

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 MARCH 1, 2007

3 The Owensboro Metropolitan Planning Commission  
4 met in regular session at 5:30 p.m. on Thursday, March  
5 1, 2007, at City Hall, Commission Chambers, Owensboro,  
6 Kentucky, and the proceedings were as follows:

7 MEMBERS PRESENT: Ward Pedley  
8 Gary Noffsinger  
9 Marty Warren  
10 Sean Dysinger  
11 Ruth Ann Mason  
12 Judy Dixon  
13 Clay Taylor  
14 Madison Silvert, Attorney

15 \* \* \* \* \*

16 CHAIRMAN: Call the Owensboro Metropolitan  
17 Board of Adjustment to order. We'll begin our meeting  
18 with a prayer and the pledge of allegiance to the  
19 flag.

20 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

21 CHAIRMAN: First item on the agenda is  
22 consider the minutes of the February 1, 2007 meeting.  
23 They have been read and placed on file in the Planning  
24 office. Were there any additions or corrections?

25 MR. NOFFSINGER: No, sir.

CHAIRMAN: Board is ready for a motion.

MS. DIXON: Move to approve.

CHAIRMAN: Do we have a second?

1 MR. DYSINGER: Second.

2 CHAIRMAN: We have a motion and a second. All  
3 in favor raise your right hand.

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: The motion passes unanimously.

6 Next item.

7 -----

8 CONDITIONAL USE PERMITS

9 ITEM 2

10 1815 Leitchfield Road, zoned R-1C, A-U (Proposed  
11 R-3MF)  
12 Consider request for a Conditional Use Permit in order  
13 to operate a 10,000 square foot child daycare facility  
14 with a maximum of 96 children  
Reference: Zoning Ordinance, Article 8, Section 8.2B3  
Applicant: Wabuck Development Co. And the Board of  
Education of the Owensboro Independent School District

15 MR. SILVERT: Please state your name for the  
16 record, please.

17 MR. HOWARD: Brian Howard.

18 (MR. BRIAN HOWARD SWORN BY ATTORNEY.)

19 ZONING HISTORY

20 The subject property is located on Leitchfield  
21 Road across from East 18th Street. The property is  
22 currently zoned R-1C Single-Family Residential and A-U  
23 Urban Agriculture; however, a petition to rezone the  
24 property to R-3MF Multi-Family Residential was heard  
25 at the February 8th Planning Commission meeting and

1 received a favorable recommendation.

2 The overall plan for the property includes the  
3 construction of 56 apartment units that will serve  
4 single parents who are attending a post secondary  
5 institution, a common building, a child daycare  
6 building for the residents and the extension of East  
7 18th Street from the current terminus at Leitchfield  
8 Road. The daycare facility is 10,000 square feet and  
9 will be limited to a maximum of 96 children.

#### 10 SURROUNDING LAND USES

11 The subject property is located in an area of  
12 mixed residential, commercial professional/service and  
13 agricultural zoning classifications. The Estes  
14 Elementary School is located to the northwest and is  
15 zoned P-1. The property to the east is a cemetery and  
16 is split zoned A-U Urban Agriculture and P-1  
17 Professional/Service. The property to the south is  
18 zoned B-4 and R-4DT and consists of multi-family  
19 residences and a convenience store. The property to  
20 the west is zoned R-1C and P-1 with single-family  
21 residences and a portion of the elementary school.

#### 22 ZONING ORDINANCE REQUIREMENTS

23 A daycare requires a conditional use permit  
24 and is conditionally permitted in an R-1C, A-U and  
25 R-3MF zone. All other uses within the overall plan

1 for development are permitted within the proposed  
2 R-3MF zoning classification.

3 Parking requirements for the daycare according  
4 to Article 13, Section 13.8B3 are two spaces plus one  
5 per 10 children under care. The total parking  
6 requirements for the daycare will be 12 spaces which  
7 are provided according to the site plan provided with  
8 the application.

9 MR. HOWARD: We would like to enter the Staff  
10 Report into the record.

11 CHAIRMAN: Anyone here representing the  
12 applicant?

13 APPLICANT REP: Yes.

14 CHAIRMAN: Do you have a comment you would  
15 like to address to the board?

16 APPLICANT REP: No, not unless someone has a  
17 question.

18 CHAIRMAN: Anyone here in opposition of this  
19 item?

20 (NO RESPONSE)

21 CHAIRMAN: Any board members have any comments  
22 or questions?

23 (NO RESPONSE)

24 CHAIRMAN: If not the chair is ready for a  
25 motion.

1 MS. MASON: Mr. Chairman, I move that we grant  
2 the Conditional Use Permit based on Findings of Facts,  
3 that there's no opposition, it's compatible with the  
4 area as there's a school already in the area. It's a  
5 needed facility as it's essential and it will promote  
6 the health, safety and welfare, and the Planning  
7 Commission gave it a favorable recommendation to  
8 rezone it.

9 CHAIRMAN: Is there a second?

10 MS. DIXON: Second.

11 CHAIRMAN: We have a motion and a second. Any  
12 questions on the motion?

13 (NO RESPONSE)

14 CHAIRMAN: All in favor raise your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries unanimously.

17 Next item, please.

18 ITEM 3

19 1008, 1016, 1018 Omega Street; 2600 West 10th Street;  
20 2517, 2521, 2523 Lancaster Avenue, zoned I-2  
21 Consider request for a Conditional Use Permit in order  
22 to operate an auto and truck parts storage business, a  
23 salvage operation including disassembling disabled  
24 vehicles, recycling of automobile and truck parts and  
25 storage and disassembling disabled vehicles.  
Reference: Zoning Ordinance, Article 8, Section  
8.2G4/27  
Applicant: Judson Ray and Gloria Jean Drewry.

ZONING HISTORY

1           The subject property is located on the west  
2 side of Omega Street between 10th Street and Lancaster  
3 Avenue. The properties located at 1008, 1016, and  
4 1018 Omega Street were rezoned from B-4 General  
5 Business and R-4DT Inner-City Residential to I-1 Light  
6 Industrial in March 1996. According to the  
7 application materials, the intended use for the  
8 property in 1996 was the expansion of a truck repair  
9 business that had been in operation for approximately  
10 one year. In July 2001, the property located at 2600  
11 West 10th Street was rezoned from B-4 General Business  
12 to I-1 Light Industrial. At that time, the intended  
13 use of the property was for a transmission repair  
14 shop. The properties on Lancaster Avenue have  
15 historically been zoned R-4DT Inner-City Residential.  
16 In December 2006, the entire property was rezoned from  
17 I-1 Light Industrial and R-4DT Inner-City Residential  
18 to I-2 Heavy Industrial.

19           The December 2006, rezoning application  
20 resulted from a notice of violation based on the  
21 illegal use of the property as a salvage storage yard  
22 which is not a permitted or conditionally permitted  
23 use within an I-1 Industrial or R-4DT Inner-City  
24 Residential Zone. The use of the property as noted in  
25 the violation and as proposed by the applicant

1 including disassembling vehicles, recycling of vehicle  
2 parts and storage of disabled vehicles is only  
3 conditionally permitted with an I-2 Heavy Industrial  
4 Zone. Based on the evidence submitted at the December  
5 2006 Planning Commission Meeting and positive  
6 testimony from adjoining property owners, the rezoning  
7 application received a favorable recommendation and  
8 was ultimately approved by the City Commission on  
9 February 6, 2007.

