The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, October 7, 2004, 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: I want to call the meeting of the Owensboro Metropolitan Board of Adjustment to order.

I want to welcome each one of you being here this evening. We start each meeting with a prayer and the pledge of allegiance. If you so desire, please join us as Tim Miller will have our prayer.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Again, I want to welcome you to

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the meeting. A couple of guidelines we'll state now to make it simpler later on.

If you wish to speak on any item, please come to one of the speakers and state your name for the record to get it officially. Also if you start going over the same item each time, more than two or three, a couple of times, we will cut you off because there's no need to listening to the same agreements or disagreements on the item.

With that the first item is consider the minutes of the September 2, 2004 meeting. They're in the office on record. I don't think we've found any problems with them.

MR. NOFFSINGER: No, sir.

CHAIRMAN: With that I'll entertain a motion to dispose of the item.

MS. DIXON: Move to approve.

MR. MILLER: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

First item, please.

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CONDITIONAL USE PERMITS
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ITEM 2

3415 Buckland Square, in an R-3MF zone
Consider request to amend a Conditional Use Permit
to operate a public community center for the Boys &
Girls Club of America.
Reference: Zoning Ordinance, Article 8, Section 8.2B7
Applicant: Steve Winkler, Cliff Hagan Boys & Girls
Club, Inc.

MR. NOFFSINGER: Mr. Chairman, the
Planning Staff has reviewed this application. The
application is found to be in order.
The Board of Adjustment has approved a
Conditional Use Permit for this location for a similar
use at this same location on two other occasions.
This revision to the Conditional Use Permit would be
to change the footprint of the proposed building as
well as the location of the building on the property.
With that it's ready for your consideration.

CHAIRMAN: Were any objections filed in
the office?

MR. NOFFSINGER: No, sir.
CHAIRMAN: Is there anyone wishing to
object for this conditional use?

(NO RESPONSE)

CHAIRMAN: Does the applicant have
anything you'd like to add to it?

(NO RESPONSE)

CHAIRMAN: Any board member have any

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questions of the condition?

(NO RESPONSE)

CHAIRMAN: Any comments from the board?

(NO RESPONSE)

CHAIRMAN: Entertain a motion.

MR. PEDLEY: Mr. Chairman, I make a motion to approve the amendment to the Conditional Use Permit for relocation of some of the items on the plat and the footprint of the building in accordance with the plat presented with the condition that all previous conditions shall be as stated in the original Conditional Use Permit.

CHAIRMAN: Is there a second?

MS. MASON: Second.

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

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

ITEM 3

1831 McCulloch Avenue, in an R-4DT zone
Consider request to amend a Conditional Use Permit to place a 16'x80' Class 2 manufactured home on the property, revising the parking location.

Reference: Zoning Ordinance, Article 8, Section 8.2 10B

Applicant: Denise Marcum

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this application. It's found to be in order. It does revise the parking on the property where this board previously approved the parking to be off the alley. The applicant because of drainage reasons is proposing that the parking come off of Riley Avenue. With that it's ready for consideration.

CHAIRMAN: Any opposition in the office at this time?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Anyone wishing to oppose to this Condition?

(NO RESPONSE)

CHAIRMAN: Does the applicant have anything they would like to add at this time?

(NO RESPONSE)

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

(NO RESPONSE)

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

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MR. MILLER: Mr. Chairman, motion to
approve since this is an amendment to a previously
approved Conditional Use Permit.

CHAIRMAN: Is there a second?

MS. DIXON: Second.

CHAIRMAN: A motion has been made and a
second. Is there any other questions from the Staff
or office?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

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VARIANCES

ITEM 4

506 Breckenridge Street, in an B-4, I-1 zone
Consider request for a Variance to reduce the
roadway buffer from 40 feet to 30 feet along
Breckenridge Street.
Reference: Zoning Ordinance, Article 13, Section
13.622, 13.6221
Applicant: James Gregory Wimsatt

MR. NOFFSINGER: Mr. Chairman, the
Planning Staff has reviewed this application. The
application is found to be in order. The Planning
Staff has prepared a Staff Report with a
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recommendation for approval and has submitted this recommendation to this board for consideration.

CHAIRMAN: Is anyone objecting to this variance in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Anyone in the audience objecting to this variance?

(NO RESPONSE)

CHAIRMAN: Does the applicant have anything you would like to add to it?

(NO RESPONSE)

CHAIRMAN: Does the Staff have more comments?

MR. NOFFSINGER: Yes, Mr. Chairman. I will state for the record that Planning Staff after reviewing has found that the property that Mr. Wimsatt owns adjoining this, the landscaping is located within the roadway buffer. By allowing this variance it will allow the landscaping that's existing on the adjoining site to be continued along this proposed development site. So it would be in keeping with the character of the area and the location of the existing landscaping. Breckenridge Street is a one-way arterial that is adequate to handle the capacity, roadway capacity now and in the foreseeable future. It's not likely that a
roadway widening project would be proposed on this facility for many, many years. So with that Staff has prepared the findings that the Board of Adjustment have available to them that they can read into the record.

CHAIRMAN: Does any board members have any other questions on this item or comments?

(NO RESPONSE)

CHAIRMAN: Does the applicant understand the conditions that the Staff stated?

APPLICANT REP: Yes.

CHAIRMAN: Does the applicant have anything else to add?

APPLICANT REP: No.

CHAIRMAN: Entertain a motion to dispose of the item.

MS. DIXON: Move to approve the Variance because granting this Variance 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; and will not allow an unreasonable circumvention of the requirements of the zoning regulations.

CHAIRMAN: Is there a second to the motion?
MR. MILLER: Second.

