The Owensboro Metropolitan Board of Adjustment

met in regular session at 6:00 p.m. on Thursday, April 6, 2006, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: C.A. Pantle, Chairman
                   Gary Noffsinger
                   Marty Warren
                   Sean Dysinger
                   Ruth Ann Mason
                   Ward Pedley
                   Judy Dixon
                   Brad Anderson
                   Elliott, Attorney
                   Madison Silvert, Attorney

CHAIRMAN: Want to call the meeting to order of the Owensboro Metropolitan Board of Adjustment. Want to welcome you this evening.

We open our meeting each evening with a prayer and the pledge to allegiance. We invite you to join us. Judy Dixon will give us our prayer tonight.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Again, I want to welcome all of you to the Board of Adjustment at this time. If you have anything that you want to add on any item, please come to one of the podiums, state your name and be recognized.

With that we'll go ahead and proceed at this
time. The first item on the agenda is the minutes of
the last meeting. They're in the office. Anything
that need to be added on to it?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Entertain a motion to dispose of
the item.

MS. DIXON: Move to approve.

CHAIRMAN: Is there a second?

MS. MASON: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

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CONDITIONAL USE PERMITS

ITEM 2

1100 West Fifth Street, zoned R-1T
Consider request to amend a previously approved
Conditional Use Permit in order to construct a 10'x40'
building addition to an existing church facility for
storage and classroom space.
Reference: Zoning Ordinance, Article 8, Section 8.2B4
Applicant: The Church of the Living God

MR. NOFFSINGER: Mr. Chairman, this
application has been reviewed by the Planning Staff.
It's found to be in order. It has been advertised for
public hearing at this time.
I would like to enter into the record as Exhibit 1 the Staff Report for this particular item. Each member has been mailed a copy of the Staff Report. It includes a description of the surrounding properties. It does not prepare any recommendations as to approval or non-approval of this application. It does not state findings of fact. It is merely an image of what the area looks like so that this board has a description that they can use in determining and conducting this hearing. So with that it's ready for your consideration.

CHAIRMAN: Is there any objections filed in the office?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Is the applicant here at this time?

(NO RESPONSE)

MR. NOFFSINGER: Mr. Chairman, I would like to add also that if the board approves this Conditional Use Permit they should do so with the condition that a final development plan be submitted and approved by the Planning Staff because the parking necessary for this development is located off site.
It is in compliance with the ordinance; however, some of their required parking is off site and the development plan is required for that.

CHAIRMAN: And there's no one here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Hearing none any board members have any comments?

(NO RESPONSE)

CHAIRMAN: Entertain a motion to dispose of the item.

MS. DIXON: Move to approve based upon findings of fact that it's an extension of the previous approved conditional use. That churches are conditionally permitted in an R-1T zone so it's an appropriate use, and subject to and amended final development plan.

CHAIRMAN: Is there a second?

MR. PEDLEY: Second.

CHAIRMAN: Any other comments from the board.

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add on to it this time?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

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ITEM 3

4524 Honeysuckle Lane, zoned A-U, R-1A zone (Proposed A-U)
Consider request for a Conditional Use Permit for a landscaping company to park vehicles, store mulch and store inventory of plants, trees, shrubs, flowers and other materials associated with landscaping.
Reference: Zoning Ordinance, Article 8, Section 8.2H8
Applicant: Gary M. Boswell, Margaret L. Boswell

MR. NOFFSINGER: Mr. Chairman, the Planning Staff has reviewed this application. The application is found to be in order. It has been advertised for public hearing at this time.

The Planning Staff has prepared a Staff Report for your review. Each members have been mailed a copy of this report. We would like to enter it into the record as Exhibit 2.

CHAIRMAN: Is there any opposition filed in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is there anyone in the audience opposing to this item?

(NO RESPONSE)
CHAIRMAN: Is the applicant here if they want to add anything?

MS. REAL: I have a question.

CHAIRMAN: Are you in opposition?

MS. REAL: I'm not really in opposition. I have a question.

CHAIRMAN: Would you wait until we get the applicant and be sure and then we'll answer your question at that time.

Is the applicant here at this time?

MR. BOSWELL: Yes.

CHAIRMAN: Anything you want to add?

MR. BOSWELL: No, sir.

CHAIRMAN: Ma'am, you want to come forward and state your name for the record, please.

MS. REAL: My name is Margaret Real. Our property adjoins this property to the rear.

MR. ELLIOTT: Let me swear you in.

(MS. REAL SWORN BY ATTORNEY.)

MS. REAL: I've never been to one of these before and I have a question. I know I look not informed because, well, that's the truth.

Mr. Boswell, could you tell me your plans. Is it going to be mostly things that grow or is it going to be mulch?
CHAIRMAN: Ma'am, direct that to the board and then we'll get the answer.

MS. REAL: I would like to know the intentions of the landscaping property. Is it going to be mostly decaying flats, large equipment not parked under garages, mulch piles, or is the plan to be mostly plants that are growing?

CHAIRMAN: We'll get that information for you.

MS. REAL: Thank you.

CHAIRMAN: The applicant please come forward and state your name.

MR. BOSWELL: My name is Gary Boswell. I'm the applicant.

(MR. GARY BOSWELL SWORN BY ATTORNEY.)

CHAIRMAN: You've heard the question she asked. Would you please inform us.

MR. BOSWELL: Yes. We submitted the site plan and maybe that would be helpful. I don't know if we can make that available to the lady.

Basically there is going to be one place between a little greenhouse and the buildings that are existing on the property where there's going to be some mulch, but other than that it's going to be trees that are bedded in. They take them and they put dirt up around them and flowers and things of that nature.
The majority of the material to be put on the property will be living plants, trees, flowers and things of that nature. They will have a mulching bed, a place where they put their mulch.

CHAIRMAN: Will there be public sales at this location?

MR. BOSWELL: No retail sales, no, sir.

Regarding equipment, when we first submitted the application or at least we talked about it, it was my understanding they would be parking some of their equipment outside, but I've since learned from Mitchell McClellan who owns the landscaping service, that their big equipment like their tractors and their backhoes will actually be parked inside. So be very little equipment outside.

CHAIRMAN: Does that answer your question, ma'am?

MS. REAL: Yes, sir. I'm happier now.

CHAIRMAN: Good deal.

Any other questions from the board to the applicant or comments?

(NO RESPONSE)

CHAIRMAN: Staff have any other questions?

MR. NOFFSINGER: No, sir.

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

MR. PEDLEY: Mr. Chairman, I make a motion for approval based on findings of fact that we haven't heard any opposition. The use is compatible with agricultural uses in the area. It will not have an adverse influence on the neighborhood.

It's with conditions completion of zoning change to A-U and the applicant complete the proposed screening.

CHAIRMAN: Is there a second to the motion?

MS. DIXON: Second.

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

(NO RESPONSE)

CHAIRMAN: The Staff have anything else to add?

MR. NOFFSINGER: No, sir.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item.

ITEM 4

4641 KY 1514, zoned A-R
Consider request to amend a previously approved Conditional Use Permit in order to construct a 4,480 square foot storage building for an existing golf
course.
Reference:  Zoning Ordinance, Article 8, Section 8.2K7
Applicant:  Kevin Ferguson, Panther Creek Golf Club, Inc.

MR. NOFFSINGER:  Mr. Chairman, this
application has been reviewed by the Planning Staff.
It too has been found to be in order.  All adjoining
property owners have been notified and it's been
advertised for public hearing at this time.  Planning
Staff has prepared a Staff Report which each member
has been mailed a copy and we would like to enter that
Staff Report into the record as Exhibit 3.