#### 10 SURROUNDING LAND USES

11 The subject property is located in an area of  
12 mixed residential, commercial, professional/service  
13 and industrial land uses. The property to the north  
14 and west are zoned B-4 and R-4DT, the property to the  
15 south is B-4 and the property to the east is P-1.  
16 Uses include a nursing home, city park, city garage,  
17 church and limited retail uses. Although testimony at  
18 the Planning Commission meeting was overwhelmingly  
19 positive, the concerns of the neighbors should be  
20 taken into consideration prior to approval of a  
21 conditional use permit.

#### 22 ZONING ORDINANCE REQUIREMENTS

23 Under Article 8, Section 8.2G4/27 in the  
24 zoning ordinance, automobile wrecking and storage  
25 yards are only conditionally permitted within an I-2

1 Heavy Industrial zone. A buffer requirement from  
2 surrounding properties is required for such uses. As  
3 stated in the ordinance, any building or outside  
4 storage, loading or working areas except for accessory  
5 parking areas or structures shall be located at least  
6 three hundred (300) feet from any Residential Zone and  
7 one hundred (100) feet from any other zone except for  
8 an I-1 or A-R Zone. The applicant has filed a  
9 variance of conjunction with this conditional use  
10 permit application to waive the buffer requirement.

11 The parking requirement for the use is one  
12 space per two employees or a minimum of five,  
13 whichever is greater.

14 Should the Board wish to grant approval of  
15 this Conditional Use Permit some Special Conditions  
16 that you might want to take into consideration would  
17 be:

18 SPECIAL CONDITIONS

19 1. A consolidation plat shall be submitted  
20 and approved by the OMPC to consolidate all subject  
21 properties into a single tract.

22 2. Existing ten foot fencing shall be  
23 maintained by the property owner to provide screening  
24 from all adjacent properties.

25 3. Storage of vehicles or materials on the



1 site may not exceed the height of the fence  
2 surrounding the property.

3 4. A pest control plan must be implemented  
4 annually.

5 These are separate conditions that have been  
6 used for other types of I-2 in conditionally permitted  
7 storage yards.

8 We would like to enter the Staff Report into  
9 the record, please.

10 CHAIRMAN: Anyone here representing the  
11 applicant?

12 MR. KAMUF: Charles Kamuf.

13 CHAIRMAN: Mr. Kamuf, let's see if we have  
14 opposition first. Maybe you can answer their concerns  
15 and questions.

16 Has there been any correspondence in the  
17 Planning office in opposition?

18 MR. NOFFSINGER: No, sir.

19 CHAIRMAN: Anyone here wishing to speak in  
20 opposition or any comments on this item?

21 (NO RESPONSE)

22 CHAIRMAN: Mr. Kamuf, would you like to  
23 address the board?

24 MR. SILVERT: State your name, please.

25 MR. KAMUF: Charles Kamuf.

1 (MR. CHARLES KAMUF SWORN BY ATTORNEY.)

2 MR. KAMUF: As I think it was read in the  
3 report, on December 14th the Planning & Zoning Board  
4 unanimously approved the rezoning to I-2. At that  
5 time I think the board fully understood that there  
6 would be a conditional use filed and also a variance  
7 of the 300 feet and also 100 feet as far as  
8 commercial. I would just like to introduce a couple  
9 of things.

10 We have letters from all the adjoining  
11 property owners that they have no objection.

12 We have also letters from the City of  
13 Owensboro, and also from the neighborhood alliance  
14 saying that they would request a rezoning of this  
15 property.

16 Also at the time that we had the rezoning,  
17 they would also request that you approve the  
18 conditional use and also the variance.

19 We have the pastor of the church next-door.  
20 He is here to testify for us. There's also Melvin  
21 Smith, who was on the board for years, on this Board  
22 of Adjustment. He is a neighbor and he is also  
23 requesting that you approve not only the conditional  
24 use but the variance. We have a lot of things to say,  
25 but if it's not necessary that you want to hear some

1 of those things, if you have some questions.

2 We're in agreement as far as the conditions  
3 that I think -- did you read those into the record,  
4 Brian?

5 MR. HOWARD: Yes.

6 MR. KAMUF: We agree to all of those. I'll  
7 give you a copy of the neighbors and some of these  
8 letters. These were introduced at the hearing that we  
9 had on December 14th.

10 Here is a big photo of the subject property  
11 and where it's located.

12 CHAIRMAN: Mr. Kamuf, let me see if any of the  
13 board members have any questions or any concerns that  
14 they need answered. Maybe we don't need to go through  
15 all of that.

16 Board Members, do you have questions or  
17 concerns you would like to ask?

18 MR. DYSINGER: Counsel, do you know off the  
19 top of your head how long this facility has been  
20 operating as it is?

21 MR. KAMUF: It's been at least ten years, but  
22 it's in an area down there where, as you can see, all  
23 the red that is there of the mixed use. In other  
24 words, you have commercial, you also have heavy  
25 industrial and light industrial, but the red, those

1 areas that are in red are existing salvage yards in  
2 the area that's been down there for, I don't know.  
3 One was in 1978, and another one 1984, an another one  
4 in 2000.

5 We agree to the conditions that were read by  
6 Brian into the record.

7 CHAIRMAN: Any other board members have any  
8 questions?

9 (NO RESPONSE)

10 CHAIRMAN: Any comments from Staff?

11 MR. NOFFSINGER: No, sir.

12 CHAIRMAN: Chair is ready for a motion.

13 MR. TAYLOR: Mr. Chairman, I move to approve  
14 the conditional use permit based upon the fact of the  
15 ruling of the Planning Commission, the surrounding  
16 area, the history of the property, and that no  
17 neighbors or outlying facilities are objecting to this  
18 and based upon the meeting of the special conditions.

19 CHAIRMAN: We have a motion. Do I hear a  
20 second?

21 MR. DYSINGER: Second.

22 CHAIRMAN: We have a motion and a second. Any  
23 question on the motion?

24 (NO RESPONSE)

25 CHAIRMAN: All in favor raise your right hand.

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion approves unanimously.

3 Next item.

4 Related Item

5 ITEM 3A

6 1008, 1016, 1018 Omega Street; 2600 West Tenth Street;  
7 2517, 2521, 2523 Lancaster Avenue, zoned I-2

8 Consider request for a Variance to waive the buffer  
9 requirements of 300 feet to residentially zoned  
10 property and 100 feet to commercially zoned property  
11 in order to operate an impound yard or yard for  
12 storage of abandoned, dismantled, partially  
13 dismantled, obsolete or wrecked automobiles.

14 Reference: Zoning Ordinance, Article 8, Section  
15 8.2G4/27

16 Applicant: Judson Ray and Gloria Jean Drewry

17 MR. NOFFSINGER: Mr. Chairman, this  
18 application has been advertised for public hearing at  
19 this time. All adjoining property owners have been  
20 notified.

21 In fact, to our knowledge all property owners  
22 that are affected by the 300 foot buffer requirement  
23 from a residential zone and the 100 foot buffer zone  
24 from commercial property have been notified as well.  
25 As evidenced here tonight, there's no one here to  
speak in opposition or raise any questions as to the  
variance request.

The Planning Staff has prepared a Variance  
Staff review which we would submit as part of the  
record which detail the special circumstances and

1 hardship that would be placed on the applicant if this  
2 variance were not granted. In fact, the property  
3 could not be used for the use that it has had for, as  
4 Mr. Kamuf stated, approximately ten years, as well as  
5 the use that has been approved by the Planning  
6 Commission and the conditional use permit that you  
7 just approved in a prior item.

8 We are recommending conditions and those  
9 conditions would be the same conditions that were  
10 placed on the conditional use permit related to  
11 maintaining the eight foot fence, which I understand  
12 that may be a ten foot fence.

