

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

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

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

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

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

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

MR. PEDLEY: I think I need to add to my motion that it be screened from all residential area
at the beginning?

CHAIRMAN: Does that meet with the second?

MS. DIXON: Yes.

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

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

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

MR. NOFFSINGER: Yes.

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

CHAIRMAN: Well, I think the motion, what you stated in your motion you want the fence on the
south and east side?

MR. PEDLEY: Correct.

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

MR. PEDLEY: Yes, a solid fence.

CHAIRMAN: You understand that, sir?

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

MR. PEDLEY: Yes.

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

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

MR. JAGOE: Six foot solid wood fence.

MR. PEDLEY: Six foot is okay.

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

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

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

MR. PEDLEY: I understand that, but the residential area was there first, plan residential area. So I think it needs to be screened.
CHAIRMAN: I think we have one other gentleman wish to be heard. State your name.

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

(MR. STEVE HAIRE SWORN BY ATTORNEY.)

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

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

As far as the ball field, if I lived there
I wouldn't want a ball come flying through and hit me in the window either. So I think we could be very accommodating to making sure that didn't happen. I would have some concerns if we had to put a fence up to keep those kids from getting to our facility.

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

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

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

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

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

MR. HAIRE: Then I'm confused. I thought Ohio Valley Reporting
(270) 683-7383
we were talking about enclosing that whole side where
the homes are at. Now you're saying the ball field
only. If that's the case, then I didn't really need
to come up here and say anything.

CHAIRMAN: His motion was the total east
side.

MR. PEDLEY: Right.

MR. NOFFSINGER: I stand to be corrected.

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

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

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

MR. HAIRE: Yes.

MR. WARREN: Which includes around the
ball park area as well, according to the map. My
concern would be if I lived in one of those houses,
privacy would be my biggest concern. Then another
concern is that my backyard is open to anyone who
happens to be walking along that path. If I were a resident in one of those homes, I would certainly want that fence there.

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

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

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

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

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

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

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

MR. WINKLER: Okay. I just have a feeling that we're not being invited to children. I
understand the baseball diamond, but we're in an area
that's a big need for children and I feel like putting
the fence around would not be inviting to children. I
think that's the whole purpose of our Boys & Girls
Club is inviting children to come to our facility. I
understand the baseball diamond and from that housing.
We're putting a fortress around our building for not
invitation for children to come to our facility.

CHAIRMAN: Any other comments, Mr. Jagoe?

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

MR. WINKLER: I see your concern. Also I
think if we look at a six foot wood fence, we're going
looking at strong winds. We're looking at rotting
surface. We're looking at maintenance of a wood fence
versus a chain-link fence because you get into, well,
two, three years ago a tornado come through and it
took down everybody's fence. If you look at just a
fence where air, wind can get through you're looking
at a long-term of trying to maintain a wooden fence, a
solid wooden fence versus a chain-link fence for the
maintenance of our building. We try to raise every
dollar we can for the Boys & Girls Club and now we're
raising another major expense for maintaining a six
foot wood fence completely around our facility.

CHAIRMAN: It's not totally around it.

It's just two sides.

MR. WINKLER: Which is a long distance.

It's six acres all the way around there. Again,
you're looking at long-term maintenance of a wood
fence. You have trees rotting and you're looking at
long-term of a wood fence.

CHAIRMAN: Any other comments from the
board?

Thank you, Mr. Winkler.

You've heard the motion and the second.

Hearing no other discussion or comments from the
audience, all in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

Ohio Valley Reporting
(270) 683-7383
ITEM 3

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

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

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

CHAIRMAN: So noted in the record, please.

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

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

(NO RESPONSE)

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

MS. DIXON: Motion to postpone.

MS. MASON: Second.

CHAIRMAN: Motion been made and a second.

All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE
WITH THE DISQUALIFICATION OF MR. PEDLEY.)

CHAIRMAN: Motion carries.
Next item, please.

ITEM 4

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

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

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

MS. WATSON: 724 square feet.

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

CHAIRMAN: Has there been any objections
or concerns filed in the office?
MR. NOFFSINGER: Not to my knowledge, no, sir.

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

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

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

MR. MILLER: Motion to approve.

CHAIRMAN: Is there a second?

MS. DIXON: Second.

