The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, December 4, 2003, 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
Sean Dysinger
Ward Pedley
Ed Baylous
Attorney

CHAIRMAN:  Call the Owensboro Metropolitan Board of Adjustment to Order. We're going to start the meeting today with invite each one of you to join us in prayer and pledge of allegiance. Tim Miller is going to give the blessing.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  Want to thank all of you for coming and welcome you. A couple of guidelines to start with.

If you wish to speak, please come to one
of the microphones and state your name and be sworn in for the secretary. Be sure it all gets correct.
You're all welcome to talk about any of the things as long as you're saying the first time around. If you're repeating on it, we'll cut you off. There's no need to listening to it every time over and over.

With that we'll start off with the first item of business which is the minutes of the last November 6th meeting. They're on record in the office. Have there been no corrections or anything needed to it?

MR. NOFFSINGER: That's correct.
CHAIRMAN: We'll entertain a motion to dispose of it.
MS. MASON: I move to approve the minutes.
CHAIRMAN: A motion has been made for approval. Is there a second?
MR. DYSINGER: Second.
CHAIRMAN: Motion been made and a second.
All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, Mr. Noffsinger.

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CONDITIONAL USE PERMITS

ITEM 2

6371 Karns Grove Road, in an A-R zone
Consider request for a Conditional Use Permit to
construct a 50-foot by 54-foot addition to the
existing church building for church assembly,
sanctuary, fellowship hall, Sunday school classes and
related church activities.
Reference: Zoning Ordinance, Article 8,
Section 8.2/B4
Applicant: Karns Grove Baptist Church

MR. NOFFSINGER: Mr. Chairman, the
Planning Staff has reviewed this application. The
application has been found to be in order. The
application is for an addition to an existing church
facility and is ready for consideration

CHAIRMAN: Was there any objections filed
in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is there anyone wishing to
speak in objection to this particular item?

(NO RESPONSE)

CHAIRMAN: Does the applicant have
anything they want to come forward and state or have
to say?

APPLICANT REP: No.

CHAIRMAN: Any board member have any
questions or comments?

(NO RESPONSE)

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CHAIRMAN: Staff have anything to add to it?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Hearing none Chair will entertain a motion.

MR. MILLER: Mr. Chairman, I make a motion to approve since it complies with all the applicable provisions of the Zoning Ordinance and is consistent with the Comprehensive Plan. It will not have a significant environmental impact and is adequately served by the public utilities and facilities.

CHAIRMAN: Is there a second to the motion?

MR. WARREN: Second.

CHAIRMAN: A motion has been made and a second. Any other questions or comments by the staff or board?

(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 3

5224 KY 54, in an A-R zone
Consider request for a Conditional Use Permit to construct a golf driving range with a pro shop and teaching facility building.

Reference: Zoning Ordinance, Article 8, Section 8.2/K7
Applicant: Donald H. Mitchell, Jr., Veronica L. Mitchell

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff. It's found to be in order.

The applicant has submitted a site plan of how they intend to develop the property. The subject property is located on Kentucky 54 which is an arterial roadway. It's located in an A-R zone as we discussed and the adjoining properties include a vacant farm land or farm land as well as a cemetery in the area and some commercial uses.

The applicant proposes to develop the majority of the property, if not all of the property, which contains approximately 30 acres. On that 30 acres there will be facilities for parking, a pro shop. There will be a driving range as well as a teaching facility.

The applicant is proposing conceptionally a retention basin to the rear of the property, the south end of the property. That will be a retention basin an an irrigation lake.

The site plan was prepared by Bryant Ohio Valley Reporting
(270) 683-7383
Engineering, Inc. With that it's ready for your consideration.

CHAIRMAN: Have there been any objections filed in the office?

MR. NOFFSINGER: There have been no objections; however, we have had at least one call from adjoining land owners that were asking questions, but we have no formal objections.

CHAIRMAN: Is there anyone in the audience wishing to object to this particular item?

MR. DAME: Yes.

CHAIRMAN: Let me get the applicant to comply at this time and then you'll have your chance.

MR. KAMUF: Mr. Chairman, Charles Kamuf.

(MR. CHARLES KAMUF SWORN BY ATTORNEY.)

MR. KAMUF: Mr. Chairman, Mr. Mitchell is here and also the engineering firm to answer any questions that you would like. I don't think I need to make a presentation until I see what the issues are.

CHAIRMAN: Board any have any questions right now of Mr. Kamuf?

(NO RESPONSE)

CHAIRMAN: Hearing none you object to it so will you state your name and your questions please,
MR. DAME: I'm Walter Dame.

(MR. WALTER DAME SWORN BY ATTORNEY.)

MR. DAME: I'm a property owner. I don't have no objection to someone making an improvement on that property as long as it doesn't affect my property. That is a flood area out there and I sure wouldn't want it to cause worse flooding on my property.

I talked with a fellow over the phone the other day and he says he doesn't know how this pond or lake is going to be drained. I wouldn't want it to drain over on my property. There's a big ditch on one side of his property and my property. That is a flood zone out there, both properties and so forth.

CHAIRMAN: You're concerned with the water?

MR. DAME: Water situation coming out on me. If he's going to have a lake, he said he didn't know how it was going to be drained. It would be up to the engineering so are they present? Would they know how it's going to be drained?

CHAIRMAN: We'll try to get the answer for you then, sir.

Mr. Kamuf, you all have --

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MR. BRYANT: I'm Don Bryant of Bryant Engineering.

(MR. DON BRYANT SWORN BY ATTORNEY.)

MR. BRYANT: He's correct in stating that the entire site is in a flood zone, it's a regulated flood zone. We have anticipated this from the beginning. The topo has been completed for the site in preparation of a site plan.