13 MR. KAMUF: It is a ten foot fence.

14 MR. NOFFSINGER: Very good. Maintain a ten  
15 foot fence by the property owner to provide screening  
16 from all adjoining properties. Storage of vehicles or  
17 materials on the site may not exceed the height of the  
18 fence surrounding the property, and a pest control  
19 plan must be implemented annually.

20 With that having no opposition Staff is  
21 recommending the variance be approved.

22 CHAIRMAN: Let me ask if there is any  
23 opposition on the variance. This is different than a  
24 conditional use permit. Is there anyone here wishing  
25 to speak in opposition of the variance?

1 (NO RESPONSE)

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

4 (NO RESPONSE)

5 CHAIRMAN: If not the chair is ready for a  
6 motion.

7 MR. DYSINGER: Mr. Chairman, move to grant the  
8 variance given the findings that it will not adversely  
9 affect the public health, safety or welfare; will not  
10 alter the essential character of the general vicinity;  
11 it will not cause a hazard or nuisance to the public;  
12 and it will not allow an unreasonable circumvention of  
13 the requirements of the zoning regulations; and with  
14 the previously stated conditions.

15 CHAIRMAN: Do we have a second?

16 MS. MASON: Second.

17 CHAIRMAN: We have a motion and a second. Is  
18 there any questions on the motion?

19 MR. DYSINGER: I do have a question. We moved  
20 to approve the conditions that were spoken in the  
21 record by Staff which were a ten foot fence. The  
22 written application stated eight foot.

23 MR. NOFFSINGER: Right. That would be a ten  
24 foot fence as instructed today.

25 CHAIRMAN: All in favor of the motion raise

1 your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries unanimously.

4 ITEM 4

5 9300 KY 815, zoned A-R

6 Consider request for a Conditional Use Permit to add a  
7 600 yard rifle range to an existing pistol and rifle  
8 range.

9 Reference: Zoning Ordinance, Article 8,  
10 Section 8.2K7/42

11 Applicant: Darrell and Rebecca Whittaker

12 MR. NOFFSINGER: Mr. Chairman, I have a letter  
13 from the applicant that I think I should read into the  
14 record. It was dated today.

15 "We request a postponement of the Conditional  
16 Use Permit for the rifle range until the April  
17 meeting," signed by Becky Whittaker.

18 Now, I understand that the applicant is here  
19 tonight and wishes to proceed with the hearing. So  
20 barring no objection from anyone in the audience, or  
21 the board, then we're ready to move forward with this  
22 application.

23 We have notified individuals that the  
24 postponement was being sought. I make it clear I  
25 stated anyone wishing to raise any issue regarding  
postponement of this item needs to speak up.

MR. KIRTLEY: I'm Robert Kirtley. I'm Linda  
and Frank Hayden's attorney.



1 (MR. ROBERT KIRTLEY SWORN BY ATTORNEY.)

2 MR. KIRTLEY: I got that call and that was  
3 this afternoon. I had some other preparatory work I  
4 was going to bring to this. I had made copies, I  
5 noticed Mr. Kamuf gave copies to everybody. I only  
6 have one of the thing, but I'm willing to go forward  
7 with it. I don't think there's any problem there, but  
8 you're going to have to share this one little exhibit  
9 I have if that's fair enough.

10 MR. DYSINGER: Mr. Chairman, apparently I'm  
11 confused. Was it the applicant requesting?

12 MR. KIRTLEY: Absolutely.

13 MR. NOFFSINGER: Yes. The applicant was  
14 requesting postponement. They requested that today.  
15 Once we found that out, we notified all parties of  
16 record, at least made an attempt to have notify  
17 parties of record. We left a message on Mr. Kirtley's  
18 answering machine. He was a party of record.

19 Now, I just wanted to make sure that everyone  
20 was clear in terms of what took place today with the  
21 request for postponement. We're all here. The  
22 applicant is now requesting that we move forward. Is  
23 everyone okay with that?

24 MR. KIRTLEY: Was there a basis for a  
25 continuance given in the letter?

1 MR. NOFFSINGER: No, sir.

2 MR. KIRTLEY: How is this normally treated by  
3 this board?

4 MR. NOFFSINGER: This board would consider the  
5 request for postponement and then would debate as to  
6 whether or not a justification is warranted  
7 postponement. Then they would vote on it.

8 MR. KIRTLEY: I got it.

9 CHAIRMAN: Mr. Noffsinger, let me ask a  
10 question. When you notified, how was that?  
11 Telephone?

12 MR. NOFFSINGER: Telephone.

13 CHAIRMAN: Are you sure that you notified all  
14 people that were mailed out?

15 MR. NOFFSINGER: No. I did not make the call.  
16 I do know that Mr. Kirtley was a party of record and  
17 he was notified. However, we did not make anyone else  
18 aware that there might be a postponement here tonight.  
19 So Mr. Kirtley would have been the only one, aside  
20 from the applicant, that would have been aware of  
21 that.

22 CHAIRMAN: There may be someone out there that  
23 doesn't know that this is not being postponed. They  
24 had the information that it was being postponed.

25 MR. NOFFSINGER: No, sir, that would be

1 incorrect. They had the information that it would be  
2 heard tonight. They didn't receive any information  
3 that it might be postponed.

4 CHAIRMAN: Just wanted to clarify it. I  
5 didn't want someone left out that this was postponed.

6 MR. NOFFSINGER: Right. That's my whole  
7 purpose in making sure we have this discussion, to  
8 make sure we're all ready to go.

9 ZONING HISTORY

10 The subject property is located on KY 815  
11 between KY 554 and KY 1514. The property is currently  
12 zoned A-R Rural Agriculture. It was rezoned from A-R  
13 Rural Agriculture and EX-1 Coal Mining to A-R Rural  
14 Agriculture in September 1994. Once the zoning was  
15 completed, an application for a Conditional Use Permit  
16 was approved for the property in December 1994. At  
17 that time, the conditional use permit was for  
18 recreational activity for shooting sports including a  
19 pistol firing range, a rifle range and a future  
20 skeet/trap shooting area. The applicant is proposing  
21 to update the existing conditional use permit to  
22 include a 600 yard rifle range. No skeet/trap  
23 shooting area is shown on the current plan, proposed  
24 or future. If proposed for addition in the future,  
25 the conditional use permit must be updated to reflect

1 the change.

2 SURROUNDING LAND USES

3 The subject property is in an area of mixed  
4 rural agricultural and coal mining zones. The  
5 property to the north and south are partially zoned  
6 A-R Rural Agriculture and EX-1 Coal Mining, the  
7 property to the west is zoned EX-1 Coal Mining, and  
8 the property to the east is zoned A-R Rural  
9 Agriculture. Land uses in the vicinity of the subject  
10 property are primarily agricultural with scattered  
11 rural residences.

12 ZONING ORDINANCE REQUIREMENTS

13 Under Article 8, Section 8.2K7/42 in the  
14 zoning ordinance, major outdoor recreational uses in  
15 an A-R zone require a conditional use permit. Parking  
16 requirements associated with the use according to  
17 Article 13, Section 13.8K7 are one per employee on the  
18 maximum shift plus one per three participants and one  
19 per three spectator seats.

20 We would like to enter the Staff Report into  
21 the record.

22 CHAIRMAN: Anyone here representing the  
23 applicant?

24 MR. FULKERSON: Yes.

25 CHAIRMAN: Would you like to address the board

1 and share your intentions?

2 MR. NOFFSINGER: Excuse me, before we do that.

3 Mr. Howard, do you have also an exhibit that  
4 you wish to make a part of the record?

5 MR. HOWARD: Yes.

6 MR. NOFFSINGER: Did you make reference to  
7 that exhibit?

8 MR. HOWARD: I certainly will.

9 We prepared a map using our GIS. It shows the  
10 subject property and zone of the surrounding area.  
11 It's color coded to indicate ranges of elevation and  
12 it also has spot elevations that are located on the  
13 map. The spot elevations are the number, for example,  
14 528.16. We would like to enter a copy of that into  
15 the record as well.