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

(NO RESPONSE)

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

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 5

9642 KY 951, in an A-U zone
Consider request for a Variance to reduce the front yard setback from 30 feet to 7 feet in order to construct a garage.
Reference: Zoning Ordinance, Article 8, Section 8.5.2(c)
Applicant: Michael and Karen Young

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

The Planning Commission will be recommending tonight approval of a modified variance from what the applicant is requesting. That would be a variance to reduce the building setback for this
particular structure from 30 feet to 15 feet as measured from the center line of the right-of-way. That recommendation comes with a condition that a new plat be submitted to reduce the plat at 35 foot setback down to the 15 foot setback.

The reason for this recommendation is due to the location of other structures within the area that are encroaching upon a 30 foot required building setback. Topography of the area is such that the particular lot, it's difficult to site any type of structures due to the topography that falls off as you approach the rear of the home. Several feet back it falls off. So it makes it difficult to locate a garage on the property.

We have worked with the applicant. It's my understanding that the applicant is agreeable to amend the application to a 15 foot setback as opposed to what was proposed and that would be a 7 foot setback. The Board of Adjustment has received a Staff Report and we made findings for the board to review.

CHAIRMAN: Is there any objections in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone in the audience wishing to object to this variance?
CHAIRMAN: Does the applicant have anything you'd like to state to the board? Is the applicant even here?

CHAIRMAN: The applicant is not here on this item.

CHAIRMAN: Any board members have any comments or questions?

CHAIRMAN: If not entertain a motion to dispose of the item.

MS. MASON: Mr. Chairman, I move for approval with the changes recommended by the Staff of the front yard setback from 30 foot to 15 foot with a condition that a new plat be submitted to reduce the plat at 35 foot setback. With this approval with the new front yard setback it will not adversely affect the public health, safety or welfare; it will not alter the essential character of the general vicinity; it will not cause a hazard or nuisance to the public; will not allow an unreasonable circumvention of the requirements of the zoning regulations, if we use the Planning Staff recommendation.
CHAIRMAN: Is there a second to the motion?

MS. DIXON: Second.

CHAIRMAN: A motion has been made and a second. Any other comments by the Staff?

MR. NOFFSINGER: No.

CHAIRMAN: Any board member have any questions or comments?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

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ADMINISTRATIVE APPEALS

ITEM 6

416 Wing Avenue, in an B-4 zone
Consider request for an Administrative Review to appeal the zoning administrator’s interpretation that the construction and repairs of pallets is an industrial use and is not permitted in the B-4 zone.
Reference: Zoning Ordinance, Article 8, Section 8.4 industrial uses (29)
Applicant: Randy Jones

MR. NOFFSINGER: Mr. Chairman, Mr. Jim Mischel, Zoning Administrator, is here tonight to present his findings and his decision. I remind the Ohio Valley Reporting (270) 683-7383
Board that you're here to consider tonight whether or not Mr. Mischel made the appropriate decision or if he errored in the decision in review of the current use on the property.

So with that we should hear from Jim Mischel and his presentation of the case.

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

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I'd like right now to give you a little background information on the property that's located at 416 Wing Avenue. I'd like to give you a little handout first.

Initially the reason we got involved with this we had some complaints to the office. I've got two letters here I'm going to pass out so you can take a look at it while we're discussing it. I'd like to put one in the record too. I'll give you a couple of minutes to read over that.

As you can see, the first pages that I passed out are letters that we've had complaints concerning this business. It's Jones Pallet Company. They make, they refurbish wooden pallets. There was some concerns, I guess, from neighbors here that this
is occurring in the wrong zone. It is zoned commercial. This type of business should be in I-1 light industrial business. So we did investigate.

If you look at the papers, there's a memo I sent to Mr. Randy Jones concerning this. At that time I asked him to contact us concerning this item, which he did. We talked about it. He e-mailed me some concerns that -- basically I guess what we're going off of this is a commercial piece of property. There is a clause in the zoning ordinance that describes grandfathered uses. As long as the business is grandfathered in before the ordinance took affect and maintained that industrial activity throughout the years without an 18 month absence, then it can continue that industrial use.

We asked him to show us, give us some evidence to show that it's always been in existence of industrial use. He did e-mail me some information concerning this use. After reading it, and I gave you a copy of that. You'll see that in an e-mail to me. I didn't feel like I could certify this as a grandfather use with the information that was given to me. So after that, and I think that was in August, August 10th, that e-mail, I sent out a notice of violation stating that this should be, this business

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should be an industrial type setting. Of course, Mr. 
Jones has appealed. He's done an Administrative 
Appeal on that decision. I guess he's here tonight to 
show that maybe this is a grandfather use. I don't 
know if you have any questions right now of what you 
have there.

CHAIRMAN: Any board members have any 
questions of Mr. Mischel?

(NO RESPONSE)

MR. MISCHEL: There was some photos turned 
in too and I think you've seen those.

CHAIRMAN: Is the applicant here? If the 
applicant have any comments, come forward.

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

MR. JONES: Randy Jones.

(MR. RANDY JONES SWORN BY ATTORNEY.)

MR. JONES: We've been in business there 
for about two or three years now. Like Mr. Mischel 
said, I've got a list of the companies that have been 
there.

I'm sure most of us here tonight are 
familiar with May Brothers Concrete. They built the 
building back in '57. They owned it up until 1993. 
At that point Owensboro Grain made the purchase.

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Since that time they have rented the building out all the way up to the present time. Each person that has been in there, all except for one, has been industrial. It has not been setting for 18 months. I've got all the months and times here.

The first person they rented to was Industrisl Technology. Wayne Hughes had it from March of '93 to September of '94. He's got a representative here tonight to let you know if you need that. It was industrial use.

Millay Building & Remodeling was industrial. They were there from '94 to December '95. Viewmaster Windows did industrial work, John Noffsinger. He had it from December '95 to June of '96.

I've got a guy here tonight that also had a pallet business. Was in there anywhere from two to four years. He did the exact same thing I did.