Elevations generally run from 396 to 398 for a couple of areas, even 400. Base flood elevation for the site is 396 which is basically the existing ground elevation near the rear of the property, south of the property where the retention lake is proposed.

There will be regrading of the site, but we have no intention of hauling any fill material whatsoever into the site. We're not going to build it up above what's there.

In shaping the site, will be removing material from the retention area and some of the areas outside of the green space areas and elevating the practice areas that are shown in green and the building pads and so forth. It will just be a regrading of the existing site. There will be no adverse affect on the flooding on any properties upstream or down. Retention lake overflow will go
directly into Burnett Fork. It will not affect any adjoining properties.

Now, once we get the conditional use issued for the property, we'll submit a more detailed site plan. In this case it's in the county. It will be reviewed and approved by the county engineer. Then since it is in a flood zone we'll be submitting this for the Division of Water for their approval as well.

CHAIRMAN: With that pond that you're picturing, retaining will have a trickle type?

MR. BRYANT: Yes, for low flows. Actually we're not going to be constructing any improving areas such as roof areas and large paving areas or anything that's going to increase the runoff from the property. It's agricultural and undeveloped now. When improved it will improved but it will still be in grasses and so forth. It will not increase runoff. We are going to route as much water into the lake. It will be a permanent pool so they can irrigate out of it and then it will also serve as a retention.

CHAIRMAN: Does that answer your question, sir?

MR. DAME: Yes, pretty much so in some ways. I still don't see -- if you see them three and four inch rains we had this summer, it stands several
10 inches deep over all that property down in there. If you don't fill it up, how are they going to hit a golf ball in the water?

MR. BRYANT: Like I said we're not going to bring the elevation of the entire site up. We'll be regrading the site. The greens and fairways will be elevated, but some of the other areas will be lowered as part of the regrading plan. So the net impact is zero.

MR. DAME: Is that blue in the corner there on that map the lake?

MR. BRYANT: That's the retention lake, yes.

MR. DAME: Where is it going to drain from there?

MR. BRYANT: The overflow will be directly into the creek. Will be a pipe structure or possibly -- we don't have a detailed design, but it will go directly into the creek.

MR. DAME: It's going to be some kind of drainage from all of his property into that lake?

MR. BRYANT: Not the entire site. Just the rear portion of the site. The rest of the site will drain as it does now, directly into the creek.

MR. DAME: It don't drain into the creek
right now is the problem.

MR. BRYANT: Well, it's part of Burnett Fork.

CHAIRMAN: It will have to be approved by the county engineer and meet their specifications before they can do it.

MR. DAME: There's one other problem. It really doesn't concern me that much, but isn't the state going to have to widen that highway out there, you know, on and off problem there across that bridge?

MR. BRYANT: I suppose so. Undeveloped doesn't encroach on the right-of-way in any way so it won't interfere in any way with future development.

CHAIRMAN: Anyone else have any other questions?

(NO RESPONSE)

MR. WARREN: Is this Burnett Fork the big ditch that you were talking about that separates you?

MR. DAME: That's the first time I've ever heard it called that.

CHAIRMAN: Staff.

MR. NOFFSINGER: Mr. Chairman, Burnett Fork would establish the line for the urban service area. This property is right on the edge of our urban service area, our urban growth area. It's just
outside of that urban growth boundary.

Considering that this property is located within the flood plain and the proximity to that creek, the proposed use would probably have, well, I'm sure would have less of an impact upon the environment and flooding in that area than a residential subdivision would. Whatever changes in elevations that they make on this property, those will have to be approved by the county engineer and they'll have to have a detailed drainage plan plus the Division of Water will have to approve this permit. So if you take into consideration that there are going to be very few buildings and very little impervious area on this site, this is probably and environmentally is as good of use as you could expect for this particular piece of property.

Now, granted it's non-residential use and it would be a use that would generate some traffic, be non-residential in nature; however, as I stated, Kentucky 54 is classified as arterial, it's an arterial street. It is included for widening in the transportation plan.

What does that mean? Well, when is going to be widened? I don't know. I can tell you it's one of the priorities this community is looking at.
Eventually I feel confident it will be widen, but at this point the money has not been allocated for that project.

With this type of development and traffic that it should generate it should not overburden the capacity of Kentucky 54 in that area.

CHAIRMAN: Anyone else have any other comments?

(NO RESPONSE)

CHAIRMAN: Board members have any questions?

(NO RESPONSE)

CHAIRMAN: Hearing none entertain a motion to dispose of the item, please.

MR. WARREN: I'd like to make a motion to grant this Conditional Use Permit due to the fact that it does promote public health by providing recreational opportunities. It will not have a significant impact on the environment or negative impact on the environment. It complies with site development requirements for the zoning ordinance and it's consistent with the goals of the Comprehensive Plan.

CHAIRMAN: Is there a second?

MR. DYSINGER: Second.
CHAIRMAN: A motion has been made and a second. Are there other questions from the staff or board?

MR. NOFFSINGER: No, sir. I have said enough.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

We're going to change our agenda and go from Number 5 instead of Number 4, put that in last on the agenda this evening. With that proceed on, please, sir.

ITEM 5

819 East Ninth Street, in a B-4 zone
Consider request for a Conditional Use Permit to operate a child day care facility within an existing building to serve a maximum of 75 children.

Reference: Zoning Ordinance, Article 8, Section 8.2/B3
Applicant: Debbie Cooney, Louis Reynolds

MR. NOFFSINGER: Mr. Chairman, the Planning Staff has reviewed this application. The application is found to be in order.