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

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please, sir.
ITEM 5

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

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

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

CHAIRMAN: Have there been any objections
or comments filed in the office on this, Mr.
MR. NOFFSINGER: I don't think there has really been any objections filed in the office, but I do understand there are some concerns from adjoining property owners that may be in the audience tonight.

CHAIRMAN: Is the applicant here?

MR. RILEY: Yes.

CHAIRMAN: Would you come forward and be sworn in.

MR. ELLIOTT: State your name, please.

MR. RILEY: Don Riley.

(MR. DON RILEY SWORN BY ATTORNEY.)

CHAIRMAN: You have anything you want to add?

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

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

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

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

MR. ELLIOTT: State your name.

MS. AUD: Pauline Aud.

Ohio Valley Reporting
(270) 683-7383
MS. AUD: I would like to know just the floodway, just what does he plan to do with that since we have adjoining farms around there, crop lands?

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

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

CHAIRMAN: Anyone have any other questions?

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else they want to add?

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

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

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

MR. RILEY: No.

CHAIRMAN: Thank you.

Chair will entertain a motion at this
MR. PEDLEY: Mr. Chairman, are we acting on this individually?

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

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

MR. WARREN: Second.

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

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Now we'll consider Item 6.

ITEM 6

8135 Haynes Station Road, in an A-R zone
Consider request for a Conditional Use Permit to allow a limited expansion in a floodway of an existing automobile race track by the addition of two concession stands, remodel of an existing concession stand and modification of the track layout.
Reference: Zoning Ordinance, Article 18, Section 18-6(b)(2)(H), Section 18-5(b)(4), Section 18-4(3)
Applicant: Willie W. Stroup, Kentucky Motor Speedway

MR. NOFFSINGER: Mr. Chairman, this application has been advertised for public hearing at this time. All adjoining property owners have been
notified. I did address the floodway issues in
previous Item Number 5.

CHAIRMAN: Anyone in the audience have any
other comments or questions relating to this item?
(NO RESPONSE)

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

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

MR. WARREN: Second.

CHAIRMAN: Any other discussion?
(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, sir.

ITEM 7

5464 KY 144, in a B-4 zone
Consider request for a Conditional Use Permit to
construct and operate mini-storage warehouses for
individual storage.
Reference: Zoning Ordinance, Article 8,
Section 8.2L(7)
Applicant: Wholesale Petroleum, Inc.

MR. NOFFSINGER: Mr. Chairman, this
application has been advertised for public hearing at
this time. All adjoining property owners have been
notified. A development plan has been approved for
the subject property and this is basically a revision
to a previously approved Conditional Use Permit
application for the construction of mini-warehouses in
a B-4 zone.

CHAIRMAN: Been any objections or comments
in the office?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Anyone objecting or have any
comments on it?

(NO RESPONSE)

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

MS. DIXON: Move to approve.

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

MR. MILLER: Second.

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

(NO RESPONSE)

CHAIRMAN: Hearing none all in favor raise
your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 8

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

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

This is for the construction of a new
church building that will be 48 by 94 feet. The
property is proposed to have a single driveway off of
Tamarack Road. If the application is considered
favorably, it should be conditioned upon a revised
plat of the property to change the location of the
approved driveway. That would be consistent with this
Conditional Use Permit. They are proposing to screen
the vehicular use areas, the parking areas of this
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
consideration.

CHAIRMAN: Any objections or comments filed in the office?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Anyone wishing to object to the item?

(NO RESPONSE)

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

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

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

MR. WARREN: Yes.

CHAIRMAN: Is there a second?

MR. PEDLEY: Second.

CHAIRMAN: Any discussion?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.
ITEM 9

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

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

CHAIRMAN: Any objections or comments in
the office?

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

CHAIRMAN: Is the applicant here?

MR. JARBOE: Yes.

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

MR. JARBOE: Charles Jarboe.

(MR. CHARLES JARBOE SWORN BY ATTORNEY.)

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

MR. JARBOE: Answer any questions that
anybody would have.
CHAIRMAN: Is there anyone in the audience that has any questions of the applicant? Come forward, sir, and be sworn in. Address your concerns to the Chair and we'll try to get you an answer.

MR. HAMILTON: Mike Hamilton.

(MR. MIKE HAMILTON SWORN BY ATTORNEY.)

