The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, June 2, 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
Tim Miller
Sean Dysinger
Stewart Elliott
Attorney

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CHAIRMAN:  Call the Owensboro Metropolitan Board of Adjustment meeting to order. Want to welcome every one of you this evening. We start out each meeting each night with a pledge and a prayer. We invite you if you so desire to join us. Gary will have the prayer this evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  Again, I want to thank you for coming to the Owensboro Metropolitan Board of Adjustment. We have a few guidelines we try to work by.
If you want to speak on any item, come to one of the podiums and be sworn in by the attorney and then you're welcome to speak because we want to keep a record of everything.

Also, if you start arguing or saying the same thing over and over, we'll call you out of order. There's no need to keep listening to the same thing over and over.

With that we'll start with the first item on the agenda. Consider the minutes of the May 5th meeting. They're now on record in the office. I think they're correct and everything.

MR. NOFFSINGER: Yes, sir.
CHAIRMAN: With that I'll entertain a motion to dispose of the minutes.
MR. MILLER: Motion to approve the minutes.
CHAIRMAN: A motion made. Is there a second?
MR. DYSINGER: Second.
CHAIRMAN: A motion has been made. Is there a second?
MR. WARREN: Second.
CHAIRMAN: All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

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CONDITIONAL USE PERMIT

ITEM 2

5645 Wayne Bridge Road, in an R-1A, A-R zone
Consider request for a Conditional Use Permit to
place a 14'x70' class 2-manufactured home on the
property.
Reference: Zoning Ordinance, Article 8, Section 8.2
Applicant: Louis and Alice Weise, Karen Weise

MR. NOFFSINGER: Mr. Chairman, this
application has been reviewed by the Planning Staff.

It's found to be in order.

The applicant is asking for placement of a
manufactured home on the property. It's 14 by 70.
The application indicates it will be a 1990 model.
The applicant is asking for a waiver on the parking so
that rather than it being paved or concrete parking
that it be graveled because of the nature of the area
and other parking areas in that neighborhood are
gravel. That is a policy by this board and you do
have the ability to waive that requirement.

The applicant is also asking for waiver on
the concrete block foundation skirting because they
plan to construct a home and remove the manufactured
home in two years. The concrete or masonry type
skirting around the parameter of the manufactured home
is a requirement of the zone which this board does not
have the authority to waive. Just want to make sure
this is in the record and the applicant understood
that. That is a basis of approval of this application
that the board can consider the gravel parking, but
they could not consider the waiving of the skirting as
request.

CHAIRMAN: Any opposition in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone in the audience
wishing to speak in opposition to this item?
(NO RESPONSE)

CHAIRMAN: Hearing none does the applicant
have anything you would like to add at this time,
please.

Come and state your name.

MS. WEISE: My name is Karen Weise.

(MS. KAREN WEISE SWORN BY ATTORNEY.)

MS. WEISE: I just wanted to ask. There
is also stating on there that I have to have a 10 by
10 porch, whether it be concrete or wood. I wonder if
we could just waive that just until we get the need
electricity to turned on so we can build it. We need
electricity to build it.

MR. NOFFSINGER: That is something that
the board can consider. You're asking for a waiver on
a 10 by 10 porch or a deck in front of the
manufactured home?

MS. WEISE: Yes. Just until we get the
electricity turned on. We need electricity to build
it.

MR. NOFFSINGER: The home that you're
going to build. Not the --

MS. WEISE: I need electricity to build
the porch for the home that's going to be on the
trailer.

MR. NOFFSINGER: I'm with you now. You
had it on here you're going to build a home in the
next two years. I misunderstood.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?
MR. NOFFSINGER: No, sir.

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

MR. DYSINGER: I have a question for the
staff.
If we move to approve the Conditional Use Permit, do we need to read in the Number 7 to get that in the record or is it taken for granted, under A10B?

MR. NOFFSINGER: That is a requirement of the zone.

MR. DYSINGER: That was my question. It's taken for granted.

CHAIRMAN: Is there a motion to dispose of the item, please?

MR. DYSINGER: Move to approve the Conditional Use Permit given the findings that it's not incompatible with neighboring property with the additional approval for the waiver on parking being paved. That it's okay for it to be gravel, and a waiver on the front porch requirement until such time as electricity is installed.

CHAIRMAN: Is there a second to the motion?

MS. MASON: Second.

CHAIRMAN: Any other comments or discussion by the board or office?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

Ohio Valley Reporting
(270) 683-7383
CHAIRMAN: Motion carries.

Next item please.

VARIANCES

ITEM 3

1428 West Second Street, in a B-4 zone
Consider request for a Variance to reduce the rear
yard building setback from 20 feet to 2 feet for the
existing 4,875 square foot building and for the
proposed 2,000 square foot building addition.
Reference: Zoning Ordinance, Article 8,
Section 8.5.16(e)
Applicant: Charalambos (Harry) Pavlas

MR. NOFFSINGER: Mr. Chairman, Planning

Staff has reviewed this application. The application
is found to be in order. Staff does have a brief
presentation just describing what has taken place and
what the Staff's recommendation would be on this
proposal.

MR. ELLIOTT: State your name, please.

MS. STONE: Becky Stone.

(MS. BECKY STONE SWORN BY ATTORNEY.)

MS. STONE: When the existing building was
built at this location, apparently the property line
was misidentified as to the property boundary for the
tract. It appears that there is an unimproved, about
an 18 foot unimproved alley behind the existing
building. So the property setback was measured from
the south side of the property line. So the applicant believed he was 20 feet away from that property line.

In reality, he's about two feet away from the property line which is the right-of-way to this unimproved alley.

So in order to get that building into compliance and also to do an addition to the existing building, a Variance is being sought so that he can build in line with that existing building which is about two feet from the property line.

Given that the alley is an alley that's unimproved that goes nowhere, the Staff would recommend that the alley closing be affected first before the Variance is acted upon. This way the Variance that's requested will be less than the 18 foot Variance that's requested tonight. It will be a reduction in that Variance amount. The board could postpone this item and reduce the amount of the Variance granted once that alley closure has occurred.

The Staff's recommendation would be to postpone until the alley is closed.

CHAIRMAN: Comments from the Staff?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board members?

(NO RESPONSE)
CHAIRMAN: Does the applicant have any comments you would like to add on to that?

MR. ELLIOTT: State your name, please.

MR. RINEY: Jim Riney.

(MR. JIM RINEY SWORN BY ATTORNEY.)

MR. RINEY: The applicant did not realize that the building had been built as close to the rear yard line as Ms. Stone described. Evidently when the inspection was done and checked there was a property that was on the opposite side of the alley that she testified. It was not discovered until we did a survey to submit this for the addition, this building addition for storage on the east end of the building. At that point in time the request from Staff was to go ahead and submit for a Variance, which obviously we're here tonight to carry through with that.

