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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

APRIL 7, 2005

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, April 7, 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
- Ward Pedley
- Stewart Elliott
- Attorney

\* \* \* \* \*

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

Want to welcome each of you. We start our meeting each night with a prayer and the pledge of allegiance. We ask you to join with us if you so desire. Ruth Ann will have the prayer this evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Again, I want to welcome each one of you to the meeting this evening. Set a few guidelines.

Each one of you have the opportunity to

1 speak if you so desire. When you speak, come to one  
2 of the podiums, one or the other. State your name so  
3 you can be sworn by the attorney.

4 Also, if you keep saying the same thing  
5 over and over again, call you out of order. Each one  
6 of you can add what you need to say, but if you keep  
7 saying the same thing over and over we'll call on you.

8 With that the first item is the minutes of  
9 the last meeting. They're on record in the office. I  
10 don't think there's been any problems with anything.

11 MR. NOFFSINGER: No, sir.

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

14 MS. DIXON: Move to approve.

15 CHAIRMAN: Is there a second?

16 MS. MASON: Second.

17 CHAIRMAN: A motion has been made and a  
18 second. All in favor raise your right hand.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries.

21 First item.

22 -----

23 CONDITIONAL USE PERMITS

24 ITEM 2

25 1420 Benita Avenue, in an R-4DT zone

Ohio Valley Reporting  
(270) 683-7383

1 Consider a request for a Conditional Use Permit in  
2 order to operate a homeless shelter servicing 90  
3 residents and to provide educational, spiritual,  
4 financial and substance abuse recovery services.  
5 Reference: Zoning Ordinance, Article 8,  
6 Section 8.2 C1  
7 Applicant: Boulware Center Mission, Inc., St.  
8 Joseph's Peace Mission for Children, Inc.

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

12 The applicant has amended the Conditional  
13 Use Permit application since it was submitted. The  
14 applicant has requested that the provision for  
15 substance abuse for folks that are not residents of  
16 the mission would not take place at this location at  
17 this time. If the applicant were to provide those  
18 services to non-residents, and if the Conditional Use  
19 Permit is approved, then the Boulware Center Mission  
20 would have to come back before this board for a  
21 rehearing on their Conditional Use Permit.

22 So with that this item is ready for  
23 consideration. The applicant is here tonight. I  
24 believe the neighborhood is represented here tonight  
25 and they will have a power-point presentation to show  
26 this board. With that, Mr. Chairman.

27 CHAIRMAN: Is there any letters or  
28 comments in the office that we need to address at this

1 time?

2 MR. NOFFSINGER: Yes, sir, I believe we do  
3 have two letters that need to be read into the record  
4 at some point in time.

5 MR. ELLIOTT: State your name for the  
6 record.

7 MR. LANE: Doug Lane.

8 (MR. DOUG LANE SWORN BY ATTORNEY.)

9 MR. LANE: We have two letters from  
10 concerned Citizens that we would like to enter into  
11 the record.

12 The first is from John Morris at 434 West  
13 Highland Court.

14 "Gentlemen:

15 "My name is John Morris and I own 434 West  
16 Highland Court; located directly next-door and to the  
17 east of 1420 Benita Avenue. I received a Conditional  
18 Use Permit Notice that was sent out to adjoining  
19 property owners.

20 "My Grandther, Mr. L.E. Morris, purchased  
21 434 West Highland Court in 1925 and it has remained in  
22 the family ever since; going on 80 years now. In 1986  
23 it was placed on the National Register of Historic  
24 Places, so it is a Nationally Recognized historic  
25 home. It is also known as the Monarch-Payne house  
that was built in 1890 on what was known as  
Distillers' Row.

"I have personally supported the Boulware  
Center Mission in the past and believe in their cause.  
However, I am AGAINST the Conditional Use Permit  
referenced above. I DO NOT think it would fit in with  
the neighborhood and certainly DO NOT think this  
property, that is located in the middle of a  
residential neighborhood, should offer substance abuse  
recovery services.

"Thank you.

"Yours Truly, John Morris."

1                   The second letter is from Horace and Pam  
2                   Mayfield.

3                   "Nearly thirty years ago, we put down  
4                   roots in this neighborhood. We chose this area  
5                   because of its settled and peaceful quality. We've  
6                   mourned the passing of some, been saddened when some  
7                   (our sisters) have moved away and watched our own four  
8                   children grow to adults and move out on their own.

9                   "Over the years, things have changed and  
10                  yet we've kept much of the same peacefulness.

11                  "Now there is a pending threat to that  
12                  peace.

13                  "Please believe that we have no doubt  
14                  about the good being done by Boulware Center, we just  
15                  don't think our neighborhood is where it needs to be  
16                  done. Substance abuse counseling and 12-step meetings  
17                  for men, in a neighborhood where there are two schools  
18                  within yards, should be a concern to all...not just  
19                  those who live in this neighborhood.

20                  "You may think it is too late and there is  
21                  nothing to be done, but they have not yet purchased  
22                  this property in our neighborhood. The dollars they  
23                  plan to spend on renovation could be spent on their  
24                  current location or some more suitable location.

25                  "Please voice your concerns now, before it  
26                  is too late.

27                  "Horace & Pam Mayfield."

28                  CHAIRMAN: Thank you.

29                  The applicant come forward and present  
30                  your case.

31                  MR. ELLIOTT: State your name, please.

32                  MR. CRAIG: My name is Bill Craig.

33                  (MR. BILL CRAIG SWORN BY ATTORNEY.)

34                  MR. CRAIG: I'm currently the president of  
35                  the Board of Boulware Mission. We have stated most of  
36                  what we need to state in the application we filed with  
37                  you. This is the end of a week period which we have

1 made a public presentation both to the county  
2 commission and the city commission. I want to make a  
3 few very quick comments. The first thing I need to do  
4 is make a correction in case I'm confronted with it  
5 later.

6 At our existing mission, I made a  
7 statement at the city commission that we've only had  
8 one occasion where we've had to have a police called  
9 to our district in the last 12 years.

10 The fact is that we've had one time when  
11 we've had to have the police at our existing mission  
12 because of violence that resulted in some shedding  
13 blood. I thought that was the one time.

14 On average however, we would ask the  
15 police to come to our mission about once a quarter if  
16 we have any sort of impending confrontation. I want  
17 to correct that statistic because it's come back to  
18 ring in my ear a couple of times in the last couple of  
19 days.

20 Going from that to our primary  
21 presentation, Boulware was established in 1921. Since  
22 1992 it has operated primarily as a homeless shelter.  
23 In 2004 at our existing facility, we serve on average  
24 38.45 people per day, serving 42,000 meals. The vast  
25 majority of the people who have come to our homeless

1 mission have substance abuse problems.

2 Let me tell you, homelessness is not a  
3 product for the lack of jobs, a lack of education or a  
4 lack of homes. Homelessness is a product of people  
5 who have difficulties living their lives on life's  
6 terms. So we serve the homeless individuals and have  
7 done so for years, but we also help them recover those  
8 living skills which let them survive successfully out  
9 in the community.

10 We have more college graduates come to us  
11 than those who are illiterate. So our job is to teach  
12 people how to live responsible lives.

13 Our executive director is familiar to  
14 almost everyone is Ms. Rosemary Lawson. She has been  
15 our executive director for a dozen years and God  
16 willing will continue for a number of years to come,  
17 and her assistant, who has also worked with her for 11  
18 years. We have substantial experience in the trenches  
19 over the last dozen years or so. We want to stay in  
20 our part of town and that includes the property where  
21 the monastery is.

22 The monastery property is ideal for our  
23 purposes. Its layout lends itself precisely to our  
24 uses. If we had designed it from the ground up, we  
25 would have come up with something very close to what

1 it is. It will house 90 people ideally. I  
2 respectfully submit to the Board of Adjustment that  
3 what we would be doing is returning a current  
4 unoccupied deteriorating black hole in the community  
5 back to what it was, a place where 90 people live,  
6 work, teach, educate, and generally improve themselves  
7 and improve the community in which they're found.

8 We are good neighbors. Those people who  
9 have become familiar with our conduct on Hall Street  
10 would agree with that.

11 We realize that there is everywhere drug  
12 and alcohol activity. We realize that there is drug  
13 activity and some drug problems in the community to  
14 which we will be moving. If you query the police and  
15 authorities in this community, you would find that  
16 there are drug and alcohol problems in most places,  
17 including where we're going. The fact is where we  
18 exist drug and alcohol problems generally are reduced.

19 Drugging and drinking people don't want to  
20 be around us. We operate with a 24 hour a day, 365  
21 days a year surveillance system.

22 There has been a number of what - - I  
23 wasn't familiar with this term a month ago. There  
24 have been a number of what I call NIMBY rumor, not in  
25 my back yard rumor. Rather than trying to deal with



1 every possible one, I ask if I may be permitted to  
2 respond later when others raise issues as to why they  
3 think we should not be coming to the neighborhood.

4 The most important NIMBY rumor I want to  
5 debunk up front is that Boulware Mission does not  
6 operate and will not be operating a non-medical detox  
7 facility. That is something we anticipate moving into  
8 our existing facility on Hall Street and to be  
9 operated by different public charitable organization.

10 We're here ready to answer any questions  
11 and we're here ready to deal with any anticipated  
12 complaints or any anticipated objections that others  
13 may have.

14 We have filed with the city commission and  
15 the county commission a very summary report that I  
16 would like to enter into the record for the members of  
17 the Board of Adjustment. People who worry about our  
18 conduct of our activities ought to see a copy of the  
19 rules and regulations under which we operate. So I  
20 brought those as well. Boulware Mission is a  
21 statistical merit. I have brought a summary of those  
22 statistics as well. There is one copy of the services  
23 we generally provide. So I didn't make enough copies  
24 for everyone, but I would like to pass these out to  
25 the members of the commission and I'd like a copy put

1 in the record.

2 CHAIRMAN: Mr. Craig, do you want this  
3 entered into the record and also connected with your  
4 application?

5 MR. CRAIG: Yes, sir, I do.

6 Rather than belabor points that may not be  
7 necessary or to make your consideration known, I ask  
8 that I be permitted to respond after others have  
9 spoken. Would that be permissible, Mr. Chairman?

10 CHAIRMAN: Yes.

11 MR. CRAIG: I would not review in detail  
12 our site plan that we filed because I believe all of  
13 you have that already. Want to make sure about that.

14 CHAIRMAN: There's been an amendment to  
15 your written one though.

16 MR. CRAIG: That is correct. That  
17 amendment provides some additional information. For  
18 example, the question was asked about access in and  
19 out. We intend to have a drive in and drive out side  
20 by side on Wing Avenue. A lot of people don't  
21 understand of our residents only one and ten will have  
22 a vehicle. We have asked for approval of our site  
23 plan which provides for just over 70 parking spaces.  
24 We expect to initially put in 60 parking spaces. We  
25 frankly expect at any time it will be surprising if as

1 many as 30 of those spaces are occupied, but if at any  
2 time - - all of our parking will be internal, inside  
3 of our walls.

4 We will maintain, in a very real sense we  
5 will maintain the property in as cloister a fashion as  
6 it always was. Maintaining the walls. We are going  
7 to shut off and construct a wall across the only paved  
8 exit that will go in and out on Benita Avenue. We  
9 will erect signs. All parking will be inside of our  
10 facility. We will frankly be - - we will promote the  
11 idea of putting a yellow stripe on our side of Benita  
12 Avenue. There will not be traffic of anybody visiting  
13 us on Benita Avenue. Everyone will be coming in on  
14 Wing.

15 Now, there have been some prior uses  
16 before you. One proposal was that it be a day care  
17 center for children. I can guarantee you that that  
18 would have many times the traffic we're going to have.  
19 There has been the notion I suppose that if you  
20 conduct a substance abuse treatment program, a  
21 licensed program for your residents that are living  
22 there, that that somehow endangers the neighborhood.  
23 Believe me the last place drunks and drug people hang  
24 out is where you're in the business of being  
25 constantly supervised, constantly under scrutiny of

1 one kind or another. People that show up that have  
2 any problem, we promptly have them gone. We invite  
3 anyone. We've invited the neighborhood at several  
4 prior meetings to come to our Hall Street facility any  
5 time 24 hours a day, 7 days a week.

6 Before I go on too long, I'd like to  
7 respond to any questions that you have and I'd like to  
8 respond to any objections that are made if necessary.

9 CHAIRMAN: Do you have anyone else that's  
10 wants to add to your alls part now, sir?

11 MR. CRAIG: Not at this point, Mr.  
12 Chairman. I have people from the mission. See, I  
13 could pick and choose which sort of issue. I will bet  
14 you that there will be a time we'll have a huge picnic  
15 equivalent to a great big church picnic. When that  
16 happens, by the way, we have the pastors here from  
17 Wing Avenue Baptist Church and Peoples Baptist Church.  
18 We will be using parking facilities elsewhere and  
19 using a shuttle van to bring people in and out of our  
20 facility. Our people come home mid afternoon. They  
21 will not conflict with people leaving Titan and Murphy  
22 Miller. The trouble with my going on into everything  
23 that might be raised is that I take up your time  
24 unnecessarily. So that's why I ask that we respond to  
25 whatever others may have to say.

1                   CHAIRMAN: I appreciate that.

2                   Does the opposition have their - - come  
3 forward and state your name, please.

4                   MS. EMBRY: Donna Embry.

5                   (MS. DONNA EMBRY SWORN BY ATTORNEY.)