16 MR. NOFFSINGER: Do you have a copy of that  
17 for the applicant as well?.

18 MR. HOWARD: I certainly do.

19 MR. SILVERT: State your name for the record  
20 please.

21 MR. FULKERSON: Chuck Fulkerson.

22 (MR. CHUCK FULKERSON SWORN BY ATTORNEY.)

23 MR. FULKERSON: Basically the range was  
24 approved I think in '94 by the County Planning &  
25 Zoning committee.

1           The only thing that has been changed since '94  
2           is the fact that a 600 yard berm was added. There's a  
3           300 yard berm there currently. The surveyor's site  
4           plan, HRG Surveying Engineering has drawn a map  
5           showing that the 600 yard berm is still 110 yards from  
6           the rear property line. The shooting area is going to  
7           be directly in correlation with the other two shooting  
8           areas that are there. It's 180 yards from the road.

9           The berm is 30 feet in height, which I believe  
10          is like 12 feet higher than recommended by the state  
11          police. The state police use this facility. The  
12          county sheriff's department has used this facility.  
13          Boy Scouts use this facility. It's been determined  
14          safe by the state police that flew over in  
15          helicopters.

16          I would just say that he requested to go on  
17          with it. I'm under the understanding that someone  
18          from Planning & Zoning came today and looked and  
19          agreed that the parking and the shrubbery and  
20          everything was to your specifications. I guess we'll  
21          just see what the board has to say. If you have any  
22          questions, we can answer them. If there's any  
23          opposition, I would like the opportunity to address  
24          them.

25          CHAIRMAN: Any board members have any

1 questions of Mr. Fulkerson?

2 MR. DYSINGER: For the purposes of evidence  
3 entering into the record, did you bring anything with  
4 you tonight? Letters from state police regarding  
5 safety, ATF?

6 MR. FULKERSON: You would have gotten the  
7 letters from the state police I assume whenever it was  
8 approved in 1994. Because there was a fly-over before  
9 it could be approved.

10 MR. DYSINGER: Then I have a question for  
11 Staff.

12 The applicant stated that the layout of the  
13 shooting range was approved in '94. Does Staff concur  
14 with that?

15 MR. NOFFSINGER: We have no records of any  
16 approval other than this Board of Adjustment on  
17 12/1/94 approved a 300 yard rifle range as well as a  
18 50 yard pistol range with orientation of shooting  
19 toward Kentucky 815 and a future trap or skeet field  
20 on the balance of the property.

21 MR. DYSINGER: Toward 815?

22 MR. NOFFSINGER: Shooting toward 815.

23 MR. DYSINGER: Is that the current layout?

24 MR. NOFFSINGER: The current layout would have  
25 just the opposite. Shooting away from the road, in

1 the opposite direction of the road.

2 We have no record of any outside approvals  
3 other than what this board approved. What is out  
4 there today, is not consistent with what the board  
5 approved.

6 MR. DYSINGER: Does the Staff have an opinion  
7 regarding any difference this might make?

8 MR. NOFFSINGER: No, sir.

9 MR. FULKERSON: As far as the direction that  
10 the shooting occur, the reason that it was changed is  
11 by a request from Planning & Zoning to shoot in the  
12 other direction. That's my understanding. It was  
13 just easy to change. It just cost more to build the  
14 berms up on the far end. We thought as a request we  
15 would accommodate that and do it.

16 MR. DYSINGER: But you don't have any of those  
17 letters or anything with you to tender into the record  
18 today?

19 MR. FULKERSON: No.

20 MR. DYSINGER: That's all I have right now,  
21 Mr. Chairman.

22 MR. NOFFSINGER: For the record, I have no  
23 record of where the Planning Commission requested that  
24 you shoot in the opposition direction. During the  
25 public hearing there was very little said in '94.



1 There was a question raised as to why you were  
2 shooting toward 815. At that time it was determined  
3 that the elevation at the road was much higher than  
4 where you would actually be shooting from.

5 MR. FULKERSON: That's correct.

6 MR. NOFFSINGER: There wasn't anyone from  
7 Planning & Zoning that requested, to my knowledge,  
8 that you shoot the other way.

9 MR. FULKERSON: That was just my  
10 understanding. I wasn't there in '94. My  
11 understanding was that they said, wouldn't it be  
12 better to shoot away from the road than towards the  
13 road? We can do that. We just have to build berms.  
14 We exceeded the limits of required height on the  
15 berms. I did that.

16 As far as the trap and skeet, you know, on the  
17 back end, you're basically just talking about a 30  
18 foot wide, 30 foot high pile of dirt. It's just there  
19 as a safety measure.

20 Where they're actually shooting from is the  
21 distance from here to her. From what's already there.  
22 It's just another pile of dirt, a little bit further  
23 back. That's all that was done.

24 CHAIRMAN: Any board members have any further  
25 questions?

1           MR. DYSINGER: So there is skeet trap shooting  
2 there currently or not?

3           MR. FULKERSON: There is not.

4           MR. DYSINGER: Are you proposing that?

5           MR. FULKERSON: Well, that was in the plan  
6 originally to do, to set up for Planning & Zoning.  
7 Then when the county approved for the one to be out on  
8 60, there's no reason to open something else up to  
9 compete. You know, we didn't foresee that in the  
10 future. There was people that requested to be able to  
11 do this. It's not me. It's not, there's not a lot of  
12 people that will use that berm. There's just a few  
13 and it's just Saturdays and Sundays usually. We just  
14 thought it was something you could throw up and do it  
15 and we didn't realize that it was going to be an issue  
16 at all.

17          MR. DYSINGER: We get a lot of that here.

18          MR. FULKERSON: I believe that. Does anyone  
19 need to see this?

20          CHAIRMAN: No.

21          Let's see what opposition has to say and  
22 questions.

23          Mr. Noffsinger, has there been any written  
24 opposition in the Planning office or any problems?

25          MR. NOFFSINGER: Well, I'm not sure about any

1 written, but we do have one land owner that is here  
2 tonight that has raised issues regarding this site.  
3 That's the only contact we have had of record or off  
4 the record for that matter.

5 CHAIRMAN: Would Opposition like to address  
6 the issues?

7 MR. KIRTLEY: Let me, if I can, circulate this  
8 to you to give you some perspective of what the land  
9 is out there.

10 The applicant or the property in question is  
11 8. The Haydens own lot 7 and 33, which envelops 8. I  
12 didn't get the chance to make copies.

13 So that you can get some idea that Darrell  
14 envelops all around this property. Full border on the  
15 right, if you're looking from 815 west, and the whole  
16 back and a large portion of the east side of the  
17 property.

18 The Haydens primary and main concern is  
19 safety. It's a big safety issue in their mind.

20 What it amounts to is that the Whittakers  
21 never complied with the authority of this body back in  
22 '94, when they got this approval in '94. In fact, I  
23 think their concern might even be more that they don't  
24 own it.

25 In April of '95, they limited their liability

1 by placing it into a corporation appropriately named  
2 Rock Hill Gun Range, Inc., which brings another issue  
3 of safety.

4 You have two things here that the Haydens are  
5 really concerned about. First, it's going downhill to  
6 a bowl. The bowl then comes up and their property is  
7 over here. Your ability, these rifles can shoot a  
8 mile and kill up to a mile or further. That's my  
9 experience as 30 years as county attorney and state  
10 police telling me about a lethal range of some of  
11 these weapons.