The proposed facility will be located within the existing building. The existing building contains a number of businesses. There is adequate parking on the site to meet the parking needs of the
proposed use. There's an adequate drop-off area as well located on the property so that the children could be dropped off in a safe and efficient manner. Access to the property is provided via East Ninth, Street which is an arterial street, as well as Center Street which is a local street. So there should be adequate transportation facilities existing.

There are also a number of businesses located within the community or within this neighborhood such as the Owensboro-Daviess County Hospital which would support or could support a need for this type of facility. So that is ready for your consideration.

CHAIRMAN: Has there bee any objections filed in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is there anyone wishing to object to this application?

(NO RESPONSE)

CHAIRMAN: Is the applicant here?

APPLICANT REP: Yes.

CHAIRMAN: Do you have anything you'd like to add to it at this time?

APPLICANT REP: No, I don't think so.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

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

MS. DIXON: Move to approve because it would provide a use that's essential to the community; would not have a significant impact on the environment; complies with the site development requirements of the zoning ordinance and is consistent with the goals of the Comprehensive Plan.

CHAIRMAN: Is there a second?

MR. MILLER: Second.

CHAIRMAN: A motion has been made and a second. Any other questions or comments from the board?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add on?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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CHAIRMAN: Motion carries unanimously.

The next item, please.

ITEM 4

1253 Willett Road, in an A-R zone (POSTPONED)
Consider request for a Conditional Use Permit to
construct a 3,946 square foot bunkhouse with a 2,818
square foot deck to house a maximum of 14 migrant farm
workers and one supervisor.
Reference: Zoning Ordinance, Article 8,
Section 8.2/A7
Applicant: MISAS, Inc., Robert J. & Lisa C. Wimsatt

MR. NOFFSINGER: Mr. Chairman, Planning
Staff has reviewed this application. We find the
application to be in order.

At this time I would like to read the
project overview into the record as submitted by the
applicant.

In Spanish, the word "posada" means "inn."
When we speak of an inn, we refer to a place of
hospitality, where paying guests stay for a time. The
posada or inn that we plan will be for migrant workers
who are employed by farmers in this part of the
county. In some ways it will resemble the
European-model hostel; a place where guests share in
the care of the facility.

The Inn/Posada will be an attractive and
well-maintained building that offers simple bunkhouse
style accommodations to meet the housing needs for
single migrant workers. It will be an asset to the community, both visually and in its purpose.

We feel that our plan has benefits for both the migrant workers and the farmers who employ them. We are aware that farmers are increasingly dependent on migrant help, and that housing their workers is often a continual challenge. If farmers apply for special visas for workers through the H2A program, they must have housing arrangements that meet certain standards, and are guaranteed for the duration of the visa. In addition, the presence of guest workers will make a modest contribution to the local economy.

Our Inn/Posada will have a full-time "innkeeper" - a live-in administrator who will supervise the living arrangements and residents, and oversee care of the building and grounds. It will also have the oversight of the MISAS Board. Sr. Lorraine Lauter OSU will be closely involved in direction and supervision of the inn and its guests.

All of the guests will be employed by local farmers. They or their employers will lease space for the duration of their intended employment. They will have some share in responsibilities for the inn, including cleaning and cooking.
The Posada will not be an open homeless shelter. Those who live there will be gainfully employed. They will be contributing to the local community for the duration of their stay.

Guests of the Posada will have opportunities for recreation, shopping and laundry, and worship. Enrichment programs will be offered, most notably classes in English. These programs will be open to anyone in the area, whether or not they are guests at the Posada.

We believe that the Posada will be a remarkably strong asset to the community in which it is located. By welcoming the Posada, the community will be supporting the farmers who are its backbone, while offering decent and affordable housing to guest workers.

The Posada will be built under the auspices of MISAS (Migrant/Immigrant Shelter and Support). MISAS was founded in February 2002, in response to an invitation from the Kentucky Housing Corporation. The KHC was searching for a group that would develop a plan for migrant housing, a need that is critical throughout the state. With the acquisition of an approved site, and an approved plan for construction (including input from contractors,
architects, engineers and other construction professionals) MISAS will be awarded a challenge grant of up to $220,700. MISAS is pursuing grants from other entities as well for ongoing support of the project.

Questions relating to the Posada project may be directed to Sr. Larraine Lauter, 229-2713, or llauter@maplemount.org.

Mr. Chairman, this was postponed from the last meeting due to some questions regarding conditions to a possible recommendation. At that time there were questions raised by the applicant as to previous conditions that were placed on the approval by this board.

This is a new day. The previous conditional use permit expired. The applicant is before you again to ask for approval for this project.

The proposed facility is being classified under use group 8.2/A7 in the Zoning Ordinance. With that it's ready for your consideration.

CHAIRMAN: Does the applicant have anything you want to direct new at this time before the board?

SISTER LARRAINE: Yes.

CHAIRMAN: Please state your name.
SISTER LARRAINE: My name is Sister Lorraine Lauter. I'm a little unsure as to how to address the entire nature of my remarks since I had sent the memo both to Mr. Noffsinger and to the board. Just now am aware that you would not have seen the memo because it would have to be reviewed by all of you in full. The memo is quite lengthy. I'm not sure if we want to engage in reading it into the record or what's the appropriate step to do.

CHAIRMAN: It should be read into the record.

MR. BAYLOUS: If we can put a copy into the record, that will be fine. It doesn't have to be read in its entirety as long as a copy is in the record of the proceeding.

CHAIRMAN: Do you have anything major you want to bring or do you want to read it or not? That's up to you.

SISTER LARRAINE: I'm fine with summarizing the subtle points.

CHAIRMAN: That will be fine.