6                   MS. EMBRY: I live three houses from the  
7 1420 Benita Avenue property.

8                   After several years of looking for that  
9 ideal house in the ideal neighborhood with great  
10 neighbors, we found our 72 year old dream home on  
11 Geary Court. That was ten years ago. The  
12 neighborhood had everything we were looking for. The  
13 neighbors, who have lived in their Geary Court homes  
14 for years are wonderful, the street is quiet, but best  
15 of all, it has a slow, comfortable, "safe" feeling.  
16 On warm spring and summer evenings, especially after  
17 dinner, a lot of us sit on someone's front porch and  
18 we sit and talk.

19                   In early March 2004, Boulware  
20 representatives were seen looking at the monastery.  
21 The neighbors had to find out through rumors about  
22 what was going on between St. Joseph Peace Mission and  
23 Boulware. So, the beginning of April 2004, certified  
24 letters with signed petitions against the sale,  
25 rental, or occupying of 1420 Benita Avenue to Boulware

1 from St. Joseph Peace Mission were sent and phone  
2 calls were made. You have copies of the petition with  
3 you.

4 But no one from St. Joseph Peace Mission  
5 chose to answer our letters or our calls. As quoted  
6 by Jay Wethington, president of St. Joseph Peace  
7 Mission's board, from a Wednesday, September 1, 2004,  
8 Messenger-Inquirer article titled "Boulware's Planned  
9 Move Worries Neighbors," the board decided that there  
10 was no point in talking with neighbors.

11 Again, at our Old Owensboro Neighborhood  
12 Alliance meeting, when trying to discuss the situation  
13 with Boulware's board and their representatives and  
14 reading their many articles in the Messenger-Inquirer,  
15 our neighborhood has still never been told the total  
16 truth.

17 We, the homeowners, have put too much  
18 time, money, sweat, and tears into our beloved homes  
19 and neighborhood to have not been told, in the  
20 beginning, about a project of this magnitude that will  
21 so greatly impact our neighborhood in such a negative  
22 way. To this day, no one from Boulware has ever come  
23 to us directly and said, We want to do this in your  
24 neighborhood. What do you think? We, the effected  
25 homeowners have always had to find out Boulware's

1 intentions through other sources.

2 We, as a united neighborhood, do not want  
3 Boulware Mission moving into the Benita Avenue  
4 property. We have nothing against the work Boulware  
5 does. It is a great organization. What we do not  
6 want is the increase of traffic on our narrow streets,  
7 as Benita and Geary Court has restricted parking on  
8 one side only, the large number of strangers that will  
9 be coming and going from the mission either walking or  
10 driving 24 hours a day, 7 days a week, and the  
11 increase of noise Boulware and its residents will  
12 bring to our now quiet neighborhood.

13 As quoted by Sue Fowler, Boulware's then  
14 board president, in the Wednesday, September 1, 2004,  
15 Messenger-Inquirer article titled, Boulware's Planned  
16 Move Worries Neighbors, the facility would not contain  
17 a thrift store or detoxification program or anything  
18 else that would generate a large amount of traffic.  
19 If that were true, then why, in Boulware's initial  
20 Conditional Use Permit application, supplemental  
21 statement of proposed use, second paragraph state,  
22 "They will also provide substance abuse evaluations  
23 and treatment/counseling services to individuals  
24 referred by local judicial and law enforcement  
25 agencies, as well as self-referred. Non-residence

1 members of the public may be charged fees on an  
2 ability to pay basis. We know Boulware is receiving a  
3 license for DUI counseling and education to serve the  
4 community. And are they or are they not going to have  
5 a thrift store?

6 Any drug treatment center and 24 hour  
7 shelter, in lieu of incarceration, as was initially  
8 applied for in Boulware's Conditional Use Permit  
9 application, would bring an increase of problems into  
10 our neighborhood. Boulware wants to bring a drug  
11 treatment facility - are they a licensed substance  
12 abuse treatment facility? - an around the clock  
13 walk-in rehab, NA and AA meetings. We've even heard  
14 about a latino health clinic, a thrift store, and two  
15 non-alcohol AA night clubs, onto a neighborhood  
16 surrounded by homeowners and two schools.

17 How safe will our children be with the  
18 large number of strangers that will always be now  
19 present in our neighborhood? A quote from Mr. Bill  
20 Craig, Chairman for Boulware, at Tuesday's April 5,  
21 2005, city commission meeting, about attending AA  
22 meetings at the Benita facility, quote "They might  
23 stop for a martini before a meeting."

24 The Daviess County Middle School property  
25 is only 172 yards from 1420 Benita Avenue. A second



1 school, The Lighthouse Christian Academy, is a private  
2 school run by Peoples Baptist Church, located in  
3 Peoples Baptist Church, 700 Wing Avenue, and is only  
4 176 yards behind the monastery property. With Daviess  
5 County Middle less than one block in front and The  
6 Lighthouse Christian Academy less than one block in  
7 back, means both schools are located less than 1,000  
8 yards from 1420 Benita Avenue.

9           According to local law enforcement  
10 agencies, anyone arrested having drugs or drug-related  
11 items on their person within 1,000 yards of a school  
12 will be charged and prosecuted with the felony crime  
13 of trafficking. Again, both schools fall within 1,000  
14 yards from a school category. As we all well know,  
15 those that have a drug problem and are going to rehab,  
16 do not always remember to leave their drugs and  
17 drug-related items at home, especially when they've  
18 already been high all day and night. Boulware should  
19 care enough about the people they say they are trying  
20 to serve, as to not put them in a situation where they  
21 can be charged with a felony of drug trafficking  
22 because the facility and the property it sets on is  
23 between two schools.

24           We as a neighborhood, feel Boulware would  
25 be better off expanding on Hall Street. Not just for

1 a cost saving aspect, but they already own most of the  
2 property surrounding their existing Mission. Would it  
3 not be cheaper for Boulware to build a new facility on  
4 the property they already own on Hall Street than to  
5 occupy a tired, run down, black hole?

6           There are discrepancies in Boulware's  
7 Conditional Use Permit application as to the number of  
8 nuns that were living in the monastery. As stated  
9 under Supplement Statement of Proposed Use, Number  
10 one, up to 90 homeless individuals who will reside on  
11 site. This is the same capacity as the facility  
12 housed when operating as a religious monastery. When  
13 making that statement in their application, what  
14 Boulware did not realize; The monastery was started in  
15 1948 and the extension was added in 1966 with the  
16 intention of being used as a Catholic girls overnight  
17 retreat, not as an extended stay facility, and having  
18 only bath and restroom facilities for approximately 18  
19 nuns. Contrary to a quote made by Elaine Morgan,  
20 Boulware's public relations chairman, when addressing  
21 the neighborhood's concerns about parking in front of  
22 our homes, in the Wednesday, September 1, 2004  
23 Messenger-Inquirer article, titled Boulware's Planned  
24 Move Worries Neighbors, Morgan said, "The convent has  
25 parking already." Cloistered nuns did not drive, they

1 had no cars. No parking was ever needed.

2 In another statement by Elaine Morgan,  
3 Boulware's public relation chairman, in an August 28,  
4 2004 Messenger-Inquirer article titled, Boulware  
5 Mission Buys Old Nunnery, the facility will be able to  
6 serve between 90 and 125 clients.

7 Boulware officials hope to eventually turn  
8 the Hall Street building into a detoxification center.  
9 The planned use for the Hall Street facility is for a  
10 non-medical detox. The Recovery Kentucky Program that  
11 is planned for this area might be bringing its own  
12 non-medical detox. Are two of these facilities needed  
13 in this area? Or, would the Hall Street facility  
14 merrily be a flop house if it doesn't have a treatment  
15 component?

16 In a March 30, 2005 Messenger-Inquirer  
17 article titled "Officials: Boulware Substance Abuse  
18 Program May Be Extended," Boulware Mission officials  
19 hope a center's substance treatment program for the  
20 shelter residents can eventually be expanded to assist  
21 non-center residents after the mission moves in to its  
22 new facility on Benita.

23 It was an opportunity that just came out  
24 of nowhere, said Rosemary Lawson, Boulware Mission's  
25 director. A substance abuse program is something

1 Boulware officials have considered for years, Lawson  
2 said. It's something I've wanted for eight years, she  
3 said. It's exciting to see this baby being born.

4 We, the neighborhood, have heard, (1) only  
5 homeless shelter, no expanded substance abuse  
6 services; (2) homeless shelter, expanded substance  
7 abuse services; (3) homeless shelter, expanded  
8 substance abuse services, now including non-residents,  
9 AA and NA meetings; (4) homeless shelter, expanded  
10 substance abuse services, including non-residents, AA  
11 and NA meetings, an around the clock walk-in rehab,  
12 health clinic, two non-alcohol AA night clubs, thrift  
13 store. And as per Boulware's Conditional Use Permit  
14 application, a drug treatment center and a 24 hour  
15 shelter in lieu of incarceration.

16 Now, it has changed again, as of Monday,  
17 April 4, 2005. Boulware's application was amended to  
18 "just a homeless shelter, no drug treatment center."  
19 They made announcements in two weeks that they have  
20 changed what they're putting in the monastery.

21 Which of these statements made public by  
22 Boulware are true? And, who or what would stop  
23 Boulware, once they have their foot in the door, for  
24 not coming back in the future and asking for a drug  
25 treatment center? What if, and I quote, "it just

1 comes out of nowhere."

2 Therefore, it is our belief that after a  
3 year of inconsistencies and misleading statements by  
4 Boulware, it's board and their representatives to the  
5 public, the Messenger-Inquirer, and especially those  
6 of us who will be most effected by the move, we all  
7 now feel, Boulware might have broken its trust with  
8 the neighborhood.

9 When deciding on this matter before you,  
10 please vote no to Boulware's Conditional Use Permit.  
11 Not only for the safety of our young children and our  
12 elderly widowed neighbors, but for the future security  
13 of our entire neighborhood. If Boulware were to come  
14 into our neighborhood, we will never know our  
15 neighbors again.

16 Now my husband has something to say.

17 CHAIRMAN: State your name.

18 MR. EMBRY: My name is Dusty Embry.

19 (MR. DUSTY EMBRY SWORN BY ATTORNEY.)

20 MR. EMBRY: My name is Dusty Embry. I  
21 live at 412 Geary Court with my wife Donna. I will be  
22 addressing some infrastructure issues concerning the  
23 1420 Benita Avenue property.

24 Drainage, and why is it important to this  
25 issue.

1                   This neighborhood area, Geary Court, Wing  
2 Avenue, and Benita Avenue, has a combined sewer  
3 system. Combined sewer means storm water drainage  
4 from house, street gutters and sanitary sewers are  
5 combined into a common trunk line. Causing more water  
6 involvement than would be if the storm and sanitary  
7 sewers were separate. After a moderate or heavy rain,  
8 water from the combined sewer system in this area  
9 overloads the sewer trunk line system causing  
10 flooding. This means sanitary sewage is combined with  
11 storm water in flooding above ground. This sewage and  
12 water run off backs up on East Fourth Street and East  
13 Second Street, directly in front of Geary Court and  
14 the Daviess County Middle School. This makes for an  
15 unsanitary condition, plus a traffic hazard due to  
16 standing water over the road. Any additional water  
17 run off from Boulware's proposed paved parking lots  
18 will overload our old combined sewer system even more.  
19 When flooding occurs, at the lowest point, East Fourth  
20 Street, at the foot of Geary Court and in Daviess  
21 County Middle School's front lawn, the residual ecoli  
22 bacteria from the sanitary sewer, after flooding,  
23 remains on the streets and on top of the ground long  
24 after the flood water recedes. The students, being  
25 unaware of this deadly bacteria, walk on this property

1 during school.

2                   The point being: Any additional storm  
3 water or sanitary sewage load, that would be  
4 contributed by Boulware's proposed 90 bed facility,  
5 needs to be addressed by Owensboro City Engineering  
6 and RWRA. Because of no previous parking on the  
7 property, any new parking lots will possibly require a  
8 containment pond to hold off any run of rain water.  
9 This property might require two ponds due to the  
10 property flowing into two separate drainage areas.  
11 This issue will have to be addressed by Boulware's  
12 architect on this project.

13                   Boulware's planned expansion will  
14 include 24 employees, DUI classes with a maximum of 50  
15 persons, with possible class times from 8:00 a.m. to  
16 9:00 p.m., AA and NA meetings, 20 percent of the  
17 homeless population have cars, also visiting  
18 professionals, volunteers, plus deliveries and public  
19 visitors. This adds to 200 to 300 car visits to the  
20 facility during the day.

21                   Therefore, due to Owensboro's landscape  
22 ordinance, requiring islands, green space, which  
23 include trees, flowers, shrubs, and so on, the 55  
24 parking spaces proposed for Boulware's parking lots  
25 will now be cut to approximately 35. Thus, not having

1 enough parking for staff, residents with cars and  
2 visitors. Where will the rest park? Also, the  
3 removal of most all existing trees will be required  
4 before parking lot construction can begin; thus,  
5 changing the character of the property. Also, this  
6 proposed parking lot will be put on consecrated  
7 ground. Nuns were buried in a cemetery on this  
8 property before they were entombed in Whitesville.  
9 Boulware's architect will have to address this issue  
10 of parking.