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

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

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

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

CHAIRMAN: Bring them forward. Do you want those submitted in the record for evidence?
MR. HAMILTON: Yes, I do.

CHAIRMAN: So noted.

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

CHAIRMAN: Go ahead.

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

CHAIRMAN: Thank you. Any other comments?

State your name for the record, please.

MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I might just add the main reason that Mr. Jarboe is here tonight is in the course of Mr. Hamilton's inspection he discussed a
compromise to go with him on inspection. We do
building electrical inspections. When we went on that
inspection we found zoning violation of the landscape
business in this zone. We have talked with Mr. Jarboe
and in the best interest he filed a Conditional Use
Permit to operate this business in A-U zone.

CHAIRMAN: Staff have any other comments?
MR. NOFFSINGER: I have a question of Mr. Jarboe.

CHAIRMAN: Will you come back.
MR. NOFFSINGER: Mr. Jarboe, on your site
plan there is shown here an existing 14 by 60 mobile
home.

MR. JARBOE: Yes.

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

CHAIRMAN: Mr. Jarboe, is the mobile home,
is that unit that's in question shown on the site plan that is submitted?

MR. JARBOE: It is not.

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

MR. JARBOE: Correct.

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

MR. JARBOE: Yes. That's correct.

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

Given the development within that area and the anticipated development within the area as well as the city park, it will be Staff's recommendation that the Board of Adjustment should require paving of all
vehicular use areas. That will be consistent with the surrounding developments. That would be consistent with what this board has done to other landscape nursery lawn care services that have appeared before this board in the past. So that would be the Planning Staff's recommendation and that we limit access to West Fifth Street Road to a single driveway. For the record, that's what is shown on this plan, a single driveway.

MR. JARBOE: Can I reply to that?

CHAIRMAN: Yes, sir.

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

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

MR. JARBOE: The whole length of the Ohio Valley Reporting (270) 683-7383
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property is blacktopped, 1,000 feet by 10 foot area.

I own all of that.

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

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

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

MR. JARBOE: Right.

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

MR. JARBOE: I park trucks all over.

That's a three acre lot and I park my vehicles on all of it. It's all dirt.

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

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

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

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

MR. NOFFSINGER: That's fine.

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

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to pave it.

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

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

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

State your name again.

MR. MISCHEL: Jim Mischel.

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

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

MR. MISCHEL: If it's going to be used, it
should be paved. If it's not going to be used, then it should be left in grass and not used.

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

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

CHAIRMAN: Do you have any question address it to the Chair, please, sir. Board have any questions of the applicant or the staff?

(NO RESPONSE)

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

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

CHAIRMAN: State that last part. Only
from Fifth Street Road?

MR. NOFFSINGER: A single driveway.

MR. PEDLEY: A single driveway to --

MR. NOFFSINGER: To West Fifth Street.

MR. PEDLEY: -- West Fifth Street Road only.

CHAIRMAN: Is there a second to the motion?

MS. MASON: I'll second it.

CHAIRMAN: Any other discussion or any questions?

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

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

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

MR. NOFFSINGER: I got myself in trouble
trying to speak for Mr. Pedley earlier. Mr. Pedley.

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

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

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

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

MR. PEDLEY: Is it paved?

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

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

MR. JARBOE: That is it. See, on my proposal I've got another section that I propose that I want to put in there eventually. It's not there now, but when I put that proposal in there I didn't put it on there to do it right now. Eventually I would like to have my own entrance off of Fifth Street Road.
CHAIRMAN: That's in your plan that you submitted and that's what we got to consider, what you have here. Not what you plan maybe.

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

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

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

MR. JARBOE: Right. The entrance part.

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

MR. JARBOE: Okay.

MR. NOFFSINGER: Would be limited to one driveway only. If you choose not to do that, then
that's fine. Just continue access. That's the way I understand it.

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

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

MR. PEDLEY: Yes.

CHAIRMAN: Do we have a second?

MS. MASON: Yes.

CHAIRMAN: Any other discussion or questions?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

You understand and the Staff will work with you?

MR. JARBOE: Yes.

CHAIRMAN: Be sure that you comply, sir.

Next item.