12 If it's a 2000 foot area or it's 110 from  
13 there or it's 900 berm, that's only -- excuse me. 600  
14 feet berm, 600 yard, 1800 feet. It's got almost 3,000  
15 feet to go on to the Hayden's property.

16 Now, the other aspect of it is that's  
17 overshooting. Now, when you say they put a 30 foot  
18 berm in, because the elevations I understand of 815 is  
19 534 at the road. 2,000 feet into the property going  
20 west it's 500 feet. There's a 34 foot drop. Now, you  
21 put a 30 foot berm, which is said to be done here,  
22 you're four feet short of a level shot.

23 Now, killing range is shooting straight.  
24 Trajectory these berms are designed or intended, as I  
25 understand it, so that the projectile, if it misses

1 the target, the berm, it deflects and goes up in the  
2 air and it loses its velocity and kill ability.  
3 That's what these berms are all about. But in this,  
4 you know, the straight line you've got a minimum of 4  
5 feet on a 30 foot berm. Straight line application  
6 that the velocity can go up to a mile. Now, that's a  
7 safety issue.

8 Another thing is, and I somewhat noticed it  
9 today, Rock Hill Gun Range, Inc. is the owner of this  
10 property, of record today. That limits their  
11 liability. They said it was a \$20,000 transaction.  
12 That means -- in fact, I don't even know if they're  
13 properly before this body here tonight because they  
14 should be the owner/applicant and it's listed, as I  
15 think, on the proceeding as the Whittakers are the  
16 owners/applicants. They may own the shares of stock  
17 in that corporation, but they surely don't own that  
18 corporation.

19 More importantly that's a limit under scope of  
20 liability. That's good business, if you're the person  
21 operating a gun range. Someone gets killed, \$20,000  
22 is the most you have to defend.

23 This is what I'm talking about, safety.  
24 This whole thing deals with safety. I think the  
25 layout of this land doesn't lend itself. I think the

1 reason why this body authorized it in '94, it was  
2 going uphill. All you're going to do, your  
3 trajectory, if they leave the property they're going  
4 to leave it in an arc where the velocity will fall  
5 down and eventually fall harmless. It might irritate  
6 somebody, but it won't kill anybody. The shell and  
7 the rock of this, this is strip mine recovery land.  
8 If you glance and you hit and you ricochet going into  
9 the ground, it's more likely to hit rock and ricochet  
10 in a violent way.

11 Now, there are people here tonight that will  
12 talk about they work on Lot 7 that they've ducked  
13 bullets in the past. Mr. Hayden tending to his fence  
14 row has ducked bullets in the past. I'm just simply  
15 saying, it's not trying to keep a neighbor from  
16 utilizing their property, but it's also that neighbor  
17 must utilize it for activities they should do it in a  
18 safe, very safe way, and I don't believe that's done  
19 here.

20 Particularly, when they just reversed it in  
21 '94. Really they're nonconforming of their  
22 conditional use. They never conformed to it. So I'd  
23 ask that you deny this application for the safety  
24 reasons because it's not laid out well.

25 Two, the applicant is not the owner of this

1 property. The thing you have to think is vicarious  
2 liability here. They limit their liability by putting  
3 it in this corp name. I don't know what reason it's  
4 there, but I know for a fact it is or at least it is  
5 of record.

6           Anyway, that's the position. I'd ask that you  
7 hear from Linda or Frank or Tony. These are people  
8 that live out there to tell you what they experience  
9 on this. We're not talking about a pistol range.  
10 We're talking high velocity rifles. Why else would  
11 you want to put them 600 yards out, you know. That's  
12 a very lethal weapon that's a good sport. If you're  
13 going to operate something like that, you ought to be  
14 totally accountable and you ought to do it in a safe  
15 manner. I'm just saying the 30 foot berm now is 4  
16 feet shorter, keep it from going to the other property  
17 and a straight line.

18           That's the position the Haydens are in and ask  
19 that you consider that. If the applicant were at some  
20 time to produce bona fide engineering studies showing  
21 the -- from NRA. NRA has whole booklets on these  
22 matters of putting up firing ranges in a safe and  
23 practical way. They would be totally opposed to  
24 anybody just throwing one together. NRA has got a  
25 book - it's 19 bucks. I couldn't get it today. I was

1 in a meeting - on how to set up a range, an outdoor  
2 range. I think these are things that have not been  
3 met here.

4 They simply say a flyer by the state police in  
5 '94 that has no record here in this body, and  
6 obviously nothing here today.

7 This is not a change of a conditional use.  
8 The conditional use was never done in '94. This is a  
9 whole new ball game basically. I'd ask that you deny  
10 it. Thank you.

11 CHAIRMAN: Any board members have any  
12 questions of Mr. Kirtley?

13 (NO RESPONSE)

14 CHAIRMAN: Anyone else like to speak on this  
15 item?

16 MR. KIRTLEY: Mr. Hayden would like to address  
17 the board.

18 MR. SILVERT: Can you state your name for the  
19 record, please?

20 MR. HAYDEN: Frank Hayden.

21 (MR. FRANK HAYDEN SWORN BY ATTORNEY.)

22 MR. HAYDEN: Like Bob was saying, my farm goes  
23 all the way around this area that they're shooting out  
24 at. We have cattle on the farm. We have fence rows  
25 that we have to run. We bale hay off the farm.



1 They're out there shooting any time of day, any time  
2 they want to.

3 You know, I remember one time I was working on  
4 a fence down by the pond over on the left-hand side,  
5 which was way away from that berm, and I heard -  
6 (indicating) - go right over my head. That was a  
7 ricochet bullet. That's all it could have been.

8 You know, I've got Tony takes care of my farm  
9 now. He's out there having to ride fences and keep  
10 the fences up. People are out there hunting, chase  
11 deer through the fields, you know, and deer tear  
12 fences down. We have to fix all of them. It's just  
13 dangerous. It's dangerous. The way it is now it's  
14 dangerous. Not less them putting in this 600 yard gun  
15 range for high power rifles. It's dangerous now.

16 If they approve this 600 yard range, that's  
17 like shooting, me shooting at one of them little boxes  
18 down there. I shake a lot. I'll guarantee you I  
19 wouldn't hit that box and they ain't going to hit that  
20 berm. Just a little, 600 yard, just a little movement  
21 will put that bullet I don't know how much higher or  
22 lower. It could go either way or sideways, you know.

23 I would like to see the whole thing gone  
24 because we've got 60 acres right beside it that we're  
25 afraid to work on because I mean that gun range right

1 now, the berm is right beside my property. Right on  
2 the edge of it. Like you said, they put it in  
3 backwards from '94. They should have been shooting  
4 the other way instead of shooting towards us. You  
5 know, nothing is right.

6 Like I say, I would like to see the whole  
7 thing gone. I definitely don't want that 600 yard  
8 berm put in there for high powered rifles. That's all  
9 I've got to say.

10 CHAIRMAN: Any board members have any  
11 questions of Mr. Hayden before he sits down?

12 (NO RESPONSE)

13 CHAIRMAN: Thank you.

14 Mr. Fulkerson, would you like to step back up  
15 and address the concerns and questions?

16 MR. FULKERSON: Whenever this comes before the  
17 board or you make a motion to approve, I want to make  
18 sure that I understand fully what it is we're  
19 approving or not approving.

20 CHAIRMAN: Mr. Noffsinger, will you address  
21 that?

22 MR. NOFFSINGER: Mr. Fulkerson, in '94,  
23 December 1st of 1994, this board approved a  
24 conditional use permit application for the operation  
25 of a 50 yard pistol range and a 300 yard rifle range.