11 The planned main entrance to the proposed  
12 Boulware facility is a vehicle/pedestrian safety issue  
13 due to it being on top of a blind hill, with lessened  
14 visibility from the north on heavily traveled Wing  
15 Avenue. Due to the new expansion of businesses on the  
16 Highway 54 corridor, to East Parrish and Highway 54  
17 from East Fourth Street and Highway 60 East. The Hon  
18 Company, Titan Fabrication, Matlack Trucking, as well  
19 as much other vehicle traffic, from surrounding  
20 neighborhoods, use Wing Avenue on a 24/7 basis. Due  
21 to Wing Avenue being a heavily traveled and dangerous  
22 city street, the architect of Boulware's expansion  
23 will have to realize and also address this issue of  
24 vehicle and pedestrian safety.

25 To get to the city bus stop in this area,



1 any resident or guest leaving the Boulware facility  
2 will have to cross busy Wing Avenue at the top of a  
3 blind hill, walking north, four houses down, to wait  
4 in front of the homes of our neighbors.

5 This is what the residents will see when  
6 they're walking out of the proposed entrance of  
7 Boulware Center on Wing Avenue side.

8 Wing Avenue is a city street with a  
9 sidewalk on the west side, not the east side, due to  
10 the monastery's stone wall. Vehicle traffic  
11 observation by pedestrians entering or leaving  
12 Boulware's proposed ingress, egress to this property  
13 will be sight limited creating a dangerous condition  
14 to their person. Anyone crossing the street in this  
15 area will risk limited visibility of oncoming vehicles  
16 to gain access to the bus stop, which is directly  
17 across the street from the Benita/Wing Avenue  
18 intersection, another limited visibility and dangerous  
19 intersection. Only a few people can stand in the  
20 existing bus stop area. Many others will have to  
21 stand on the street or on private property until the  
22 city bus arrives. Boulware's architect will have to  
23 look at this as a resident/pedestrian safety issue.

24 The entire heating and air conditioning  
25 system in all buildings is non-functional at this

1 time. The monastery dormitories do not nor have they  
2 ever had air conditioning for cooling. Only steam  
3 heat.

4 Large masses of people also can create a  
5 noise issue. Even a subtle conversation between two  
6 people can be heard several yards away. The  
7 residents, employees and guests cannot and will not be  
8 quiet 24 hours a day as the monastery nuns were.

9 Cars, buses and taxis will be bringing  
10 people to and from Boulware 24 hours a day, 7 days a  
11 week.

12 Boulware is not a business that operates  
13 only from nine to five. Boulware, being a business,  
14 not a homeowner, or a cloistered order of nuns, will  
15 generate much more noise around the clock on the  
16 property located in the center of our residential  
17 neighborhood. And due to the height of the property,  
18 residents of Boulware will be watching us 24 hours a  
19 day. Boulware's architect will have to address this  
20 issue of noise and no air conditioning.

21 The proposed facility will break our home  
22 privacy also due to most residents being required to  
23 leave the facility during the day. When Boulware's  
24 residents are not in the facility, where do they go  
25 during the day? Where do they want to go during the

1 day? Where can they go during the day? Where will  
2 they go? Where can they go in our residential  
3 neighborhood? Only conjecture from here.

4 St. Joseph Peace Mission paid \$1.00 for  
5 the Benita Avenue property and approximately \$5,000 in  
6 taxes as per public record. They're now asking  
7 approximately \$500,000, as per Boulware's lawyers and  
8 papers filed. There are deed restrictions by the nuns  
9 that were placed on the first buyer of the property  
10 that need to be clarified.

11 Other examples of infrastructure issues  
12 are: Asbestos contamination, (the facility was built  
13 before the 1970's), lead paint, broken and  
14 nonfunctioning HVAC systems, electrical wiring,  
15 plumbing and sewer system, natural gas piping (both  
16 yard lines leak), no sprinkler system, no alarm  
17 system, and structural integrity of the buildings.  
18 Hence, termites, roofing, foundations and so on. As  
19 of now, the facility has bath and restrooms to  
20 accommodate approximately 18, not for the 90 residents  
21 plus staff and volunteers, as proposed by Boulware. A  
22 licensed architect will have to address these issues.

23 As of now, Boulware needs \$1,200 per day,  
24 as per their website to operate. What will the higher  
25 cost per day be with the added purchase price of the

1 Benita Avenue property, higher utility, necessary  
2 bills and all completed renovations required by code  
3 as determined by the City of Owensboro.

4 The estimated cost of renovation for this  
5 facility, plus purchase price for the property from  
6 St. Joseph Peace Mission will be astronomical to  
7 Boulware's current fiscal capability, and forget the  
8 ghost of future contributed funds. If this property  
9 had been such a good deal, why has it sat empty for so  
10 long?

11 We have seen what the Chairman of Boulware  
12 feels about this property.

13 This endeavor, if allowed to proceed, will  
14 be a major impact on our neighborhood for now and  
15 forever into the future.

16 We as a neighborhood feel Boulware, it's  
17 Board and their representatives has not and will not  
18 in the future comply with all necessary codes and  
19 requirements by the City of Owensboro or respect our  
20 neighborhood. Our neighborhood was here first.

21 We believe the expansion for Boulware is  
22 needed, but not in our neighborhood.

23 We understand the Benita Avenue property  
24 needs to be used for something, but it needs to be a  
25 use that fits in our neighborhood.

1                   We appeal to the Board of Adjustments to  
2                   make the right decision at this time.

3                   Thank you very much.

4                   CHAIRMAN: At this time does any board  
5                   member have any questions of opposition?

6                   (NO RESPONSE)

7                   CHAIRMAN: Does anybody else in the  
8                   opposition have anything else you want to add at this  
9                   time?

10                  Come forward and state your name, please.

11                  MR. ELLIOTT: State your name, please.

12                  MS. BOARMAN: Melissa Boarman.

13                  (MS. MELISSA BOARMAN SWORN BY ATTORNEY.)

14                  MS. BOARMAN: First of all let me start  
15                  off by saying I'm not against a safe haven for the  
16                  homeless or a substance abuse shelter or a place for  
17                  non-violent criminals, but not in my neighborhood.

18                  My parents bought their home my senior  
19                  year, 1995, and when I got married in 1998 my husband  
20                  and I bought a home behind them because it is peaceful  
21                  and quiet. We thought it would be a wonderful place  
22                  to raise a child in a family-like setting surrounded  
23                  by people we have known for many long years and feel  
24                  safe around. The Benita Avenue Monastery is the heart  
25                  of our neighborhood. Even though it stands vacant, to

1 bring in this monstrous facility would be like putting  
2 in a 50 house subdivision right in the middle of where  
3 we all have lived so happily for so long.

4 One of my many concerns is security. Will  
5 the surrounding neighbors be secure from drugs,  
6 alcohol, violence, etcetera, or will this all be on  
7 the honor system? The reason I bring this up is my  
8 next major concern. Strangers. As of now we have  
9 known our neighbors and have for many years. Isn't  
10 that what a neighborhood is all about? Having the  
11 same people day in and day out surrounding you making  
12 you feel safe in your community.

13 With the drop-in policy at Boulware, no  
14 telling how many strangers would be walking our  
15 streets daily and nightly.

16 Which brings me to the greatest concern of  
17 all. Sex offenders. We have heard rumors that  
18 Boulware is planning on bringing in people from  
19 surrounding counties, even across the bridge. In the  
20 nine area counties including in Indiana; Perry,  
21 Vanderburg and Spencer; in Kentucky; Daviess, Ohio,  
22 McLean, Hancock and Warren, there are 960 known  
23 registered sex offenders. Of those, 331 are convicted  
24 child molesters.

25 My case in point is this: I can go on

1 line daily, weekly, monthly and see who is registered,  
2 but thousands have been lost due to moving or failure  
3 to re-register. Is Boulware going to run a background  
4 check on every single person who walks through that  
5 door begging for help?

6 Take John Couey for example. He murdered  
7 Jessica Lunsford in Florida and then traveled 100  
8 miles away to a shelter in Georgia. He was a  
9 registered sex offender, but used an assumed name when  
10 he entered the shelter. It is very disturbing to  
11 think that criminals could walk into a facility, use a  
12 false name and no questions asked. It only takes one  
13 time for my child, the Mayfield grandchild, the Conrey  
14 grandchild, or any of the many grandchildren or  
15 children in our area to disappear or be molested  
16 because of the mass number of strangers constantly  
17 coming and going.

18 Is my five year old daughter not going to  
19 be allowed to play outside any more in fear of who is  
20 watching her? Am I going to have to quit my beloved  
21 job and lock myself in my house because I don't know  
22 who is walking my streets? Not every resident of  
23 Boulware is bad, but not everyone at Boulware is good.

24 Boulware never approached anyone in my  
25 neighborhood personally about their plans for the

1 Benita Avenue property. Do we not have a say in the  
2 fate of our neighborhood's existence? We have worked  
3 so hard to keep drugs and alcohol out of our area.

4 I was watching an interview of Ms. Lawson,  
5 the Executive Director of Boulware, on Channel 44,  
6 Wednesday, April 6. She was asked what type of people  
7 come to Boulware. Her reply, "People mainly with drug  
8 addictions who cannot afford rehab and also persons  
9 with Aids and hepatitis." Hepatitis is so highly  
10 contagious and due to our combined sanitary/water run  
11 off sewer system, every time it floods the disease  
12 will be floating in the water and deposited on Daviess  
13 County Middle School's front lawn, our streets and  
14 sidewalks.

15 Dismas Charities looked at the Benita  
16 Avenue at one time to buy. Due to the restrictions  
17 placed on it and zoning laws for criminals, they  
18 decided against the purchase.

19 In Russellville, Kentucky, Terry Caffee  
20 was proposing to place a drug and alcohol treatment  
21 facility in an old school located in a residential  
22 section. Corem Estes, who land abuts the school  
23 property said, and I quote, "We know it is needed, but  
24 there are better places for it."

25 Each day at the end of their shift, the



1 Boulware employees get in their vehicles, drive to  
2 their homes, miles away from the shelter. They are  
3 surrounded in a safe place where they know their  
4 neighbors, can take a walk, let their children play in  
5 the yard without fear, sit on the front porch or leave  
6 their front door open and no stranger will walk in.  
7 They are in their safe haven, and do not have a  
8 homeless shelter or substance abuse treatment facility  
9 in their residential neighborhood. And I bet it feels  
10 great to sleep peacefully at night.

11 I would ask the board to please vote no to  
12 Boulware's Conditional Use Permit for the safety and  
13 security of everyone who resides here, especially the  
14 children and elderly. Thank you.

15 CHAIRMAN: Anyone else?

16 State your name, please.

17 MR. ELLIOTT: State your name, please.

18 MR. MAYFIELD: Horace Mayfield.

19 (MR. HORACE MAYFIELD SWORN BY ATTORNEY.)

20 MR. MAYFIELD: I live at 4016 Geary Court.  
21 We've lived there for 28 years now. I work a rotating  
22 shift which means I'm not home a lot of times at  
23 night.

24 I do not want a facility of this type in  
25 the neighborhood where my wife is going to be left

1 home by herself at night. It's not safe. Contrary to  
2 what Mr. Craig says, there will be some people that  
3 are going to be out on the streets after their curfew  
4 or whatever they want to call it. They're suppose to  
5 be in by a certain time. It is not feasible for  
6 something like this to be in a residential  
7 neighborhood where you have women that have to spend  
8 the night by themselves because their husband is  
9 working a job. You have widows living by  
10 themselves. You have single elderly women living by  
11 themselves. We have quite a few elderly couples in  
12 the neighborhood. A residential area is not the place  
13 for this type of facility. I hope you vote no. Thank  
14 you.

15 CHAIRMAN: Any other comments by  
16 opposition?

17 Come forward please and state your name.

18 MR. ELLIOTT: State your name, please.

19 MR. KIRTLEY: Bob M. Kirtley.

20 (MR. BOB KIRTLEY SWORN BY ATTORNEY.)

21 MR. KIRTLEY: Pam and I live at 1500 North  
22 Highland Avenue which is across the street from the  
23 Payne property which adjoins the facility. I don't  
24 mind telling you that I'm deeply troubled appearing  
25 before you here tonight because I am a member, been

1 invited to be and I'm on the board of Boulware.

2 I was the community member to help assist  
3 and work with the board toward the use of the  
4 monastery property. I'm totally supportive of  
5 Boulware, but I'm totally supportive of the Boulware  
6 Mission Homeless Shelter for men, women and children.  
7 I want you to know that this is a great endeavor of  
8 substance abuse, but it's brand new. It was only  
9 started a month ago basically when we hired the  
10 clinical people from the hospital.

11 Now, the reason why I say that that is a  
12 serious financial cost item that will be borne by  
13 Boulware. Now, the reason why I'm here, I had when I  
14 read the Wednesday paper a week ago I got deeply  
15 concerned, and when I read the application that was  
16 filed I became more concerned. So I expressed my  
17 concern to several boards members. I had thought that  
18 what I was told that the entire element of substance  
19 abuse would be removed from this application for this  
20 particular campus. If it develops in the future,  
21 that's fine, but I was led to believe that. I was  
22 coming here tonight to speak in support of this, but  
23 when I see that the application does nothing but still  
24 maintain that program within this facility, I have  
25 deep concerns.

1                   Now, I know my neighbors about drug  
2                   addiction, I deal with that in my occupation on a  
3                   regular basis.