SISTER LARRAINE: The first point had to do with the desire that has been from the beginning on Ohio Valley Reporting (270) 683-7383
part of MISAS and myself as to carry out whatever is
done in spirit of cooperation with the community;
city, county and entities of the community.

I want to reiterate with that that my
personal philosophy is that adversarially
relationships are not in the best interest of
anyone. I say that as a preface to these other
remarks which I hope make more clear my concern with
the conditions as they were placed on the previous
permit.

We've already reviewed the Kentucky
Housing Corporation invited me to start the non-profit
to pursue this project.

Another point is that its reasonable to
conclude that we have demonstrated a sincere desire
for a successful project. One of the first things I
would say in response to the conditions is that they
seem to imply that perhaps it might not be the desire
of MISAS to have a successful project. That just
doesn't seem very reasonable, especially given that
two of the conditions specifically refers to simply
restate the law as it stands that would be a given,
the condition that it would be given that those
conditions would be met according to the law. If not,
that the permit would be withdrawn. Those would be
the conditions on any conditional use permit. I'd like to read this section of the memo:

I have a well-founded and researched concern that all involved (both MISAS and the Board of Adjustors) have inadvertently violated the Kentucky Fair Housing law by the conditions set on the conditional use permit for the La Posada Hostel. The Board of Adjustors has set extraordinary conditions in response to opinions and fears stated at on public record that may be clearly demonstrated to be discriminatory in nature, relating to ethnicity and country of origin of the likely residents of the project. MISAS has agreed to these conditions in the past, knowing that they were extraordinary and the response to discriminatory fears and opinions. Therefore, both MISAS and the Board of Adjustors could be demonstrated to be in collusion with discriminatory intentions. A lack of bad intent is in no way an adequate defense when the violations of fair housing laws are identified.

Then from the next section;

MISAS is very concerned about what appears to be a lack of uniform administration and treatment as to similar structures and activity. For example, it is our understanding that similar structures and
activities either have no conditional use permit at all, or if such permits were issued, no special or extraordinary conditions were attached to such permits.

Then we have a list of particular permits, particular issues including a variety of bunkhouses and the Jennifer House; none of which have conditions attached to the permits.

Just bare with me for a moment. I'll see if we can skip anything.

MISAS has already stated an intention to build a hostel in compliance with the housing regulations of the H2(a) program. Our hope is that farmers who wish to participate in the visa program and yet are precluded from doing so by the stringent housing regulations may find housing for their workers and thereby afford them the opportunity to work legally and safely in this country. However, our public willingness to support, and I'm speaking of MISAS, the H2(a) program and our open dialogue with farmers and state officials who work with the program makes us, MISAS, vulnerable to potential criticism of the intentions of our mission. Any hint of collusion with discrimination would likely bring well-deserved challenges to our intentions, and the nature of our
support of fair housing.

I'd like to add that not five minutes after I finished typing this I received with e-mail from across the state asking about this very concern. Completely unsolicited. I had no idea if this person had any understanding of what our project was about or anything. Just someone in another non-profit housing venture.

MISAS has a partnership with the Kentucky Human Rights Commission to assist in the awareness of fair housing laws, and in fact, is co-sponsoring the Fair Housing Symposium on November 15, 2003.

Our vision and that of Kentucky Housing Corporation is that Daviess County be known as a site for a model program of housing for farm workers. We want a project that the community can be proud of and which merits positive attention, rather than negative criticism.

Now, this parts speaks more distinctly to the issue of fair housing, as the Kentucky Fair Housing law are set.

MISAS must operate rental housing under the same conditions of the new landlord. There is no law that requires proof of citizenship or legal residence to rent, and in fact to do so on the open
market could be challenged as a fair housing violation. If in the future federal farm worker housing funds are secured for the construction of additional housing, the legislation pertaining to those funds would mandate the recording of legal residency documents.

I was asked that question kind of on the spot last time about this so I want to be clear.

I was confused and unprepared for the related question at the last hearing, and I should have been clearer. MISAS may only legally request to retain copies of legal residency in those cases where housing or rental subsidy has been funded by particular federal programs. It's a legal mandate to us.

Below is a draft statement in response to the issue of extraordinary conditions placed on the La Posada Conditional Use Permit, which has been prepared with legal counsel. Jesse Mountjoy is our lawyer.

I would also like to invite the Board of Adjustors, after I read this, to offer suggestions as to wording that would allow both parties to rectify the unintended violation of fair housing laws. So this is a draft statement.

Kentucky Fair Housing Law mandates housing
without discrimination. Sr. Larraine Lauter, as Executive Director for MISAS, has the responsibility to act solely in accord with the law. She also has a mandate, set by the Kentucky Housing Corporation, that the funds granted for this project be in no way used in violation of fair housing. The extraordinary permit conditions that can be demonstrated to have been set and maintained in response to concerns of a discriminatory nature could readily be challenged as violating the fair housing laws.

One year past the original date of the conditions set for the permit, Sr. Larraine is far more educated as to the intent and implications of Kentucky Fair Housing Law. She, and the MISAS Board of Directors realize that in agreeing to the conditions out of a spirit of compromise, she unwittingly colluded with discriminatory intentions. The MISAS Board of Directors also believes that the Board of Adjustors acted without intention of discrimination.

To wit, some of the permit conditions, specifically Numbers 1, 2 and 4, point to a special set of concerns about a particular group of people, identified solely by their ethnicity and country of origin, as they are currently stated. They may be
demonstrated to have been set in response to very
publicly aired opinions and fears about the group of
people who would most likely constitute the residents
of the project. Statements that may be clearly
demonstrated to be discriminatory, prejudicial and
defamatory in nature have been made on public record
at all three of the public hearings that have
addressed the conditional use permit for the La Posada
project.

