The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, February 3, 2005, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

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

* * * * * * * * * * * * * * * * * * *

CHAIRMAN:  Call the Owensboro Metropolitan Board of Adjustment to order.

The first thing we do is start our meeting each time and ask you all to join us if you so desire. We'll start with a prayer and then have pledge of allegiance.

Judy Dixon will have our prayer for us this evening.

(PRAYER AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  First item on the agenda is to
consider the minutes of the January 6th meeting. Has there been any complaints or problems in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: With that we'll entertain a motion to dispose of the minutes.

MR. DYSINGER: Move to approve.

CHAIRMAN: Motion made to approve the minutes.

MR. MILLER: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

MS. DIXON: Mr. Chairman, I need to resign as secretary and nominate Ruth Ann Mason to refill that position by acclamation.

MR. MILLER: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Want to welcome you all to the meeting this evening. If you have anything to bring up to the board, please come to the podium. Be sworn in and then state your name and go from there, please.

With that first item this evening.
ADMINISTRATIVE APPEAL

ITEM 2

715 East Fourth Street, in a B-2 zone
Consider request for an Administrative Review to continue the non-conforming use of constructing, selling and repairing vehicles, vehicle parts and other such related services on the property.
Reference: Zoning Ordinance, Article 8, Section 8.2F5
Applicant: Tracy Payne, James E. Russell

MR. NOFFSINGER: Mr. Chairman, Mr. Mischel, the zoning administrator for the City of Owensboro and Daviess County, is here tonight to explain why this item is on the agenda and the history. Then I believe the applicant is also in the audience and is represented by counsel.

CHAIRMAN: Come forward and be sworn in, please.

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I'm going to try and give you a short condensed version of what brought us up to this point. Then if you have any questions you can ask.

A few months ago I had Mr. Russell and Mr. Payne come into the office. I believe Mr. Russell would like to sell the property at this time to Mr. Payne. There was some questions about the zoning, if Ohio Valley Reporting
(270) 683-7383
it would be proper for them to operate a vehicle repair business at this location.

This property is zoned B-2 which is Downtown Commercial Zone. Ordinarily for a vehicle repair business that would be in an I-1 light industrial zone for any kind of vehicle repair body shop, something like that. Essentially we looked at maybe trying to rezone this property from B-2 to I-1, but under the Comprehensive Plan we could not support that. There's also some parking issues.

At that time they had stated that this property has always been used for this type of business over the years. They set about with affidavits to show us that this property is non-conforming industrial use and repair vehicles that has occurred at this location. They did that through a series of exhibits. Mr. Meyer here has given us those.

There's a couple of questions I guess I thought that needed to come in front of this board so they could testify to that.

Also the affidavit has been sworn to by Mr. Russell, the owner, and not like the people that actually ran those businesses. Typically we get that a lot. He did do affidavits and showed some evidence
that these people have been at this location.
I think there was a question about the farm supply. Make sure that they had operated there prior to '79 all the way through. So they can probably testify to that. Essentially that's why we're here.

If you have any questions, I'll be glad to answer them now or later.

MR. MILLER: Mr. Chairman, I've got a question.

Jim, just for the record, would you describe the criteria for a business to be grandfathered in under the existing ordinance.

MR. MISCHEL: Typically if a business existed prior to the adoption of the zoning ordinance, that's typically what we feel like is a grandfather clause. They can continue that use as long as no major changes are contemplated such as additions or anything like that that would necessitate it to be brought into compliance. If for whatever reason that property is vacant for like 18 months, then they would lose that grandfather clause and that's part of them showing these through the affidavits that it didn't go through and 18 month gap to lose the grandfather clause. I think what they're trying to show is that,
one, it wasn't vacant for 18 months, and two, they kept that type of use in existence prior to, you know, since the ordinance was adopted.

MR. MILLER: And the date of the ordinance?

MR. MISCHEL: I'd have to get the exact date out of here.

MR. NOFFSINGER: April of 1977.

MR. MILLER: '77.

MR. NOFFSINGER: Yes, sir.

CHAIRMAN: Any other questions from the board at this time?

MR. DYSINGER: I'm sorry, Gary. Did you say '77?

MR. NOFFSINGER: Yes, sir. April 20th or 21st of 1977.

CHAIRMAN: Any other question from the board at this time?

(NO RESPONSE)

CHAIRMAN: The other gentlemen have anything they'd like to present?

MR. MEYER: Just briefly, Mr. Chairman.

MR. ELLIOTT: State your name, please.

MR. MEYER: J.D. Meyer.

(MR. J.D. MEYER SWORN BY ATTORNEY.)