4                   Boulware is a vital asset to this  
5                   community. I'll be honest with you, the monastery  
6                   property has been vacant for a number of years. It  
7                   would be an ideal setting properly done for a homeless  
8                   shelter. I'm on one of the committees to own the  
9                   land. What I'm saying is that's a second aspect since  
10                  I felt I was not dealt with on this correctly, I now  
11                  point to another more important problem that I see.

12                  They are great expectations and great  
13                  thoughts about what we can do here at the Benita area.  
14                  The problem is financially. The property up there,  
15                  and I'm familiar with the money pit. Pam and I we've  
16                  got our house on Highland so we know what it means to  
17                  invest sweat equity. The monastery property can be  
18                  rectofitted, but you have to have the money in hand.

19                  Now, my biggest problem you approve this,  
20                  it gets half done and you have then created a slum  
21                  within that complex. It will not be a facility that  
22                  is lock and key for the homeless people of our  
23                  community. I don't feel also tagging with that  
24                  substance abuse of the highest cost order when you  
25                  have clinical people dealing with it. That's the

1 highest cost of alcohol, drug expense or for recovery  
2 program. I support it, but what I'm saying is that's  
3 a separate issue. It does not belong on this campus  
4 at this time.

5 From that point at the Hall Street campus,  
6 it is great to start it there and I hope you approve  
7 that. That's an administrative rule and I think you  
8 probably have, Gary, without bringing it to the board.

9 MR. NOFFSINGER: No, sir. That will be  
10 Item 7 on the agenda.

11 MR. KIRTLEY: Well, I totally support that  
12 and ask that you approve that. So I'm probably a  
13 mixed bag here.

14 What I'm saying from a financial point of  
15 view, I have deep concerns of the capability to  
16 generate the funds to properly retrofit this  
17 building. If I didn't have those concerns, I wouldn't  
18 be standing here. I have the issue with having a  
19 substance abuse program on that campus at this time.  
20 Maybe in time, but I was led to believe and I thought  
21 clearly that it was simply going to be the shelter for  
22 men, women and children and nothing else at this  
23 time. When I found this today that the modification  
24 did not include that, this simply allowed this other  
25 aspect to exist, I felt compelled to bring up the

1 second issue of finances.

2 If this body chooses to approve, I wish  
3 you would not approve the substance abuse portion. If  
4 you approve it for a homeless shelter, it should be a  
5 Conditional Permit conditioned upon this thing being  
6 properly retrofitted before occupancy or before that  
7 permit is granted or that condition is granted. In  
8 other words, we need to have the money and be able to  
9 do the program, and then I'm 100 percent for that  
10 because it's a vital asset to our community in that  
11 regard. It's providing a tremendous benefit to our  
12 community. I'm not as worried it's in my backyard.  
13 No, it's not that. I'm talking about this facility  
14 itself.

15 Jerry Ralph bought it. He couldn't make a  
16 go of it. Like this because there are very deep cost  
17 problems associated with this property that are going  
18 to be, and we may not generate the money plus we have  
19 an obligation within 36 months to pony up a half a  
20 million dollars for the property. These may put undue  
21 stress and strain added to a substance abuse program  
22 that is a cost program.

23 I'm sorry. I'm still a board member.  
24 They may excommunicate me. What I'm saying is, and I  
25 support Boulware because I don't see Boulware on good

1 intentions fail. Thank you.

2 CHAIRMAN: Does anyone else have any new  
3 opposition to present at this time?

4 Come forward, please. State your name for  
5 the record, please.

6 MS. SMEATHERS: I'm Lavena Smeathers. I  
7 live at 420 West Highland.

8 (MS. LAVENA SMEATHERS SWORN BY ATTORNEY.)

9 MS. SMEATHERS: I live at the dead end of  
10 Benita Avenue. It's right in my back door at least 50  
11 feet of my property. I'll be scared to live there.  
12 So please, if you can do something to keep from having  
13 that there, I certainly will appreciate it. I've been  
14 living there 32 years.

15 CHAIRMAN: Any other opposition that's new  
16 information to be brought at this time?

17 (NO RESPONSE)

18 CHAIRMAN: Does the board have any  
19 questions of the opposition at this time or the staff?

20 MR. NOFFSINGER: No, sir.

21 CHAIRMAN: The applicant have anything you  
22 would like to add in at this time.

23 MR. CRAIG: I'd like to just address two  
24 or three things.

25 The young lady and mother who was up here

1 worried about a sex offender element. Number 1,  
2 Boulware requires a picture ID, it requires a Social  
3 Security Number, and Boulware runs a background check  
4 on every person coming to that facility for sex abuse  
5 issues. We run at least as thorough a check as any  
6 school, hospital, police department or other agency.

7           Number 2, yes, people who are there during  
8 the day leave when their time there is over, but we  
9 have staff on site 24 hours a day. As they say in our  
10 avocation, we will have four residential units where  
11 staff is there throughout the night every night. In a  
12 facility that will operate like our existing facility  
13 with surveillance cameras, television, etcetera, to  
14 see what is going on not only in the facility but  
15 around the grounds. The three acre track will be  
16 incredibly more "policed" after we are in operation  
17 than it is presently.

18           The asbestos problem keeps coming up. The  
19 only problem is nobody hears when we tell them that we  
20 have had a survey of the property done by an asbestos  
21 surveying firm and are taking that into account. All  
22 of those things that you heard anyone say we are going  
23 to have to take into account with our architect and  
24 with our contracting company, that's true. That's  
25 what we're going to do.



1                   We asked RWRA whether our proposed  
2                   population on the facility would be a problem and they  
3                   said it should not be a problem at the current level  
4                   that we are proposing here. We got that in writing  
5                   from them.

6                   We did not just think of this last week.  
7                   This is the culmination of a five year plan of  
8                   expanding the mission. We asked a competent  
9                   contracting company, at least assuming that Lanham  
10                  Construction is a competent contracting company, to  
11                  look at the facility. They gave us an estimate for,  
12                  Bob calls it retrofitting, bringing it into our  
13                  necessary use. They gave us an estimate well below  
14                  our cut off. Our cut off was a million and a half  
15                  dollars. They gave us well below a million.

16                  We have had an initial architectural  
17                  report in the same range. We're not silly. We know  
18                  it will go higher than we think initially. We're also  
19                  not silly. We had a competent feasibility study  
20                  performed. We have commitments with respect to  
21                  contributions to our capital campaign in the  
22                  neighborhood of a million dollars. You will see from  
23                  what I gave you that the net worth from our audited  
24                  financial statement is in the neighborhood of a  
25                  million dollars which includes a quarter of a million

1 dollars endowment.

2 I never met a church or other faith based  
3 organization that did not have to live somewhat on  
4 faith. We have gone to the extent that any competent  
5 group would in order to make sure that our capital  
6 campaign would be successful and will at a minimum  
7 raise the necessary funds to retrofit or renovate,  
8 however you want to figure.

9 Now, this June Bell who is the Executive  
10 Director of St. Joseph Peace Mission is willing to  
11 believe that we will reconstruct the property, refit  
12 it, and it will be around to pay the remainder of the  
13 purchase price three years from now. We have extended  
14 financing this with them for a couple of years more,  
15 but that is their problem I respectfully submit. It  
16 is not the problem for this group to consider tonight.  
17 We have the necessary funds available to us or will  
18 have available to us.

19 With respect to deed restrictions, all  
20 deed restrictions according to our title attorney are  
21 being released.

22 I want to mention the picture that you saw  
23 with all of the traffic on it on Benita Avenue. The  
24 picture was taken on the afternoon that we asked all  
25 the public to come. Our first time out there. We had

1 no designated parking. We had no parking inside. We  
2 had no nothing. A lot of people chose to park on  
3 Benita Avenue. What happens is that picture then  
4 keeps being thrown at you as if that's the way we're  
5 going to have parking on Benita Avenue. It's a total  
6 misrepresentation. Unintentional I'm sure.

7 We know that there will be necessary  
8 drainage required. We've already spoken with Hale,  
9 Riney & Gilmore which will work with the architectural  
10 firm in order for our drainage to be handled  
11 competently and appropriately. That will be subject  
12 to approval by appropriate city authorities.

13 No, there will be no night club. No,  
14 there will be no two night clubs. No, there will not  
15 be a 24 hour walk-in clinic, detox or anything else  
16 that attracts people in the middle of the night. If  
17 you were aware of the operations we have had on Hall  
18 Street, you would know how non-controversial we  
19 operate.

20 Elaine Morgan by the way was the person  
21 who was suppose to be standing here. She was the one  
22 who was suppose to be president and she got promoted  
23 by the Messenger-Inquirer to a new job in North  
24 Carolina and that's how I happen to be here.

25 No, we will not have 200 to 300 cars in

1 and out of our facility on a daily basis. At the  
2 present time we are about a third, a little over a  
3 third of the size of what the facility is going to be.  
4 We would be surprised if there are 30 cars in and out  
5 in a day. You're just not looking at the way the  
6 existing facility operates and what will happen.

7 Boulware operates in a responsible  
8 fashion. Has audited financial statements. It does  
9 not undertake financial obligations it doesn't keep an  
10 it doesn't make a commitment to this community that's  
11 going to renovate the facility for a million dollars  
12 without having in advance good reason to believe that  
13 we're going to have it. I've already mentioned about  
14 the commitment.

15 Now, I respectfully suggest to the  
16 gentleman who talked about his wife or other ladies  
17 being at home at night alone, that would concern me,  
18 of course, but instead of a non-occupied completely  
19 black available for any vagrant to inhabit, including  
20 any sex offenders who hasn't gone through a background  
21 check, three acre track, what there will be is an  
22 occupied 24 hour a day staffed continuously with  
23 surveillance cameras and lighting facility. I  
24 respectfully submit to anyone in the neighborhood will  
25 be safe.

1                   Now, the notion of our shrilly-sallying  
2                   back and forth and telling different stories about  
3                   substance abuse treatment. The only reason we have a  
4                   substance abuse treatment is that our people have  
5                   always gone to Owensboro Medical Health System before  
6                   Owensboro Mercy Health System in order to participate  
7                   in a substance abuse treatment program. We have over  
8                   600 graduates of that program who have gone through  
9                   Boulware. When that treatment team became available,  
10                  we said, we will bring them into our program if it's  
11                  economically feasible.

12                  The commitments we made, and I have the  
13                  head of our treatment component here, Kristina Payton  
14                  who will correct me if I'm wrong, commitment was that  
15                  our substance abuse treatment program must be  
16                  self-funded and will be maintained and all cost paid  
17                  out of dedicated contributions for that purpose only.  
18                  You give a dollar to Boulware, it may go into our  
19                  operating account. It may go into our capital  
20                  campaign to pay for our retrofitting renovating this  
21                  facility or it may be a payment to our substance abuse  
22                  treatment component.

23                  I'm happy to report that at this point it  
24                  appears that our substance abuse treatment component  
25                  is very popular and people are making contributions,

1 but it's self-funded. It does not come out of our  
2 other general operating funds. That was part of the  
3 deal when we brought it in. The substance abuse  
4 treatment component is not a risk to our general  
5 financial capability.

6 We said when we filed this initial  
7 application we did not want to trouble this Board of  
8 Adjustment more than necessary. We anticipated that  
9 we would have substance abuse treatment for our  
10 existing operations and when we move it will come with  
11 us for our residents only. We anticipate down the  
12 road that that substance abuse treatment component  
13 will have access capacity. I can tell you why. If  
14 you have 90 people living at the facility, they go  
15 through a 28 day substance abuse license treatment  
16 component program. It's all done in classroom. It's  
17 not done with drugs. Not done with hanging bottles.  
18 Not done with gurneys. It's not done with any drugs  
19 at all. It's like a schooling. It's like group  
20 therapy meeting. That's what it consist of.

21 Now, people don't stay at our mission for  
22 30 days. People stay at our mission for 60 days, 90  
23 days, 180 days, a year. We say, stay longer, grower  
24 stronger so that when you leave you will have resolved  
25 those living issues which caused you to be homeless.

1                   Now, if you have 90 people, think about  
2 this for a minute - and you take them through your  
3 substance abuse treatment program for 28 days, they're  
4 going to be there a lot longer than 28 days. You're  
5 going to have all kinds of slots available in that  
6 substance abuse treatment program for people from the  
7 community. What we wanted to provide was what the  
8 hospital canceled. We said, we will limit our  
9 substance abuse treatment program, self-funding I've  
10 already mention, to our residents that are living  
11 there in order to allay fears that we were somehow  
12 bringing a bunch of neer-do-well to the neighborhood.

13                   We said, let people see that we operate  
14 competently. So we modified our application and we  
15 will come back to you in the future if it's  
16 appropriate. We don't know that we will. If it's  
17 appropriate to say, look, we have handled ourselves.  
18 We've conducted ourselves as good neighbors and  
19 therefore consider expanding that treatment program.  
20 That controversial attracting the wrong kind of  
21 people. Treatment program was conducted at Owensboro  
22 Mercy Health System for years and also out on Veach  
23 Road in an office complex for years. The number of  
24 times they had problems with inappropriate people  
25 being attracted there for behavior was zero. That

1 comes from the lady who directed it. That runs from  
2 1997 until 2004.

3 We don't guarantee we're perfect. We  
4 don't seek perfection. We seek improvement in what we  
5 do. This is an ideal use for a large piece of ground.  
6 We're currently in a residential neighborhood. We're  
7 going to a residential neighborhood. We don't expect  
8 everything to always be perfect, but our neighbors by  
9 in large are very happy with us. We haven't had  
10 complaints about noise. Believe me, the distances are  
11 much closer on Hall Street than they ever thought  
12 about being inside of a wall of a monastery.