ITEM 10

2017 West Tenth Street, in an R-4DT zone Consider request for a Conditional Use Permit to operate a church. Reference: Zoning Ordinance, Article 8, Section 8.2B(4)
Applicant: Rev. Malcolm E. Walker, Mary L. Walker

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

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

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

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is the applicant here this evening?

REV. WALKER: Yes.

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

REV. WALKER: I'm Reverant Malcolm Walker.

(REV. WALKER SWORN BY ATTORNEY.)

REV. WALKER: Sir, if you don't mind, I would like to say that I agree to tell the truth.
Swearing is not in my vocabulary.

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

REV. WALKER: Not that I know of.

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

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

CHAIRMAN: Would you restate it?

MR. NOFFSINGER: Yes, sir.

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

REV. WALKER: Yes, I understand that.

MR. NOFFSINGER: Thank you.

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

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Thank you, sir.
Chair will entertain a motion to dispose of the item.

Do you have any comment? State your name.

MR. MISCHEL: Jim Mischel.

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

CHAIRMAN: Thank you.

Chair will entertain a motion to dispose of the item.

MS. MASON: I make a motion for approval.

CHAIRMAN: Is there a second?

MR. PEDLEY: Second.

CHAIRMAN: Any other discussion?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, sir.

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VARIANCE

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ITEM 11

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

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

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

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

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

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

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

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

MR. JAGOE: William R. Jagoe, IV.

(MR. JAGOE SWORN BY ATTORNEY.)

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

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

MR. JAGOE: That's fine.
I guess first of all I want to, you know, this is quite embarrassing for our company to present this tonight. It just came through human error. Coming to this board, just in case this ever happened again I want to show you what Jagoe Homes has looked at here to try to keep this from happening.

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

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

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

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

It gets down to basically management decided. If the lot is critical, how that's critical defined and whether or not we'll have the civil engineer out to check these sites as they're being constructed once the blocks is laid. The city does check it. We check it. Our superintendents check it. Even out there on the site right now we don't come up with the same measurement by checking it with
what Mr. Riney has, but we know he's using the instruments.

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

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

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

(NO RESPONSE)

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

(NO RESPONSE)

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

MS. DIXON: Move to approve the variance.

CHAIRMAN: Is there a second?

MR. PEDLEY: Second.

CHAIRMAN: Motion been made and a second.

Any other discussion or comments?

(NO RESPONSE)
CHAIRMAN: Hearing none all in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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ADMINISTRATIVE APPEALS

ITEM 12

8100 Block Curdsville-Delaware Road, in an A-R zone
Consider request for an Administrative Appeal to appeal the zoning administrator's interpretation that a multi-family structure is not a permitted use in an A-R zone.
Reference: Zoning Ordinance, Article 8, Section 8.2A3
Appellant: Jerry W. O'Bryan

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

MR. WARREN: Mr. Chairman, I need to 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.
MR. MISCHEL: My name is Jim Mischel.

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

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

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

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

If we go to Page 2, this is the Zone And Use Tables and have the different uses that we have. Essentially Mr. O'Bryan would like to
build a multi-family four-plex. If you look under Residential, and I have it marked under 3) Dwelling; Multi-Family. You go across the chart there you'll see under A-R, which the property is zoned, and it's not permitted. P at the top, which I have marked, "Principally Permitted Uses: Uses listed and other uses (not otherwise listed in table) substantially similar to those listed are deemed permitted."

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

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

CHAIRMAN: Any member of the board have any questions?

(NO RESPONSE)

CHAIRMAN: Thank you, Jim.

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

MR. ELLIOTT: State your name, please.

MR. O'BRYAN: Jerry O'Bryan.

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

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

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

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

If you look at the reasons for wanting to construct something like that, it's just the economics of the construction, the economics of the utilities for the employees, people living there, and that's a big one. It's better land use than what -- you know, we're allowed to do about anything here that you can think of. We can build individual houses. We can put in mobile homes. You can build a dormitory. I guess if we could fall back on one of those options, but
multi-family dwelling seemed like the most practical thing to do because of the two main we've already mentioned, the economics and construction, economics of operation.

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

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

Our next alternative is probably put in modular homes.