It may be easily ascertained that similar
conditional use permits for seasonal farm worker
housing in Daviess County have not reflected those
discriminatory concerns.

I'd also like reiterate at this point that
as far as has been able to ascertain that there are
similar bunkhouses that have been built without
permits.

MISAS is therefore legally obligated to
request a careful review of the conditions as they
stand, and a rewriting of the conditions so that they
are in line with similar projects.

MISAS has no hidden agendas or plans for
the La Posada project, nor should we be held
accountable to respond to every public statement that
claims otherwise. The MISAS mission will be best
served by a well-managed and maintained facility, and
those involved fully recognize that the success of the
project or lack thereof will reflect on themselves
personally, as well as MISAS. To assert otherwise is
defamatory of the character and intentions of the
persons involved, and illogical.

That's the end of the draft statement.

I'd also have to say that I'm concerned
about the implications for setting special conditions
where none have existed before, particularly as they
might impact future permit requests.

I, again, have an obligation to act in
complete accord with Kentucky Fair Housing law and in
the best interest of the mission and activities of
MISAS. In addition, I can see that such precedence
would have implications for other projects, especially
those brought to the board by farmers.

MISAS would prefer a permit that is in
every way comparable to those of comparable
projects; that is, having no special conditions
attached, especially as regards special supervisory
conditions. At the same time, we recognize the
difficulty of simply wiping the slate clean.

Therefore, we propose the following:

A) That conditions 1 and 2 simply be

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deleted, since they are in reality implied by existing law, and do not need to be reiterated;

B) Condition 3, the condition that seems most appropriate and lawful with regard to concerns about discrimination - that was having to do with the subdivision of the plat - has been satisfied, and therefore, need not be reiterated;

C) Condition 4, the condition that most patently reflects discriminatory concerns, be eliminated in its entirety;

D) A new condition, which states in its entirety: The facility shall be managed by MISAS, Inc., would be the condition that we feel like we could accept.

CHAIRMAN: Would you answer one question for me. You were stating other locations in the county that have been built accordingly like them. Do you know of any of those on small locations on theirself and not on large farm operations?

SISTER LARRAINE: I'm not sure about the one that was built in relation to the - -

CHAIRMAN: That are not connected to large farm.

SISTER LARRAINE: I'm thinking about the one that was built in relation to the packaging
facility. Help me out here. Vegetable processing facility. Western Kentucky Growers Co-Op. While these are all on large parcels — I'm not sure that that one is permitted at all actually. Been unable to find a permit for that. However, they're all in residential areas. They're all public roads; all the ones that we've been able to find permits for.

MR. NOFFSINGER: Mr. Chairman, if I might comment on a few of these items.

Sister Lorraine mentioned Joe Elliott's bunkhouse. No special conditions. Conditional use permit came before this body. It was approved with no conditions and the facility was constructed on Joe Elliott's farm. He resided there. In fact, he had a full-time innkeeper, if you will, administrator, supervisor. It could be argued that that would be tenant housing which is exempt by the statutes for agricultural use and perhaps would not have required a conditional use permit.

She mentioned the Jennifer House. I don't know how you can attach conditions to an application that this board denies. How do you deny an application and then attach conditions? You don't do it.

SISTER LARRAINE: It has a permit though.
MR. NOFFSINGER: It has a permit, but that was outside of this board's decision. They were directed to issue a permit by the court. So there were no special conditions tied to it because it was a recommendation from an action of denial.

She's mentioned another site. I'm not aware of that facility. I can tell you that it may very well have occurred prior to the time we started enforcing the ordinance in January of 2000 and could be a situation where it existed prior to, predates the zoning ordinance. I don't know.

This body did not review those. How can this board set conditions on those? In fact, this is the first application of its type to come before this board. It is before this board as a dormitory.

Dormitories by their nature have some type of supervision. If we go to a university dormitory, they have live-in resident hall administrators.

I disagree and take issue of Sister Lorraine's I think accusations here that this board has violated the Fair Housing Act or discriminated. I can tell he it's certainly not the staff's intent to do that nor is it the intent of this board to do that.

In fact, the board has approved the conditional use permit on one occasion and each of the
conditions listed speak directly to the project overview. You presented that to us. We can't control what the general public says in these meetings. You know, we have the fifth amendment which talks about freedom of speech. I think you need to be very careful what you say, but you have the freedom of speech. I don't think it's this gentleman's job right here to tell us you can't say that, but what they speak on record and what comes out is the way other people will perceive them and understand them. I don't think anyone on this board has done that. In fact, I think this board is in favor of this project and has worked to find a way to make this project come about in line with what's been presented to us.

Condition 1, we talked about number of residents. You're bound by law with a conditional use permit to have 15 beds. If you want to come back or if you want to expand, you have to come before this board.

It's not out of the ordinary for this board to set a condition reminding the applicant of that because I can tell you our staff, and we deal with folks on a daily basis, once a conditional use permit is issued they believe that they can do anything they want with that property under that.
particular use, but that's not the case. If they expand, they have to come back before this board for a hearing.

Well, they expand. They don't get the permit and someone, somehow we find out about it. Well, you were suppose to get a conditional use permit. Well, I didn't know that. I didn't know I had to do that. That is placed there as reminder and as a favor to the applicant to help the staff to assist boards in the future and staff in the future. Hey, here it was. It's a matter of record. We can take that condition off.

We have you on record and this board on record stating that 15 is the maximum. It's not that big of an issue whether we leave that condition on.