13 We've had no complaints about our  
14 gatherings. AA and NA meetings in this community  
15 occur in First Presbyterian Church on Griffith Avenue.  
16 They occur at the St. Stephens Cathedral on Locust.  
17 They occur in dozens of places throughout this  
18 community. I have not ever heard anybody say that it  
19 is a detraction to that neighborhood to have AA or NA  
20 meetings going on there. The people who are in the  
21 business of recovery are not an attractant to the  
22 people who are drug sellers, etcetera, etcetera.

23 I can't make everything right. I cannot  
24 eliminate everybody's questions. I can tell you we  
25 operate on a curfew. I can show you the rules which



1 we've operated for a dozen years.

2 St. Joseph Peace Mission is an absolutely  
3 wonderful addition to this community and what we pay  
4 them will be used by them for an endowment. It is  
5 amazing to me that anyone would say that we are fools  
6 for paying them a half a million dollars for the  
7 property. In the first place, that's between a buyer  
8 and a seller. In the second place, the property is  
9 ideally suited for us and we know it.

10 You can't debunk all the misconceptions.  
11 If I go on to talk about every item in detail, I'll  
12 take too much time.

13 I thank you for your courtesy. I'm sorry  
14 it's a hard decision. I think the decision is  
15 obviously good for everyone and we will show that to  
16 be the case. It's something that ought to happen.  
17 Thank you.

18 CHAIRMAN: The opposition have anything  
19 else to add?

20 Come up here and state your name and ask  
21 your question.

22 MR. ELLIOTT: State your name, please.

23 MR. HAM: My name is Steve Ham.

24 (MR. STEVE HAM SWORN BY ATTORNEY.)

25 MR. HAM: I'd like to give you a different

1 perspective. I came here in support of this, but I  
2 feel compelled to speak from a different angle.

3 I volunteer down at the Boulware. I'm a  
4 retired school teacher. I taught 31 years in the city  
5 system from the seventh grade through the twelfth. I  
6 taught kids from the lowest level classes all the way  
7 through college prep. I speak to a class now at  
8 Kentucky Wesleyan.

9 I could say this about the Boulware, and I  
10 have dealt with hundreds of faculty and staff  
11 throughout my career. I've dealt with literally  
12 thousands of students. There is not a finer group of  
13 staff I've ever been in contact with. The people that  
14 I know personally, the clients so-to-speak that I work  
15 with are just like us. They're great. They're  
16 wonderful. There's a whole misconception here.  
17 They've just had some hard times, but they're going to  
18 make it, if people help them, and they need that. In  
19 and outside the Boulware, if anybody wants to come and  
20 see it, it's the most pristine interior and exterior  
21 you've ever seen.

22 Finally, the neighborhood will not be  
23 diminished I can assure you. If anything, on the  
24 contrary it will be enhanced. Thank you.

25 CHAIRMAN: Anyone else for or against come

1 forward.

2 MR. ELLIOTT: State your name, please.

3 REVEREND MARKS: My name is Reverend  
4 Michael Marks.

5 (REVEREND MARKS SWORN BY ATTORNEY.)

6 REVEREND MARKS: First I'd like to say to  
7 the Chairman that I will agree to keep my comments  
8 brief, if you will promise next Sunday not to bring up  
9 the rule at church.

10 For ten years I worked as the chapel first  
11 at Our Lady of Mercy Hospital for five years and then  
12 after the merger at OMHS.

13 From 1997 until I left the hospital to  
14 become a full-time pastor again, I worked with the  
15 substance abuse treatment component there, the unit  
16 there. I worked with Peter Patton. I work with  
17 Harold Richardson who are two of the people who are  
18 now on staff at Boulware.

19 When I was first asked to come and to  
20 begin working with the service, I will have to say  
21 that I think that I had many of the same concerns and  
22 many of the same misconceptions about drug and alcohol  
23 detox and treatment. I feel in my heart, I share the  
24 feelings that some of you folks from the neighborhood  
25 have.

1                   I have some of those same concerns about  
2 going and working with people who were drug addicts  
3 and who were alcoholics.

4                   What I learned over a period of three  
5 years working in that program is that the people  
6 there, the people who we refer to as patients at that  
7 time in a hospital setting were people who had a  
8 tremendous desire to be helped and to overcome the  
9 problems that they have.

10                  I found that the 12 step program was a  
11 wonderful, wonderful program. The spiritual component  
12 that I was able to participate in, I did a weekly  
13 spirituality group and also a weekly grief group with  
14 the patients there. They were so hungry, so hungry  
15 spiritually. To see lives transform, to see people  
16 who were able to overcome their addiction with all the  
17 help that they received through that program, that  
18 became for me the highlight of my week. Every week as  
19 a chapel in the hospital I got to where I really was  
20 looking forward to going up to that unit and being  
21 with those people and bringing the spiritual component  
22 of the program to them.

23                  Over the last couple of months, I was  
24 asked by Harold Richardson, meeting with him at the  
25 hospital if I would consider on a volunteer basis to

1 help to set up and train pastors to work in that  
2 spiritual component. Not only the spirituality group  
3 that is a part of the AA program, but also in another  
4 part of the building because it would be outside of  
5 the licensing areas that are limited by state  
6 regulation to also help to develop a bible study  
7 relating to the 12 steps. We had a preliminary  
8 meeting this week, earlier this week with several area  
9 clergy. Some others have contacted me since that time  
10 to express their interest in coming and being a part  
11 of that. The spiritual component and the Christian  
12 component will be very, very much a part of the  
13 treatment program.

14 I understand your concerns. I understand  
15 some of them. Not all of them. I don't live in the  
16 neighborhood and I don't claim to know all of them. I  
17 do know the fears and apprehensions that I had before  
18 I started working with the folks who needed our help.  
19 My attitude and my outlook was totally changed as a  
20 result of the experience of working with them. I hope  
21 that this board will give Boulware an opportunity to  
22 provide these greatly needed services in our  
23 community. Thank you.

24 CHAIRMAN: There's one more back here and  
25 then we're going to cut it off.

1 MR. ELLIOTT: State your name, please.

2 MR. BURGESS: Stan Burgess.

3 (MR. STAN BURGESS SWORN BY ATTORNEY.)

4 MR. BURGESS: I want to congratulate the  
5 Boulware Center for the marvelous work that they've  
6 done over the years past. They are an integral and  
7 essential part of this community for the problem that  
8 many are addressing.

9 I stand here somewhat confused and a touch  
10 concerned because I've heard Mr. Craig say they will  
11 not be detox today just a few moments ago. Then when  
12 I sat in the county commission a couple of hours ago  
13 and questioned what to do with the Hall Street  
14 facility, he said, that will be operated by 5013C  
15 entitled Life Boat. That will be the non-medical  
16 detox.

17 As a follow up in the questioning, it  
18 became apparent from Mr. Craig's response that you  
19 could not operate the non-medical detox separate from  
20 their main operation. That over time they would have  
21 to migrate together. That's a concern to me because a  
22 non-medical detox addresses people that cannot be  
23 treated medically. Specifically in our community a  
24 methamphetamine addict is one that's terribly  
25 important and it takes a long time. A few days in a

1 non-med detox, that person would be a real problem for  
2 that person because it could potentially give them  
3 just enough rest to go on down the road and maybe lose  
4 their life.

5 I guess my statement is more one of not  
6 understanding because I've heard no detox here and in  
7 the county commissioners meeting earlier today I've  
8 heard, yes, we will have to move the two programs  
9 together at some point. I assume that together at  
10 some point means at the monastery; although, it wasn't  
11 clear. That's all that I have. Thank you.

12 CHAIRMAN: At this time does anyone on the  
13 board have any questions?

14 MR. MILLER: Mr. Chairman, I've got some  
15 questions for Mr. Craig.

16 CHAIRMAN: State them, please.

17 MR. MILLER: On the 2004 statistical  
18 information that you gave us, it does state a 9 p.m.  
19 curfew, 10 p.m. lights out. Is that the same hours of  
20 operation that will be at this new facility?

21 MR. CRAIG: Same as it's been for years  
22 and years and it will continue.

23 MR. MILLER: Is there any traffic allowed  
24 in or out of the facility after that time until you  
25 open in the morning?

1                   MR. CRAIG: No. If you had an emergency,  
2 if someone got sick, you might, but no. The place is  
3 basically closed. This will be operating, this is an  
4 odd use of the term, but it will be operating very  
5 much as a gated community and will not be open  
6 generally to the public except during the non-curfew  
7 hours.

8                   MR. MILLER: The background checks that  
9 you say that you do on everyone that comes in.

10                  MR. CRAIG: Absolutely.

11                  MR. MILLER: What time period? How long  
12 does it take to do a background check? What do you do  
13 with those? Do you use that to - - are people  
14 eliminated from the program?

15                  MR. CRAIG: If you don't pass the  
16 background check, you're not permitted to be a  
17 resident there.

18                  MR. MILLER: How long does it take to get  
19 these background checks?

20                  MS. LAWSON: We use internet access.

21                  MR. CRAIG: This is our executive  
22 director, Rosemary Lawson.

23                  CHAIRMAN: Come forward and state your  
24 name.

25                  MR. ELLIOTT: State your name.



1 MS. LAWSON: My name is Rosemary Lawson.

2 (MS. ROSEMARY LAWSON SWORN BY ATTORNEY.)

3 MS. LAWSON: We are so fortunate to have  
4 high speed internet access. The State of Kentucky has  
5 registered pedophiliers accessible through high speed  
6 internet. We do that on a regular basis. We also use  
7 Owensboro Police Department. NCIC, they have that  
8 opportunity there. We keep court referral records  
9 from the Messenger-Inquirer. We have thousands of  
10 files on clients that we have served. We do  
11 everything within our ability to make sure that the  
12 people we're serving are suitable for our services.  
13 So if anyone who proposes a danger to us or anyone  
14 else.

15 MR. MILLER: Let's say I walk into your  
16 facility right now. How long would it take you to  
17 determine I'm the fine upstanding young man that I am?

18 MS. LAWSON: We have a great team of case  
19 managers. We have someone who has a master's degree  
20 in counseling and theology. We have Bill Barris back  
21 here. We have some very professional people who do a  
22 verbal interview. Very extensive senses interview  
23 with the folks. We take pictures. We take  
24 fingerprints. We ask for standard identification:  
25 Social Security card, picture identification. You

1 know, just like you would with any other - - it  
2 doesn't take long to get that information.

3 MR. MILLER: Again, how long? Are we  
4 talking hours, or days, or weeks?

5 MS. LAWSON: Twenty minutes.

6 MR. MILLER: Twenty minutes to do a  
7 background check and determine is someone - -

8 MS. LAWSON: We could go on the internet  
9 very quickly and determine it.

10 MR. MILLER: That's what I was looking  
11 for. Thank you.

12 MR. WARREN: Ms. Lawson, I have a question  
13 for you.

14 I may be a little confused or I'm a whole  
15 lot confused actually. I become homeless is 7:30 at  
16 night and I don't have a place to go to. Can I walk  
17 into your doors and say, I don't have a place to sleep  
18 tonight? Is that what you do? That's what I thought  
19 you did.

20 MR. LAWSON: We have an 8 p.m. to 8 a.m.  
21 Owensboro Police Departments Referral System. No one  
22 can come into the mission between 8 p.m. and 8 a.m.  
23 unless they're brought, referred by the police  
24 department. The police department then has the  
25 obligation to do, you know, identification checks and

1       etcetera. During the evening, during our lock down  
2       hours, from 10 to 5:30 in the morning, we have an  
3       answering service. If you let the phone ring, you can  
4       hear it and it refers the caller to the Owensboro  
5       Police Department, give the name, etcetera. The  
6       nature of your call is an emergency. The Owensboro  
7       Police Department will contact the mission and the  
8       proper person will take care of your emergency;  
9       otherwise, please leave a message, giving the name of  
10      the person calling, etcetera. We work very closely  
11      with law enforcement for protection of our clients and  
12      our volunteers and our staff.

13                   MR. WARREN: So if I came to you right now  
14      and you're saying that you could do a 20 minute  
15      background check and I pass the background check then  
16      I could stay at the facility?

17                   MS. LAWSON: Right now you would, yes.  
18      It's 7:30. Between 8 p.m. and 8 a.m.

19                   MR. WARREN: So after 8:00 p.m. it's only  
20      police?

21                   MS. LAWSON: Yes. Believe it or not it's  
22      a very rare incident that we - - I mean I have our  
23      night manager here who's been with us for over five  
24      years. He is in the building. We have very few  
25      problems. Very few evening interruptions.

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

3                   (NO RESPONSE)

4                   CHAIRMAN: Thank you.

5                   The Staff have anything to add at this  
6 time, questions or comments?

7                   MR. NOFFSINGER: No, sir.

8                   MR. PEDLEY: Mr. Chairman, I have a  
9 statement.

10                   You've dealt us a very, very tough item  
11 here. It's tough to make a decision. I've been on  
12 this board about 11 years and it's one of the  
13 toughest. I support the Boulware Center. I believe  
14 in it and believe we need it. Believe it's a good  
15 location, but we have concerned citizens here that  
16 live there too.