CHAIRMAN: What was his dates?
MR. JONES: December of '95 to January of 2000. The company that was in there was Matt Hayden Empire Turf and a portable aluminum window storm repair. Bob Pinkston, his son, rented from both of them. They had it for that duration doing the exact same work I do.
It was asserted in the very beginning that I do pallet assembly. This is incorrect. I do not build one pallet. I get the pallets in. If they don't need anything, they're sold. If they do need something, I put a board or two or whatever it needs on it and it's sent out. I do not assemble pallets. According to the information I read, that is what makes it industrial use is the assembly. They've got it in your all's notation on what is industrial use is box and crates. I do not build boxes. I not build crates. It says assembly of those things. I do not do that.

I am no different than a used car lot that gets a car in. If it's okay, he sells it. If it needs some work, he puts it in his little shop and he fixes it and then he sells it. I do the same thing. So I don't really see myself as industrial because all I do is sell the product that I repair, if it even needs repair. That's the way I go from that. Like I say there has been a pallet shop that's been in there longer than I've even been there. They never had any problem with that.

There was a guy by the name of Garland Gray that had Permatrue Industrial Coatings. He was there from March of 2001 to June of 2002.
Robert McBride was there doing furniture. He was the only one that was commercial. He was there from June 2nd to October 2nd, which was, what, about three or four months.

Then from that point until to right now I've had it doing a pallet shop which is the same thing Bob Pinkston's son, Rob Pinkston, was doing the same thing. He's here to attest to that fact tonight.

As far as all the complaints are going, I haven't really seen what you've got there. I know one of the things was I block the sidewalk. I've got pictures to show the sidewalk is not blocked.

I've got reports back from the health department, reports back from the city that have both come and seen exactly what they were complaining about. They said, these are unfounded statements and they found no problem with it.

The health department was called because they said there was rats out there. We all knew that wasn't true, but that's what she reported so he had to come out and check it. This was due to on a block over, from what I understand. The city had come and flushed out the sewer system and some rats had come out. These were not mice. These were rats. They had come out and the lady on that street had seen them and
she got word back to use that that's what it was. Had
nothing to do with me whatsoever. When the health
department came out, he walked around. He said, there
should be holes in the ground. I had just mowed the
ground so he should easily be able to see any holes.
He said, there's nothing here. It's totally
unfounded. The pallets he said were stacked neatly
and in order. He saw no complaint.

The fire department has said the same
thing.

Everybody she has contacted has come back
with a neutral remark. There's no problems.

I've also got other neighbors that live in
the neighborhood because the complaint I was getting
back was this is a neighborhood thing. Really it's a
one or two family thing. The rest of the neighborhood
are here tonight to say that they want me there. If
you have a question about that, they're more than
happy to tell you that they want my business there.

I've also been told that my business has
been a detriment to the area. I'm a renter. Not an
owner, but after I had been there about a year to a
year and a half I spent 3 or $4,000 putting a roof on
somebody else's building so I could be in there and it
would look better not only for the neighborhood, but
it would be better for me. So I spent 3 or $4,000 to Lyle's Roofing to come in and tear that roof off. It was in bad shape. It had grass growing out of the roof. So if that gives you any idea. There were holes and different things in that roof. It was molded and stuff. We had all of that stripped out and redone.

You know, it looks like I'm putting forth an effort for somebody that says I'm a detriment to the neighborhood.

Also the same people that are saying that have also come up to me and made the remarks how much they appreciate me being there now because the grass is mowed and kept neat. They said that sometimes they even mowed the yard, but they were glad that I was mowing it now. You know, I'm beginning to wonder why they're complaining if they're also coming up and telling me they appreciate me mowing the yard.

If you'd like to see them, I've got pictures showing the pallets stacked neatly. I've got pictures that show that the sidewalk is wide open.

You also had a picture there, I believe, that's got a brown van in it. She's got a notation in one of the reports that I was told that this person had to honk the horn, swerve to miss me, but little did she know
that that person was the wife to a guy that works in Temporary Professionals which is right across the street from my business. We knew each other for years. She was coming across that parking lot to get back on the street. When she went behind my forklift she was honking and waving because we were friends. They will call you. They will write you. You can call them and they will attest to the fact that they did that.

I don't mean this the wrong way, but I've got to tell you like it is. I know a lot of people and I've got a lot of people that come up and down that street honking the horn, sometimes stopping, sometimes waving. They get the idea when they hear the honking going on when people are waving and being cool about that this is complaining about me being out there. It's simply because I know all these people. Even my brother-in-law that's here tonight, he drives by every now and then. When he does he'll honk two or three times and wave. This goes on a lot.

I've got people that work for UPS that deliver my nails to me. When they come by they'll honk three or four times and wave.

I've got a guy that works for Fed Ex. He goes to church with me. When he comes back, he'll
honk, he'll wave. Sometimes he'll pull over. He did last night. We talked for awhile.

So the honking and so forth like this, that's unfounded because it's mostly people that I know honking at me.

The complaints about me blocking the street. After I realized what was going on, the complaint there, which to me is unfounded because I went back through my books and I looked at these people that came that caused me to block one part of one lane, that's all it was, one part of one lane. It happened four times in this whole year. Because I had to pay them or they have to pay me. I get written receipts for that. So I went back and looked. That only happened four times.

When they say that I block the street, my truck is parked on my side. No yellow line. I have a right to park there. There's three stacks of pallets on the street side. That's all I have to get out there for is those three stacks. The other three stacks are loaded from my side of the street. So that's no problem whatsoever.

Even here recently I have a big vacant lot on the other side that is in-between their daughter and son-in-law and me. I even started using that
lately to load. So that even lowers, you know, what I do there.