CHAIRMAN:  Any opposition filed in the office?
MR. NOFFSINGER:  No, sir.

CHAIRMAN:  Anyone wishing to be opposed to
this particular item or questions?
(NO RESPONSE)

CHAIRMAN:  Is the applicant here at this time?
APPLICANT REP:  Yes.

CHAIRMAN:  Do you have anything you would like
to add to the application?
APPLICANT REP:  No.

CHAIRMAN:  We don't have any opposition or
anything to add at this time.  Entertain a motion to
approve.

MR. DYSINGER:  Mr. Chairman, move to approve
the conditional use permit given the findings it's in keeping with the existing uses and there appears to be no objection.

CHAIRMAN: Is there a second to the motion?

MS. DIXON: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything to add to it?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

ITEM 5

7061, 7105 KY 2830, zoned I-2, B-4 (Proposed I-2) Consider request for a Conditional Use Permit for reclaiming sheet steel from used fabrication items and recycling and processing of automobiles.

Reference: Zoning Ordinance, Article 8, Section 8.2G4 Applicant: Double T Investments, River Metals Recycling, LLC

MR. NOFFSINGER: Mr. Chairman, I have a letter from the applicant's attorney, Mr. Charles Kamuf, requesting that this particular item be postponed until the May meeting. They will be submitting a variance request to be heard in conjunction with this
rezoning. So they're requesting that you postpone taking action on this item until the May meeting so they can file that application and they can be heard together.

CHAIRMAN: Entertain a motion to postpone.

MR. DYSINGER: Move to postpone.

CHAIRMAN: Is there a second?

MR. PEDLEY: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries. Postponed until the next meeting.

Next item, please.

ITEM 6

193 Phillips Court, zoned R-4DT
Consider request to amend a previously approved Conditional Use Permit to construct a 30'x60' picnic shelter on the existing campus.

Reference: Zoning Ordinance, Article 8, Section 8.2C1
Applicant: Mary Kendall Campus/KY United Methodist Homes for Children and Youth, Methodist Home of KY, Inc.

MR. NOFFSINGER: Mr. Chairman, this application has been advertised for public hearing at this time. It's been reviewed by the Planning Staff and found to be in order.

Staff has prepared a report for you to be considered here tonight. Each member has been mailed
a copy of this report in advance. We would like to mark that as Exhibit 4 for the record.

CHAIRMAN: Any opposition brought to the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone opposing the application at this time?

(NO RESPONSE)

CHAIRMAN: Hearing none is the applicant here?

APPLICANT REP: Yes.

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

APPLICANT REP: No.

CHAIRMAN: The board have any questions of the applicant?

(NO RESPONSE)

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

MR. PEDLEY: Mr. Chairman, make a motion to amend the previously approved Conditional Use Permit to allow for construction of 30 by 60 picnic shelter based on findings of fact we've heard no opposition on this item and it is compatible with the existing use. It will not have an adverse influence on the neighborhood.
CHAIRMAN: Is there a second?

MR. WARREN: Second.

CHAIRMAN: Motion has been made and a second.

Any other questions or comments from the board?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 7

1945 Tamarack Road, zoned R-3MF
Consider request for a Conditional Use Permit to operate an early learning school for a maximum of 240 children ages two through six.
Reference: Zoning Ordinance, Article 8, Section 8.2B3 and Section 8.2B14
Applicant: Sue Hastings and Larry Hastings/Hastings Early Learning School, J.P. Simms/Rushing Wind Church of God

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff. It's found to be in order. It has been advertised for public hearing at this time and adjoining property owners have been notified.

The Staff has prepared a report that we mailed to you. We would like to enter that report into the
record as Exhibit 5. With that it's ready for your consideration.

Mrs. Hastings was one of my elementary school teachers. I think about second grade perhaps at Lincoln Elementary. I don't have a vote in this, but I wish you the best.

CHAIRMAN: Any opposition filed in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone in the audience objecting to this?

(NO RESPONSE)

CHAIRMAN: Hearing none does the applicant have any comments to add at this time?

APPLICANT REP: No.

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

(NO RESPONSE)

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

MS. MASON: Mr. Chairman, I move for approval and my findings of fact are there is no opposition and it's already definitely essential to the public health, safety and welfare because there's already a school there and it's compatible with the neighborhood.
CHAIRMAN: Is there a second to the motion?

MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

ITEM 8

3300 US 60 East, zoned P-1
Consider request to amend a previously approved Conditional Use Permit for operation of a preschool for a maximum of 74 children within an existing church facility.
Reference: Zoning Ordinance, Article 8, Section 8.2B3 and Section 8.2B14
Applicant: Owensboro Church of Christ

MR. NOFFSINGER: Mr. Chairman, the Planning Staff has reviewed this application. It's found to be in order. We have advertised this item for public hearing at this time and adjoining property owners have been notified.

The Staff has prepared a Staff Report which
has been mailed to each of the board members. We
would like to enter that Staff Report into the record
as Exhibit 6.

CHAIRMAN: Is there any opposition filed in
the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone wishing to oppose this
application at this time?

(NO RESPONSE)

CHAIRMAN: Is the applicant here?

(NO RESPONSE)

CHAIRMAN: Not seeing the applicant, does the
board have any comments?

(NO RESPONSE)

CHAIRMAN: Entertain a motion to dispose of
the item.

MR. NOFFSINGER: Mr. Chairman, before you do
that, I would remind you that there are conditions
that Staff has listed in this report. Two of those
special conditions that apply to this subject property
is that there would need to be a final development
plan submitted and approved as well as completion of
the zoning change to P-1. They are rezoning a portion
of this property to professional service.

CHAIRMAN: Any other comments from the board?
(NO RESPONSE)

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

MR. PEDLEY: Mr. Chairman, I make a motion to amend the previously approved conditional use permit to allow for an increase from 49 children to a maximum of 74 children based on findings of fact that we have no opposition, it is a reasonable expansion and will not overburden the property, and it is compatible in use with the neighborhood.

With condition 1) subject to final development plan submittal and approval; 2) completion of zoning change to P-1; 3) applicant be required parking, screening and landscaping; 4) applicant shall not exceed the 74 children without coming before this board for approval.

CHAIRMAN: Is there a second to the motion?

MR. DYSINGER: Second.

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

(NE RESPONSE)

CHAIRMAN: Any other comments from the Staff?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item.

ITEM 9

337 Washington Avenue, zoned B-4
Consider request for a Conditional Use Permit in order
to operate an indoor recreational facility.
Reference: Zoning Ordinance, Article 8, Section
8.2B11
Applicant: Natalie Smith, Marie Casey/Toohey Realty

MR. NOFFSINGER: Mr. Chairman, this
application has been review by the Planning Staff.
It's found to be in order. It's advertised for public
hearing at this time and all adjoining property owners
have been notified.

Planning Staff has prepared a Staff Report
which has been mailed to each member of this board and
we would like to enter that Staff Report into the
record as Exhibit 7.

CHAIRMAN: Any opposition filed in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone wishing to object to this
item?.

(NO RESPONSE)

CHAIRMAN: Is the applicant here that would
like to add anything else at this time?
APPLICANT REP: No, sir.

CHAIRMAN: Hearing none any question from the board?