The mismeasurement or whatever evidently was not the issue of the applicant. From the information I've got we had a boundary survey identified the corners and so forth. There was a property corner on the opposite side of the alley that was also evidently visible.

During the process I think late last week we found out that the Staff was recommending that the alley be closed. So we hustled around, found the
adjoining property owners and in fact have filed the
alley closing papers with the city engineer's office.
Finally got the property owner identified that adjoins
the alley to the south and got that taken care of
yesterday. Got it filed.

The applicant would request that the
rezoning be approved conditionally based on the facts
that have come to light that we have discovered. That
would be that rather than postponing that the approval
would be subject to the alley closing. There would
not be a building permit issued at this time or until
the alley closing was affected. If the alley closing
did not go through, then the building permit would not
be issued under those conditions. Would have to be
revisited here or whatever the appropriate venue would
be.

The issue of timing, he's got contractors
lined up. He can't start with him right now because
he doesn't have his building permit. If it were
postponed, then the 21 day waiting period, the meeting
cycle and so forth can push him back even further. In
order to at least acknowledge the applicant's good
faith efforts to comply with the request from Staff,
that is to go ahead and file the Variance and to file
the alley closing, we would ask that the board would
consider approving, would make a motion to approve subject to the alley closing. Then whenever the alley closing took affect, those documents were presented to Staff at that time without having to wait to get back on the next agenda. They could go ahead with the building permit with those alley closing items were complied with.

So we just ask the board to consider that as an option rather than postpone it tonight. That may end up being late summer or early fall before he could get started on construction and that doesn't always work well in the fall season.

CHAIRMAN: Counsel, can we do that?

MR. ELLIOTT: I don't know if we can or not because this is a Variance and we don't know how much of a Variance will be given until the alley has actually been closed. It hasn't been closed yet. It's kind of putting the cart before the horse, I think.

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No. I agree with legal counsel. This item will remain on the agenda, as long as the board postpones this action. It will be back on for the July meeting. Once that alley goes through the process of closing, then it would be whenever that
next meeting would be. We wouldn't take it off the agenda. They would not have to resubmit. They would simply amend the site plan in the application to reduce the amount of Variance that would be necessary.

At this point in time without the alley closed, you don't know how much of a Variance you would be granting. It could be that the applicant receives all of the land. In that case, a Variance may not be necessary. If they receive only half of it, then that reduces the Variance in half.

I don't think this board can act on a Variance application until they know how much, what the dimensions are. What that would mean right now if you were to act on the Variance it would be the Variance of, what, 18 feet that they're requesting.

MR. RINEY: Let me offer this to the board. This would be a similar situation if you had a Variance issued on a lot. Take a subdivision that was granted. Then the property owner that is adjoining and his neighbor decided they wanted to do a little land trade, anyhow there would be a lot division, where the lot that had the Variance, ended up acquiring a little bit more property from his neighbor be a lot consolidation. The Variance would stand, but that wouldn't prohibit the lot consolidation from
occurring. You see what I'm saying? There's not that much difference from that and this alley closing. We know that the old alley, it's a paper alley meaning that it never was improved or had been improved in current times in the last 50 years.

The city annexation documents that were prepared by the city attorney have information that says that each alley, each adjoining of the alley would get half of the alley. I know from personal experience, some of my family had closing and that's exactly what happens. It makes sense. Each adjoiner on each side would get one half. So we know that the 9 feet, we know that the alley is 18 feet and we know that 9 feet would go north and 9 feet go south. Those are the documents that have been signed. Those are documents prepared by the city attorney that have been signed and submitted to the city engineer's office. The neighbors agreed to the alley closing on that basis. That they would have a legal right to acquire the half that was closest to their property. That's a matter of routine with the right-of-way closing.

Normally unless somebody either waives their right to get half that right-of-way, which can happen, or if someone can demonstrate that the entire right-of-way, the old road, county road or alley or
whatever came off the property initially, then it's a
50/50 split rather than some other ratio or entire
right-of-way that's being closed.

In this case, the documents have been
filed, the proper documents have been filed with the
city office that have the language in there from the
city attorney that says the adjoining property owners
from both the north and south would get their half of
the alley. So that would be the 9 feet of the 18 foot
alley. So I think we do know what we would end up
with.

As survey we would expect to go back out
there with these documents and be able to say, if it
were approved by the city commission or when it was
approved, that they would have their right to the nine
feet.

MR. DYSINGER: It seems to me that there's
a body that needs to make a decision, that may
actually supersede this body. It would be presumptive
of us it seems to me to make any decision prior to
that.

The other side of that is I'm
uncomfortable voting on a Variance with question marks
in it even though we know, as you stated, we know that
basically the boundaries and what the maximums are.
going to be. I would personally be uncomfortable voting on something with a question mark in it. In my experience of the last couple of years being on this board, the minute we try to make an assumption about what's going to happen is when we start getting in trouble.

While you make a good case, I think it would be premature personally to make a decision based on what we know today.

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

MS. MASON: Stewart, you're actually saying that we can't vote on this?

MR. ELLIOTT: Right. That would be my recommendation.

CHAIRMAN: You're advising us that it be postponed.

MR. ELLIOTT: Right.

CHAIRMAN: Any comments from Staff?

MR. WARREN: Or we can act on the --

MR. DYSINGER: But if we deny it, if we deny the Variance the applicant would have to resubmit another $250 fee and all the problems and so forth. For the record if we were to deny it that would be the situation. I don't see, and I'm certainly not
speaking for the board here, but I don't see how justice is served in that way either.

MR. RINEY: I think the applicant is here if the board would want to hear a comment from him.

CHAIRMAN: He's welcome to have comments.

MR. ELLIOTT: State your name, please.

MR. PAVLAS: Harry Pavlas.

(CHARALAMBOS PAVLAS SWORN BY ATTORNEY.)

MR. PAVLAS: It was my understanding that this Variance would have been approved if the paperwork was done to close the alley there. I didn't know all these things. You know, they all came to us late. As a matter of fact, until yesterday Mr. Riney was running around trying to put it together. If I knew it, I wouldn't have been here. It require all of this adjustment and work. I didn't even know there was an alley back there until we applied for that addition to the building. We already built on that property twice. It was exactly the same that I'm asking to do right now and nobody caught it. This is the first time that it came up. I am in a hurry. I need to build that building. I don't know what the fastest way to go. I accommodate the situation or you can accommodate us. I'll leave it up to Mr. Riney and the city get it together. As Mr. Dysinger said, it's
better if we don't vote and leave it for next time,
but when is the next time? Is there any other way to
speed this up?

CHAIRMAN: Be roughly 30 days from this
date.