17                   I agree with Mr. Kirtley. I haven't heard  
18 that there's been a feasibility study on that piece of  
19 property. I haven't heard that there's been a cost  
20 analysis. I haven't heard that the construction  
21 engineers looked at it to see if it can be been  
22 brought up to fire codes and all building codes. I  
23 haven't heard that you've actually done that. I agree  
24 with Mr. Kirtley. You go in and you don't have the  
25 money to do this and it does become a major problem

1 for the community.

2 You've dealt us page after page after  
3 page, and listening to and listening to. We've got a  
4 few minutes here to analyze this whole thing and try  
5 to come up with the right decision. It's very, very  
6 difficult. I don't know if I can right now make a  
7 decision. There's been made a very, very good  
8 argument here. Kentucky status what we must find to  
9 approve the Conditional Permit, I'm not sure we have  
10 it here right now. I don't know. I just wanted to  
11 make those comments as a board member.

12 MR. CRAIG: May I respond?

13 CHAIRMAN: Please. Briefly.

14 MR. CRAIG: As I said before, we had  
15 Lanham Contracting look at the property and give us an  
16 estimate of the cost it's going to take to bring it up  
17 to a power where we need it. We have also worked with  
18 temporary firm that was already familiar with the  
19 property from prior proposals on what would be done.  
20 They have given us some tentative work. We're going  
21 to be meeting with a local engineering firm, of  
22 course, with respect to any drainage problem,  
23 etcetera.

24 I respectfully say we have taken those  
25 preliminary steps necessary to satisfy ourselves that

1 the cost involved in bringing the property to an  
2 appropriate condition for us to use it, we've taken  
3 those steps.

4 We also undertook a feasibility study  
5 which was summarize that last item I gave you. It  
6 shows that in the first place we have commitments with  
7 respect to our fund raising of sufficient funds to do  
8 the renovation. So not being argumentative, Mr.  
9 Pedley, we have done our homework as best as is  
10 possible before we take ownership.

11 Last comment. I cannot explain Mr.  
12 Burgess' confusion. It will not be a detox,  
13 non-medical detox operation at the monastery property  
14 now or ever. That is not proposed now or ever. That  
15 facility will be operating by a separate charity.  
16 People who go through that program and choose to try  
17 to put their life into order may become residents at  
18 Boulware just like anyone else might who decides to  
19 get their chaos in their life taken care of.

20 CHAIRMAN: Thank you.

21 Does the Staff have anything to add at  
22 this time?

23 MR. NOFFSINGER: NO, sir.

24 MR. KIRTLEY: May I respond to what - -

25 CHAIRMAN: Briefly.

1                   MR. KIRTLEY: I think what you bring up  
2 because like I say I'm a board member and I'm in I  
3 support Boulware, but what I'm saying is there are a  
4 lot of issue here that are requiring a lot of deep  
5 thought. You may want to pass this until your next  
6 meeting and be able to deliberate on it and make a  
7 decision then.

8                   I really say that because of the issues  
9 presented, it's just not cut and dry. What I stress  
10 is, Boulware alone is one thing. Boulware with drug  
11 intervention is totally a different ball game. It  
12 doesn't rely on what it's been doing at Hall Street  
13 all these years. It's a new concept.

14                  Now, 12 step is AA and NA. That's been  
15 there for eight years. It's great. This clinical  
16 recovery unit is new. It's a month old. It can't be  
17 much older than that because the people was just hired  
18 at the last board meeting. Maybe you want to  
19 deliberate on this. I think you brought up a valid  
20 point.

21                  Also about the funding of this thing.  
22 It's like that ad years ago of the woman, "Where's the  
23 beef?" I'd really like to see the money in the bank  
24 because I am concerned as a member of that community  
25 that if we undertake this project and good intentions

1 fail, we will have a worse case scenario there.  
2 That's the reason why timing is so - - what I'm saying  
3 here we're rushing the judgment right now in my  
4 opinion as a board member. We should have the money.  
5 We should have this all in hand before we go and make  
6 this big commitment. That's just my thought because  
7 the property is not going anywhere. I can assure you  
8 of that.

9 CHAIRMAN: We've listened to both of you  
10 for and against. Appreciate you all.

11 MS. DIXON: Mr. Craig, what kind of time  
12 frame are you talking here?

13 MR. CRAIG: We have a time period within  
14 which we must close our purchase. Within the next 90  
15 days we expect the architectural engineering work to  
16 be completed. We expect during that time period to  
17 have the funds available to us to start the  
18 infrastructure work, the basic utilities, that kind of  
19 thing. If all went perfectly, which of course it  
20 won't, you would have the facility available for start  
21 occupying by the end of the year. The problem is to  
22 get all of it coordinated because you'll have to do  
23 the heating ventilating, air condition, etcetera. Our  
24 time period, we're under a time constraint in terms of  
25 getting the facility operational and closing our



1 purchase. We expect to have our funds available, as I  
2 said earlier, in accordance with our feasibility.  
3 We've already extended our contract once. We found  
4 out more and more about what we needed to do.

5 MS. DIXON: What I'm asking is: What  
6 would be your projected occupancy should you receive  
7 this Conditional Use Permit?

8 MR. CRAIG: Less than a year from this  
9 point.

10 CHAIRMAN: Any other board member have any  
11 questions?

12 MS. MASON; You plan to be fully done with  
13 renovations and the building before you occupy it or  
14 is this going to be ongoing while people are living in  
15 the facility?

16 MR. CRAIG: There are certain types of  
17 renovation you can do to parts that are surface only  
18 to parts of the building. What will happen is you  
19 will move your existing residents there because as you  
20 increase residents you will increase staff.  
21 Renovation of the property, all the basic structure  
22 will be done first. The occupancy for food services,  
23 that kind of thing that will always be used. There  
24 are a number of additional bathrooms I understand.  
25 You also have to handle both genders. You will get

1 that work done. You will have enough of the  
2 residential facility for the existing operations.

3 You will gradually add people because you  
4 have to add staff as you add people and that can't be  
5 done instantly. It can only be done as you gradually  
6 increase the number of residents. So when I say that  
7 we move over there, we will, but it will be the  
8 existing operation that it will gradually grow to its  
9 full component because there are a number of people  
10 that have to be hired.

11 CHAIRMAN: Any other questions from the  
12 board?

13 (NO RESPONSE)

14 CHAIRMAN: What I started to say awhile  
15 ago I want to thank both the applicant and those that  
16 are opposed to it for your alls interest, information  
17 and being polite to both sides. We appreciate that.

18 With that what's the board's pleasure at  
19 this time?

20 MS. DIXON: Mr. Chairman, I'm going to  
21 make a motion that we approve the Conditional Use  
22 Permit with review at six month intervals from  
23 beginning of occupancy for the following year.

24 MR. NOFFSINGER: For a period of one year.

25 MS. DIXON: For a period of one year from

1 occupancy.

2 I understand the concerns of you, but let  
3 me tell you. I live two blocks from a homeless  
4 shelter. I live two or less than two from some  
5 ongoing NA and AA programs. I can tell you I know of  
6 people that these kinds of things have saved their  
7 lives, and they're people just like you and me.  
8 They're kids just like mine and yours. So I fully  
9 understand. I have seen the evolution of the Boulware  
10 Board because I've been familiar with Boulware since I  
11 was five years old. I know what good things come of  
12 it. I have confidence based upon the testimony given  
13 here tonight that a lot of thought has gone into this  
14 and that it's going to serve a vital purpose. I don't  
15 really know where such a facility goes. Everybody  
16 says, we don't need it in this neighborhood. I used  
17 to think we didn't need it in mine, but it's there and  
18 it served a purpose. That's what I'm basing my motion  
19 on.

20 CHAIRMAN: Is there a second to the  
21 motion?

22 MR. WARREN: I will second the motion.

23 CHAIRMAN: You've heard the board. Have  
24 any other questions of the motion by the applicant or  
25 the opposition?

1 (NO RESPONSE)

2 CHAIRMAN: Staff have anything else to  
3 add?

4 MR. NOFFSINGER: No, sir.

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

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries.

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

10 ITEM 3

11 5555 Wellness Drive, in an A-U, I-2 zone  
12 Consider request for a Conditional Use Permit for  
13 the continued operation of the existing Wellness Works  
14 Center fitness facility, including indoor and outdoor  
15 recreation and occasional public fund-raisers and  
16 social functions.

17 Reference: Zoning Ordinance, Article 8, Section 8.2  
18 B7, B11, K7, 8.4/13, 8.4/42

19 Applicant: Premium Allied Tool

20 MR. NOFFSINGER: Mr. Chairman, Planning  
21 Staff has reviewed this application. The application  
22 is found to be in order. This application is for an  
23 existing facility that was reviewed by the Daviess  
24 County Zoning Administrator back prior to 2000. A  
25 permit was issued by the OMPC office for the facility.  
At this time I believe the property is going through  
some refinancing. It may be due to some legal  
research on the property. The attorney here tonight  
has recommended that they go through the Conditional

1 Use Permit process. So that's what we're here tonight  
2 to consider a Conditional Use Permit for the  
3 activities that I mentioned. Again, it is an existing  
4 building and it's found to be in order.

5 CHAIRMAN: Any opposition that came to the  
6 office?

7 MR. NOFFSINGER: No, sir.

8 CHAIRMAN: Anyone in here wishing to speak  
9 in opposition of this item?

10 (NO RESPONSE)

11 CHAIRMAN: Does any board members have any  
12 questions of the applicant?

13 MR. NOFFSINGER: Mr. Chairman, if this  
14 Conditional Use Permit is approved, it should be  
15 approved stipulation that the property shown here be  
16 consolidated to a single tract.

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

19 MR. BRANCATO: My name is Frank Brancato.

20 (MR. FRANK BRANCATO SWORN BY ATTORNEY.)

21 MR. BRANCATO: I will be happy to answer  
22 any questions from the commission.

23 Mr. Noffsinger is correct. I was running  
24 title on this property in preparation for some  
25 refinancing and noted that the approval was under part

1 of a construction plan and there wasn't a specific  
2 certificate of use and that's why I recommended that  
3 the company come here and get a certificate of use so  
4 that the property conforms to all applicable  
5 regulations.

6 CHAIRMAN: Thank you.

7 Does any board member have any questions  
8 of the applicant?

9 (NO RESPONSE)

10 CHAIRMAN: The office have anything to  
11 bring out, questions or other comments?

12 MR. NOFFSINGER: No, sir.

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

15 MR. PEDLEY: Mr. Chairman, I make a motion  
16 for approval based on findings it's compatible with  
17 the neighborhood and with a condition that the two  
18 properties be consolidated.

19 CHAIRMAN: Is there a second to the  
20 motion?

21 MS. MASON: Second.

22 CHAIRMAN: Any other comments or questions  
23 from the board?

24 (NO RESPONSE)

25 CHAIRMAN: Staff have anything else?

1 MR. NOFFSINGER: No.

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

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: Motion carries.

6 Next item, please.

7 ITEM 4

8 940 West Ninth Street, in an I-2 zone  
9 Consider request for a Conditional Use Permit to  
10 construct a 12,500 square foot building (100' by 125')  
11 and a 1,840 square foot shed to be used for metals  
12 processing and storage as a part of the existing  
13 operation of storage and processing of scrap metals  
14 currently conducted on the site.  
15 Reference: Zoning Ordinance, Article 8, Section 8.2  
16 G4, 8.4/27  
17 Applicant: Dahl & Groezinger, Inc.

18 MR. NOFFSINGER: Mr. Chairman, the  
19 Planning Staff has reviewed this application. It's  
20 found to be in order and ready for consideration.

21 If this application is approved tonight,  
22 it should be approved with a condition that the  
23 variance be approved under Item 4A which is a related  
24 item.

25 CHAIRMAN: Any opposition in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Anyone in the audience wishing  
to speak in opposition of this application?

(NO RESPONSE)

1                   CHAIRMAN: Any board member have any  
2 questions of the applicant?

3                   (NO RESPONSE)

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

6                   APPLICANT REP: No.

7                   CHAIRMAN: Staff have any other comments?

8                   MR. NOFFSINGER: No.

9                   CHAIRMAN: Entertain a motion to dispose  
10 of the item at this time.

11                   MS. MASON: Mr. Chairman, I move for  
12 approval in that it is compatible with the  
13 neighborhood and the facility that is there. The  
14 approval would be contingent on the variance being  
15 approved on the item on the agenda this evening.

16                   CHAIRMAN: Is there a second to the  
17 motion?

18                   MR. PEDLEY: Second.

19                   CHAIRMAN: Any other comments or  
20 questions?

21                   (NO RESPONSE)

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

24                   (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25                   CHAIRMAN: Motion carries.



1 Next item, please.

2 RELATED ITEM:

3 ITEM 4A

4 940 West Ninth Street, in an I-2 zone  
5 Consider request for a Variance to reduce the  
6 300-foot buffer requirement from residentially zoned  
7 property to a distance of 85 feet from the closest  
8 point of the new structures.

Reference: Zoning Ordinance, Article 8,  
Section 8.4/27

Applicant: Dahl & Groezinger, Inc.

9 MR. NOFFSINGER: Mr. Chairman, Planning  
10 Staff has reviewed this application. The application  
11 is in order and ready for consideration.