(NO RESPONSE)

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

MR. DYSINGER: Mr. Chairman, move to approve the conditional use permit given the findings that there's no opposition. The use is not inconsistent with the neighborhood and the over all neighborhood plan.

CHAIRMAN: Is there a second to the motion?

MR. PEDLEY: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.
ITEM 10

1010 West Ninth Street, zoned I-1
Consider request for an Administrative Appeal to
relocate two existing non-conforming access points on
an arterial street to one non-conforming access point
on a local street for an existing business.
Reference: Zoning Ordinance, Article 4, Section 4.43
and Article 7, Section 7.34 and 7.4
Appellant: River City Industrial Services, Inc.

MR. NOFFSINGER: Mr. Chairman, at this time I
would like to ask Mr. Mischel to present a brief
summary of what this request entails and his
involvement with this application.

MR. ELLIOTT: State your name, please.

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: In the recent past we had a
request made to us to allow for a loading dock to be
constructed on Maple Street. On Maple now there's an
existing parking lot across from the old tobacco
warehouse. They've used that in the past.

They would like to be able to put their trucks
in the parking lot and back across the street into
this new loading dock.

Under the current ordinance that's not allowed
to back out on public right-of-way. Seeing as right
now in the past they've got two of those openings now
on Ninth Street, which is a major street. It's an arterial street. They've agreed to close up both of those. So right now on Ninth Street they have two doors and they back in to it now and they always have. They've greed to close both of those doors out and take them out, put the street curb back in, put the grass in the right-of-way and close this up and have one owning on Maple Street. We thought that was a good trade off to get the truck traffic off of Ninth Street and blocking traffic and everything and put it on a local street.

I don't know if you have any questions.

CHAIRMAN: Board members have any questions?
(NO RESPONSE)

CHAIRMAN: Is the applicant here this evening?
APPLICANT REP: Yes.

CHAIRMAN: Do you have any questions or comments you would like to add?
APPLICANT: No.

CHAIRMAN: Staff have anything else to add?
MR. NOFFSINGER: No, sir. We have had at least one call in the office so there may be some folks here tonight that have questions regarding this application, but no, sir.

CHAIRMAN: Anyone have any questions this
evening on this item?

(NO RESPONSE)

CHAIRMAN: Hearing none entertain a motion.

MR. DYSINGER: Mr. Chairman, move to find for the appellant given the findings that it will benefit the public safety by replacing an already unsafe situation with one that is at least slightly safer. Also with the finding that it will benefit the public welfare by providing additional landscaping in the area that frankly could use it.

CHAIRMAN: Is there a second to the motion?

MS. DIXON: Second.

CHAIRMAN: Any other comments or questions from the board?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

ITEM 11

4665 Hunters Ridge, zoned R-1A
Consider request for an Administrative Review in order to appeal the Zoning Administrator's refusal to issue a certificate of occupancy per Owensboro Metropolitan Zoning Ordinance based on no installation of a swimming pool enclosure as required by the 2002
Kentucky Residential Code and Amendments.
Reference: Zoning Ordinance, Article 5, Section 5.2 and 5.3
Appellant: Kimberly M. Watson

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

CHAIRMAN: Mr. Mischel.

MR. MISCHEL: I'm Jim Mischel.

I'm going to try to just give you a brief history of why were here on this item here. Our office for swimming pools they are required to have a permit. If you look in the Zoning Ordinance under 5.2 building permits are required for this.

Under Section 5.3 for any permit we issue it's required to have a Certificate of Occupancy before you use the structure.

I guess that's why we're here. Because the permit has been issued and we have not issued a final Certificate of Occupancy. It comes down to the fence. Now, the applicant believes that they complied and they should receive that certificate because they have what is a pool cover.

Under the building code we belief it needs to have 4 foot tall fence surrounding the pool area.

What brought this to our attention is we had
a pool contractor come to us and say they would like

to start installing these pool covers. I said, well,

that's not in the code. You can't do that. They

said, well, we have a location, one or two locations

where that's been done in the past. So I got those

locations and sure enough it was.

There was some confusion with the pool

contractor and the owners. In their contracts they

were saying that the owners were responsible for

fences. Come to find out we have a lot of swimming

pools in this county that does not have a final CO

certificate.

We went back and I had them pull all the

permits issued. We can only go back as far as the

year 2000. Our computer, the old system we had

crashed and we lost all of our data in that.

Started in 2000, our new computer system.

They pulled those up and we've issued 72 swimming pool

permits. Of those 72, 68 we've gone back and a lot of

people have complied, put a fence up. Sixty-eight of

those people have put their fences up. We have three

applicants that have agreed to install the fencing. I

think as of today maybe one or two of those went on.

So we might have one more that needs to do it.

Of course, we have the applicant here that is
before you tonight. They have their presentation.

All of you have a copy of this. I'll try to briefly go over this.

If you look on Page 2. A letter I had written October 12, 2005 to the Watsons. I'll just try to briefly read this.

"The Owensboro Metropolitan Planning Commission recently contacted you about the Kentucky Residential Code fencing requirement for swimming pools. After careful review and consideration, it is the OMPC's interpretation that an electric pool cover does not comply with the requirements of the Kentucky Residential Code.

"Enclosed is a copy of the Swimming Pool Building Permit and Application for 4665 Hunters Ridge that was submitted to the OMPC for approval in November 2004. Both the Application and Building Permit list the following:

"* The swimming pool enclosure shall extend not less than 4 feet above the ground.

"* All gates shall be self-latching and self-closing with latches placed 4 feet above the ground.

"Also enclosed is a copy of an email conversation with Terry Slade, Director for the Office of Housing, Building and Construction with the Division of Building Code Enforcement. This email conversation confirms the OMPC's interpretation that an electric pool cover does not meet the requirements of the Kentucky Residential Code for swimming pool enclosures.

"If you have any questions or comments, please contact our office."

On Page 3 I emailed Terry Slade, director of the office this question.

Says, "Terry, Kentucky Residential Code (Chapter 26) requires that a fence be installed around all swimming pools (P2601.9). I have had two recent owners/contractors contend that electric pool covers were acceptable and meet the intent of the code as per section P2601.9.3 (Alternative devices). My
interpretation has also been that an electric pool
cover is not a natural barrier and that a fence is
still required, because of the following issues:

"1) A cover is subject to human error; ie, if
they forget to cover the pool

"2) Disruption of electrical service

"3) Malfunction of the pool cover

"An additional argument for the use of an
electric cover in lieu of fencing has been that a 'Hot
Tub' is defined as a 'Private Swimming Pool' and
section P2601.9.1 states the exception that a hot tub
(swimming pool by definition) would be exempt with an
approved safety cover.

"I would like to get the State's
interpretation on the above, before proceeding any
further."

On Page 4, Terry replied to my email. His
response was:

"Jim, The original 2002 KRC as published (red
book) is not up to date. Please go to the code
supplements at our website or go to the KRC on line.
Alternative device section has been deleted entirely.
Even when we allowed alternative devices, pool covers
were not acceptable in lieu of the fence enclosure.
Hot tubs are not regulated by this section. Only
in-ground pools are regulated and in-ground pools are
not regulated less than 24 inches deep or less than
250 square feet of surface area (see Section P2601.1).
The hot tube with safety cover exception is no longer
in the code and if it were we would not interpret the
code to mean that swimming pools with safety covers
would also be acceptable because hot tubs are defined
as swimming pools.

"Let me know if you have any questions.
Terry."