I've done everything I can. One of the families that's here tonight, her husband was out there one day and I was talking to him. I said, if you ever have any complaints about my pallet business over there, you tell me instead of calling in. The same thing was told to her. One time we were sitting out there in front of the business at night talking over my truck. We talked for about 30 or 45 minutes. I said, listen, instead of you calling somebody, the next time just come tell me what it is and we'll work on it. There's no need to call the city because all the tax payers dollars for somebody to run out there for nothing. That's what has happened about four or five times now. We're paying for people to come out for unfounded reason. It's all been proven in the report.

From that time, she has yet to come and talk to me one time about any issue whatsoever. That's all I asked her.

The McBrides told me that there was an area they wanted to see improved. I said, hey, no problem. Give me 30 days and it will be took care of. It was took care of in one week. So if they'll work
with me, I'll work with them. When they don't come to me and they call the health department, which is unfounded. They call the fire department saying my business is going to cause the houses in the area to catch on fire, you know, it's absurd, but that's what they said, there's nothing founded there. The fire department has been there. The health department came. That was unfounded. Everything they have said has been unfounded.

I've got a letter right here that you're more than welcome to see from a new renter that just moved in. If you'd like for me to, I can read it to you what it says or you can read it in private. They came up there, even their own daughter and son-in-law, it's written in here word for word, to warn them that their mother may tell them about how to keep their yard, how to keep it mowed, or how to keep the bushes trimmed, or keep the dumpster up off the street, or whatever. It's all right here. Even the person that he's renting from, even before he moved in, that Ms. Embry would probably cause some problems. He was warned before he moved in. He had to work tonight so he wasn't able to be here so he wrote a letter and put that in there.

She's consistently causing problems in the

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neighborhood for different ones. Like I said I told her face to face that if she would just come see me when she's got a problem and we would take care of it. She has yet to come to me. But the ones that did, we've got everything worked out.

I do whatever I can to reach out and touch people in the neighborhood that have a problem. The people across the street are elderly people. When he's got furniture in his truck and he's coming home, I go over there and help him unload it. Sometimes help then unload their groceries. Their son had a tree down during the storm. I helped them cut down the tree and stuff. You know, I do whatever I can around the neighborhood. This family here is the only one that seems to have a problem. I don't have any problem with her. About a week or two ago she had a truck in the garage that would not start. The battery was dead. I was over there working on my lot. Even in the midst of all this complaining and stuff, she still asked for me to come help her get her truck started. I went right over there. Hooked the battery charger up for her. Got her truck going for her and she still complains. I can't do anything to please her.

Like I say I've got everything that shows
that I should be grandfathered in date-wise. They're all industrial businesses. There was a previous pallet company that was there. We didn't really start having a big problem until we refused to sign a petition that she had going around. Once we didn't sign that petition, it started getting heated up from then on.

I don't know what else to tell you, but I like I said I've got the witnesses here that will validate and tell you they approve of me being there. I've got a letter from the people in the neighborhood that's not here tonight signed that they approve of me being here. You'll find it's only the one family and maybe one other that have any issue. I just don't see a problem with it.

CHAIRMAN: Any board member have any questions of Mr. Jones at this time or the Staff?

MR. NOFFSINGER: I do.

Mr. Jones, I have a question of you. I have an e-mail I believe it's from you dated 8/10/2004, RJBUSINESSES31.

MR. JONES: Yes.

MR. NOFFSINGER: That's your e-mail address, correct, where you listed the dates and uses that occurred in that -- you would confirm that that
is from you?

MR. JONES: Yes.

MR. NOFFSINGER: One question here.

From March of 2001 to June of 2002, McBride Furniture was in operation here. Would you explain the nature of that business?

MR. JONES: No. That was Permatrue Industrial Coating from March 1st to June --

MR. NOFFSINGER: I'm sorry. Then McBride Furniture was the only non-industrial company. June '02 to October '02. Would you describe the nature of that business?

MR. JONES: He bought used furniture. It was used, but sometimes it looked more towards the antiquish type stuff. Then he would resell that.

MR. NOFFSINGER: Thank you.

I have a question of Mr. Mischel.

Mr. Mischel, the use that was just described by Mr. Jones, what use category does that fit into in the zoning ordinance?

MR. MISCHEL: The McBride Furniture?

MR. NOFFSINGER: As he described it.

MR. MISCHEL: Typically that would be a commercial activity. From what I understand, it's sell and resell of antique furniture, used furniture.
MR. NOFFSINGER: B-4 general business zone?

MR. MISCHEL: B-4 general business zone.

MR. NOFFSINGER: Would you describe the statutory requirements and the requirements of the zoning ordinance regarding a grandfather use and the continuous of a non-conforming use.

MR. MISCHEL: Typically if, in this case, if you have a piece of property that's zoned commercial and when the ordinance came in when it was inactive, if that use was industrial, even though it was zoned commercial, then that was grandfathered in. It can continue, as long as there's no major changes or change in use. If an industrial activity ceases, they have 18 months to bring in another industrial activity. If you change that use of the property, go back to what it was, then you lose your grandfather status on that.

MR. NOFFSINGER: So therefore you're telling us that the use of the furniture store that sold antiques and retail sales of furniture was a use that would be allowed in the B-4 zone and that was the zoning of the subject property at that time. Therefore the property at that point in time lost its grandfathered status or non-conforming status?
MR. MISCHEL: Yes, once they change that.

MR. NOFFSINGER: I have a question of Mr. Elliott.

Mr. Elliott, did Mr. Mischel describe the statutory requirements as well as the zoning ordinance requirement regarding grandfather uses and their ability to continue?

MR. ELLIOTT: Yes, he has.

MR. NOFFSINGER: Thank you. I have no other questions.

CHAIRMAN: The gentleman that had the furniture for sale, is he here this evening?

MR. JONES: His wife is.

CHAIRMAN: Would she come forward at this time, please?

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

MRS. McBRIDE: Regina McBride, 406 Geary Court.

(MRS. McBRIDE SWORN BY ATTORNEY.)