MR. PAVLAS: I don't know if -- I'm just
asking, you know, bringing this up if there was a bond
or a collateral or something to put against anything
so you can speed this up. I don't know. I'm just
bringing this up. I know I've got the need there for
a building. I'm trying to get it as fast as I can.

CHAIRMAN: We sympathize with you and
understand it, but there's certain things we can do.

MR. PAVLAS: I know. If I knew earlier,
we wouldn't have been here. I would just close the
alley and come to the thing right. I'm sorry to take
your time.

MR. DYSINGER: That's what we're here for.

MR. PAVLAS: That's all I've got to say.

CHAIRMAN: Any other questions or
comments?

MR. NOFFSINGER: Excuse me.

Mr. Pavlas, the next meeting will be July
7th. That will be the first Thursday.

MR. PAVLAS: There's no other way to speed
it up. You have to go through this procedure?

MR. NOFFSINGER: That's what legal counsel has advised.

MR. PAVLAS: And there is no other way?

That's the way we go? I hate to ask that.

MR. NOFFSINGER: The alley closing is going to take a little time, but we're going to do all we can to help you there because Mr. Riney submitted that I think yesterday or today. As soon as it gets to Planning, we're going to take a look at it and we're going to get the city and recommendation with just a matter of a day or two.

MR. PAVLAS: Yes, but it still have to come to the committee on July 7th?

MR. NOFFSINGER: Yes. Then the alley closing will go to some other agencies. I can't speak for those agencies such as Regional Water and other utility companies. Planning will do their part in just a matter of a day or two. Get that over and then once the city -- you know, by July 7th the alley may not be closed, but we'll be a lot further along in that process, I hope, to know what the particulars are. We can visit this particular item on July 7th.

MR. PAVLAS: Okay. Thank you.

CHAIRMAN: Mr. Riney, you have something

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else to add?

MR. RINEY: Let me ask one question for
the record then. Like Mr. Noffsinger said it normally
takes six weeks or longer for an alley closing to be
processed. His name statement was the Planning
Commission will review it at public facility hearing.

MR. NOFFSINGER: Excuse me, Mr. Riney.
The Planning Staff will do that. We're no longer
taking those to the Planning Commission.

MR. RINEY: I stand corrected.

MR. NOFFSINGER: We're doing that at the
Staff level to speed these type of applications along.

MR. RINEY: I recharge my battery.

Planning Staff will review that, but that
won't close the alley. The alley action has to be
through an action of the city commission, which is
probably going to be at least six weeks if not eight
weeks away.

Now, I don't remember, Mr. Noffsinger, if
they have to have one reading or two readings on that,
as far as the city commission occurs. My question
would be: Once it gets in and has at least one
favorable reading, could action be started then for
Mr. Pavlas just for the sake of -- I'm speaking in
terms of the next scheduled meeting. Because I think
realistically the July meeting is out. That's just an artificial target. I suspect that he won't be able to be back until the August meeting just because of the way that the city commission has to collect their information over the different public agencies and public utility companies that Mr. Noffsinger mentioned, and get that feedback back to the city commission to make an informed decision. I think it's going to be August before we can be back before this body. So anything that we could do that might expedite that, I'm just trying to help Mr. Pavlas here, suggesting that since he made that good faith effort. I'm asking for that clarification for whatever might be on the record.

MR. NOFFSINGER: I can only speak for Planning, and I'm not going to restate what I've already stated. We're doing our part. We're going to do a review in not a week or three weeks. We're going to do that review in a day or two. You're going to have to put pressure on those other agencies, and I recommend you do that. Because if you have Planning that is pushing it forward and willing to work with you, I would hope those other agencies would as well. I can tell you this: You're going to have to see it through. You're going to have to walk it
through. If you sit back and wait for those other agencies to react, I know from experience you're going to be waiting past August. We will be back in July. The alley realistically, unless you put a lot of pressure on them, will not be closed by that meeting. However, I trust that if you're putting pressure on some of those agencies and saying, look, we need to move forward and you have survey documents, we're going to be further along in that process. I think the board will be in a better position to act on it or they'll say, look, we don't have any are information than we had before. Let's hold up

MR. RINEY: I understand that. I think you know us well enough that maybe not pressure but persuasion is our usual customary method of trying to take care of our clients. That's already given in that six weeks. It's been our experience that that's just as good as the animal is going to do.

CHAIRMAN: We'll do what we can on it legally.

Any other question from the board?

MR. PAVLAS: I have one more question. If my good neighbors are willing to sell that piece of land, would that make things easier?

MR. ELLIOTT: May not need a Variance.
CHAIRMAN: If you can buy third part of the alley, we wouldn't have to come back.

MR. DYSINGER: If we knew what everybody had, we wouldn't have a problem here either.

MR. MILLER: The alley closure would still have to happen before the purchase took place.

MR. PAVLAS: Yes, we do that then I won't have to Variance maybe.

MR. DYSINGER: The act of postponing this is going to allow things to develop in a way that we can take another look at this in July.

CHAIRMAN: We're hoping.

MR. DYSINGER: Exactly. We'll have to see how things develop. Things, as you indicated, may develop that would make the Variance unnecessary. I think that would be ideal for everybody. As far as tonight, postponement. We're looking for really a way to make sure that you're covered as well.

MR. PAVLAS: Thank you.

CHAIRMAN: I think we've pretty well worked over this. Is there a motion now one way or the other?

MR. WARREN: Motion to postpone the item until the next meeting.

CHAIRMAN: A motion has been made. Is
there a second?

MR. DYSINGER: Second.

CHAIRMAN: A motion made and a second.

Any other comments?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries. This item will be postponed until the next meeting or as soon as possible.

Next item, please.

ITEM 4

1506 East 20th Street, in an R-4DT zone Consider request for a Variance to reduce the side street yard building setback from 25 feet to 4 feet in order to construct a 30'x24' detached garage.

Reference: Zoning Ordinance, Article 8, Section 8.5.11(c)

Applicant: Gregory Lynn Tong

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this application. The application is found to be in order. The applicant has stated that there are other situations within this area that Variances have been granted on or there are other setback encroachments. At this time I would like to ask Becky Stone to come and state the Staff's recommendation on it.

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CHAIRMAN: State your name, please.

MS. STONE: Becky Stone.

The Staff would recommend approval of this Variance request based on a number of variances being approved in the immediate vicinity, a number of encroachments in the vicinity. This would be in character with the existing neighborhood. However, we would ask that a condition be placed on the approval that the garage doors be oriented toward the alley. This would be close to the side street yard and we would want to assure that there were not cars pulling in from that side street that would encroachment over the sidewalk or the right-of-way in that area. So with that condition we would recommend approval.

CHAIRMAN: Is there any opposition in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Thank you. Anyone in the audience object to the item?

You object to it?

MS. SIGLER: I have a question.