1 It showed the location of the berms, where the parking  
2 area would. It showed the orientation of a shot being  
3 toward Kentucky 815. That is what you have approved  
4 before.

5 If you have constructed anything other than  
6 what I've just described and other than what was  
7 approved through this site plan by this board, you are  
8 in violation. I believe you're probably in violation  
9 right now because as I understand it, you have  
10 oriented the shots opposite from the road and you're  
11 shooting toward the Hayden property. The location of  
12 the berms have shifted in terms of their location.

13 Plus, I think you've now added a 600 yard  
14 range to the facility that would not be consistent  
15 with that site plan. So right now it appears that  
16 you're in violation.

17 You are before this board tonight for this  
18 board to approve basically what you've constructed out  
19 there. So this board is charged with either approving  
20 your conditional use permit, and that would allow you  
21 to continue doing what you're doing now. They may  
22 approve your conditional use permit in a modified  
23 form, which includes modifications. They may approve  
24 part of it. They may approve -- it's just in a  
25 modified form. This board has the option to deny your

1 permit. If this board denies your permit here  
2 tonight, then what you have out there remains in  
3 violation. I say likely in violation. I think you  
4 probably are. We will have to proceed by legal means  
5 if necessary to close the operation down.

6 But that's why you're here tonight, to ask  
7 this board to approve what you have considered or what  
8 you've already constructed.

9 MR. FULKERSON: The 600 yard berm, solely the  
10 600 yard berm is why we're here tonight.

11 MR. NOFFSINGER: No, sir. No, sir. You are  
12 here tonight with a revised site plan that indicates a  
13 50 yard pistol range and a 300 yard rifle range  
14 shooting in the opposite direction of what you were  
15 approved by this board and in alternate locations, and  
16 the addition of a 600 yard range.

17 MR. FULKERSON: That wasn't our understanding  
18 coming. Our understanding was is whether you approve  
19 600 yard berm or not. If the issue is coming up over  
20 whether we're shooting in the opposite direction, I  
21 think that we probably need to hear it again and find  
22 out who the two people that were on the Planning &  
23 Zoning board that visited the facility that suggested  
24 that we shoot in the other direction were to make that  
25 of record here today.

1           One, if it's in violation and you want it  
2 shooting the other way, then we have the option of  
3 turning it around. That's the way you approved it.  
4 To me that would be far worse for everyone out there.

5           Two, if you close it down, the facility is not  
6 there to make money. It's there just to provide a  
7 service to customers and people in the community that  
8 want a safe place to go; Boy Scouts, state police,  
9 sheriff's department. If it was to close down, then  
10 there would be no supervision and we'd still allow  
11 people to shoot there. We wouldn't need the approval  
12 of Planning & Zoning.

13           As far as the map that came and the  
14 surrounding properties, the surrounding properties  
15 were there in '94 owned by the same people. That in  
16 '94 had they had opposition, to me it should have been  
17 brought up then.

18           Too, the 600 yard berm doesn't affect the  
19 property to the left-hand side of the range or the  
20 right-hand side of the range. All it did was move the  
21 shooting, the way the bullets are traveling now, all  
22 it moved it was slight altercation to the left. The  
23 table, the shooting, where the people are actually  
24 shooting from is no different from the distance from  
25 here to her. They're just shooting further.

1           The argument on trajectory. Whether you're  
2 shooting on a flat surface or downhill, a person is  
3 still shooting at a target no taller than this out in  
4 front of a 30 foot tall backdrop. Shaking is not  
5 going to make -- if you were aiming at the top, sure,  
6 but that defeats the purposing having built it.

7           I would reiterate that the state police  
8 approving it, to me their criteria, their reasoning or  
9 the method they used to establish safety would be far  
10 superior to that of the NRA or this board. I don't  
11 mean that in a bad way. I don't know anything about  
12 plumbing. I don't know anything about where you put  
13 your septic tank or the rules on it. I'm sure you all  
14 are familiar with that. I think we contacted the  
15 right people to get this thing set up in the right  
16 way. I think there was a lot of cooperation whenever  
17 the range was turned around through this board in '94.  
18 It may not have the right signatures. I don't know  
19 that. I was not here. I don't know. I think it was  
20 done at a recommendation of the county. Not just  
21 because we're going to be in violation. It is we'd  
22 rather you do this, so we did it. That's my  
23 understanding.

24           CHAIRMAN: First let me clarify your name. I  
25 think I'm misstating your name wrong. Will you state

1 it again?

2 MR. FULKERSON: Chuck Fulkerson.

3 CHAIRMAN: I thought it was Mr. Whittaker. I  
4 didn't catch your name at first. Are you representing  
5 Darrell Whittaker, Darrell and Rebecca Whittaker?

6 MR. FULKERSON: I was asked to come down and  
7 speak.

8 CHAIRMAN: Do you own the property or is it  
9 leased?

10 MR. FULKERSON: I own property behind the  
11 range also.

12 CHAIRMAN: Who owns the property where the gun  
13 range is?

14 MR. FULKERSON: Darrell Whittaker. Darrell  
15 and Rebecca Whittaker. I think the LLC, it was just  
16 an incorporation. For someone to bring that argument,  
17 I would say that 45 percent of the community would  
18 have separate entities of LLC's for protection just  
19 because you don't want to gamble with your children's  
20 future. I have more than one. My brother has eight.  
21 I don't see where an LLC changes. The only thing it  
22 changes is liability, I guess. Where if someone gets  
23 hurt on one farm, they don't sue you for all of it. I  
24 don't see that as being an issue, especially an issue  
25 to bring before Planning & Zoning.

1           CHAIRMAN: Let me see if any board members  
2 have any questions for you, and I'm going to bring Mr.  
3 Kirtley back up and then we're going to wrap it up.

4           Any board members have any questions?

5           MR. DYSINGER: On the issue of ownership. My  
6 only concern is, is the application in order? And the  
7 fact that it's not in the LLC's name.

8           I agree with you. LLC is just what it states.  
9 It's limited liability.

10          Is the application in order? I don't want to  
11 spend much time on this if it's out of order to begin  
12 with.

13          MR. NOFFSINGER: It's probably a legal  
14 question, but I can tell you I have no written proof  
15 that the application is not in order. What I have  
16 here, what this gentleman is telling me, I would say  
17 the application is in order.

18          However, we have another party that provides  
19 testimony that says someone else owns it, but they  
20 didn't bring anything to submit into the record  
21 because he thought it was going to be postponed.

22          One thing I want to add and that is the  
23 minutes or the transcript from the December of '94  
24 meeting. A total of three pages. Keep in mind that  
25 this would be the transcript of what was said verbatim



1 the night this application was approved. One person,  
2 Audie Pantle questioned this. He says, "I have one  
3 question in looking at these plans and maybe you can  
4 explain to our satisfaction. I notice you're  
5 shooting. You've got a berm and you're shooting  
6 towards the road."

7 That was a board member here. He's still on  
8 this board.

9 "Mr. Whittaker: There's a hill before you get  
10 to the road. I'm going to put a 25 foot dirt berm on  
11 top of that, but you're going to be at least another,  
12 it's going to be close to 250 yards from that berm to  
13 the road and I've got almost six acres of" --

14 Mr. Pantle interrupts and says, "Your  
15 topography has got you."

16 Mr. Whittaker says, "Yes, sir. Plus I've got  
17 six acres of woods that you have to shoot through."

18 That's all that's said. So in terms of a  
19 representative from the Planning Commission or the  
20 Planning Staff, this is all the involvement we had in  
21 it because we were not the zoning enforcement officer  
22 for the county in 1994. What happened after it left  
23 here, we can't attest to. We can only attest to what  
24 exactly was stated in the record and what this board  
25 approved.