12 Each of you have received a copy of a  
13 variance staff review. It's been made available to  
14 each of you.

15 CHAIRMAN: Any opposition in the office?

16 MR. NOFFSINGER: No, sir.

17 CHAIRMAN: Anyone in the audience wishing  
18 to speak in opposition on this item?

19 (NO RESPONSE)

20 CHAIRMAN: Hearing none does the applicant  
21 have anything to add to it?

22 APPLICANT REP: No.

23 CHAIRMAN: Do any board members have any  
24 questions or comments?

25 (NO RESPONSE)

1                   CHAIRMAN: Staff have anything else to  
2 add?

3                   MR. NOFFSINGER: No.

4                   CHAIRMAN: Entertain a motion to dispose  
5 of the item at this time.

6                   MR. PEDLEY: Motion for approval based on  
7 findings it will not adversely affect the public  
8 health, safety or welfare; will not alter the  
9 essential character of the general vicinity; will not  
10 cause a hazard or a nuisance to the public; will not  
11 allow an unreasonable circumvention of the  
12 requirements of the zoning regulations.

13                   CHAIRMAN: Is there a second to the  
14 motion?

15                   MR. MILLER: Second.

16                   CHAIRMAN: Any other questions from the  
17 board or staff?

18                   (NO RESPONSE)

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

21                   (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22                   CHAIRMAN: Motion carries.

23                   Next item, please.

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VARIANCES

ITEM 5

308 Brown Court, in an R-1A zone  
Consider request for a Variance to reduce the side  
yard setback from 10 feet to 5 feet and the rear yard  
setback from 20 feet to 18.5 feet in order to  
construct a single-family residence.  
Reference: Zoning Ordinance, Article 8,  
Section 8.5.5(d)(e)  
Applicant: David Westerfield, William T. Westerfield

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

If the application is approved by this  
board, it should be approved with a condition that the  
power line located on the subject property be  
relocated as well as the easement. There will need to  
be a revised subdivision plat submitted to the  
planning office for approval.

CHAIRMAN: Any opposition in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Anybody in the audience wishing  
to speak in opposition of this item?

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: Any board members have any

1 questions of the applicant?

2 (NO RESPONSE)

3 CHAIRMAN: Staff have anything else to  
4 add?

5 MR. NOFFSINGER: No, sir.

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

8 MR. WARREN: Make a motion to grant the  
9 Variance to the findings that it will not adversely  
10 affect the public health, safety or welfare; will not  
11 alter the essential character of the general vicinity;  
12 will not cause a hazard or a nuisance to the public;  
13 will not allow an unreasonable circumvention of the  
14 requirements of the zoning regulations, with the  
15 restrictions that the power line be relocated and that  
16 a revised subdivision plat be drawn up.

17 MR. NOFFSINGER: Yes, for the new  
18 easement.

19 MR. WARREN: For the new easement.

20 CHAIRMAN: Is there a second to the  
21 motion?

22 MS. DIXON: Second.

23 CHAIRMAN: Any other questions from the  
24 board or staff?

25 (NO RESPONSE)

1 CHAIRMAN: The applicant understand the  
2 conditions that's been put on at this time?

3 APPLICANT: Yes.

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

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries.

8 Next item, please.

9 ITEM 6

10 1401 Hathaway Street, in an R-4DT zone  
11 Consider request for a Variance to reduce the side  
12 yard setback from 25 feet to 10 feet in order to  
13 construct a single-family residence.  
14 Reference: Zoning Ordinance, Article 8,  
15 Section 8.5.11(c)  
16 Applicant: Chris Payne, Owensboro Mercy Health System

17 MR. NOFFSINGER: Mr. Chairman, Planning  
18 Staff has reviewed this application. The application  
19 is found to be in order and ready for your  
20 consideration at this time.

21 Each board member has received a copy of  
22 various staff review describing the circumstances as  
23 well as considerations and the possible findings in  
24 reviewing this variance.

25 CHAIRMAN: Is there any opposition through  
the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Any board member have any

1 questions or comments of the applicant?

2 (NO RESPONSE)

3 CHAIRMAN: The applicant have anything  
4 that you'd like to bring at this time?

5 (NO RESPONSE)

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

8 MS. DIXON: Move to approve based upon  
9 findings that it will not adversely affect the public  
10 health, safety or welfare; it will not alter the  
11 essential character of the general vicinity; it will  
12 not cause a hazard or a nuisance to the public; and it  
13 will not allow an unreasonable circumvention of the  
14 requirements of the zoning regulations, if the  
15 Planning Staff recommendation is accepted.

16 CHAIRMAN: Is there a second?

17 MR. MILLER: Second.

18 CHAIRMAN: Staff have any other comments  
19 to add at this time?

20 MR. NOFFSINGER: No, sir.

21 CHAIRMAN: Any board members have any  
22 other questions?

23 (NO RESPONSE)

24 CHAIRMAN: All in favor raise your right  
25 hand.

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries.

3 Next item, please.

4 -----

5 ADMINISTRATIVE APPEALS

6 ITEM 7

7 731 Hall Street, in an R-4DT zone  
8 Consider request for an Administrative Review to  
9 change from the on-site non-conforming unlicensed  
10 substance abuse treatment program to an on-site  
11 licensed substance abuse treatment program.  
12 Reference: Zoning Ordinance, Article 4, Section 4.53,  
13 Article 7, Section 7.34  
14 Applicant: Boulware Center Mission, Inc.

12 MR. NOFFSINGER: Mr. Chairman, this  
13 application is found to be in order and it is what has  
14 been stated here.

15 CHAIRMAN: Is there any questions right  
16 now of the board?

17 (NO RESPONSE)

18 CHAIRMAN: Does the staff have anything  
19 they want to add on at this time?

20 MR. NOFFSINGER: No, sir.

21 MR. MILLER: I've got one question. I  
22 don't understand why it's an Administrative Review.

23 MR. NOFFSINGER: Right now these services  
24 are provided at this location. It's non-confirming in  
25 that they do not have the Conditional Use Permit

1 necessary to operate these facilities. The only  
2 change is they're going from an unlicensed substance  
3 abuse center to a licensed one. So in order to move  
4 forward with giving the okay to the facility, it's  
5 found that it's best to go through the non-conforming  
6 use rather than the Conditional Use Permit process,  
7 which would require on-site facilities such as  
8 additional parking of the facility. They're not  
9 changing the use of the property in terms of the uses  
10 of the substance abuse treatment program. It's going  
11 from an unlicensed to a licensed program.

12 CHAIRMAN: Any other questions from any  
13 board members?

14 MS. DIXON: So what we're asking is what  
15 would a motion sound like?

16 MR. NOFFSINGER: In this particular case,  
17 it would be to basically allow or approve the change  
18 from an unlicensed substance abuse facility located at  
19 this location to a licensed facility.

20 MS. MASON: I have a question.

21 Are you all going to continue, once you  
22 move to the Benita Avenue you're going to continue  
23 with the substance abuse program on Hall Street?

24 MR. CRAIG: Yes. We will have some  
25 continuing there for the future. We are taking a use



1 that's been there for I mean literally for decades and  
2 we're upgrading the quality of it by having a licensed  
3 program. Part of that means that we have to have  
4 something in writing that we send to the state  
5 authority to approve our license saying that this is  
6 legally permitted at this location. So we must have  
7 that back from you all in order to get our license  
8 issued.

9 MR. NOFFSINGER: I answered that question.

10 CHAIRMAN: Any other questions?

11 (NO RESPONSE)

12 CHAIRMAN: We'll entertain a motion now.

13 MS. DIXON: I move to approve an on-site  
14 license substance abuse treatment center at 731 Hall  
15 Street.

16 CHAIRMAN: Is there a second?

17 MS. MASON: Second.

18 CHAIRMAN: Any other questions or comments  
19 from the board?

20 (NO RESPONSE)

21 CHAIRMAN: Staff have anything else to  
22 add?

23 MR. NOFFSINGER: No.

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

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries.

3 Next item, please, sir.

4 ITEM 8

5 7865 Jack Hinton Road, in an A-R zone  
6 Consider request for an Administrative Review in  
7 order to appeal the Zoning Administrator's  
8 interpretation that building a post-frame building for  
9 the storage of a tractor and tools on a vacant 4.59  
10 acre lot is not permitted because the building would  
11 be allowed only as an accessory structure in  
12 accordance with Article 8.2/H1 or Article 8.2L/3 and  
13 there is no principal building or use located on the  
14 lot.

15 Reference: Zoning Ordinance, Article 7, Section 7.35

16 Applicant: Gary and Nadine Trogden

17

18 MR. NOFFSINGER: Mr. Chairman, Mr.

19 Mischel, zoning administrator for Owensboro and

20 Daviess County is here to give a description of what

21 has taken place.

22 CHAIRMAN: State your name for the record,

23 please.

24 MR. MISCHEL: Jim Mischel.

25 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I'll make this very brief.

I'm going to give everybody a one page

handout here. I'll put one in the record.

I will briefly explain the situation.

Mr. Trogden came in to acquire a building

permit to build a pole barn type structure on this

1 property at Jack Hinton Road. In turn, I had to turn  
2 down that request. I'd like to kind of show you why I  
3 had to do that.

4 This section out of the Zoning Ordinance,  
5 Article 8, Schedule of Zones, there's two places I  
6 could put this building. As you can see at the top  
7 under Agriculture, there's agricultural structures and  
8 stables. Over here this property is zoned A-R. Under  
9 that you see highlighted in yellow it say A,  
10 accessory. So these structures and stables could be  
11 accessory in that zone.

12 Also down at the bottom I could have  
13 placed it under storage sheds. Again, if you look  
14 over under that zone A-R, it's accessory.

15 The problem we have here is this property  
16 at 7865 Jack Hinton Road is a vacant piece of  
17 property. It's 4.59 acres. There's not a principal  
18 structure such as a house. It's hard for me to issue  
19 that permit knowing this. So I had to turn it down  
20 for that reason. I don't know if you have any  
21 questions at this time.

22 MR. WARREN: So if he builds a house  
23 there, then he could do that?

24 MR. MISCHEL: That's correct. In the  
25 past, we've had people come up and sometimes they want

1 to build a pole barn first to store their equipment.  
2 In the past, we have issued a permit for a house and a  
3 structure. They build that accessory structure first  
4 so they could lock up their building materials and  
5 equipment such as that. We have done that, but they  
6 have followed through and built a house too.

7 CHAIRMAN: Any board member have any  
8 questions for the Staff?

9 (NO RESPONSE)

10 CHAIRMAN: Mr. Attorney, would you state  
11 our position legally by the law?

12 MR. ELLIOTT: Our position is to determine  
13 whether or not the administrator's interpretation of  
14 the Zoning Ordinance is correct.

15 CHAIRMAN: What the law states.

16 MR. ELLIOTT: Yes. Now you hear from the  
17 person that filed the appeal and see what their  
18 position is.

19 CHAIRMAN: Does the applicant have any  
20 comments you want to bring forward?

21 State your name for the record please?

22 MR. TROGDEN: My name is Gary Trogden.

23 (MR. GARY TROGDEN SWORN BY ATTORNEY.)

24 MR. TROGDEN: First off I'd like to  
25 apologize for my wife not being with me. You all

1 might have noticed her with a young child that came  
2 earlier. My mother had a fall at the rest home  
3 tonight. Her and I both have power of attorney so she  
4 had to be the one to go out there.

5 This is the first Board of Adjustment  
6 meeting I've ever been too. Certainly have gained a  
7 new respect. You all certainly have some heard  
8 decisions to make. That first one was a pretty tough  
9 one.

10 I filed this petition over three weeks  
11 ago. Really my desire you might say started about 15  
12 years ago. That's when my mother retired from the  
13 Owensboro City Schools. She worked in the  
14 kindergarten for 20 years. She immediately went to  
15 work for the Soup Kitchens down at the Pitino Shelter  
16 volunteering and I kind of became involved with her.  
17 She was always getting me to be her gopher boy I guess  
18 you might call it. Bring her boxes, get utensils and  
19 things like this.

20 Just kind of a dream was kind of developed  
21 in me at that time. That some day I'd get in the  
22 position that I could have a little piece of land that  
23 I'd like to put a garden to donate to these two local  
24 soup kitchens, the Pitino Soup Kitchen and Tenth  
25 Street Baptist Church.

1                   First contact with zoning was I had an  
2                   intention of building a garage on my property up  
3                   there. They said then that the problem they had was  
4                   people had done this before and then later on convert  
5                   the garage and start working on cars, lawn mowers and  
6                   stuff like this. So I switched and thought, well,  
7                   maybe I could just build one of these post-frame  
8                   buildings. That's certainly within the agricultural  
9                   rural area out there from Jack Hinton Road where my  
10                  property is coming off 54. There's 20 of these such  
11                  buildings out through there. So I propose certain  
12                  conformity to the area.

13                  Also I'd like to say that one of these  
14                  type of structures would be very hard to convert over  
15                  to mechanical uses or anything like that because a  
16                  post-frame building, the boards are every four foot  
17                  apart in the ceiling and stuff. A lot of additions  
18                  would have to added to be convert it over to a  
19                  business type of situation, which is no intention of  
20                  mine anyway. I want to store tools in.

21                  Also it just seems like that just one bad  
22                  apple or two or whatever. I'm sure Mr. Mischel has  
23                  had to deal with that. It's a rarity. A bad apple or  
24                  two shouldn't spoil what innocent people want to do in  
25                  developing.

1                   I also feel like going like David against  
2 Mr. Goliath here. They know this book well and I  
3 don't. I just bought my first one three weeks ago.  
4 It seems to me like I found at least three places in  
5 the zoning regulation book that supports my idea of  
6 what I want to do here.