CHAIRMAN: Come forward and state your name, please. We'll try to get you an answer.

MS. SIGLER: Susan Sigler.

(MS. SUSAN SIGLER SWORN BY ATTORNEY.)
MS. SIGLER: I just have a question about how is this going to, the property next to it, how is that going to -- the property that adjoins, how is that going to affect the property boundaries with the setback? Is that going to change the property boundaries on the other side?

CHAIRMAN: We'll get an answer from the Staff.

Becky, would you come forward.

MS. STONE: The property boundaries on the lots in the area will remain the same. This is just a reduction in the setback for his detached garage on the street side.

MS. SIGLER: Thank you.

CHAIRMAN: Is there anyone else asking a question or opposed to this item?

(NO RESPONSE)

CHAIRMAN: Does the applicant have anything he wants to come forward and state at this time?

APPLICANT REP: No.

CHAIRMAN: Do you understand the conditions that the garage doors will be toward the alley?

APPLICANT REP: I do.
CHAIRMAN: Board members have any questions or comments?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add to it?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Entertain a motion to dispose of the item now.

MS. MASON: I make a motion for approval with the condition that the garage doors be facing towards or oriented towards the alley. Under these findings, it will not adversely affect the public health, safety and welfare; it will not alter the essential character of the general vicinity; it will not cause a hazard or nuisance to the public; and it will not allow an unreasonable circumvention of the requirements of the zoning regulations.

CHAIRMAN: Is there a second to the motion?

MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add on?
MR. NOFFSINGER: No, sir.

CHAIRMAN: Applicant understand the motion we've made?

APPLICANT REP: Yes, sir.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

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ADMINISTRATIVE APPEAL

ITEM 5

4545, 4565 Frederica Street, in a B-4 zone
Consider request for an Administrative Review to appeal the Zoning Administrator's interpretation that off-premise advertising is not permitted in accordance with Article 9, Section 9-5.
Reference: Zoning Ordinance, Article 7, Section 7.35
Applicant: BR Associates, Inc.

MR. NOFFSINGER: Mr. Chairman, Jim Mischel is here tonight to make a presentation or description of what has taken place and then I believe the applicant is also here tonight to state their side of the case.

MR. ELLIOTT: State your name, please.

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: My name is Jim Mischel,
associate director for OMPC.

I'm going to try to give you a brief
description of why this item is before you tonight.
Like I said I'll try to keep it brief. I've got a few
handouts. I'm going to give them out to you. I would
also like to put one in the record.

I'd just like to kind of briefly go over
this. What you have in front of you is the
application that was turned in to our office. Let me
give you a little background information.

Back this past March we sent out a
Violation Notice for an off-premise sign. It's a 4545
Frederica Street. As some of you all know, that's
where the Wendy's and Denny's new restaurants were
built at the corner of Frederica and Salem Drive.

Back this last March, I noticed that there
was an off-premise sign there. Sent out a Notice of
Violation in March. Since that time I've talked with
the applicant and they have since filed an
Administrative Appeal. That's why we're here tonight.
So I'm going to try to give you some background
information.

If you look at these applications, there's
three pages of application here. On that you'll
notice at the top it says Page 1, 2, and 3. On this
application, what we stress is the address and the

signs. Each page has a place for three signs. You see Sign 1, it gives a description of what that sign is going to be. It's a Denny's/Wendy's. Sign 2 is a Wendy's wall sign. Sign 3 is a Wendy's wall sign.

If you'll notice on each one, they're marked by the applicant which was custom signs with on-premises sign, each one of those three.

Now, in the blue below that I highlighted, you'll notice it says off-premises sign. None of those are marked. They were all marked on-premise.

If you go further down at the bottom of Page 1, it says "Sign will read," and then Sign 1 it says, "Denny's, Wendy's, 27,000." Sign will read on the second sign "Wendy's." The third sign says sign will read "Wendy's."

If you go up to Page 2, I'll try to make this quick. Sign 1 says, Wendy's wall sign. Sign 2, Denny's wall sign. Sign 3, Denny's wall sign. Again, they're all marked as on-premises sign. On the blue where it says "off-premises," none of those signs have been marked as an off-premises sign.

You go down again at the bottom the signs will read Wendy's. Sign 2 will ready Denny's. Sign 3 says Denny's.
If you go to Page 3, again, it says Sign 1, Denny's wall sign. Sign 2, Denny's wall sign. Sign 3, Denny's High Rise Existing." Again, they're all marked "on-premises sign." If you look in the blue area, it's not marked off-premises.

Down at the bottom the sign will read, the first sign Denny's, the second sign Denny's, and third sign Denny's.

If you move on to where the drawings that were submitted, we have one that shows the Wendy's building. There's some signage on it. Then the second sign, the larger one has Denny's sign on it, showing what was in those applications.

At the time when the application was turned in, I was not here in that month of March 2004. This sign application went to Becky Stone. She reviewed it. The only comment she had to Shelly, and Shelly is the secretary in my office, was that this sign exceeds 30 feet. It necessitates an engineer stamp on it for the wind blown.

Becky told Shelly that as soon as we get that stamp, Kentucky Engineer stamp on there she could process the permit. Everything was in order.

I have another handout here concerning that. Again, I'd like to put one in the record.
As you notice, at the top it says, "Custom Signs & Engineering, Inc." It says, I've highlighted, "To: Shelly Hayden. From: Scott Elpers." Down below that it says "Sign layout with Stamp." Now, that was faxed to Shelly which is the secretary in our office.

If you go to the second page, there is a drawing there that shows the sign. What Shelly was looking for was that stamp. If you see on the right it says, "State of Kentucky." I think it's Ralph Pund, Professional Engineer. Stamping that it met the wind requirements and everything.

You will notice on that sign it says Denny's, Wendy's, then down below that says Ohio Valley Medical Center. It was not Shelly's job to interpret the ordinance. She was suppose to get this. Once she did, she processed the sign application.

At the time that they faxed this in, if they wanted that to be a part of the signed package, they should have filled out a sign application. Should have went back through the review procedures not only showing the sign but the size of the sign, what it's going to read and the cost of the sign. None of those things were done. Shelly was mainly looking for that stamp just showing that it was okay.
I just have a couple of more handouts and I'll be finished. I would like to put this into the record.

As you see this here, this is the signed permit that was issued. You see where I highlighted says, "Project Description: Install signage for Denny's/Wendy's restaurants." Again, if we were issuing that permit or have intent or knew about it, it should have been right there. Denny's/Wendy's/Ohio Valley Medical sign. That was not included in the sign package when we permitted it. So we permitted just that.

If you look further down it says "Sign: ON-Premises." There was no mention of off-premises advertising in this application.