There was a condition about severe regulations and rules. You had indicated in that public hearing that there would be rules and regulations, as with most dormitories. I know when I was college I had rules and regulations I had to go by. You had presented that to the board and the board wanted to have an absence of specific rules and regulations just to know, hey, there was going to be some type of order to the living arrangements no matter who lived there. It doesn't matter to me who
lives there. Anyone can live there. That's an issue, but there be some type of rules that you have a group of people living together and someone supervising it.

Condition 3, I'm sure you want to delete that. We do too because it's already been fulfilled.

Item 4, a full-time live-in administrator must be on site at all times. You stated in the application that you'll have a full-time innkeeper.

You know, generally a dormitory you have a live-in administrator. I can tell you it certainly is not my intent to discriminate against anyone or to violate a fair housing act.

The Planning Staff, we've reviewed the application. This application is in order and ready for consideration.

SISTER LARRAINE: If I may respond.

First of all, I would like to reclarify as I said at the beginning. I do not, MISAS is not saying that the board is guilty of intentional violation of the fair housing. Indeed by saying that, I hold myself responsible for the acceptance of those conditions. I'm trying to clearly demonstrate that. I have no doubt of the goodwill of the Board of Adjustors.
Secondly, as someone who is familiar because of other experiences with fair housing, not experiences that I've personally been involved with but that members of my family who rent have been involved with in Louisville. I can assure you that if you appear to be, we appear to be in violation of fair housing, any concern at all our intentions do not matter. Our intentions do not matter and they should not.

There is no much there to respond to I'm trying to sort this out.

I don't really see a need to reiterate the need for supervision or the need for programs or whatever when we have clearly demonstrated our interest and concern with that piece of it. By being interested in that ourselves, we don't see ourselves to be in violation of fair housing. It's the nature of the condition set in an environment where prejudicial comments were made that renders this an unfortunate kind of situation.

I would also say that I think, for example, that the dormitory at Brescia, most recent dormitory at Brescia was built since 2000. I would just submit that I'm doubtful that it's possible to find any permit in the city, in the county that calls
for conditions like this.

I'm also not sure that we really want to follow the path of opening up the door for farmers, agricultural employers who want to build housing in the future, I know that some have plans there, who are then vulnerable to the same kinds of attacks by people who are going to be unhappy about that.

I can personally witness that Joe Elliott tells me that he had neighbors who were very opposed to that.

I don't think this is a good direction for us to start taking with this.

Again, in terms of, I think MISAS has clearly demonstrated that, yes, our initiative that set the ideas like rules, regulations, programs, etcetera, you know, that clearly came out of our court. We don't feel a need to have that reiterated to us. We don't feel a need to have it specially reiterated for us because of the population that we're serving. So we submit that it's not legally defensible and that we are very uncomfortable with it because it's not going to be legally defensible for us either. It's something that I've researched with fair housing.

MR. DYSINGER: I'm sorry, Sister.
Mr. Chair, the application that we have before us includes the conditions which Sister Lorraine says that she is uncomfortable with. It seems to me that the question is what we do with that application.

CHAIRMAN: She submitted it.

MR. DYSINGER: And she's no longer comfortable with the conditions in that application.

CHAIRMAN: Is my understanding you want to change your application?

SISTER LARRAINE: I don't want to change our application. I want to receive a new permit, which I understand is the given at this point, that does not have these same sorts of conditions placed on it. If we're starting over, let's start over.

MR. DYSINGER: If we deny this application, is MISAS able to resubmit under new arrangement or is that not the best way to handle that, Gary?

We have to make a decision based on the application that's in front of us. As the applicant you have purview to bring in other things, other people. We do not. That is completely outside of our ability. I'm just trying to think -- because as Mr. Noffsinger pointed out, despite what you may or may
not think or despite what the record reflects, this board is supportive of what you're trying to accomplish here. We also have the responsibility of the safety and welfare of the people in the adjoining properties. That's not to say that there's going to be problems. It's to say we have to look at this issue from all sides. If we have to make this decision based on just the information that's in front of us right now, what's the best way to handle this?

SISTER LARRAINE: May I interject that we have here a new permit that as of yet has no conditions on it. We are submitting -- our submission, our proposal does not change in any way. It's what were placed on the permit that we're asking. We're asking that the conditions of the previous permit not be reiterated in this permit because of the vulnerability to the concerns of fair housing. Our vulnerability as well as yours. In fact, in some ways more ours.

CHAIRMAN: Staff.

MR. NOFFSINGER: Mr. Chairman, I just want to comment on Sister Lorraine's comments in this memo regarding intentional or unintentional violation of Fair Housing Act.
I can tell you I'm not buying into that. That I can speak, and I will speak only for myself, but I feel I have not intentionally or even unintentionally attempted to discriminate, violate the Fair Housing Act and --

SISTER LARRAINE: Mr. Noffsinger, have you dealt much with fair housing?

MR. NOFFSINGER: -- that is the indication. I think if you look at my comments at what I've made -- what you're doing is coming before this board telling this board that, hey, you have violated and here is what you're to do and you have become educated.

I will submit to you that you have an application before this board and this application as submitted is what you're agreeable to. The application you submitted speaks to these same conditions.

Now, if I'm recommending to this board, I'm recommending that they hear from anyone in the audience that wishes to speak and then take that evidence into consideration and weigh it as to the Fair Housing Act and the issues of discrimination and due process, and I think they will. If the recommendations is for approval, I think it should be
conditioned upon the application as submitted.

Now, we're here tonight to consider this application. Not a discrimination case or fair housing case, and that's what you're speaking to. I'm not admitting to that. I think we're far away from that, unless someone raises that issue. I can tell you for the record that it's certainly not my intent to discriminate nor to violate the Fair Housing Act. I don't believe I have done that or this board. I think this board has worked with you to come up with a good project and conditions that are germane to the issue and consistent with what would be considered on other types of projects and you have the first project.