1           MR. FULKERSON: I think that when they  
2 requested, one, you have to get a restroom. You have  
3 to do this. You have to do that. During the process  
4 of setting that pole, running the electricity, doing  
5 that they said, we think it would be better if you did  
6 it this way. It was open for conversation. I think  
7 it was Darrell's perception that that is what the  
8 county wanted to do. I'm not pointing fingers. I'm  
9 just saying that was the understanding.

10           The range is open on Saturdays and Sundays.  
11 There are a few customers, frequent customers that may  
12 have a key to be able to use that facility in the  
13 afternoon after work or if they're on a different  
14 shift they may go up there in the morning, but as far  
15 as during the week there is very little use of that  
16 facility.

17           During the two weeks, usually ten days prior  
18 to deer season, try to have someone be there to  
19 supervise so that people can sight their deer rifles.

20           As far as another safety issue, be spread all  
21 over the county with guns that aren't going to be  
22 accurate. It serves a purpose. It really does.

23           We sure don't want anybody on the other end  
24 concerned for their safety. That's why the berms are  
25 like they were.

1           Mr. Kirtley explained that there is a valid --  
2           where that berm is, is not down in a valley. The  
3           property may lay at somewhat of an angle like this -  
4           (indicating). The berm would be here. Then further  
5           past that there would be a large valley going down.  
6           You also have to understand that when you're talking  
7           about this other valley, with the berm being up here,  
8           someone would have to be the width of that valley's  
9           distance further back. It's astronomical the distance  
10          that's past that berm for someone to get hit.

11          Personally I don't know of a military bullet  
12          that would go through that berm. I have no earthly  
13          idea how thick it is, but it's a massive pile of dirt.  
14          It has dirt on it. There was dirt hauled to it to put  
15          on it. You know, argue that there's no rock somewhere  
16          in that pile, that would be crazy.

17          That fact that you put a soft pallet in front  
18          of that. Most bullets that travel that speed, if they  
19          hit a blade of grass they're going to disintegrate. A  
20          berm would absorb it. It will flatten or it will  
21          disintegrate. It will come apart.

22          With most high traveling or high velocity  
23          ammunition, a deer from me to the guy that's been  
24          addressing on that microphone, if you shot a high  
25          velocity bullet from here to there and you hit the

1 smallest of twig between there, the odds of you doing  
2 any damage to him at all is slim to none. It's going  
3 to come apart. It will fragment. That's what the  
4 bullets are designed to do.

5 CHAIRMAN: Let us get Mr. Kirtley back up.  
6 Anyone wants to speak in opposition, then we're going  
7 to shut it off and try to make a decision here.

8 MR. KIRTLEY: I think Mr. Fulkerson answered  
9 the concerns what they are talking about. A) it's in  
10 a corp name, the limited liability, in case someone  
11 gets killed out there it's not their problem.

12 It's the Haydens' problem. What I'm saying, I  
13 cannot believe that that's what was represented here.  
14 The limited liabilities is just \$20,000 we got in it.  
15 So go out there and kill somebody. I'm not talking  
16 about ricocheting into a berm. I'm talking about the  
17 ground was disturbed is rock.

18 You can put of record in Deed Book 647 at 462  
19 recorded dated April 5, 1995, just four months after  
20 this body authorized this footprint that never went  
21 the way it was. The Whittakers transferred this  
22 property to Rock Hill Gun Range, Inc. It's in that  
23 name today. By Mr. Fulkerson's own admission, it's a  
24 limited liability in case someone gets killed out  
25 there. It's not their problem.

1           Now, when you read from the record about '94,  
2           that's the other thing. The footprint is logical.  
3           Why didn't you go 815? Topography has got you.  
4           Elevations have got you. That's the safest way.  
5           Trajectory is going airborne. Will simply not go into  
6           a person. They will go until their velocity ends and  
7           then they'll fall to the ground. They might, you  
8           know, hit something, but it won't be any injury hit.  
9           That's the whole thing. I'm just simply saying that,  
10          one, the downhill elevation. You shoot straight  
11          you're going onto other people's property dead on.

12                 To say no one will miss and these berms,  
13           you're not talking -- straight line, you can't say  
14           that, but he's insured against it by having it in a  
15           corporation.

16                 So I'd say that, one, the applicant is not the  
17           proper advocate for this. The whole thing should be  
18           dismissed and he should be cited for being in  
19           violation for what was approved in '94. I think that  
20           record speaks pretty clear. There's no hidden agenda  
21           here about reversing it. There's no air patrol flying  
22           over this to look at it, and there's no state police  
23           records or law enforcement records in this record at  
24           all. That's the scary thing. There should be  
25           engineers. Somebody that is a soil sample of the

1 compaction of where these bullets so they won't  
2 ricochet, the impacting. If someone wants to put a  
3 lethal sport, and that's what it is. It's a good  
4 sport, but you take control and you take sure  
5 everything besides limiting your liability through a  
6 corporation to make sure the public is safe. I say  
7 this thing should be denied and they should be cited  
8 and shut down. Thank you.

9 MR. TAYLOR: I've got a question. It might be  
10 for --

11 CHAIRMAN: Mr. Kirtley.

12 MR. TAYLOR: I don't know if it'd be more  
13 directed toward Mr. Kirtley or Mr. Noffsinger. It's  
14 sort of based upon the whole application process. I  
15 don't know what that would mean if it was filed  
16 improperly.

17 It seems to be that the deed Mr. Kirtley is  
18 referring to is on Deed Book 647, Page 462 from '95,  
19 April 5th. Application from the deed where  
20 Mr. Whittaker conveyed it from Mr. Ashby on Deed Book  
21 639, 692. So I don't know what effect that would have  
22 upon this whole process of citing a different deed  
23 book. Whether it was a current deed or not. If that  
24 would, how that would effect this whole process.  
25 That's just my question. From what he quoted, you

1 know, I don't know. I don't think that would  
2 mean -- I don't know if that means a new hearing would  
3 be done with the proper filing or how the board goes  
4 about that if it's filed that way.

5 MR. NOFFSINGER: Mr. Kirtley has raised a  
6 technicality. It's valid. We have a letter from the  
7 applicant's attorney stating they've certified or  
8 they're certifying that there are no deed restrictions  
9 since 1994. We had a letter doing that prior to '94.  
10 That refers to this Deed Book 639, Page 692.

11 The applicant is here. The applicant should  
12 be able to tell us whether or not Mr. Kirtley has  
13 raised a valid issue or not. If so, then I think,  
14 yes, we do have a technicality here. This needs to be  
15 straightened out and then perhaps, you know, you may  
16 want to have more information about the construction  
17 of this facility. At this point we're limited.

18 Mr. Dysinger asked if Staff had an opinion on  
19 this. We don't have an opinion on this because, you  
20 know, you gain the knowledge. What you don't have in  
21 the application, you gain from the public hearing.  
22 Quite honestly we've got the applicant here that's  
23 stating that they have the proper approvals. The  
24 state police has okayed it, this and that. Doesn't  
25 have anything in writing.

1           We also have the applicant's representative  
2           that says, here, I'm concerned for my life safety.  
3           That may very well be a valid point, but that  
4           applicant's representative is certainly not an expert  
5           in trajectories. He's an attorney.

6           There are some unanswered questions here that  
7           you're not going to get the answers to tonight.

8           MR. TAYLOR: That's sort of what my question  
9           is. Since there is an obvious change in what the  
10          application is as to what, you know, by referring to a  
11          deed which I would consider sort of somewhat a big  
12          change, would that mean that it would come back before  
13          the board with proper filed paperwork and a new  
14          hearing or would it be that we have -- are we still  
15          ruling on it tonight or does it give it like a pause  
16          to where it's properly filed and then they come back  
17          and support their arguments again maybe in another  
18          manner or we're voting on it even though it appears to  
19          be filed incorrectly?