Down at the bottom it also has construction cost 60,000. If you go back and add up all three pages of applications, all the signs that were included, the cost of each one, it totaled 60,000 for all the signs they mentioned. It does not include no cost for that Ohio Valley Medical. We just didn't know about it. It wasn't mentioned in the application and therefore we did not permit that. It's not stated on here anywhere. Plus when they signed this permit they also signed an agreed to abide by the ordinance.
in affect. Which, the last thing I'll give you, shows
that the Article 9 of the Sign Ordinance where
off-premises advertise is not allowed within the city
limits. I would like to put one into the record here.

I'll just read the Article 9 Sign
Regulations. "Note: New off-premises commercial
billboards are prohibited within the corporate limits
of the City of Owensboro by Ordinance No. 53-89,
adopted 21st of November, '89"

So essentially since 1989 within the c
ity limits, off-premises advertising has been band.
We have not issued any permits for off-premises
advertising.

I have one more thing I'd just like to
read into the record. This would be from Shelly
Hayden which is the secretary that accepted the stamp
on the drawing.

"The office received three pages of signed
permit applications for the Denny's and Wendy's sign
being constructed at 4545 Frederica Street. The
application was dated March 15, 2004. Jim Mischel was
not available during the March 2004 so all signed
applications were given to Becky Stone for review and
approval. Becky informed me that the permit could be
be issued when the contract was submitted with an
Kentucky Engineering stamp concerning the height of
the sign. On March 31, 2004, Scott Eplers faxed a
drawing with the Kentucky Engineer stamp on it. I
processed the sign permit after seeing the stamp on
the drawing. I did not review the drawing for
compliance with the sign ordinance. I do not
interpret the sign ordinance or building electrical
codes for compliance. Jim Mischel told me that in
conversation with Scott Eplers, Scott indicated that I
had talked to him about the sign regulations. This is
not true. I routinely look for Kentucky Engineer
stamps on signs, trusses and elevation certificates as
instructed, but I do not interpret any of the above

I don't know if you have any questions
right now pertaining to this.

CHAIRMAN: Any board members have any
questions of him before he sits down?

MR. MILLER: Jim, is it usual practice or
is it unusual that you would receive a separate
drawing or picture of the sign for the engineer's
stamp? It just seems that the one that was submitted
with the application would be the one that would be
submitted for the stamp and not something different.
See what I'm saying?
MR. MISCHEL: The engineer would probably submit a drawing. He's putting his stamp on it. Typically not only a sign, but if it's a truss or anything, when they put their stamp on it they want what's included in there so somebody doesn't maybe put in -- this was 45 feet. It shows 45 instead of 60 or 80 feet or whatever.

MR. MILLER: I guess what I'm asking is why wouldn't that be submitted originally with the original application to follow the whole process through?

MR. MISCHEL: Some of them are submitted the first time and they might not have known that over 30 feet they needed an engineer stamp. Typically we do have turned in later with the stamp, and we have that done with building permits too.

CHAIRMAN: Thank you, Jim.

Staff have any other comments?

MR. NOFFSINGER: Two things. One is point of clarification for the record.

Mr. Mischel, I believe you stated that the Notice of Violation was sent out in March of this year. I believe that it is dated April 20th of 2005. So it would have been April of this year. Did I misunderstand? Just need to make sure it's clear in
the record that the violation notice is dated April 20, 2005. Were you referring to a letter other than the violation notice?

MR. MISCHEL: That might be correct.

MR. NOFFSINGER: Well, the Violation Notice is dated April 20, 2005, but I believe you had correspondence with the appellant in March of this year. That was via a non-violation letter.

MR. MISCHEL: We've had some correspondence. It looks like we've issued a Notice of Violation March 16 with a compliance deadline of April 16.

MR. DYSINGER: There were two Notice of Violation?

MR. NOFFSINGER: In the application, the Notice of Violation is April 20, 2005.

MR. MICHEL: We have two. There is one April 20, 2005.

CHAIRMAN: That's the correct date?

MR. MISCHEL: Yes, that would be the correct date, the April 20th letter. I believe the March 16th letter was not sent certified. The April 20th they were sent certified and I have a certification by here where it was signed. It looks like it was signed April 22nd, which would be April
MR. NOFFSINGER: The applicant filed the appeal on April 29th of 2005. The point in that is I want to make sure we have the correct Notice of Violation date and that the appellant filed in a timely manner, which appears they would have.

MR. MISCHEL: Yes. When that was sent out, the person did not send it certified so we sent it back out to make sure that we met that requirement.

MR. NOFFSINGER: Jim, clarification in terms of the language in the application process. What you're saying is the language on the sign is stated on the application as to how it's to read. There were drawings submitted originally with the application showing what that language would be and the types of sign.

This faxed drawing was for structural purposes only. Much of the language on this sign is not legible. That structural drawing is purely, that it has been designed, looked at by a structural engineer and does meet the safety standards.

MR. MISCHEL: Yes. That drawing submitted was just strictly for the structural stamp. That's all we were looking for on that. That's all Shelly was requesting and looked for.
Even now if people turn in a drawing of a sign to our office, we would not process that. They have to fill out an application. I mean that's part of it. We've got to know the cost of the sign, what it's going to say, the size of it. You have to turn an application in for us to process it. We did have three pages of the application and in those three pages turned in by the applicant, there isn't on any of those applications stated Ohio Valley Medical. None of it stated it'd be off-premises, which is what that sign is. Didn't even have the cost on there. I mean if you add up all the cost it totals everything but that. We still don't know what the cost of that sign was. That's why you have applications. We have that on building permits, electrical permits. You have to know the information before you can issue a permit.

CHAIRMAN: Thank you, Jim.

Does any board member have any comments before the applicant?

MR. DYSINGER: I have a question for Mr. Mischel.

For the purpose of the application, the sheet that Shelly saw and issued the permit upon receiving, it could have been blank for all that
matters; is that correct? I mean it's irrelevant what
that thing said. She's just looking for the stamp.
Am I understanding that correctly?

MR. MISCHEL: She is looking for Kentucky
Engineer stamp. She knows it's got to be Kentucky and
it's got to be an engineer stamp.

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

(NO RESPONSE)

MR. MISCHEL: Basically when Custom Signs
and that fax, received that fax that says to Shelly.
"Hey, Shelly, here's the stamp you're looking for."
It's not p.s. we're adding another sign to this. Get
back with me if you need information on the cost or
anything, or here's the cost, here's the size of it.
Nothing like that. Here is the stamp that you need to
process it.

CHAIRMAN: Thank you, Jim.

The applicant have anything you want to
add at this time?

MR. ARGENZIANO: Yes, I would.

CHAIRMAN: State your name for the record.

MR. ARGENZIANO: Carmen Argenziano.

(CARMEN ARGENZIANO SWORN BY ATTORNEY.)