I guess, according to the size of the property we can put in 20 of them. We wouldn't do that. We would probably put in four. I've got two. They're not, it's just hard to keep them looking nice. It's hard to maintain them. They're just not durable structures. Whereas this thing we can face the front, the blacktop. We can give people backyards and privacy fences and keep everything with more eye appeal to the public and ourselves too. You might not think that a hog farmer would care too much about the way things look, but I do.

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

CHAIRMAN: That's where we're caught at.

We can't change the ordinance or the regulations where it's not permitted. That's kind of where we're caught at.

The Staff or the attorney have anything to add?

MR. ELLIOTT: It's not permitted and that's the ordinance. We're bound by that.
MR. O'BRYAN: I guess I didn't understand that. Jim told me it was against the rule. I thought that's what the Board of Adjustment was to make the variance or whatever you call it. If you can't, you know, I'm not going to walk away even mad. I won't be able to do what I want to do. I really don't, you know, it doesn't really make -- yes, it makes more sense really. Common sense it's a good idea.

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

MR. ELLIOTT: Yes.

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

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

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir, not any comments other than, Mr. O'Bryan, have you talked to the health department in terms of what their requirements might
MR. O'BRYAN: Well, I talked to Ed Cecil yesterday and actually I meant to get him to get out and do a preliminary. I didn't want to do a whole lot of work. Just like that sketch on how we were going to build it. It's just a sketch. We didn't spend much money to get something real elaborate until we knew we were going to be able to do it. In talking to him, he told me that if allowed on the state level they had not ever done anything like that here locally. He kind of grunted a little bit when he talked. I could tell he might not like it. I put up four mobile homes. It's going to be the same thing. We'll put them in the same location. We've got enough land mass there for the septic system, for the sewers. He said, we would like to have those things on a sewer system, public sewer system, which I'd like to have it on public sewer system. I don't like septic tanks either. That's going to be under option. It would save me a lot of money. I could probably put four mobile homes up there 50, 60,000. This thing might cost 160,000. We were going to try to make it attractive.

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

CHAIRMAN: You have anything you want to add?
MR. MISCHEL: Jim Mischel.

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

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

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

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

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

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

MR. MILLER: Mr. Chairman, since the
multi-family structure is simply not permitted, the zoning ordinance, I make a motion that we uphold the zoning Administrator's interpretation and deny the Administrative Appeal.

CHAIRMAN: Is there a second?

MS. DIXON: Second.

CHAIRMAN: Any other discussion or comments?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

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

CHAIRMAN: Motion carries unanimously.

Next item.

ITEM 13

3808 Fogle Drive, in an R-1C zone
Consider request for an Administrative Appeal to appeal the zoning administrator's interpretation that the driveway access point on Tamarack Road must be closed and the access point to the property be located on Fogle Drive and that a fence cannot be constructed 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

MR. NOFFSINGER: Mr. Chairman, this is an Administrative Appeal in which the Board of Adjustment is charged with finding that the zoning administrator
did correctly interpret the zoning ordinance or he did not correctly interpret the zoning ordinance.

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

CHAIRMAN: Staff present.

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

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

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

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

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

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

MR. SULLIVAN: Mike Sullivan.

(MR. MIKE SULLIVAN SWORN BY ATTORNEY.)

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

CHAIRMAN: Just a second. Let me get a
clarification from the attorney whether we are
qualified to listen to this being it's on public
property.

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

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

MR. ELLIOTT: Right.

MR. SULLIVAN: Mr. Chairman, where I was
getting is I think Jim Mischel cited us for -- here
my problem is. You all cited us for this fence issue
or it's come up somehow. If we're dropping anything
that has to do with the fence tonight and then
somebody from the city is going to contact us about
that and we deal through it that way, then fine. I
just want to clarify that. From here forward we're
not dealing with the fence.
CHAIRMAN: I want to get clarification for the board to be sure where we were at. That's the reason I interrupted you, sir.

MR. SULLIVAN: No problem.

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

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

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

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

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

Just to give you a little history, I believe it was February 21, 2001, we issued a building permit for a detached garage at this residence which is 3808 Fogle Drive. I believe at the time the owner was Jerry Butler, builder here in town. I think he had sold it to the Carraways here. Essentially when Mr. Butler came in I discussed the access issue. We talked about the access issue of Tamarack Road.
told him at that time when we issued that permit that
Tamarack is what we call minor arterial street and
there is access controls on that street and it would
have to come off Fogle Drive.