CHAIRMAN: He stated that you were in the furniture or antique business repair. What's the date?

MRS. McBRIDE: We was over there from -- I have to go back here now. He had his last heart
surgery in '02. We was there probably from 2001 until then, but we had a lease. After he had his open-heart surgery, he let us out of it because we couldn't run the business no more. Then after that -- well, we may have stayed a year, maybe a year and a half over there. Then he had his open-heart surgery. We had an auction and left. Then after that he stayed home probably six months, seven months. He decided that he didn't want to be home any more. So we went to Consumer's Mall. He let us out of the lease. We took care of the building.

CHAIRMAN: Would you state for us or tell us what kind of business you operated at this location when you were there, please?

MRS. JONES: We had an antique shop.

CHAIRMAN: That answers my question.

Thank you, ma'am.

Does the Staff have any questions or other board members?

MS. MASON: You did not build furniture.

You just sold furniture.

MRS. McBRIDE: No, we did not build furniture.

CHAIRMAN: Thank you.

Mr. Jones, do you have any other people
MR. JONES: The only thing I wanted to try to get cleared up is how they're actually trying to zone me. They're trying to say I'm industrial, but if all I do in the sell like he did in furniture, I don't do anything different. Just mine is pallet. I wanted to see if that's considered commercial or if that's considered industrial because that's what me and Jim Mischel has been trying to figure out. There's nothing in the zoning thing that actually list what I am. He said that the closest thing he could find was the assembly of box and crates, which sounds like the same deal, but it's not what I do. That was part of what we were saying. Let's go here tonight and see if they can tell us what that interpretation is. Also through the reading that I found through your alls information on zoning, you have a B-5 that's commercial that is a new ordinance that allows commercial and light industrial in that commercial business. That's what I figured myself as just general business and sales. If it doesn't go to B-4, I can see it easily going into B-5 without being "industrial."

CHAIRMAN: Anyone else wanting to speak to support his appeal?
CHAIRMAN: Do the ones that are objecting to the location wishing to come forward. State your all's reasons, please.

MR. ELLIOTT: State your name, please.

MS. EMBRY: Donna Embry.

(MS. DONNA EMBRY SWORN BY ATTORNEY.)

MS. EMBRY: First I would like to submit some pictures.

We and other neighbors of the property located at 416 Wing Avenue are opposed to the business known as Jones Pallet operated by Mr. Randy Jones who is conducting an industrial business in a general business B-4 zone.

Mr. Jones' business is in violation of the general business zoning ordinance as per citation given to Mr. Jones by Mr. Jim Mischel on September 2, 2004, thus making this business non-conducive with our neighborhood.

According to the courthouse records, May Brothers Concrete Company built and occupied the 416 Wing Avenue property from 1957 until sold to Owensboro Grain Company June 24, 1993. On August 1, 2001, the property was transferred to Owensboro Grain Company, LLC.
During May Brothers 36 year occupancy,
this property was used exclusively for office space,
equipment storage and parking lot.

Over the last 11 years, after May
Brothers, there have been many businesses renting or
occupying space at 416 Wing Avenue. Some stayed a few
months. Others longer and from time to time the
building set empty. A small lawn mower shop, custom
builders, window replacement, home improvement sales,
Welborn's Florist and Bob's Antiques were some, but
never has there been a business of such magnitude,
volume or negative impact on our neighborhood until
Jones Pallets, nor were there any problems with any of
the other businesses at this address.

Mr. Randy Jones, operator of Jones Pallets
and the current tenant of 416 Wing Avenue, has been
renting from Owensboro Grain Company, LLC or Mr. Ron
Prater for approximately the last two years. Mr.
Jones constructs and rebuilds industrial wood pallets.
He uses very little new wood for reconstruction of
these pallets. Therefore it is necessary for his
business to acquire used pallets in order to use the
salvageable wood to construct a serviceable pallet for
resell to his customers.

During the construction or reconstruction
of these pallets, sawdust particles are emitted into our neighborhood.

Because of the amount of used pallets that requires to construct one good pallet, Mr. Jones does not have the area needed at this location to store, reconstruct or otherwise forward his business intent without causing problems to the neighbors around him. These used pallets remain in the lot next to his business until he sees fit to use them. This not only causes a cosmetic concern to the neighborhood, this situation also raises an environmental issue.

Due to the space that is needed in loading or unloading pallets onto or off of large trucks and trucks with attached flatbed trailers by the use of his forklifts, Mr. Jones would block traffic on a major thoroughfare in front of 416 Wing Avenue almost on a daily basis thus causing a traffic hazard not only to himself but to others. He has no other choice for this endeavor as he has little or no space to load or unload on this property.

We in this neighborhood maintain our properties to good and full community expectations. Our position is if Mr. Jones as a tenant is allowed to continue with his current industrial business practices as stated, we as homeowners will suffer the
degradation of Mr. Jones' business practices.

We appeal to you that this property located at 416 Wing Avenue remain general business.

Thank you.

CHAIRMAN: Any board member have any questions of the lady?

(NO RESPONSE)

CHAIRMAN: Staff have any questions?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Anyone else objecting come forward, please.

MR. DARLING: My name is Bob Darling.

(MR. BOB DARLING SWORN BY ATTORNEY.)

MR. DARLING: I'm a resident at 414 Geary Court which backs up to approximately 500 Wing Avenue.

Our neighborhood has generally been a neighborhood where people try to get along. It has over 90 percent occupancy of homeowners. We have at least 50 percent occupancy of homeowners that have been there over 20 years. My property has been occupied by the same family for 60 years.

Some of the things that were said tonight I don't believe were correct. I personally have had problems with the sidewalks being blocked and the streets being blocked. I'm sure Mr. Mischel, it
happens all the time, that he gets a complaint and when he goes to the complaint the property is in good shape. The homeowner or the property owner has cleaned the property up and has taken pictures to prove that it's been this way all the time. Well, it hasn't been this way all the time. It's been in different states at different times. It's cleaned up right now.