MR. ARGENZIANO: First, I would like to
introduce myself and thank the board for taking my

time. I'm vice president of operations for BR

Associates. We own and operate about 157 restaurants

and other units. In Owensboro, we own and operate all

the Long John Silver's, Grandy's, Wendy's, and the

Denny's.

Back last year we tore down the old

Denny's and put a two and a half million dollar

project on that site.

To put everything in a nutshell, Mr.

Mischel made a fine effort to try to demonstrate why

the city made an error in his office when he was on

apparent retirement. The bottom line is this is the

picture that was submitted with the signed permit.

The colored rendering was submitted with the signed

permit. He neglected to tell you that. The reason he

neglected to tell you I believe is because he wasn't

there and there was confusion in the office. It

wasn't our intention to try to sneak in the Ohio

Valley sign. Those people had asked us.

Furthermore, on Page 1 of his first

argument he highlights in blue "off-premises sign."

Well, our sign company wouldn't have checked

Billboard, Bus Shelter or Church or Civic Club, would

we? I believe what this is asking is if you are
constructing an off-premises sign this is what you
would check.

I tried to reason with Mr. Mischel. I
made several attempts when he first -- the sign was
constructed I believe in June. I didn't get first
notice until February so it sat there almost eight
months. Then he tells me that the only reason that
he's now objecting is because somebody complained
about an off-premises sign. I believe the ordinance
refers to an off-premises billboard. I don't I
believe that sign qualifies as a billboard.

Furthermore, that sign rendering, the very
first page if you look under Sign 1 it says, "Denny's,
Wendy's," and the rest of it is missing. Now, I'm not
making any accusations, but I don't believe that Mr.
Mischel is being totally honest about what took place.

We are not in the business of trying to
beat any ordinance out of a 3 by 8 or whatever size
sign that is.

We entered into a lease with Ohio Valley
Medical Center. They paid and constructed a sign
there. We had no idea until February that this was
even an issue. I think it's unconscionable that the
city department that's responsible for issuing those
permits refuse to accept any responsibility that a
mistake may have been made. All I'm asking for is the board to consider that that's probably and most likelihood what occurred and to not punish me for what happened. I can't see how -- he wasn't even there. You can understand the confusion when apparently this Shelly was running the whole show in his absence. For him to have knowledge of what took place when he wasn't even there I think is dishonest intellect.

I ask the board to allow the sign to remain on the basis that it wasn't trying to be hidden. That a permit was issued based on a stamped engineered rendering and a drawing of that sign and that it be allowed to stand.

CHAIRMAN: One question. Did you sign the three signed permit applications?

MR. ARGENZIANO: Mr. Eplers on behalf of Custom Signs signed that I believed.

CHAIRMAN: Signed two of the three.

MR. ARGENZIANO: I guess the one didn't get signed.

CHAIRMAN: State your name.

MR. EPLERS: Scott Eplers, Custom Sign & Engineering.

(MR. SCOTT EPLERS SWORN BY ATTORNEY.)

MR. EPLERS: I want to clarify something
that Jim also stated. I had a great deal of the
conversation with Shelly over the code. I want to
clarify that.

This project started several months in
advance before us actually filing for the permit.
Carmen had asked me to contact the city office to find
out what the regulations were. Actually Jim Mischel
was the gentleman who I spoke to in great detail about
that. He explained to me that total height was like
80 feet. You could have two pole signs that had to be
a certain distance apart, which we do have. Certain
amount of square footage on the pole signs. I just
wanted to clarify that I did not talk in great deal
length with Shelly. I did deal with Jim Mischel in
the very beginning, but when the actual permit was
filed, I filed for it in person at the office, but he
was in retirement at that time.

I just want to add too it's really not a
billboard. It is -- it looks almost like a tenant
sign that you would see at a shopping center with
multiple tenants on it. I know that's what the
ordinance is for, is to limit these ungodly billboards
that are everywhere. I can appreciate that. That's
not what this sign is. Nor was it our intention to
try to sneak this through.

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If you look under that where it says the pole sign for Denny's/Wendy's. If you add up the square footage, the square footage is actually included with all those signs. It's actually more than that. If you look, there's a leaflet that has larger Denny's signs. The reason why we did that is because Carmen, who he answers to is not exactly sure of the sign at that time. So we added the additional square footage when we filed the grid, but we give the smaller sign because we were thinking that that's what they were going to go with. If you actually add up the square footage that's down there, it includes all of those signs, 500 and some odd square feet that we only actually have on that one structure 491 square feet.

CHAIRMAN: One question I want to ask. What was the date that you decided that you would add the addition, Ohio Valley Medical Center? When did you sign a date with them to add to it?

MR. ARGENZIANO: That was from the inception.

CHAIRMAN: Well, it would have been added to the signed permit.

MR. ARGENZIANO: They had been asking us for two years. That was always in the signed permit.
CHAIRMAN: It never was put on any --

MR. ARGENZIANO: That's because if you look at what that asks, that ask for an off-premises sign. Nobody in their right mind when reading that application -- off-premises means --

CHAIRMAN: Let's forget about the off-premises for a minute. Where's the third name on the signed? You've got Denny's/Wendy's only. You do not have Ohio Valley Medical Center.

MR. ARGENZIANO: I don't know. He doesn't have a copy of that report in his possession, but the colored rendering of that sign was submitted with that.

MS. MASON: Was that signed? Has that been signed like these other permits were? Was it issued with the permit that was signed?

MR. ARGENZIANO: The permit didn't come with all of this. The permit was just a piece of paper.

MR. EPLERS: As far as the actual rendering, was it signed?

MS. MASON: What I'm asking is we've got copies of a signed permit application with Wendy's/Denny's listed on it, but we don't have a copy of what he's got there that it was signed like these.
MR. EPLERS: You should have a copy which you don't have. Like Jim Mischel indicated that if a sign is over 35 feet it has to have an engineer's stamp and that's what he gives you.

MS. MASON: Yes, but it had to also have a signed permit application too.

MR. EPLERS: That's what you have in your hand.

MS. MASON: That's what I have in my hand, but it doesn't mention Ohio Valley Medical.

MR. EPLERS: The square footage and everything is included into the pole sign.

MS. MASON: But why isn't Ohio Valley Medical listed in this permit?

MR. EPLERS: If you look it says, Denny's/Wendy's and then there's a space there. I'm almost positive we put on there --

MS. MASON: It says "PE."

MR. ARGENZIANO: If you look at the very bottom right above "Sign will read," right above "Sign Cost 27,000," it says Denny's, Wendy's, and plenty of room. I make no argument except somebody may have altered the document.

MR. DYSINGER: Scott, do you guys fax this in from your office?
MR. EPLERS: No. Actually I filed for the signed permit in person myself down in the office.