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

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

If you look at the first page I gave you,
on Page 13-3 you'll see where it has 13.21 Access
Management for Major Streets. Its says, I'll read
for the record, "Access to building developments
located along arterial or major collector streets in
the Owensboro Urban Service Area shall be subject to
the driveway spacing standards and the policies for
applying those standards, as specified in the adopted
'Access Management Manual for the Owensboro-Daviess
County Urban Area.'"
As I've stated, this portion of Tamarack Road is what we call minor arterial. The spacing standard on these streets are 250 feet. This lot along Tamarack Road, if my mistaken is correct, I think 110 feet which would not meet the 250 foot spacing.

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

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

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

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

If there are any questions at this time.

(NO RESPONSE)

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

MR. MISCHEL: I think there was some question about maybe one of the inspectors from the engineering department, maybe Jeff, being out there not saying anything about it. You've got to understand not only the engineering inspectors, but you might have building inspectors. Plus if they go on a job site, they don't always understand --
they're going out there to just look at the site.
They don't know if it's right or wrong. They assume
that you're doing it right. That you got it approved.
That's not his decision to make. He's out there to
make sure the concrete is a certain thickness, make
sure that it's not going past a certain size or
whatever. He's not out there to decide you can do it
on this street or you can do it on that street or
whatever. Same way for setback. Sometimes they don't
know should it be five feet or ten feet. They're just
going by what the sheet says.

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

(NO RESPONSE)

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

MR. SULLIVAN: Yes, sir.

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

I don't know if you got a copy of that or
not, but it's the only sworn testimony of anybody who
was personally involved in this incident that's in the
record before Mr. Mischel red-tagged the property.

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

After a couple of days Mr. and Mrs. Carraway told Mr. Wedding to proceed. Mr. Wedding then went to the City Engineering Department, as stated in his Affidavit, and talked with Ms. Price and told her about the location of this driveway. Then went out and -- the city inspector came out. Apparently he showed him the fence line at the site. Showed him where the driveway was going. No one said anything. Other than the inspector did tell him about certain requirements for reconstruction of the driveway near the sidewalk area. He goes ahead and begins the work. He digs up the necessary grounds. Pours the forms. Pours the concrete to the sidewalk because apparently you've got to call them back out.
there to get a permit when you're going to tear up a
sidewalk or do work near the sidewalk.

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

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

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

So those are the facts. We've got my

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

CHAIRMAN: Does the Staff have any
questions or comments?

MR. NOFFSINGER: Yes, sir.

Mr. Sullivan, you stated that this garage
building was constructed prior to the current owner,
the appellant, purchased the property?

MR. SULLIVAN: Yes.

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

MR. SULLIVAN: It was part of the negotiation that Mr. Butler agreed to put that in. I think it was their plans to, it was their plan to finish. There's an attached garage and I think they're going to turn that into a room and use it.

They told Mr. Butler that they would only buy the property if it had an attached garage.

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

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

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

MR. SULLIVAN: No. The only portion not constructed. Basically from that driveway --
basically, I don't know, most of it has been 
constructed. From that garage that was built all the 
way to the Tamarack Road sidewalk. 

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

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

(NO RESPONSE)

CHAIRMAN: Mr. Mischel.

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

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

Essentially, again, I would say like I did 
last time, this is really not a variance procedure.
This is an Administrative Appeal to see if the interpretation is right or wrong as far as the street classification, access point. I think the engineering department takes it pretty seriously. When they write this permit they write them directly as stated. There was not a drawing showing an access going to Tamarack. They wrote the permit in front of premises of 3808 Fogle Drive.

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

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

If this isn't it, I would be happy to pursue the other avenue, but I would hate for this to go away simply unprocedural matter.

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

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

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

Isn't that right, Gary?

MR. NOFFSINGER: I'm just throwing this out for discussion. I think they are in the proper arena in terms of did Mr. Mischel take the appropriate
action and enforce the zoning ordinance as he was suppose to do as it reads. I think that's what we're here to do and that's what we're doing. You may find that he didn't. This is somewhat complicated in that the city engineer's office and their inspector was involved.

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

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

MR. ELLIOTT: If you were to find that he was not correct, and his decision was not correct,
aren't you in effect allowing the access point off Tamarack Road?