7                   In 3.1 and 3.2A says, Agricultural land  
8 use exemptions. Says, notwithstanding any other  
9 provisions of this zoning ordinance, land which is  
10 used solely for agricultural use is defined in this  
11 zoning ordinance, which it's got right there in  
12 agricultural use. Building permits, certificates,  
13 yard or location requirements for agricultural  
14 buildings.

15                   Then another part my wife found in here is  
16 over on 7-3 and it says, Reasons that the variance  
17 will preserve will not harm the public safety and  
18 welfare and will not alter the essential character of  
19 the neighborhood. Certainly the type of building that  
20 I will build will not in any way go against the  
21 neighborhood.

22                   In fact, I have a letter here from Mr.  
23 Fred Marksberry. He's the biggest landowner in the  
24 area. This is March 14th.

25                   "I, Fred Marksberry, a former East Daviess

1 County Commissioner, serving for 17 years, from 1982  
2 to 1999, verify that I own a 165 acre farm across the  
3 road from Gary and Nadine Trogden, property on Jack  
4 Hinton Road.

5 "I support their efforts to build a  
6 post-frame building to store equipment. These types  
7 of buildings are numerous in our area and comply with  
8 the A-R zone for agricultural uses."

9 Then over on A-1 under the A-R zone it  
10 says, Rural agricultural zone establish that - - rural  
11 character of the Daviess County Rural Service area by  
12 promoting agricultural and agricultural land uses.  
13 Certainly if you have a building to store agricultural  
14 tools certainly seems to me like it's within what I  
15 want to do and fit within the agricultural idea.

16 Also I have a couple of recommendation  
17 letters here from a couple of respective people in our  
18 community. One is Mr. E. Louis Johnson who is an  
19 attorney that's been also a former state  
20 representative for our area. He just wrote very  
21 brief. Says, "Dear Board Members: I have known Gary  
22 and Nadine Trogden for many years. I feel comfortable  
23 in giving a letter of reference for their honesty and  
24 character. I have been informed that they wish to  
25 raise a vegetable garden on their acres located on



1 Jack Hinton Road for the purpose of raising vegetables  
2 and share their produce for the poor people in the  
3 community. It sounds like a worthwhile project and I  
4 ask you to give due consideration for this venture."

5 The second letter I have is from a man  
6 that's well-known for over 40 years and that's Mr.  
7 Dave Aughtry who is a current jailer. He wrote a  
8 letter of recommendation. Says, "To whom it may  
9 concern: Gary Trogden informed me of his intention to  
10 construct a pole barn type of building on his property  
11 at 7865 Jack Hinton Road. Gary plans to grow  
12 vegetables on his property and donate much of his  
13 produce to the homeless shelters here in Daviess  
14 County. Gary has a need to construct the building to  
15 store his tractor that will be used to work the  
16 garden. I have for over 40 years have known Gary  
17 Trogden. He's a trustworthy individual that is  
18 concerned about the less fortunate. I feel it will be  
19 a disservice to the community if Gary was not allowed  
20 to raise this garden that will benefit the homeless.  
21 Therefore, I encourage the zoning on this property to  
22 grant this approve so Gary can construct this building  
23 in question. Thank you, David Osborne."

24 Also, as I understand it, Mr. Noffsinger  
25 should by now have received a letter from Mr. Reid

1       Haire. I want to share that letter because I didn't  
2       know he was going to send it, but he sent me a copy of  
3       it.

4                   He said, "Mr. Gary Trogden recently  
5       contacted me in the matter that he will be bringing to  
6       the Board of Adjustment on April 7th. I'm writing as  
7       part of his request, as long as certain stipulations  
8       are met. Mr. Trogden wishes to construct a post-frame  
9       building on this four and half acre tract of ground  
10      that he owns on Jack Hinton Road. Under the current  
11      zoning rules, he's prohibited from doing so.  
12      Nevertheless, as long as Mr. Trogden agrees to  
13      maintain the property, agrees not to operate any  
14      business out of the post-frame building and keeps his  
15      tools and equipment inside the building when not use,  
16      then I would encourage the Board of Adjustment to  
17      issue a variance on this building construction on this  
18      property. I'll be glad to talk with any of you at any  
19      time. Thank you, Reid Haire, Daviess County Judge  
20      Executive."

21                   I also have here four pictures that I'd  
22      like to maybe submit. This is kind of what I'm up  
23      against right now. I'll just pass these down the  
24      line. Kind of what I have to do with my tools now.  
25      You see a shovel, buckets and hoes. I just have to

1 lay them on top of the ground.

2 Here's my riding lawn mower. I have to  
3 cover it up with a big piece of black plastic. If I  
4 get a tractor - - if I don't have a building.

5 This is I think a better alternative.  
6 This is a neighborhood's building down the road from  
7 me that I'd like to build very similar, but not quite  
8 that big.

9 Also Tuesday I took this - - broke a piece  
10 of ground here. It's not a very big garden at this  
11 time. It's about 100 foot long. Whatever I produce  
12 out of this garden this year, if I produce 200 pounds  
13 of potatoes, 100 pounds of them is going to donate to  
14 the Soup Kitchen and Tenth Street Baptist Food. If I  
15 raise 20 bushels of tomatoes, 10 of them is going  
16 there. The same way with corn or whatever.

17 I borrowed the neighbor's tractor. I had  
18 to drive five miles on the tractor and five miles  
19 back. As you can see, if I can get my own tractor and  
20 have a place to put it, I can expand these gardens  
21 this way and quite a bit over to the east, acre and a  
22 half of garden which would really in essence be an 80  
23 or 90 percent of this food would go to the local Soup  
24 Kitchens.

25 In conclusion it's my understanding that

1 this board is set up to look at individual cases  
2 because everything is not in black or white. There  
3 are unique situations.

4 Just as you ladies and gentlemen serving  
5 and giving something back to society by serving on  
6 this board, this is my way that I want to give back to  
7 society.

8 Ms. Mason certainly gave a beautiful  
9 prayer when you all started this tonight.

10 God has somewhat blessed me with a green  
11 thumb and that I can use to help the less fortunate.  
12 I'm asking for the variance or an exception. I think  
13 it is for a worthwhile exceptional cause. Dozens and  
14 dozens of the poorest of poor in our community that  
15 will be helped by your decision today and that's why  
16 I'm asking you to help me. Approve this variance.  
17 Thank you. Any questions I'll be glad to answer.

18 CHAIRMAN: Mr. Trogden, I agree with you  
19 100 percent on what you're trying to do. I think the  
20 statement that the Judge Executive made there and if  
21 I'm correct by the attorney, legally we can't give you  
22 any lead on this as much as we'd like to because  
23 you're under ten acres for an agricultural area. If  
24 you had a house there, then it would be existing  
25 building to your property; am I correct?

1 MR. ELLIOTT: Yes.

2 CHAIRMAN: Essentially we can't do  
3 anything.

4 MR. ELLIOTT: Your function is to  
5 determine whether or not Mr. Mischel's interpretation  
6 of the ordinance is right. He says that he cannot  
7 build this because it's not prohibited.

8 CHAIRMAN: As much as we'd like to go  
9 against it.

10 MR. ELLIOTT: That's just a hard fact.  
11 There's not any way of granting the variance or any  
12 conditional use for him to do it. The statutes says  
13 that he can't. That's Mr. Mischel's interpretation.  
14 You have to determine whether or not that's a correct  
15 interpretation.

16 CHAIRMAN: Thank you.

17 MR. TROGDEN: What about these points that  
18 I brought up here in the zoning ordinance? Like I say  
19 I'm new at this. It's my understanding that you all  
20 do have authority. In fact, it even says in the  
21 brochure here that you all have authority to make  
22 Conditional Use Permits. It says that right here in  
23 this brochure.

24 CHAIRMAN: Up to a point, if we don't  
25 change the law. We can vary with it a little, but we

1 can't change the law.

2 MR. TROGDEN: What about some of these  
3 points that I brought up here in the book? It  
4 certainly seems to go along with agricultural uses.

5 CHAIRMAN: Would you come forward and  
6 answer that please, sir.

7 MR. MISCHEL: I might try to clarify some  
8 of that. Most of the points he brought up talks about  
9 agricultural plan and definition. By definition a  
10 farm is ten acres or more. When it's ten acres or  
11 less, it's a lot. Now, if this was ten acres plus, in  
12 fact he could build the structure. For farming he  
13 wouldn't need a building permit. Under ten acres,  
14 we're required to issue a permit because it's a lot.  
15 Some things are conditional permitted. If you look at  
16 Article 8, some things are principally permitted.  
17 Some are conditionally permitted. This was not. It  
18 was just - - it had A for accessory use. If it had a  
19 C, that means he could apply for a Conditional Use  
20 Permit. Come in front of this board and they could  
21 approve it with no conditions or whatever conditions  
22 they see fit. That's not in this schedule of zones  
23 conditional permit. It just says it's accessory in  
24 that zone. If you had ten acres or more, they could  
25 probably - - we wouldn't even be here.

1                   CHAIRMAN: Do you have anything else you'd  
2 like to bring forward, sir?

3                   MR. TROGDEN: No, sir. Like I say it's  
4 all a new situation to me. I brought the case and  
5 that's the best I can do. Thank you.

6                   CHAIRMAN: Appreciate it.

7                   MR. NOFFSINGER: Mr. Trogden, what size  
8 building were you proposing to construct?

9                   MR. TROGDEN: Well, I have figures back  
10 here on two post-frame buildings of 30 by 30 and 30 by  
11 40. I've got estimates on what it would cost to build  
12 them.

13                  MR. NOFFSINGER: Have you considered a  
14 much smaller structure for storage of materials such  
15 as a 12 by 12 or 10 by 10 without electricity?

16                  MR. TROGDEN: Just a basic structure to  
17 store things is all I needed. I'd probably have just  
18 a dirt floor. Anybody knows anything about  
19 agricultural, you know, a lawn mower or so many things  
20 just don't work good sitting out in the weather all  
21 the time.

22                  MR. NOFFSINGER: The reason I mention that  
23 you might get with Jim Mischel and discuss  
24 opportunities of maybe putting some type of storage  
25 shed on the property that does not require a permit.

1                   Mr. Mischel, you want to address that  
2                   option?

3                   MR. MISCHEL: We have talked about that in  
4                   the last few days. A building 12 by 12, probably 12  
5                   by 14 would not require a building permit. For a  
6                   structure like that, you wouldn't come in to get a  
7                   permit. I wouldn't be out there to see if it was  
8                   built by any code or anything. We wouldn't be  
9                   involved in that process.

10                  MR. MILLER: So, Jim, he's wanting a  
11                  building big enough for his tractor. How big is not  
12                  big enough to get your attention?

13                  MR. MISCHEL: Essentially we're probably  
14                  looking at 12 by 12 or 12 by 14. When you go past  
15                  that much, the Kentucky Building Code kicks in.

16                  MR. NOFFSINGER: I would think that a  
17                  building that size you could get a tractor in. I can  
18                  get my tractor in that building, but if you're looking  
19                  at Audie's tractor that's another story. My tractor  
20                  could fit comfortably in there.

21                  MR. TROGDEN: Well, I was at Planning &  
22                  Zoning this morning and talked with Karen. She gave  
23                  me one of those new brochures. I understood it can  
24                  even go as high as 12 by 20; is that correct?  
25                  Certainly not what I want to do.



1 MR. MISCHEL: No. 12 by 12 or 12 by 14.

2 MR. TROGDEN: I'm not talking about a very  
3 big tractor. Only a small. You know, tiller, shovel,  
4 hoes. That's where we're at.

5 CHAIRMAN: It sounds like we're trying to  
6 come up with something where we can work with you.

7 First thing we need to do for or against  
8 the administrative appeal and then suggest that Mr.  
9 Trogden work with the office in trying to work on  
10 something smaller that doesn't need a permit, if you  
11 so desire.

12 MS. DIXON: Mr. Chairman, based upon  
13 testimony, I move that we uphold the ruling of the  
14 zoning administrator in reference to this item and  
15 suggest that Mr. Trogden get with Mr. Mischel to come  
16 up with a more viable option.

17 CHAIRMAN: Is there a second?

18 MR. WARREN: Second.

19 CHAIRMAN: Any other questions from the  
20 board?

21 (NO RESPONSE)

22 CHAIRMAN: Staff?

23 MR. NOFFSINGER: No, sir.

24 CHAIRMAN: Applicant?

25 MR. TROGDEN: No, sir.

1 CHAIRMAN: All in favor raise your right  
2 hand.

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: Motion carries.  
5 Need one final motion.

6 MS. DIXON: Move to adjourn.

7 MR. WARREN: Second.

8 CHAIRMAN: All in favor raise your right  
9 hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: We are adjourned.

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

3 I, LYNNETTE KOLLER, Notary Public in and for  
4 the State of Kentucky at Large, do hereby certify that  
5 the foregoing Owensboro Metropolitan Board of  
6 Adjustment meeting was held at the time and place as  
7 stated in the caption to the foregoing proceedings;  
8 that each person commenting on issues under discussion  
9 were duly sworn before testifying; that the Board  
10 members present were as stated in the caption; that  
11 said proceedings were taken by me in stenotype and  
12 electronically recorded and was thereafter, by me,  
13 accurately and correctly transcribed into the  
14 foregoing 98 typewritten pages; and that no signature  
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this  
17 the 25th day of April, 2005.

18

19

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

22 COMMISSION EXPIRES:  
23 DECEMBER 19, 2006

24 COUNTY OF RESIDENCE:  
DAVIESS COUNTY, KENTUCKY

25