MR. DYSINGER: And you left the original. You didn't take --

MR. EPLERS: That's exactly right unfortunately.

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

Mr. Eplers, when did you first become aware that there would be a sign on this pole reading Ohio Valley Medical?

MR. EPLERS: From the very beginning when they started talking. Like Carmen stated, while the old Denny's was there, I think it was Ohio Valley Medical had approached them about putting a sign on there. I think the reason why they never did that was because the ungodly sight that that sign was prior to. They knew that the new construction was going to be coming so they prolonged as far as until the new concept that they have there now.

MR. NOFFSINGER: Mr. Eplers, if you knew that from the beginning, why did you not put it on the application?

MR. EPLERS: As far as the Ohio Valley Medical?
MR. NOFFSINGER: Why did you not submit a
drawing of - -

MR. EPLERS: We - -

MR. NOFFSINGER: No. Wait. Let me
finish, please.

Why did you not submit a drawing of that
sign when you submitted the application with the rest
of the drawings?

MR. EPLERS: This is what I submitted.

MR. NOFFSINGER: When you submitted the
application, did you submit these other drawings at
the time you submitted the application?

MR. EPLERS: Yes, I sure did. I've got
all of this.

MR. ARGENZIANO: That's what I was trying
to point out. That this very rendering was submitted
at the time of the application.

MR. NOFFSINGER: But that's not the
stamped rendering?

MR. ARGENZIANO: No. No, it's not. It
was a drawing of what the signage we were proposing
would look like.

MR. EPLERS: If you take a look at, and I
remember this because we did several drawings.

If you notice down here in the bottom,
when we submitted this originally you notice down
there in the concrete foundation area, the wording
inside that drawing was not legible as to the engineer
that was going to put their stamp on there they felt
when the copy was going to come across. So they made
us make several changes in to where the location of
the wording of the footer. The spacing of rebar, they
wanted us to downsize that. So if you look at the
original drawing that we submitted with the permit and
the drawing that has the stamp on it, there's a few
changes. It's the exact same drawing. Just the
letter style is a little different. So that shows you
that there was an original drawing and then there was
a drawing that we had to change in order to alter it
to make the engineer stamp. What I'm trying to say is
it was not a drawing that was sent to them. They
engineered it. There were several changes made to the
sign. The signs all stayed the same, but we had to
change print on it to accommodate the engineer
drawing.

MR. DYSINGER: Can I ask one more
question?

CHAIRMAN: Yes.

MR. DYSINGER: Scott, I may put you in a
difficult position here. Are you willing to testify
under oath that the Ohio Valley Medical name was on
this application when you dropped it off, under oath?

MR. EPLERS: That I cannot do honestly.
The reason why I cannot is because I'm almost positive
it was on there, but I cannot honestly and consciously
say that it was on there.

MR. DYSINGER: So you can't say that it
was?

MR. EPLERS: No.

MR. DYSINGER: Also, again I know I'm
putting you in a difficult position. You do not have
a copy of it?

MR. EPLERS: No, I do not.

MR. DYSINGER: Your client does not have a
copy of the original application?

MR. EPLERS: No. And the reason why is
because, as I said, we submitted it in person. I
don't think it's a standard that they make a copy of
it.

MR. DYSINGER: That's the only question.

CHAIRMAN: Any other comments from the
board or staff?

MR. MISCHEL: I have a couple of things to
say here.

One, that rendering there, that's not in

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this application. If that was submitted, it would be in here. I mean nobody in the office is going to do anything. That plus this Page 1 where it says, Denny's, Wendy's, and the reference that maybe that was doctored. That would not happen. I mean nobody on Staff would do something like that. If that was doctored, up there right above it where it says "Sign 1: Denny's/Wendy's P&E," there's no room there. Where would it have gone? I can tell you nobody would have doctored that. Did not see the sign.

I would like to read into the record the definition of billboard. Billboard sign, and this is on Page 9-2 of the Zoning Ordinance. Means, "Any off-premises signs other than a bus shelter sign or church or civic club off-premises sign." So that billboard, where it says off-premises billboard, that should have been checked right there. That's an off-premises sign.

MR. DYSINGER: I have a question, Mr. Chairman.

CHAIRMAN: Yes.

MR. DYSINGER: Do you have the original, Jim? Where is the original application? Where would that be? If he dropped off the original, do we have it?
MR. MISCHEL: It's just what we see right here, what you see in front of you.

MR. DYSINGER: Not a photocopy of the original.

MS. MASON: The original application.

MR. MISCHEL: I'll have to look through there and see. Give me just a second.

MR. DYSINGER: Thank you.

MR. ARGENZIANO: I would like to make another statement.

Even if Ohio Valley Medical wasn't on the permit, clearly somebody looked at the colored rendering and could have easily said, I noticed you have a sign on here. If we were trying to be dishonest over a sign on two and a half million dollar project, why would we have put it on the colored rendering when it was submitted with the permit. Why would we do that?

MR. NOFFSINGER: Sir, we don't have a color rendering of the sign. The only time we saw that drawing was when Mr. Eplers faxed it to Shelly Hayden. That was the only time we saw that drawing.

MR. ARGENZIANO: That's not the only time his office saw that drawing though. That drawing was submitted with the application is my point in it's
colored rendering version prior to being stamped by an engineer. My comments is: When they got it with the permit, it could have easily said something or should have said something if they felt like it wasn't appropriate.

MR. NOFFSINGER: Sir, were you ever in the office dealing with this application? When was your first involvement in terms of making application, signing any permit applications? Were you ever involved in that process?

MR. ARGENZIANO: No, but I know --

MR. NOFFSINGER: How do you know what was submitted at the time? Mr. Eplers, I think, has stated that he can't say for certain as to that drawing.

MR. ARGENZIANO: I guess the question is what are you guys going to do? Do you want to jack us and have us be in breach of a lease and all of that over this? Is that the game plan? It's a reasonable request. It's not an unreasonable request.

CHAIRMAN: Sir, let me interrupt you. We have certain things we have got to do by law. Whether they're right or wrong, whether we agree or disagree. Now, don't argue with us over what we can do and can't do.
MR. ARGENTIANO: I'm saying you have the power to make what was wrong right.

CHAIRMAN: We can only do what the law tells us. You know that.

MR. ARGENTIANO: I believe you have the authority to override that Variance, do you not?

CHAIRMAN: No, sir. Not on this we do not.

MR. ELLIOTT: No.

CHAIRMAN: That is a city ordinance that we can't overrule.

MR. ARGENTIANO: Then what was the appeal process designed for, if you cannot correct it? Please explain to me what I paid the money for and I came here for.

CHAIRMAN: To be sure that we were correct by law what we could do and could not do. To inform you, sir.

MR. ARGENTIANO: What you could and could not do to inform me.