SISTER LARRAINE: Will we see in the future all other multi-person use residential facilities with their proposals restated as conditions? Whether those be residence halls. Whether those be bunkhouses. Whether those be whatever. However people want to characterize those. Shelters, halfway houses, Dismis House, the jail, anything. Will all future conditional use permits carry with them a restatement of the proposals in order to remind the applicants what they wanted to do?
MS. MASON: We're not here tonight to talk about future. We're here tonight to talk about your case.

CHAIRMAN: We've only got one to hear tonight and that's yours. Let me make a clarification of one of the things you stated.

Joe Elliott's operation is on his farm operation. It's on a large farm application. It is considered a tenant of his part of his location.
Yours is a private location on a private piece of land of your own. So that sets different from a farm operation.

Secondly, you made a statement on some of the things made in here. Everyone that's invited in here to speak for or against has the right to state their feelings to the board. What they say is not what we say or what we say is not what they say. So be sure that is clear in the record, please.

With that does anyone else have any more questions of her at this time?

MR. PEDLEY: Mr. Chairman, I'd like to respond to their previous meeting and these four conditions. I made the motion to these four conditions and I'd like to respond to those.

First of all, I have in front of me

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Kentucky Statute, Planning & Zoning Statute KRS 100.
That's what we're bound by, Public Health Safety and Welfare. That's what we make our determination on.

In your original application you asked for 14 migrant farm workers and one supervisor. That's what we gave you.

SISTER LARRAINE: That is what we intended to comply with.

MR. PEDLEY: Then in Condition Number 1, there shall not be an expansion on the residence or on the site plans submitted without coming before OMB Board. That's in here. That's a requirement. We gave you what you asked for in your application, 14 migrant workers.

Number 2, if there are any severe rules, regulations, maintenance violations, board may require permit holder to appear before the board and address the problems. The board has the power to revoke the conditional use permit and may do so. Right here, Kentucky Statute requires the zoning administrator to annually inspect. If there are violations, then he is to bring you before this board to address those problems.

Number 3, was the Staff's request. We put that in there.
Number 4, there's only one word in there that you didn't have in your application and your overview and your agreement. You said there will be a full-time administrator. I said at all time. I said a full-time administrator and I said at all time.

So these four conditions there's only one word in there that you didn't have in your application and asked for.

SISTER LARRAINE: I don't have any concerns --

MR. PEDLEY: There was no intent of discrimination of this board. If we did, we did not know that we were doing it. I know you're before this board for a new application. The old application is out the door. It expired in one year. We're considering a new application.

Again, the project overview basically says the same thing. Almost identical. I could go by your overview and make a new motion and take out one word and it would be according to your project overview and your agreement before this board and what you tell these people here that you're going to do. Now, we're not just considering you. We're considering these people over here or anybody in that community. That's what we must consider and that's according to the
Kentucky Statute regardless of discrimination fair housing. I don't like your accusations at all. We tried --

SISTER LARRAINE: I would like to clarify.

MR. PEDLEY: -- to accommodate you, give what you want. You come before this board with the accusation of discrimination. I don't like that.

SISTER LARRAINE: If I may interject. I would like to reiterate another time that I said I do not accuse the board of discrimination. I simply bring up that the board and I together have inadvertently violated fair housing law. Inadvertently.

MR. NOFFSINGER: It's your opinion.

SISTER LARRAINE: It's my opinion that, yes, you inadvertently and I inadvertently, inadvertently without intention. So there's no accusation here. It's simply a request that we put this in line with the law. Again, I'm not sure that we can find a permit where the conditions are restated for the benefit of the applicant. I don't have any concerns with what we said we would do.

CHAIRMAN: The agreements that agree to in the application you're saying --

SISTER LARRAINE: That is why that we said
that our -- the condition that we would be willing to
accept would be that the facility shall be managed by
MISAS, Incorporated. I'd be willing to say we could
add as stated in the permit application. That's
unusual in and of itself to be required to do that.
Again, I would submit that is vulnerable to inquiry as
to why all of the many, many applications before you,
including the ones tonight, there has been no
restatement of conditions. That's our only concern.
I don't want to look like I'm polluting with
discrimination. I don't believe that your intention
is discriminatory. I think we're sort in a difficult
place here. That can be very simply solved. I don't
have any intention to change the way that we go about
building or supervising or anything of this facility.
Our application stands as it is. I have no quarrel
with our application. I simply would say that I do
not understand why there's a special concern for this
particular application. That what we said we would do
has to be restated for our benefit.

MR. WIMSATT: Bob Wimsatt.

(MR. BOB WIMSATT SWORN BY ATTORNEY.)

MR. WIMSATT: I just have one question. I
realize everybody is trying to work something out
here. Certainly I don't understand all the issues as
well as Sister Lorraine as she's dealt with it, her work on this project in the last year or two. I sense that everybody is trying to work something out here. I guess my question is: If it's in the record, Mr. Pedley, I really don't understand either exactly why those couldn't be restated as conditions, but apparently Sister Lorraine has some concerns about that. If it's in the record, isn't that sufficient? I'm posing that as a question. Isn't it sufficient that if everything is in the record, does it have to be restated as a condition? I'm asking that question.

MR. PEDLEY: You have some of the same language in your lease. Basically some of the things we're saying you have in your lease if you read your lease.

MR. WIMSATT: I'm just posing the question. Does it have to be stated as a condition when it is on record, it's part of the application? Everything that you said is part of their application they've agreed to. I'm just questioning does it have to be a condition because that seems to be a stumbling block. It is on record. It's on record. Nobody can argue that the commitments that they've made. I think Sister Lorraine's concern is that it's attached as a
CHAIRMAN: I'll answer that for you.