If you go to Page 5, I'd just like to show you
briefly. That's the application that we give
everybody to fill out for swimming pool. If you note
on there I've highlighted the requirements and
conditions for swimming pools. Under it it says,
"Owner must erect and maintain an adequate enclosure surrounding the pool area. The enclosure, including gates, shall not be less than four feet above the underlying ground. All gates shall be self-closing and self-latching with latches placed four feet above the underlying ground."

Next item, "Before the pool may be used, a Certificate of Occupancy and/or final approval must be obtained from this office."

If you go to Page 6, that's the actual building permit that we issued. As you can see, we issued one for that address, 4665 Hunters Ridge looks like November 24, 2004.

On Page 7, the second page, you'll under
Comments/Conditions Item Number 2 on building permit. It says, "SWIMMING POOL: Swimming pool walls shall be six feet from the property line and from any other structure. Swimming pool structural design, location, safety devices, and drainage systems shall comply with Section 421 of the Kentucky Building Code. Swimming pool enclosure (fence) shall extend not less than 4 feet above the ground. All gates shall be self-closing and self-latching with latches placed at least 4 feet above the ground, or other approved methods presented to the Building Inspector."
Just like to point out that in the application and the building permit it clearly states that the fence is the only thing.

The state, the seminars they hold, they always stress that the fence is the only compliance that will take care of that. That the pool covers never have.

I know at one time they were saying, you know, the definition of spa it says "see swimming pool."

That might be fine. Certain sections of that swimming pool Chapter 26 you will see certain things that both have to do with both of those things.

When it comes to enclosure, they just have to say swimming pools have to have up to four foot. They give an exception for spa to cover. That's something different. That's not covering the whole thing. If they meant that, you wouldn't have the exception. You wouldn't need the exception because everything is available for pool cover.

I don't know if you have any questions. I would like to go on and put a copy of this into the record.

MR. WARREN: Mr. Mischel, do you have any idea when the state changed their - -

MR. MISCHEL: Well, in talking to Terry, they've got a new it's called the Red Book. It's
residential, but it's commercial. They are coming out
with a new code book. It has not been adopted yet.
In that code book it should have some updates on it.
That probably, they were hoping to adopt it earlier. They have not done it. They're still doing it. It might not go on line until about June or July.
This item has come up in the past. It's always been that the fence has to surround the pool area. There are certain similar things that you have to do. When you read that code, some things are different when it comes to enclosure. They split off. You have certain things for a pool and certain thing for a spa cover.
Essentially that's why we've tried to be consistent, because of liability. That's why we put it in that application and the permit both. We tried to put it on there so everybody would be familiar with it.
The pool contractors, we've never had that happen. I mean they've always known that. We've never had that until recently. All of a sudden we've had two or three.

CHAIRMAN: Board have any other questions of the staff?

MR. DYSINGER: Mr. Mischel, I have two
Is it my understanding that your testimony was that even under the old standards a wall could never be replaced by a pool cover. They were never interchangeable even under the old standards? They we never considered --

MR. MISCHEL: We've not done that. We've always had the fence. The only exception is if you have a natural barrier. We've had a few go down on the river. The river is a barrier that takes the fence to pass the river a little bit. We consider that a natural barrier.

MR. DYSINGER: The other question I had was regarding the swimming pool permit application. You stated that the applicant would have to receive a Certificate of Occupancy and/or final approval at some point. To your knowledge has that ever happened in any way?

MR. MISCHEL: No. That's I guess why we're here. We haven't issued a final CO. In our view we can't. I guess in the Watsons' view that they've complied. In our view they haven't complied and we can't issue that certificate and we do need to. It's a matter of safety.

MR. DYSINGER: Thank you.
CHAIRMAN: Any other questions from the board at this time or the staff?
(NO RESPONSE)
CHAIRMAN: The owner want to come forward and state your feelings.
MR. ELLIOTT: State your name, please.
MR. WATSON: Jim Watson.
(MR. JIM WATSON SWORN BY ATTORNEY.)
MR. ELLIOTT: Let me go ahead and swear your wife in too.
MRS. WATSON: Kim Watson.
(MRS. KIM WATSON SWORN BY ATTORNEY.)
MR. WATSON: First thing before we start I just want to pass around some pictures and introduce those in.
Those pictures, Appellant's 1 is a picture of me standing on the cover. The second one is a picture from the east view. I think it's also written on the back what it is. The third one is from the west view. The fourth one is from the northwest view.
I just want to give you an idea of what the pool cover looks like and how strong it is. It's a locking device that's connected next to the house. We have a key in a separate compartment and that's how that's opened and shut is through that device.
CHAIRMAN: Let me interrupt one minute.

One question. Is this operated by electricity or by battery or alternative?

MR. WATSON: Electricity.

CHAIRMAN: If it goes off then what?

MR. WATSON: If it goes off then we can't operate it. There is I think a manual device. I don't know whether we can do it. Home Pool can do it, but we can't.

CHAIRMAN: Thank you.

MR. WATSON: Again, that's more for informational purposes. Also I want the record to show that there's not a lot of houses. Our lot is about a two acre lot and there's not a lot of cross over in yard. If somebody wants to get in our backyard, they've got to come in our backyard and be there.

The second thing I wanted to say briefly is also show you my insurance policy. I'm going to get into the facts here in a second, but I also wanted to let you know that we built a pool with Home Pool back in the mid '90s when we lived in Town & Country and that was before the KRC was adopted. Back then the requirement was for a fence because of insurance reasons.
Now the confusion comes in that KRC, and we kind of contest that issue today, but the issue now is that some insurance companies, specifically Kentucky Farm Bureau, has said that you have to have two things, one or the other. You have to have a fence or an automatic pool cover. If you have an automatic pool cover, Farm Bureau will insure you. That's the purpose of introducing this as I think it's Plaintiff's 5, which is a copy of my declaration page in my policy of insurance, just to show that because of the automatic pool cover I have an insurance policy. I'm insured.

I think Mr. Mischel referenced earlier that they did that for liability reasons. I think one of the comments he made that, as you can tell, there are insurance companies that will insure automatic pool cover. I think we all recognized that insurance companies by in large are risk assessments. They have made determination that it is a risk that they're willing to assume if you have an automatic pool cover. That's the purpose of that exhibit.

Briefly the facts. Again, I think the facts are not really an issue here.

We purchased the home around 2004. We contracted with Home Pool to build a pool. We
originally had a different design. Kind of a T-shape
design. We met with Harold. We went over the design.
Home Pool said, well, that law has changed. You need
a fence or an automatic pool cover. I said, Harold,
is that right? We built that pool in '97 and we had
to put a fence because of insurance reasons. He said,
no. You have to have one or the other. We both kind
of talked about it. We changed our design to
accommodate the pool cover. We spent about 11,000 on
a pool cover. We'd spend 7, or 8, or 10 on a fence or
whatever so we opted for the automatic pool cover.
Just more for esthetic reasons.

Then once we got to that decision we changed
it. I wasn't for sure so I asked our insurance agent,
Gavin Roberts. I said, Gavin, we're getting ready to
build this pool at Hunters Ridge. Our contractor is
telling us that insurance no longer requires a fence.
Is that right? He said, yes, that's right. You
either have to have a fence or an automatic pool
cover. We opted for the automatic pool cover.

We put it in. Everything is fine. I think we
started corresponding back in November of '05 and that
subsequently led to the letter from Mr. Mischel.
I think the first issue is understanding the
KRC, Kentucky Residential Code. You have to
understand that that is from the International
Residential Code. A lot of times legislature rightly
or wrongly, a lot of these things are not new. They
adopted them from somewhere else.