CHAIRMAN: Which is the law that we have to let you know. You appealed it, questioned whether the Administrative made a statement to you saying it was illegal. You asked for an application to appeal this whether he is right or wrong. We've got to
determine whether he was right, whether it's legal or
illegal. That's what we're going to do here tonight.

Bear with me. With my problem I have I'm
not talking correctly, as good as I should this
evening. I apologize.

We've got to make a decision based on what
the ordinance tells us that we can do and that's what
we'll do and hopefully you understand. Do you have
any other comments?

MR. ARGENZIANO: No.

CHAIRMAN: Do you have another comment, sir?

MR. EPLERS: Yes, please.

I just want to make for the record that it
is standard practice, and I think Jim has worked with
our company several times in the past on permitting.

We do quite a bit work down here. It is standard
practice for us to send a conceptual drawing. If it
is not a part of the permitting process, I think it
ought to be. The reason why is because a conceptual
drawing is the only way that they can honestly issue a
permit for line of sight issues and a number of other
issues that can arise. If it is not, I think that Mr.
Mischel and his office ought to adopt that because a
number of other cities that we deal with on a regular
basis require that. I think, you know, had -- I can honestly tell that that conceptual drawing was submitted with the actual permit. What happened from there, I don't know. That's just for the record.

CHAIRMAN: I appreciate it.

Any other comments and then we're going to take a vote?

MR. MISCHEL: I do have the original applications here. I would be glad for everybody to take a look at them. I think it's easy to see it hadn't doctored or anything. I'll pass it around.

I think what they were questioning was Page 1 where it says "Denny's/Wendy's," but there's all three pages for everybody to look at and they're welcome to look at it too.

MR. DYSINGER: There were only three pages to the application?

MR. MISCHEL: That's it.

CHAIRMAN: No drawing of the sign with it at that time?

MR. MISCHEL: No.

MS. STONE: I'm Becky Stone. I reviewed the signed application while Jim was out of the office. I am a certified building inspector so I was qualified to do that review.
As I recall, the only deficiency in the application was that there was not a structural engineer stamp for the structural design of the sign because it was over 30 feet in height. As Shelly said in her Affidavit, I did tell her that the permit was in order, that the signed permit could be issued once that stamp drawing was received by the office. I did not review the stamp drawing when it came in.

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

MR. NOFFSINGER: Did you see, was this colored rendering made a part of the application?

MS. STONE: I don't remember that colored rendering.

MR. DYSINGER: I have a question for Ms. Stone.

Becky, how did you know the sign was over 30 feet tall?

MS. STONE: By reading the application.

CHAIRMAN: Sir, do you have anything else at this time?

MR. EPLERS: I know they stated that there was no drawings. It was just that permit application. After reviewing the application, you know, we had to fax in, they do have the covered sheet that I faxed
in. If you notice there, those drawings, if you notice those are copies. If you notice the size of those copies of the Denny's signs, you can't fax a drawing that sizes. There were drawings submitted with that application.

MR. MISCHEL: Becky can attest to that better than I can. She was there. The Wendy's and the Denny's was brought in. That colored drawing is not in the file.

MS. STONE: There were drawings with that. I do not recall a colored rendering of the sign.

CHAIRMAN: Do either one of you have anything else to state at this time?

MR. EPLERS: No.

CHAIRMAN: Does the board have any other questions or comments at that time?

(NO RESPONSE)

MR. ELLIOTT: Are these the originals? Why don't you introduce these, Jim, as part of the minutes.

MR. MISCHEL: I will introduce the original application into the record. There's three pages there.

CHAIRMAN: Any other advice at this time, sir?
MR. ELLIOTT: No.

CHAIRMAN: Any other comments?

MR. MILLER: I have a comment.

Maybe Staff consider in the future on all applications is maybe numbering and dating everything that comes in with an application just to maybe avoid this in the future. I don't know if that's possible. You probably looked at it and may do it in some cases. Just to comment on something you may look into.

CHAIRMAN: This board can recommend that to the staff. Put a motion on after we handle this item.

Hearing no other comments, entertain a motion to dispose of the Administrative Appeal whether it's correct or wrong.

MR. DYSINGER: Move to uphold the decision of the Zoning Administrator given the findings that there's absolutely no evidence to support the appellant's claim that there was a colored rendering or that the Ohio Valley Medical sign appeared on the original application.

CHAIRMAN: Is there a second to the motion?

MR. WARREN: I will second it.

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

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Administrative appeal is upheld.

Next item I'll entertain a motion that we recommend to the Staff that the signs and stuff be added to application from now on just as a suggestion.

MR. MILLER: Is that a reasonable --

MR. NOFFSINGER: We routinely try to date items. Like if we get a fax there's a date on it. We do. I'll let Jim address that.

MR. MISCHEL: If you notice the application when he signed it he did put a date on there. They're dated. When they did fax in that with the stamp it has a date on there with the fax and everything. We do get the dates. We do what the signs are going to say.

If that drawing had been submitted, Becky would have gone over and told them, hey, we just can't do it. Nobody in the office is going to change anything.

MR. DYSINGER: I think that's out o the Ohio Valley Reporting (270) 683-7383
One thing I would maybe suggest is that I don't see anywhere on there where there's a Page 1 of however, 1 of 5 or 1 of 4. Do you follow my meaning there? If there's five total pages and they number the pages. That was the only thing. As I looked at the evidence, it would have been great to see that it's five pages and they're all here. That would have ended the question outright.

What I would just ask is that over the next month maybe you guys talk about that and maybe we can talk about it before the next meeting. You guys are great at what you do and I don't think there was anything improper done here whatsoever. I would hate for any of these questions to be interpreted that way. I think everything was above board. Frankly I think you displayed a great deal more patience than I would have, Mr. Mischel, after hearing some of the things I heard here tonight said about you. That's the only thing that I would suggest. There may already be done in some way that I'm just not seeing.

MR. MISCHEL: The application, when people come in we don't know if they're applying for one permit or 20. Some of the big ones they have a lot different, small signs. I guess we could number that
MR. DYSINGER: As long as it indicated how many pages were turned in total. For instance, if we had Page 1 of 5 through 5 of 5, it would have ended the whole, we would have known that that picture wasn't there. I think we know that anyway. It wouldn't have allowed an opening for somebody to possibly try to work the system. That would be the only thing that I would suggest.

CHAIRMAN: One last motion.

MR. MILLER: Move to adjourn.

MS. MASON: Second.

CHAIRMAN: All in favor raise your right hand. (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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Ohio Valley Reporting
(270) 683-7383
I, LYNNETTE KOLLER, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Board of Adjustment meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 62 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this the 30th day of June, 2005.

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

COMMISSION EXPIRES:
DECEMBER 19, 2006

COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

Ohio Valley Reporting
(270) 683-7383