Since I've sat on this table as chairman and there's been conditions made, I have asked the people, do you understand what you're agreeing to almost every time. I'll say every time just about. The restrictions that we put on to be sure they understand. It's for their benefit and safety. It's also on the record. Sometimes you all don't listen to what is written in, the secretary writes up. We want to be sure you understand it. That's the reason they're stated.

SISTER LARRAINE: I really do not mean this in an adversarial way. I would like to point out that I do not believe the other conditions granted tonight that there was any restatement or a need to remind other than verbally. I'm not sure I heard verbally. I could have missed that. I'm not sure there was a need to restate in any way any of the -- there was a discussion of it, whatever. In the permits that were granted tonight, we do not see similar line of thought. There is no previous history of discriminatory comments made. If you look closely at what happens with fair housing, when fair housing suits are pursued legally in court, the concern is simply with the response. You know, what's the
action. Intention is not a defense. It's not a
defense for me. It's not a defense. I'm trying to
say that not as a strong Army tactic. Not as a --
simply to say this is something we can work out very
easily together. To keep telling me that there's no
particularly, nothing special here, you know, I can't
accept that. It is not the conditions themselves.
It's the perceived need to state special conditions
for this special project. That's the problem.

CHAIRMAN: The three applicants we made
this evening there were no three any major
restrictions stated in the type they presented. So
they weren't stated. Yours have been last time, this
time so they have been restated and they've been put
in the record and restate for your benefit. Not for
your harm, but for your benefit.

SISTER LARRAINE: But the entire
application is part of the record. I mean there are
other things I have in the application that are not
stated as conditions.

CHAIRMAN: With that we're going to change
to the other side and see if they have anything. You
may say something else if you desire.

Sir, do you have anything else you'd like
to bring this evening?
MR. JACKSON: Brian Jackson.

(MR. BRIAN JACKSON SWORN BY ATTORNEY.)

MR. JACKSON: Only to say to the board that I'm extremely confused now. I've been upset about this project since word one. I do not come to this as a bystander. I've lived in this community for 20 years. I've been awarded United Way Volunteer of the Year Award. I've been awarded the Civitan Owensboro Citizen of the Year Award. Pitino Shelter, the Oasis Center, they've all given me awards and honors for one reason and that's the work I've done over the past two decades. Finding and funding ways to provide adequate housing for low income people in this county. So when I rise to object to the project in principal as a matter FOLLY (CHECK), it is not without some knowledge of what I'm talking about.

First off I was here when the applicant agreed to the conditions of the board. There were many witnesses in the room. It's on public record when the applicant a year ago agreed to the conditions of the board.

Now a month ago I was also here when the applicant admitted to the board that they had only made that agreement as a matter of convenience and had no intention to comply because they found the
conditions disagreeable. Now I'm hearing
cooplicants dictate to the board what conditions
they will and will not accept.

This seems very inappropriate to me. The
board has counsel. The board does not need applicants
to interpret the law to it. This makes me very
uncomfortable indeed with the whole process. I just
want to restate my objections. Thank you.

CHAIRMAN: At this time the board is going
to take about 15 minutes, recess, and ask a couple of
things of our lawyer and at that time we'll start back
up. So within 15 minutes we'll start the program
again. Adjourn for 15 minutes.

- - - - (OFF THE RECORD) - - - -

CHAIRMAN: Does any board members have any
more questions of the applicant they want to ask?

(NO RESPONSE)

CHAIRMAN: Staff very anything else to
add?

MR. NOFFSINGER: Only to reiterate what I
said earlier at the beginning without going into full
details. Staff would recommend that if you consider
this item for approval that you place a condition on
the approval that the facility be operated as stated
in the application which was prepared by the

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applicant. All members have a copy and has been
entered into the record.

CHAIRMAN: Does the applicant have
anything else you'd like to add at this?

SISTER LARRAINÉ: No.

CHAIRMAN: Do you have anything else you'd
like to add at this time? Change your mind?

SISTER LARRAINÉ: No. I'm agreeable to
that because I'm agreeable with our application.

CHAIRMAN: Any board member have anything
else you want to add or comment?

(NO RESPONSE)

CHAIRMAN: Ready to make a motion.

MR. PEDLEY: Mr. Chairman, I make a motion
for approval based on statements in the application by
Sister Lorraine. Findings are the Conditional Use
Permit is a farm-related use and is compatible with
the community in an A-R zone. Two, the permit will
not cause adversely influence on the existing or
future development or the property or surrounding
neighborhood. Complies with the site development
requirements of the Zoning Ordinance. With the
condition the facility will be operated in a manner as
described in the project overview provided in the
application by MISAS and Sister Lorraine.

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CHAIRMAN: Is there a second to the motion?

MS. DIXON: Second.

CHAIRMAN: Any other comments from the board members?

(NO RESPONSE)

CHAIRMAN: staff have any questions?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Do you understand the motion has been made?

SISTER LARRaine: I understand the motion has been made to accept the application based on the condition of the application, yes.

CHAIRMAN: Thank you. With that all in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Anything else on the agenda?

MR. NOFFSINGER: No, sir.

CHAIRMAN: If not, entertain one final motion.

MR. MILLER: Move to adjourn.

MS. DIXON: Second.

CHAIRMAN: All in favor raise your right hand.

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(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Everybody have a Merry Christmas and Happy New Year and hope to see you all next year. 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 54 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this the 15th day of December, 2003.

LYNNETTE KOLLER, NOTARY PUBLIC
OHIO VALLEY REPORTING SERVICE
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OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES:
DECEMBER 19, 2002

COUNTY OF RESIDENCE:
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