Several other business owners that were there, the lawn mower service, I believe aluminum siding service, several of the others were commercial businesses that sold to individuals. I do not believe a pallet service has much individual sell. Not too many of us need pallets. That's generally sold from industry to industry. I believe that qualifies as that.

I believe if you look there has been even an 18 month period when the property was vacant before and after possibly of somebody like the furniture shop was there because the property has been vacant a lot of the time. So I would support Mr. Mischel in his findings.

It was mentioned tonight about some of the future zoning problems that we may have in the neighborhood. Our neighborhood realizes that it's
going to be a difficult year for it. So it is trying
to work itself through some of these issues. I
support Mr. Mischel in his findings. I believe this
is an industrial use. I believe there are lots of
places in town where this industry can take place.
It's not an industry that if it's not there would have
to go out of business. I would request that you all
turn down this request. Thank you.

CHAIRMAN: Anyone else, come forward
please, ma'am.

MR. ELLIOTT: State your name, please.

MS. BOARMAN: Melissa Boarman.

(MS. BOARMAN SWORN BY ATTORNEY.)

MS. BOARMAN: I live at 428 Wing Avenue
which is located next-door to Jones Pallets.

I'd like to clear up something that was
said by Mr. Randy Jones just a minute ago. Mr. Jones
admitted to me several months ago when the whole rat
situation came about that there were rats on the
property. I went next-door to discuss the situation
with him. He said, yes, there were rats on the
property. That he did set traps out. He was afraid
to spread poison because of fairly young children in
the neighborhood, but he had set traps. Because I
have a four year old daughter and I didn't want her to
be playing outside and us come across any rats or mice
or anything, and he said he gets the pallets from
several grocery stores and things like that and there
are meat on the pallets, and he can't help it. He
said that they ate off the pallets.

There are many things that Mr. Jones does
while conducting his business that arises concern. I
have lived in the neighborhood for nine years. My
husband and I bought the property at 428 located
next-door to 416 six years ago in August of '98.

While on his forklift Mr. Jones uses our
driveway incline to take loads of pallets to a lot
next to us. He drives his forklift in the street,
comes up our incline instead of bumping up the curb.
As they're doing this pallets have fallen off in our
driveway.

Mr. Jones parks his large truck partly on
the yellow line, as you can see in the pictures, to
load his forklift. When doing this my husband and I
cannot see to pull or back out of our driveway safely.

Traffic is constantly coming across Fourth Street onto
Wing Avenue, down Wing Avenue from East Parrish and
also turning onto Wing Avenue from Fourth Street. The
vehicles consist of semis, various cars, trucks, city
and county school buses and public transportation
buses. From 7 a.m. to 5 p.m. Wing Avenue is crowded
with constant traffic.

Mr. Jones' industrial customers do not
have anywhere to park while they're being loaded.
They have large trucks with flatbed trailers so they
pull up in front of our house partly in our grass.
While he is loading them with his forklift in the
street blocking traffic, when he is done they proceed
to go on and pull through our yard leaving ruts which
we have had to fix. He also drives his forklift on
the sidewalk which makes it a hazard for people to
walk up and down the street. I have had many times if
I'm going to go walk somewhere down the street, to go
to the Pantry or to George's Barbecue, I've had to
walk out in Wing Avenue, around his big truck, which I
understand he does park on the street, but he blocks
with the gate sometimes. You have to walk around his
truck in the street.

My husband and I do work hard to maintain
our home and our property. We have lived at 428 for
six years. There has never been an industrial
business next-door to us. This past spring when we
had the straight line winds that were 125 miles per
hour, the pallets that were stacked up in the lot
next-door to us we were very concerned that they would
become airborne and crash through our windows. So I am opposed to rezoning it as industrial. Thank you.

CHAIRMAN: Anyone else make any other comments?

(NO RESPONSE)

CHAIRMAN: Mr. Jones, we'll give you a minute to add anything you wish what they commented on. Come forward. You have anything else to say?

You have pictures you want to introduce?

MR. JONES: Yes.

The one picture there shows from the back where the sidewalk is open, the gate is wide open there. The pallets in the side yard there you can see are neat. There's no problem there. That's the same thing that the health department has said. As far as her and her husband coming home and stuff like that, he's gone before I get to work and he comes home after I'm done working. So I don't see where the issue is there. That's what she said. Where he works he's gone before I get to work. When I'm pretty well done for the day, he's getting home.

As far as the rat problem, like I said the health department has already said they're not there. She says that I said they were there. How could they be there if he checked for holes and there's nothing
there? I've got a paper I'll show you for that.

CHAIRMAN: If you want to introduce it, bring it forward.

MS. MASON: You say you worked on the pallets. I heard you say that. It wasn't on the record. It was up front here. What do you do when you work on these pallets?

MR. JONES: I pry boards off of them if they are broke and then I replace them with another pallet.

The statement that was made that there was sawdust everywhere is totally invalid because I've got a machine that's totally in a different room that's enclosed. All it does is pinch the nails and break the boards off that way. It does not cut the board whatsoever. There is no dust. That's an invalid complaint there.

MS. MASON: We're not here as much to look at the health issue. We're here to look as to whether you're operating an industrial business or a commercial retail business. So as far as the health hazard, that's something that I guess, I don't know, the health department or whatever does.

MR. JONES: That's what's right there. They say there's no problem whatsoever.
MR. NOFFSINGER: That's what these letters state.