As my argument will show you that this is a
poorly worded statute because it's fragmented.

IRCK in this provisions it includes all kinds
of pools. Kentucky didn't want to do that so they
didn't adopt all of them. They backed off and said,
we're only going to adopt part of them. As a result
the language is disjointed in consistence.

What you'll find in here is that when the KRC
was adopted, it had a provision in here which I think
one of the gentlemen over here asked Mr. Mischel about
when the act was adopted. It originally had a
provision that would have left the finders of the
governing board to decide whether or not what is an
alternative device.

In 2003 I think took some of that out. So
there was a provision at the beginning that let you
guys decide whether or not something was an
alternative device.

The main argument I think for our purposes is
understood P2601.9, which I think everyone has a copy
to my appeal.
2601.9.1, the OPC provisions is basically saying that all public and private swimming pools shall be erected with an enclosure surrounding the pool area.

It goes on to talk about if you an enclosure, if the enclosure is a fence it's got to be a certain height. It has an exception. Spa or hot tub with an approved cover.

I know the emails that Mr. Mischel read and some of the testimony he gave were a little bit self-serving because if you look at the act, the act specifically says under 2601.2, does everyone have that act in front of them?

Under 2601.2 it specifically provides that the purposes of this section, which is the swimming pool section, the words in there shall have the meanings as determined by this section.

That's very important. You can't basically tell them the way the statute defines a word is the way that you define the word for the purpose of this act.

So if you go down and look at hot tubs and spa, which is the exception under the requirements. It says, "See definition of private swimming pool."

The definition of private swimming pool is "Any
structure that contains water over 24 inches deep and
which is used or intended to be used, for swimming or
recreational bathing in connection with a home which
is available only to the family and guests of the
household." That's our pool.

Whether they did a bad job in piecing together
the statute because I think our argument is that
there's never a requirement for enclosure the way
they've written the statute. I don't think they
intended to do that, but that's what they did. That
language is clear to me.

Does anyone have any questions on that part of
it as far as hot tub/spa?

MR. NOFFSINGER: Mr. Chairman, I do have two
questions related to the testimony by Mr. Watson.
One question would be in terms of your
insurance policy that you've submitted for the board
to review. Does that state anywhere that you have a
swimming pool? The purpose of that is just to show
you have insurance.

MR. WATSON: Well, the purpose of that is to
show that I have insurance but also to show that Farm
Bureau won't tell you they don't have swimming pool
provision in there. They will either give you a
policy or not. So if they had not made that decision
to insure pool covers, I wouldn't have any insurance.

MR. NOFFSINGER: Based upon the information you submitted, this board would not know that. We're just taking your word as to State Farm or Farm Bureau has insured you and they know that you have a pool. In some cases they may not know you have a pool. That's why I was wondering if it's stated anywhere in there that you have a pool.

MR. WATSON: There is not. There's not a provision in there. It's just a simple matter. If they did not insure the pool cover, I would not have the insurance.

MR. NOFFSINGER: But we don't know that by looking at that document.

MR. WATSON: No. Other than the fact that it's coupled with my testimony telling you two things. One, before we put in an automatic pool cover, I called our agent and said, this is what Home Pool is telling us. Either a fence or a pool cover. He said, yes, Farm Bureau has changed and they will insure an automatic pool cover.

MR. NOFFSINGER: At any time did you or your agent talk to the Planning Staff, or Mr. Mischel, or any of the building staff about this alternative device?
MR. WATSON: We did not because our Home Pool contractor who I presumably knew the new rules because we had built one back in '97. It's the same company.

MR. NOFFSINGER: So you had no discussion with the building staff. You just discussed this issue with your agent. Your agent was the individual that took out the permit, Home Pool?

MR. WATSON: Yes. Not the insurance agent.

MR. NOFFSINGER: Right.

MR. WATSON: You remember we built one back in '97 and I knew that there was not, back then I knew that there was not -- the KRC didn't exist. It was an insurance issue. The insurance company said, you need to have a fence. My point is they now have subsequently decided that you don't have to have a fence.

MR. NOFFSINGER: At some point I would like to get a clarification from Mr. Mischel in terms of verifying that or not in terms of whether a fence is required. It's been my understanding that a fence regarding a pool for many years have been required to have a four foot --

MR. WATSON: It's always been an insurance issue. There's two homes in Stone Creek now that have no fences and no automatic pool covers.
MR. NOFFSINGER: But we don't know if they have a Certificate of Occupancy.

MR. WATSON: It predates the act. I think they're fine. They're predating what I'm here for. If I could supplement the record, if you so wish in affidavit form from Farm Bureau. I didn't think that would be an issue.

MR. NOFFSINGER: The reason I ask that I was looking over that because you had submitted it and I thought it might reference the pool, but it does not. So I just wanted to make that clarification that it does not.

MR. WATSON: Does anyone else have any -- I think our strongest argument is this spa and hot tub exception. Does everyone understand that the purpose of this act, they're telling me what this is. It's not the hot tub that you guys think that sis over here or the spa. They're saying for purposes of this section it's a swimming pool. So therefore by definition the swimming pool is accepted.

That goes back to my ultimate argument. That this thing is a fragmented disjointed and inconsistent statute in its application. We as a homeowner should be afforded the benefit of the construction.

Anyone have any questions on a hot tub or spa?
CHAIRMAN: No, but I have one question.
The permit application that was obtained by
Harold Jewell, is that the one that signed this for
you?

MR. WATSON: I assume because I had never seen
it before.

CHAIRMAN: That's what I wondered. Have you
ever seen this permit?

MR. WATSON: No.

CHAIRMAN: In other words, where requirements
and conditions stating in that you have never looked
at, he has never showed?

MR. WATSON: No. I can probably clear a
little bit of that up.

CHAIRMAN: Excuse me. What I'm trying to say,
he obtained the permit and had all the conditions in
it. He never did inform you. He checking with the
staff.

MR. WATSON: That is correct. My wife can say
the same thing.

MRS. WATSON: Yes, that's correct.

MR. WATSON: My opinion as to what happened is
Harold Jewell -- Creek Haven I think it is. Creek
Haven has a pond area in the middle of that
subdivision. Harold erected a pool probably after the
1 KRC was adopted. The way that the KRC read at that point was that if you had a natural boundary you didn't need a fence. So Harold has two sides of his yard a fence and the back of it is open because of this pond they have back there. It's a natural barrier. I think Harold got confused and told us and these I think 17 other home owners that you didn't need to have a fence, fence or automatic pool cover. I was hoping to have strength in numbers up here, but everybody decided to get a fence except for the stubborn Watsons.

2 I believe that Harold was rightly or wrongly, but he was confused based on his own situation. He has since, because he's billing a pool next-door to ours now. I've talked to that home owner. He now has given them, because I've talked to Harold myself. I said, Harold, you've got to give the homeowners this knowledge. You've got to tell them that until this board makes a clear determination, you've got to tell them that there's a fence or automatic pool cover, but it doesn't say that in the statute. I said, you've got to protect yourself. You can't go around telling everybody that you've got to have an automatic pool cover or a fence just for your own protection. That doesn't negate some of the arguments I've got. He has
since required that in writing from the homeowner. That you've got to have the homeowner sign off of it. I think that guess to the question did we have knowledge of this fence requirement. The answer is no.