Ohio Valley Reporting
(270) 683-7383
MR. MEYER: Ladies and Gentlemen of the Board, my name is J.D. Meyer. I'm here before you tonight requesting the allowance of the continued non-conforming use of this property by Mr. Payne, the appellant here in this matter, so that he can operate a vehicle construction repair business from the location at 715 East Fourth Street. I'm also here on behalf of Mr. James Russell who is the owner of this property.

Mr. Russell purchased this property on March 3rd of 1967. We have submitted a detailed list dating back to a lease agreement with Owensboro Plumbing & Heating Company showing that this property has been used for light industrial purposes for a period dating back to 1967 when he originally purchased the property.

After Owensboro Plumbing & Heating stopped leasing the property, there was a North Feeding Systems that went into the property there. That business constructed, designed and sold feeding apparatuses for cattle, and hogs, and other livestock. From that point there were a number of different businesses of a similar light industrial use that for about a small period that Mr. Russell leased the property to.
The most recent one Mr. Russell released this property to a gentleman by the name of James Allen. Mr. Allen operated out of this facility for a period of about 13 years a motor vehicle repair service facility. This operation that Mr. Allen undertook was to basically specialize in rebuilding of carburetors and undertaking other vehicle repairs.

As Mr. Mischel pointed out, this property is currently in a B-2 zone, but as I've just stated forth, in the affidavits that are submitted along with the application of Mr. Russell show this continued use dating back to 1967. The property is zoned B-2, but in all reality it's designed for light industrial purposes. You have essentially a large warehouse that comprises a majority of the square footage that has a 30 foot ceiling in it. There's also another floor level above some offices that's used for storing certain items that might be used in these various businesses.

We believe that Mr. Payne's intended use of this property will continue in and along the same parameters that the prior use of the facility has been utilized for. For those reasons, we ask that you all allow the continued non-conforming use of the property. I would entertain any questions that the
board may have at this time.

CHAIRMAN: Any board members have any
questions?

MR. DYSINGER: I have one. It may be more
for clarification than anything else.

In the Affidavit, it indicates that the
lease arrangement between North Feeding Systems covers
a period of April 25, 1980 to April 24, 1986. You see
that part, Section 5?

MR. MEYER: Yes.

MR. DYSINGER: It goes on to say that
Did it operate without a lease prior to April 25,
1989?

MR. MEYER: North Feeding Systems, Richard
North assumed the long-term lease that Owensboro
Plumbing & Heating originally had and then they took
over. There was some litigation and disputes between
the two, between Mr. Russell and North Feeding
Systems. The result of that dispute was a fixed lease
term pursuant to a written contract; however, they
remained and held over for a period of over a year
after the termination of that original lease,
operating under the same terms and conditions of the
lease that was previously written.
MR. DYSINGER: Just to clarify. The nature of my question refers to the period before the lease actually began. They never ceased operation during the time of these disputes from February 10, 1977 to April 25, 1980?

MR. MEYER: No, they did not.

CHAIRMAN: Any other board members have any questions?

(NO RESPONSE)

CHAIRMAN: The applicant have anything else you'd like to bring forward at this time?

MR. DYSINGER: I'm sorry, Mr. Chairman. I have one more question for the applicant or you may be able to answer it.

The hours of operation of the new business, what do you anticipate those being?

MR. MEYER: Mr. Payne, if you could come up.

MR. ELLIOTT: State your name, please.

MR. PAYNE: Tracy Payne.

(MR. TRACY PAYNE SWORN BY ATTORNEY.)

MR. PAYNE: As far as hours of business will probably be eight to five or seven to five. I might be there later at night or be there earlier in the morning, but as far as hours of business it will
be seven to five or seven to six. At this point
that's what I'm looking at.

MR. DYSINGER: Thank you.

CHAIRMAN: Any other board members have
any questions?

(NO RESPONSE)

CHAIRMAN: Hearing none entertain a
motion.

MR. PEDLEY: Mr. Chairman, I make a motion
to approve in favor of the appellant to continue the
non-conforming use based on sworn testimony here
tonight and the affidavit provided.

CHAIRMAN: Is there a second?

MR. WARREN: Second.

CHAIRMAN: Any other questions or comments
from the boards or the office?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion passes.

One final motion.

MS. DIXON: Move to adjourn.

MS. MASON: Second.

CHAIRMAN: All in favor raise your right

Ohio Valley Reporting
(270) 683-7383
hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

------------------------------------------------------
STATE OF KENTUCKY)  
COUNTY OF DAVIESS)  

) SS: REPORTER'S CERTIFICATE

I, LYNETTE 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 12 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this
the 15th day of February, 2005.

LYNETTE 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

Ohio Valley Reporting
(270) 683-7383