MR. JONES: You can see from those pictures that my lot over there where the pallets are, the pallets are stacked neat. As far as what she said about the 125 mile an hour wind, if you think about that, she just did not tell you just now that pallets flew off. The fire department does not allow you to have them over I think it's 12 feet. I don't even have them 12 feet. What we go by in the pallet business, and Mr. Pinkston can validate that, is to those in the pallet business usually a stack is 15 pallets. Fifteen pallets is about one overhead tall. I do have some stacks over there that are a little bit taller than that, but they are nowhere near the 12 foot level because I myself realize the obligation I would have or responsibility, if they were to fall over. If you look at the pictures there, those pallets even told to me by the city cannot be within 10 foot of the property line. They're at least 20 or more feet away. So there is no issue there.

The statement as far as trying to kill the rats, there was no rats to kill so I never said anything about putting out poison.

CHAIRMAN: Any other member have any other
questions of Mr. Jones?

(NO RESPONSE)

CHAIRMAN: Do you all have anything else you'd all like to present at this time?

Come forward and state your name again, please.

MS. EMBRY: Donna Embry.

I don't want to go tit for tat with Mr. Jones. Yes, Mr. Jones has admitted to my daughter and I that, yes, there is sawdust all over the floor. He had some stray kitties there one day. He said he didn't want the cats around there because they would use his floor with all the sawdust as a litter box. He didn't want the litter box, the sawdust. Yes, my son-in-law could not get in his driveway one night because the pallets had fallen off of his forklift into my son-in-law and daughter's driveway. May son-in-law had to get out of his truck and help Mr. Jones pick those pallets up before he could get in his driveway.

I mean it's not an issue with Mr. Jones. It's an issue with the business he's running. My pictures, you know, show that he has stacked them up next to their driveway. He stacks them wherever he can. We just don't want an industrial business.

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We've never had any problems with any business there before. We've been there nine and a half years and he says there was another industrial business there or pallet business. If there was, we never saw a pallet in the lot. We never saw a pallet in front of the building. We never saw a forklift. We never saw a pallet truck. So if there was, they kept it to themselves. There was never an issue with anyone, any other business at all.

CHAIRMAN: Any board member have any questions of the lady?

(NO RESPONSE)

CHAIRMAN: Mr. Mischel, you have anything else to bring up?

MR. MISCHEL: Just to say that, yes, I did send a Notice of Violation under 8.4 which under industrial uses there is -- industrial uses is box and crate assembly which I believe, in my view, that they are -- he said he's taken some of them and take the bad boards out and put new ones in. To me that's kind of assembly. That's classified industrial use. As far as maintaining, I think he was saying commercial use no more than selling used vehicles or whatever. He really is not set up for retail sales. I don't think people come in off the street and buy.

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two or three pallets or whatever. I think mainly this is industrial use. He reassembles these or however you want to phrase it and then sells them back to industrial type use for storage.

MR. PEDLEY: Mr. Mischel, I have a question for you. The furniture store says it was from March '01 to June '02.

MR. NOFFSINGER: Excuse me, Mr. Pedley. I gave you that wrong date and then I corrected it. It should be June '02 to October '02, according to his e-mail.

MR. PEDLEY: June '02 to October '02. That was the period that the furniture store was operating; is that correct?

MR. MISCHEL: In here it says three months. I think this lady said maybe a year and a half. I don't know.

MR. PEDLEY: My question is: The industrial, grandfathered in industrial zone lose its status when it became the B-4 zone regardless of whether it was operated 18 months or not?

MR. MISCHEL: Yes. Once you discontinue that industrial use and commercial use comes into it, it should fall under those present guidelines for B-4.

MR. PEDLEY: It doesn't have to be for a
period of 18 months?

MR. MISCHEL: No. Once it changes hands and goes back to commercial use, then it falls under those guidelines of commercial use.

CHAIRMAN: And then loses the grandfather clause at that time.

MR. MISCHEL: Yes. It was set up for that. Could continue until something like this happens, changes in use. In this case it would be change of use.

MR. WARREN: Mr. Mischel, could you give us sort of a definition of what industrial use is?

MR. MISCHEL: Well, that can cover a lot of territory. Typically I'd say in this that we have here, industrial would be more -- really you don't have -- it's more of a use that's for other type of business such as, I guess, you can associate a lot of things with it. You can associate it more of just I guess a lot of it here is no public coming in. No retail sales. Not really an office use. The work is done on site, you know, factory type.

MR. WARREN: So any type of building, assembly material would be industrial use is what you're saying?

MR. MISCHEL: Yes. Just about any type of
assembly. I think it says compounding, things of that nature. More industrial.

The commercial use is more related to retail sales, office use, things of that nature. Not really assembling things or manufacturing items or anything like that.

MS. MASON: When it was in operation as a furniture place, would any repair on the furniture be classed as industrial?

MR. MISCHEL: That would be more accessory. They had the furniture. If it was antiques they might have to repair a section of it or something like that. That would be more accessory. It would just be like industrial.

MS. MASON: Would that be like a car lot if they had to work on a car or something?

MR. MISCHEL: Yes, or like if he was assembling pallets he might have an office there to do his paperwork, but that's more accessory to that industrial use.

CHAIRMAN: Any other board members have any questions of the staff?

(NO RESPONSE)

CHAIRMAN: Any questions of Mr. Jones?

(NO RESPONSE)
CHAIRMAN: Do you have anything new to bring up at this time?

MR. JONES: Yes.

CHAIRMAN: Come forward.

MR. JONES: If it makes any difference on the industrial side, I'm only a one man operation. I'm not there so early in the morning that I wake somebody up and I'm not there late at night or anything like that. Everything is conducive to the neighborhood. I'm just a one man shop. That's why I was asking so much about why am I industrial when I'm a one man shop. I have no employees. I've got a couple of people ever so often that will show up to help me just on like to finish a load or something. That's only for maybe a couple of hours. There's no paid staff whatsoever. Just totally me. That's why I was so interested in seeing how one man was an industrial type of thing. That's all I have to say.

MR. WARREN: Mr. Mischel, is there any requirements or stated criteria that the industrial business has to be more than one individual or have to have a number of employees?