He never showed it to us. The second reason is because in ’97 it was an insurance issue to us. It was not a requirement anywhere else other than we couldn't get insured. The insurance now has changed that. At least Kentucky Farm Bureau has changed that.

I think one of the emails. I think it's Page 4 of the emails that Mr. Mischel referred to.

Mr. Slade, who I also had conversation with, says, "Hot tubs are not regulated by this section." You can clearly see that hot tub is specifically stated in this section. So he's not right that the hot tub -- it's not a regulatory issue. It's a definitional issue.

In Chapter 26 they tell us how to define hot tube and swimming pool. We're not regulating hot tub or swimming pool. They're just telling us what hot tub and swimming pool is.

It goes on to say, "The hot tub with safety cover exception is no longer in the code." That's incorrect because it is in there.
He goes on to say, "if it were we would not interpret the code that way." Again, that's his interpretation. I don't think any of you here can read that statute and read it any other way other than the way we read it. It tells you how to define hot tub, how to define spa. If you don't interpret it the way it tells you, you're not listening to the statute.

MR. WARREN: But, Mr. Watson, it also tells us exactly what a pool is. Exactly what a pool is. A swimming pool. It doesn't say that a swimming pool is a hot tub or that a swimming pool is a spa. It says what a swimming pool is. The code is specifically for a swimming pool. Although you can Internet a hot tub as a swimming pool or a spa as a swimming pool, a swimming pool, there's no interpretation. It is a swimming pool.

MR. WATSON: A hot tub is a swimming pool.

MR. WARREN: But it's also a hot tub. A pool is a pool.

MR. WATSON: See, I disagree with you because this section 2601.2 under definition tells you "The following words and terms shall for the purpose of this section have the meanings shown herein."

Again, I think what you're doing is you're taking your commence sense, which you think of a hot
tub sitting over here in this square box. That's not what I'm talking about. I think we've got a poorly worded fragmented statute. I'm just dealing with what they gave us. They gave us this word of the statute that says, a hot tub is a swimming pool. A spa is a swimming pool. Because they are swimming pools, they're accepted. It is an argument.

MR. WARREN: It's not an exception because it's a swimming pool. It's an exception because it's a spa or a hot tub.

MR. WATSON: Correct.

MR. WARREN: There is no exceptions for a pool, which is what you have.

MR. WATSON: But you're missing the point. For purposes of this statute they tell what a hot tub is. That's what you're not getting.

MR. WARREN: I understand exactly what it's saying. I'm not getting your interpretation of it. I can tell you that.

MR. WATSON: But you're disregarding the statute.

MR. WARREN: No, I'm not.

MR. WATSON: I respectfully disagree because the statute tells you what it is. If you want to disregard it that's --
MR. WARREN: Well, I'm disregarding it. I guess it's an issue of my interpretation of the same statute.

MR. WATSON: It is definitely an interpretation issue.

MR. DYSINGER: Mr. Chairman, could I ask a couple of questions of the appellant before we get too far.

CHAIRMAN: As long as they're not the same thing over and over.

MR. DYSINGER: No, sir.

First I want to thank you for bringing in the photos. It makes our job a ton easier when people will do that.

I guess the first question I would have, it shows a picture of you standing on the cover so it's very strong clearly. Is the cover waterproof to the best of your knowledge?

MR. WATSON: Yes. I don't know if you can see from the pictures, but we've got a - -

MR. DYSINGER: It appears there's some water collecting there.

MR. WATSON: Yes. Just rain water. We periodically put the pump on top.

MR. DYSINGER: Could you guess for me how deep
that water could get where it allow to collect?

MRS. WATSON: It can't. I mean it can to a
certain degree, but you're talking very, very small.
I mean less than an inch. It's not going to --
unless you're standing on it and it pulls a little
bit, but the thing is the pool cover is so large.
It's not a small pool. The pool is so large the water
dissipates over the cover. I mean there's not. If
you look it rained today and there's not any -- water
does not stand on the pool cover at all.

MR. DYSINGER: Because one of the photos there
appeared to be water collecting on there. In one of
the photos he submitted there appeared to be water
collecting there.

MRS. WATSON: Yes. We took those today right
before we came.

MR. DYSINGER: So water can collect on the
pool cover?

MRS. WATSON: We could all get on the cover,
all of us, without any trouble.

MR. DYSINGER: Let's say there was water on
the pool cover. If I were to stand on the pool cover,
presumably that water would kind of move to my dimple
area, for lack of a better word?

MRS. WATSON: It might cover the top of your
shoes a little bit. That's it. That's only if you have a lot of rain.

MR. DYSINGER: If a toddler were to walk around the pool cover, is it reasonable to assume that wherever that toddler was at the water would collect as well to some extent?

MRS. WATSON: They're probably not heavy enough. When you're talking about 100 pounds to sit there, no.

MR. WATSON: It's a 24 by 54 pool. It's so disbursed.

MR. DYSINGER: Thank you.

MR. WATSON: Couple of other things and I'll be done here.

Another reason why I contend this statute is poorly word is because if they define power safety cover, under the section, under definition section under 2601.2, "Power Safety Cover: A pool cover, which is placed over the water area, and is opened and closed with a motorized mechanism, activated by a control switch."

That's all great and that's what I've got, but nowhere in the statute does it ever use the term. So why would it use the term or define a term and never use it. It goes, my position is it goes back to
Kentucky adopting only bits and parts of the international code. That makes for a fragmented statute section.

Again, I think under Section 2601.9.2 it never says that the fence is exclusive and it never defines the word enclosure anywhere. There are statements that provide that the enclosure is intended to prevent uninvited persons from intruding into the pool.

Section 2601.9.3, prints these two, "An exterior private pool enclosure may surround the pool area only." I submit to you that our automatic pool cover covers only the pool area as required by 2601.9.3.

Again, what we're asking is that because of that ambiguities in the statute, I think a different interpretation the homeowner ought to be given the benefit of the doubt.

If the governing board want to go back and reissue clear regulations and say that an automatic pool cover is not acceptable, that's fine. We're kind of in a position that we rely upon our contractor who also is put on notice. That's kind of a separate issue. We did what we did based on what we were advised. Especially in light of the insurance company
changing its position to us back in '97. Back in '97 they wouldn't insure it. Now they will. They obviously, insurance companies, they spend a lot of money and time with risk assessment and they decided that's the risk they're willing to take.

Does anyone have any questions about anything?

MR. DYSINGER: Not necessarily a question. I would like to add. When I was first asked to join the board adjustment to be honest with you I kind of wondered what in the world could the board of adjustments do. The zoning ordinance is written and everyone can look to it and see what it says and so forth.

Since then I've learned that no ordinance, no statute, no law can be written so clearly and to such an extent that there won't at some point be a question about it. Now, I'll definitely stipulate that you've raised a good point about the ordinance that we're speaking of. It does refer you to swimming pool definite and to define hot tub. Part of the reason why we have administrative bodies and, in fact, courts in this country is because people are expected to bring their common sense to it. In this particular issue, 72 permits were issued. 72 people saw that they had a swimming pool and not a hot tub. You're
the one exception to that. I don't fault you for making the best case you can, especially after the expense you've gone to do what you felt was complying with the law. I would recommend that you want to take this up with the contractor you worked with.

You seem to be proceeding under the assumption that we are bound to such an extent by the words that are in the ordinance that we can apply commence sense. I would tell you, sir, that that's inaccurate.