MR. NOFFSINGER: Yes.

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

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

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

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

MR. ELLIOTT: I don't think so.

MR. NOFFSINGER: The city cannot grant the access point. There might be other issues with the city. I think Mr. Sullivan understands that.
CHAIRMAN: Proceed, Mr. Sullivan.

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

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

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

Staff have anything else to add?

MR. PEDLEY: I have a couple of questions.

All up and down Tamarack, isn't there a lot of driveways that are much — —

MR. SULLIVAN: I can answer that question.
There are 123 driveways off of Tamarack Road between Carter and Frederica.

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

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

MR. NOFFSINGER: Including Heritage Park.

We've been there.

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

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

CHAIRMAN: Do any board members have any
other comments or questions?

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

MR. NOFFSINGER: Me neither.

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

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

MR. PEDLEY: For the curb cut?

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

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

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

MR. PEDLEY: Did Mark Wedding get the
permit?

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

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

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

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

MR. NOFFSINGER: That's the point that we're trying to make. That the property owner came into the city engineer's office to get the permit.
Spoke with I believe Ms. Debbie Price and stated would like a driveway permit for 3808 Fogle Drive. Okay. We'll take a look at it.

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

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

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

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

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

MR. SULLIVAN: Well, the people in the
office didn't know, but the three inspectors that came
out to the site saw it and that's what we're, that's
our problem. People from city engineers were on site
and saw where the driveway was going to go and didn't
say anything until we had already done 85 percent of
the work.
MR. NOFFSINGER: That had already been
done at the time they went out or did they go out
before any work?

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

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

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

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

MR. PEDLEY: My question on Mr. Butler.

When he got a permit to build the garage, did he have
a plan showing the driveway and access to that drive?
Is there a permit like that?

MR. SULLIVAN: We have no knowledge of
anything Mr. Butler did and he never said anything to
my clients one way or the other about permit. Of course, they had no idea what's going on down here. They don't know anything about Mr. Butler having a conversation with Mr. Mischel. I don't doubt that happened, but they don't know anything about it. They don't know anything about how Mr. Butler went about the legal process he's suppose to go through. All they know is they said, we need a garage, and he built the garage, and then they closed on the house after that.

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

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

I believe they go out and they're more concerned about the base support. If it's going to be a driveway it's got to be so thick. A sidewalk has to be so thick, if you have a radius on it. They're
concerned with construction and concrete, things of that nature. They're not -- the layout permitting that's done in the office. They're out in the field. They're just out there to make sure that everything goes in and inspects as far as fits.

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

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

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

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

MS. MASON: So nothing was ever filed in
your office for this?

MR. MISCHEL: Not for the drive.

MS. MASON: Well, did it have to be filed?

Did something have to be filed? A permit did not have
to be filed for the driveway. It's only building the
garage itself?

MR. MISCHEL: We don't permit driveways.

We permit construction.

MS. MASON: Okay.

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

MR. MISCHEL: Also this is not unusual.

We issue a lot of permits. People come in and in
their case he said, that's not part of his contract.
A lot of people build these so-called garages and
really they're workshops. They don't have drives.
You can find a lot of these in the city and the county
to where a garage is constructed and you won't see a
drive period. It might have a garage door and
everything, but it's meant to be a workshop.
CHAIRMAN: Or storage building or something.

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

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

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

MR. CARRAWAY: Dale Carraway.

(MR. DALE CARRAWAY SWORN BY ATTORNEY.)

MR. CARRAWAY: On the particular day that I came down here to get the bond, it was a situation where when I came down I found out that the individual that I was looking for was on vacation. In all honesty I didn't know what my contractor had, who he had communicated with other than he asked me to come down and speak to I think Ms. Price, and she wasn't here. So I'm going about downstairs trying to find, you know, is there somebody that can give me a bond here. Want to go ahead and get this thing done. There's kind of a state of confusion going on because nobody knows what's going on. When we were talking about it, I remember specifically mentioning the fact
that we were going to go out on Tamarack, but that's
either here nor there I suppose. The situation was I
did get the bond and I contacted my contractor and we
went from there.