MR. MISCHEL: No. We don't go by the number of individuals or anything. Basically under that assumption, I guess, somebody at their house, if
they work for themselves to do this in a residential
area, you know, under that assumption, that they just
work for themselves. We go by the type of use. Not
the number of people or employees.

CHAIRMAN: Does any other board member
have any other comments or questions?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add
at this time?

MR. NOFFSINGER: No. They just addressed
my comment.

CHAIRMAN: Chair will entertain a motion.

MR. PEDLEY: Mr. Chairman, I make a motion
to uphold the zoning administrator's decision as being
correct.

CHAIRMAN: Is there a second?

MS. DIXON: Second.

CHAIRMAN: Is there any other comments or
questions by the board?

MR. ELLIOTT: We need to get a finding.

MR. PEDLEY: Based on the information that
was submitted here tonight from both sides and Mr.
Mischel, the break with the furniture store.

CHAIRMAN: Lost the grandfather clause.

MR. PEDLEY: Lost the grandfather because
the first store was a B-4 business.

CHAIRMAN: Still have a second?

MS. DIXON: Yes.

CHAIRMAN: Any other questions by the board members?

(NO RESPONSE)

CHAIRMAN: Hearing none all supporting the motion just made raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries. The administrator's review is supported.

Next item, please.

MR. NOFFSINGER: Item 7, before I read it in the record I think the applicant has a statement they would like to make.

MR. ELLIOTT: State your name, please.

MR. BAYLOUS: Edward A. Baylous.

(MR. EDWARD A. BAYLOUS SWORN BY ATTORNEY.)

MR. BAYLOUS: My name is Edward A. Baylous. I'm representing Steve Young, Cowboys of Kentucky. Since the time of filing this appeal, some of the plans that Mr. Young has for the property have changed. We think it's more appropriately handled through a modification of the conditional use permit that he currently has. For that reason we are
withdrawing our appeal at this time.

MR. NOFFSINGER: It's withdrawn.

MR. BAYLOUS: Thank you.

ITEM 8

301 East Seventh Street, in an R-4DT zone
Consider request for an Administrative Review to move a non-conforming structure to another part of the same lot.
Reference: Zoning Ordinance, Article 4, Section 4.43, Article 7, Section 7.34
Applicant: Michael L. Volk, Green River Housing Corp.

MR. NOFFSINGER: Mr. Chairman, Mr. Mischel is here tonight to address this application.

CHAIRMAN: Mr. Mischel, come forward.

You're still under oath.

MR. MISCHEL: There's an existing structure at Seventh and J.R. Miller. It's been used I'd say for a number of years as a laundromat. It's been vacant for awhile. I think under Community Development Program they proposed to demolish that structure and construct a new single-family house. In doing so, it will not meet the setbacks, but in the ordinance they can apply to change, to move one non-conforming use on that lot to another place on that lot, which they're proposing to do. They're going to actually make the setbacks a little bit better off of J.R. Miller, the setback as far as they can. So in our view this is a good use for the
CHAIRMAN: Does the applicant have comments they would like to make at this time?

MR. ELLIOTT: State your name, please.

MR. VOLK: Michael Volk.

(MR. MICHAEL VOLK SWORN BY ATTORNEY.)

MR. VOLK: I represent the City of Owensboro in the development. Also have with me Barry Johnson from the Green River Housing Corporation.

As Jim said, the house or the building that's there right now has been used for various things over the years. Right now the building sets right on the property line on the J.R. Miller side. What we propose to do is demolish that structure, build a new single-family residential house and move the setbacks on J.R. Miller to where they will be 5 feet off the existing property line. The new structure will be approximately 22 feet wide with off-street parking. It will adhere to the 20 foot rear setback also.

MR. NOFFSINGER: Mr. Chairman I have a question.

Mr. Volk, I have a site plan here in the application. I see where you're proposing the parking and driveway to be off of East Seventh Street; that is
correct?

MR. VOLK: Yes.

MR. NOFFSINGER: If the board chooses to approve the moving of the non-conforming structure from one location on this property to another, Staff would recommend that you do so with a condition that there be no direct access to J.R. Miller Boulevard.

MR. VOLK: That's not a problem.

MR. NOFFSINGER: Now or in the future or any time.

CHAIRMAN: Any board member have any questions of the owner?

(NO RESPONSE)

CHAIRMAN: Does the Staff have anything else to comment at this time?

MR. NOFFSINGER: Given that the proposal would be keeping in character with the neighborhood and the Germantown Redevelopment Plan, Planning Staff would recommend that the board consider this favorably of moving the structure with the condition no direct access to J.R. Miller Boulevard.

CHAIRMAN: Any comments from the board members?

(NO RESPONSE)

CHAIRMAN: Entertain a motion.
MR. MILLER: Mr. Chairman, motion to approve the appeal based upon the information as given by Mr. Noffsinger and also that the non-conformity of the structure would not be increased in scope or area of its operation; and it would not have an adverse affect on existing or future development of the subject property or the surrounding area; and also with the condition that there be no direct access to J.R. Miller Boulevard now or in the future.

CHAIRMAN: Is there a second?

MS. DIXON: Second.

CHAIRMAN: Any other comments or questions from the board or staff?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Is there any other business?

(NO RESPONSE)

CHAIRMAN: We need one final motion.

MS. DIXON: Move to adjourn.

MR. MILLER: Second.

CHAIRMAN: All in favor raise your right hand.

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(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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STATE OF KENTUCKY)  
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 55 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this the 25th day of October, 2004.

LYNNETTE KOLLER, NOTARY PUBLIC  
OHIO VALLEY REPORTING SERVICE  
202 WEST THIRD STREET, SUITE 12  
OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES:  
DECEMBER 19, 2006

COUNTY OF RESIDENCE:  
DAVIESS COUNTY, KENTUCKY

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