MR. WATSON: I understand that, but also that's only part of your argument. The other argument is that the statute does not say that the fencing requirement is the only requirement. It just says, if you're going to have a fence, that's what it's going to have to be.

I submit to you under 2901.9.2 is the approved barriers. Also it talks about private swimming pool enclosures.

Again, that's part of the frustration I have with it personally. They've adopted fragmented sections of the international code and then they changed it in '03 and they took out certain parts that makes it kind of inconsistent to read. They took out -- there's another section called alternative devices. There were some provisions that it allowed
the board to do what it saw fit under the
circumstances and also under some natural boundary
exceptions. It doesn't say, again, if you're
statutory reading, it's hard to read just one section.
You've got to read all of it. The whole thing it's
just a fragmented disjointed section that we should,
as the homeowners, be given the benefit of the doubt.
That's my position. If you disagree that's fine.
That's why were' here.

MR. DYSINGER: Thank you, sir.

CHAIRMAN: Any other comments from the Staff
or board?

(NO RESPONSE).

CHAIRMAN: I have one comment that disturbs me
a little bit. That you all didn't read or see the
permit that came from this office. You did not read
or see the requirements of conditions?

MR. WATSON: Never saw it.

CHAIRMAN: That's what disturbs me about it as
much as anything that come out here tonight. That
nobody read that beforehand except the Staff when they
give it to the applicant.

MR. ANDERSON: They never gave it to the
applicant.

CHAIRMAN: The permit was given to Mr. Jewell
stating all of the requirements and conditions.

MR. WATSON: I agree with that.

CHAIRMAN: That what disturbs me. You all didn't get to see it beforehand.

MRS. WATSON: We thought it was strange. We had put a pool in in '97. When we moved from that residence, we had a pool in the backyard that had a fence around it too. We had planned to put a different design in. This was brought to our attention. Yes, everything has been said. It's quite disturbing.

The other side of that. It brought to our attention that there were 17 other people this happened to, you know. There are different reasons why they went through with what they did as far as putting the fence in. Some of them have little kids. Some are concerned about, you know, getting into the barriers of these neighborhoods now that have the little lakes in the back. Their kids have fallen in those lakes. It's ironic I have to put a fence around my pool, but yet these subdivisions that have these nice lakes there's nothing bound there and they're quite a bit more dangerous. I understand that.

We changed what we did. Put a lot of money into it. It's not really clear as far as the issue.
It's a very safe thing. It's very, very safe. We heard about it before. When you put a pool cover, you have to do it when you build it. I think it's wonderful because it's very safe. It's safer than having a fence because you're four foot enclosures, they don't always lock. A lot of them don't close or left open. Kids can get over it. Much easier they can get over that fence than they can in that pool that has a cover that covers it all the time. It's not, it's covered. The thing is it covers the entire pool; whereas somebody, a little kid can get through a fence, get over a structure. You know, nothing is fool proof.

Just to sort of give you away from the legal act. You know, from being a parent and having kids that swim and having pools. You know, it's very, very dangerous and I understand that.

MR. WATSON: Also just for clarification I think for Mr. Warren and Mr. Dysinger, we're kind of playing a hand that we were dealt. I can say under oath, and I think my wife will too, that if Harold told us we needed a fence, we would have put a fence up. I don't think there's any question. When this thing kind of --

MR. ANDERSON: I don't think anybody is
questioning your honesty. I think people know you're honest people. It's just unfortunate that Mr. Jewell is signing these applications. You know, how many applications come in here from Home Pool with his signature on it? You know, has he been notified of this?

I'm actually directing this towards Staff. Has Mr. Jewell been notified of this rule? Obviously this problem is coming from Home Pool time and time again. If another application came in with his name on it, I would ask to speak to the owners of the house.

I mean it's an unfortunate situation. I understand where you spent more money thinking you did the right thing, but it's clearly not right by code. We've got to get some clarification to this because it's causing me to be here way too long.

MR. WATSON: I have had specific conversation from the neighbor next-door. She was put on notice. I told Harold he needs to write out something that the homeowner needs to sign because he knows, if I lose here, I'm coming for him. I told Harold, we'll try to win here first. If we win, we're square.

CHAIRMAN: I think we've covered this topic pretty good on both sides. Any other comments from
Jim.

MR. MISCHEL: I'd just like to make a few comments. It won't take very long. Back in '97, they were talking about a pool they had before, we did have a code, in fact, in '97 and prior to '97.

Now, the Kentucky Residential Code, KRC, came into affect recently. Up until then we had what they called KAMO code. That code required a fence. It wasn't something that just came about. I've been here doing this for about 20 something years.

Terry Slade, he is the director of the state building code that looks over when they adopt the building code. He's been there for 20 some years. He stands firm that nothing has changed. They've always required a fence. I don't see how, and that might be for the legal people, how an insurance company can override what the state law has passed. If we have a statute, a building code that says you must do this, I'm not sure the insurance company can say, you can put a pool cover in. I don't know.

Harold's pool, we've talked about that, the swimming pool. We had a clear understanding of that. I told Harold, we went over about pool covers, everything else. We allowed him to put the fence on
both side of his and go down to the lake into. He understood. After this happened he came to my office and I just kind of looked at Harold. You know, nothing has changed. He really didn't have anything to say.

My impression, I mean nothing has changed. Other pool contractors knew they couldn't do it. That's why they came to me and said, what's changed? We want to start selling these because we make more money on them. I said, hold it. We can't do that. Nothing has changed. We can't allow that.

I don't see how we can get much clearer. The application permit states, I mean we went out of the way to say it has to have a fence.

Harold should have came to us and say, hey, has anything changed? He never came to us. I don't think there's 17 out there. I don't think. I think there's three or four or a couple that did pool covers, but I don't think there's 17 with the automatic pool cover. Could be wrong on that.

Unless you have any questions, that's it.

CHAIRMAN: Any other questions of the Staff?

MR. WARREN: Jim, does this seem to be an issue only with Home Pool?

MR. MISCHEL: At this point, yes. We have
like three or four pool companies here. There's one or two in Evansville. They've pretty much go by the same thing, and Harold did too. I don't know. It happened all of a sudden.

MR. WATSON: Most people probably can't afford the automatic pool cover.

MR. ANDERSON: I think, Gary and Jim, the other I was trying to say is the Watsons, from their standpoint of view they don't deal with developing or building. They don't understand the permit and how it works. From a different standpoint, I know general contractors that won't sign a permit because the applicant, the person receiving it needs to know. It's just an unfortunate situation that he up and sold them a pool cover and tried to say it's replacing a pool and it's not right. That's where I was going, Jim.

Does he know this and should we stop letting him sign this for them? Because it's putting people in a bad situation.

MR. NOFFSINGER: If I might interrupt. Harold Jewell knows. Harold Jewell understands. I can say today he does. I met with him a few months ago. We discussed this. He understands.

He signed this application. It states clearly
it's to have an enclosure four foot above the ground.

He signs these routinely.

In fact, it is typical that the contractor takes out the permit. It's a convenience. It's a convenience to the Watsons. It's a convenience to me that the contractor can sign that application, get the permit and the Watsons don't have to come to city hall to get that permit. That's why we do that. Also, the laws states that the applicant can do that. Doesn't have to be necessarily the owner. It can be their agent. That's why we do it. I would hate to see us do something that would cause more bureaucracy, if you will, to the application process.