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

(NO RESPONSE)

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

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

When I talked to him I said one of the
conditions that I need here is I need a garage.
Pretty much we built the same size garage built
outside the house as we have attached on the house.
Purpose of that was because I wanted to additionally
add to our house. My wife's mother, planning for the
future and everything. Nobody wishes ill-health or
anything, but the intention was to go ahead and
convert the attached garage without having detach
garage.

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

CHAIRMAN: Thank you.

Any board member have any other questions
or comments?

(NO RESPONSE)

CHAIRMAN: Staff?

MR. NOFFSINGER: No.

MR. PEDLEY: Still have the same question.

Do we have the power to do it?

MR. NOFFSINGER: Yes, sir.

MR. SULLIVAN: May I address that?

I think Mr. Elliott and I know that the
person who tells you whether or not you have the power
to do it is Judge Griffin or Judge Castlen and that's
if something goes over there. If somebody disagrees
with Judge Griffin or Judge Castlen, they go up to
John Miller, and two other guys on the court of
appeals, and then it goes from there. You can act how
you wish here and it could be that we go over there
and it could be that we don't. I think it's up to you
all to make that decision.

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

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

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

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

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

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

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

MR. ELLIOTT: Right.

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

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

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

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

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

MR. ELLIOTT: The statute, KRS 100 allows variances for setback. You have to meet certain
standards. There's four part criteria that you have
to meet in order to get that. I don't see any such
standard to grant variances to access points.

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

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

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

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

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

MR. ELLIOTT: Right.

MR. NOFFSINGER: The statutes for the
zoning ordinance allow for the variance on access.
MR. ELLIOTT: You heard the one right before you where it was a permitted use. It was not a permitted use. There wasn't a provision for conditional use. We were without power to do anything about that.

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

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

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

MR. NOFFSINGER: If I might for the record in terms of expense, Mr. Sullivan. Around $6,500. $2,100 of that was for construction of the fence. Take that out and then the portion of the driveway that has not been constructed it may be less than 4.
MR. SULLIVAN: The contractor has money. It's gone. I'll stand by 4,200, 4,300 instead of 6,000, what I said. It's a lot of money to speak of.

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

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

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

Now, there's not sufficient frontage here to meet that 500 foot spacing standard, nor would there be sufficient frontage here to meet a 250 foot standard if you consider this to be existing.
development. So what the access management manual does is it states in those situations, access on corner lots is limited to the side street that has a lower classification, meaning Fogle Drive. I know money has been spent to construct a driveway on this property, but the driveway could be continued on Fogle Drive and intersect Fogle Drive instead of Tamarack. I understand that's greater expense. I throw that out as an option, but it just means more expense for the applicant. So there are other avenues in which to get access to this property.

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

They could also -- you know, you either
uphold it based upon what's been presented tonight in
the ordinance and the access management manual or you
agree with the applicants, that Mr. Mischel in his
enforcement of the zoning ordinance and access
management manual did this. Based upon the testimony
presented here tonight, we choose to side with the
applicant and agree that what has taken place should
be upheld.

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

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

MR. NOFFSINGER: Yes.

MR. SULLIVAN: In summary, we are here I

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

CHAIRMAN: Thank you.

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

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

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

First off I am extremely dishardening that
it gets to this point before anything can be done.
That our system is set up to not protect our public
any better than it is, but that's not for this board
to decide. That's just my personal thing that I get
to put in the record I guess because I'm making a
motion.
CHAIRMAN: I think you stated the opinion of most everybody on the board.

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

CHAIRMAN: Support the Administrative Appeal.

MR. WARREN: Support.

CHAIRMAN: Is there a second to the motion?

MS. DIXON: Second.

CHAIRMAN: Any other discussion or comments?

(NO RESPONSE)

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

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

CHAIRMAN: Two. Oppose like sign.

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

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

Next item on the agenda --

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

MR. SULLIVAN: The motion was overruled.

CHAIRMAN: The motion was overruled.

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

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

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

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

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

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

CHAIRMAN: Did not.

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

MR. NOFFSINGER: You got it.

CHAIRMAN: Mr. Stewart, you have a comment?

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

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

Any other item come before the meeting?

MS. DIXON: Move to adjourn.

MR. MILLER: Second.

CHAIRMAN: Meeting is adjourned.

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

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

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

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

COMMISSION EXPIRES:
DECEMBER 19, 2002

COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

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