I know the more information you have and had the Watsons signed this application, we could have said, well, you signed this too. Perhaps we wouldn't be having this discussion today. How far do you take that and how far can Staff be expected to contact contractor/owner and whatnot.

That's the issue we deal with. Fortunately we don't have too many of these. We have to, I think, rely on the professionals out there doing the job that our local, that are reputable, to get adequate information out there.

I'm not saying Mr. Jewell gave bad information
or he didn't either way because I wasn't a party to
that. I do know Mr. Jewell signed this application
and it's very clear on this application for the permit
as to what the requirements are.

MR. ANDERSON: And it clearly states nothing
about a pool cover.

MR. MISCHEL: We issue an awful lot of
permits. Just not for pools, but houses, room
additions, garages and everything. You could have the
same about a garage. Well, I didn't understand it.
They didn't sign it. Where do you stop? Like you
said, pretty soon we're going to create a lot of red
tape for a lot of people if the owner has to come in
each time. Most of the time we like for the
contractor to come in because they're the ones
building the thing and we can talk to them. Evidently
something broke down here. Usually we can talk to
them about how to build something whether it's a house
or a garage or swimming pool. Pool is pretty clear.
We like to talk to the contractors really so there
isn't any problem on foundation or anything.

CHAIRMAN: Thank you, Jim.

Does the board have any other questions of the
Staff?

(NO RESPONSE).
CHAIRMAN: Does the applicant have any further comments?

MR. WATSON: Just a couple.

Gary, you said convenience. I don't know why the builder or whoever could just take it to the house and get somebody to sign it. I don't understand why the homeowner needs to come down.

It's unfortunate this situation and I know in least four or five other situations that it misrepresented what was in there. It misrepresented what stated the requirements were.

MR. NOFFSINGER: Trust me, Jim. We deal with convenience and bureaucracy on a daily basis. The easier we can make it for these permits to be issued, the happier the community is. If that builder or that contractor has to come up, pick that application up and sign it, take it to you to have you sign it, come back, we're going to hear about it. That's it. We can certainly do that. It covers, you know, us, you as well as the builder, but I can tell you we already hear that there's too much red tape. I can tell you we just about string line the process about as much as we can. By letting the agent that application that doesn't -- I don't think government can be expected to enter in and becomes a party to the negotiations
you have with your contractor. That's between you and
your contractor.

MR. WATSON: That's not what I'm asking.

MR. NOFFSINGER: You know, the contractor is
signing as your agent and should be making you aware
and making sure what's required is done. If you have
to do it, then that's going to put you as having to
enter into that building process too. That slows down
the process.

MR. WATSON: At least we'd be on notice.

MRS. WATSON: I have a comment.

From what I do and from the profession that I
had and going through and making plans for things that
are done, it seems ironic that ultimately we're the
ones that are responsible. It's our home. The
homeowners are no matter what. If it's a garage
you're adding on or pool you're putting in your
backyard. You do what you do. I'm a teacher. You do
what you do. If it takes a little longer, it takes a
little longer. You do the job right. That's the main
thing.

Politics aside. Hey, I know. I've been
there. Know all about it. It's in our family. To me
you do the right thing.

Whether or not it went wrong with us, you
know, it goes wrong. To keep trying to make excuses, not that it's excuses, but to say it's easier for me, you know.

Like the comment that some of you all have made up here, you know, I'm going to use my good common sense. Good common sense is that at some point in time that paper that's got that information on it, that one sentence could have saved us a lot of money.

With the profession that I do, I work very, very hard to get. I mean very hard. That's half my year salary, you know.

That's what irritates me coming from some of the comments that I hear up here. You know, to getting out of the meeting earlier to -- you know, you do what's right. If there's a piece of paper would have cleared all this up, and that's the direction you all are going to go as far as, you know, some points have been made, you know, through the law, legal point in mind, you know, it's there. Whether you agree with it, because I know he showed me. I'm like, hey, I know. I'm a big swimmer. Have been all my life. I've helped mange pools.

The law is the law or whatever it is, is there no matter what. Of course, you get to use common sense for the benefit of the community. What bothers
me is if you're trying to take away from, you know, if it takes five minutes, then it takes five minutes, at least from where I come from, from the profession I come from.

Being a citizen of Owensboro and being here my entire life, you know, if it makes a little bit more work, it makes a little bit of work. You know, to save us a lot of money or somebody else, then you do the right thing.

I don't know what that is, but to me I think that if someone is signing off but yet I'm held accountable, then maybe I need to see that piece of paper.

MR. ANDERSON: My comment about being here too long in the meeting was you should have never been here so I think you misinterpreted it.

MRS. WATSON: I know that. It's just sort of something that sticks in your mind. I know and I appreciate it. Like I said we're just sort of in a different situation. You know, politics is not my thing. I'm a teacher by trade. I'm just saying, you know, if it takes a few extra minutes to do something, you know, you do it. I'm sorry. Just sort of hit the wrong way, I guess.

MR. DYSINGER: Ma'am, you feel wrong and I
don't blame you. I would too. Our problem is that the remedy to fix it is not in our power. You do have a remedy, but it's I'm afraid with the gentleman that put you in this position.

MR. WATSON: I disagree with you respectfully. You do have power. You just choose not to exercise my interpretation.

MR. DYSINGER: We choose not to exercise your interpretation. That's very accurate to say. We choose not to use your interpretation.

MRS WATSON: I appreciate you all listening and taking the time.

MR. DYSINGER: Personally I'm very sorry.

CHAIRMAN: I think we've covered this pretty well on both sides. Have talked on it. With that I'll entertain a motion.

MR. DYSINGER: Mr. Chairman, I move to uphold the decision of the zoning administrator given the findings that it would detrimental to the public safety and welfare by creating a potentially unsafe situation, especially for small children.

I would also say that the ordinance is fairly clearly written in terms of how it should be executed as evidenced by the finding that of 72 pool permits issued since 2000 only one applicant has had
misunderstanding with it.

I would also add as a fining the electric cover is not a natural barrier.

CHAIRMAN: Is there a second to the motion?

MS. DIXON: Second.

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

Give you one more time shortly.

MR. WATSON: When Mr. Dysinger makes that factual reference, you're making that determination based on what we said today or is that --

MR. DYSINGER: My findings of fact have to be and they are based on evidence that was introduced in this.

MR. WATSON: Evidence was introduced that there were at least four or five people that interpreted the provision that way.

MR. DYSINGER: That was your testimony contrary to --

MR. WATSON: Was Mr. Mischel's testimony as well.

MR. DYSINGER: I'm sorry, I'm referencing another piece of evidence.

All I can go by is how many people those
permits appealed and we only have one.

MR. WATSON: That is correct, but there is other people that misinterpreted it. I'm just taking issue with what the facts --

MR. DYSINGER: I understand. I have physical evidence of only one person appealing the statute as it's written as evidenced by your being here.

CHAIRMAN: Is there any other comments briefly from the staff?

(NO RESPONSE).

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Appeal is approved.

Any other information at this time or business?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Entertain one final motion.

MR. MASON: Move to adjourn.

MS. DIXON: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.
STATE OF KENTUCKY 
) SS: REPORTER'S CERTIFICATE 
COUNTY OF DAVIDSS }

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 68 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the
26th day of April, 2006.

LYNNETTE KOLLER
OHIO VALLEY REPORTING SERVICES
202 WEST THIRD STREET, SUITE 12
OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES: DECEMBER 19, 2006
COUNTY OF RESIDENCE: DAVIDSS COUNTY, KENTUCKY