20          MR. NOFFSINGER: I think that's the board's  
21          decision. You can certainly vote on it here tonight.  
22          You may want to approve it and you may want to deny  
23          it. You may want to deny it on grounds of not just  
24          the application you think is not in order, but for  
25          other reasons, or you could postpone it as well. You



1 can postpone taking any action and give both sides an  
2 opportunity to get their case prepared and come back  
3 before you at the April meeting with this application  
4 in order. Then both sides having hopefully some  
5 proof, some substance that we can put into the record  
6 to support their case.

7 CHAIRMAN: I think there's too many unanswered  
8 questions and things that need to be clarified.

9 We need a professional opinion from you, Mr.  
10 Fulkerson, to bring back before this board.

11 There's too many unanswered questions.  
12 Anything with this magnitude of safety, I don't think  
13 this board needs to act on it until we have a  
14 professional to bring before this board to say  
15 everything is safe.

16 MR. FULKERSON: I need to understand in  
17 leaving what I'm preparing for when I come back. One,  
18 I don't understand why this board would be concerned  
19 whether that was in an LLC or in Darrell and Rebecca  
20 Whittaker's name. To me that belongs in some other  
21 meeting.

22 MR. SILVERT: I guess I can answer that. The  
23 reason for that is the conditional use permit  
24 application requires that the title owner of the  
25 property sign the application. They're certifying

1 that they're the owner. Currently the application  
2 states that Rebecca Whittaker is the owner of this  
3 property. If in fact the LLC is the owner of the  
4 property, then a member manager of that LLC, on behalf  
5 of the LLC would have to sign the application. It's a  
6 technicality, but it's one that's important.

7 MR. FULKERSON: So you just need her signature  
8 on something to vote on, but the fact that it's in an  
9 LLC is irrelevant?

10 MR. SILVERT: Well, I'm not saying that. What  
11 I'm saying is, as far as the application is concerned,  
12 for an application to be in order, the title owner of  
13 the property needs to sign.

14 MR. DYSINGER: As opposed to the business.  
15 The actually property.

16 MS. MASON: The owner of the property.

17 MR. SILVERT: Yes.

18 MR. DYSINGER: Mrs. Whittaker could own the  
19 property and the LLC operate the business and we're in  
20 order.

21 MR. SILVERT: That may be possible. But what  
22 the testimony we've heard tonight is that the LLC in  
23 fact is the title owner of the property.

24 MR. FULKERSON: But the LLC does not have a  
25 signature.

1           MR. TAYLOR: I wasn't bringing it forward  
2 to --

3           MR. SILVERT: The member manager would sign on  
4 behalf of the LLC.

5           MR. TAYLOR: And I wasn't bringing it forward  
6 as a technicality saying that the LLC should be  
7 considered a negative standpoint, that it was put in  
8 LLC to do that. I was just saying that this is sort  
9 of a big thing because it could affect safety  
10 positively or negatively. If something happened --

11          MR. FULKERSON: The LLC could affect safety?

12          MR. TAYLOR: No. No, not the LLC. I'm  
13 talking about the whole decision on it. I just wanted  
14 to make sure if we did make a ruling and for some  
15 reason it came back and just the application had some  
16 type of error, then it could fall not just upon  
17 anybody, but that just we ruled on it and we didn't  
18 pick up that there was an error. I was just pointing  
19 out that it seemed to be there was an error in the  
20 application. I wasn't implying that an LLC was  
21 conveying guilt saying that I want to pass off all  
22 liability. I wasn't bringing it in that matter.

23          MR. FULKERSON: Just one note to make since it  
24 was brought up. Just the fact that it's in an LLC  
25 does not mean that if someone was in danger that you

1 are -- the LLC could be far more insured than your own  
2 personal self worth. That's totally irrelevant.

3 Two, when I came in, my understanding was we  
4 were deciding whether there was going to be an  
5 approval of a 600 yard berm. Not which direction it  
6 was shooting. Not anything on the range existing 90  
7 days ago. Which no one shot on this 600 yard berm  
8 that I know of. I'm just saying it's something that  
9 was started that evidently there was concern with.

10 To me we're here for the concern of the 600  
11 yard berm and nothing else. I want to make sure that  
12 I leave with making sure that I'm clear on that.

13 MS. MASON: But then Item 5 and 6 is in  
14 reference to this same thing, about the administrative  
15 appeal.

16 MR. NOFFSINGER: No.

17 MS. MASON: No, that's different. Oh, I'm  
18 sorry.

19 MR. FULKERSON: I'm trying to leave not  
20 confused.

21 MR. DYSINGER: My concern on that, and Staff  
22 or Chair, by all means jump in if you think necessary.  
23 I wasn't here in '94. So all I have to go on is what  
24 the application says right now. So I'm looking at  
25 this as a whole new ball game. You're asking to do a

1 gun range firing away from 815, which I'm not opposed  
2 to. I'm not in support of either way yet. Frankly, I  
3 haven't seen enough evidence on either case. There's  
4 some obvious safety concerns when you're dealing with  
5 high caliber rifle.

6 In 1994 I was in Okinawa shooting high caliber  
7 rifles. So I understand the concern.

8 At the same time this place has been operating  
9 for 13 years to my knowledge with no injury. So  
10 there's a question here. All we have to go by is  
11 evidence.

12 So my feeling is while you did walk in this  
13 room thinking you were asking for one thing, my  
14 feeling is you're walking out asking for something  
15 else. Whole new. My feeling is this is a whole new  
16 ball game because what was approved in '94 for  
17 whatever reason, and I do believe based on other stuff  
18 that I've seen that happened before things got more  
19 organized with Planning & Zoning, I do believe that  
20 you operated in good faith. You don't go to all the  
21 trouble to get their approval for something and just  
22 spin it 180 degrees just to see if you can.

23 With that said, I'm looking at this as we're  
24 starting all over again. I need to see, well, I feel  
25 like we need to see evidence stating, the evidence

1       that you say that you have from the sheriff's  
2       department, anybody that has looked at it and is  
3       qualified to say that this is safe.

4               The same token, a technical expert stating  
5       that this is an unsafe situation is all we can rely  
6       on. With reference to if we delay this action --

7               MR. KIRTLEY: We have no authority to go on  
8       that person's property, the corporation's property to  
9       make soil samples of the shell rock. We have no  
10       authority to go there. That's his property, the  
11       corporation's property. I'll be more than willing,  
12       but we can't walk the land so-to-speak. You  
13       understand that, don't you?

14              CHAIRMAN: Mr. Kirtley, will you step up to  
15       the mike when you're speaking?

16              MR. KIRTLEY: I'm sorry. My voice normally  
17       carries quite well.

18              We have no authority to go on this property to  
19       make those soil samples, to make the elevations and  
20       these things like that. Now, if we can, we will.  
21       What I'm trying to say is that I think it's incumbent  
22       upon a person.

23              I want you to understand clearly. Limiting a  
24       liability is a very big thing in risk factor and  
25       safety of the public. I'm sorry, but that's a fact.

1 Four months later when you put this from an  
2 individually owned, oops, I better put this into a  
3 corporation or limit my liability, and that's exactly  
4 what is done here and was said here tonight. That's  
5 really because accidents can happen here.

6 About going for soil and all these other  
7 things. To the extent we can bring that up, fine, but  
8 I think it is incumbent upon the applicant to show  
9 that that soil does not induce high ricochet, the  
10 land. Not the berm. This is all reclaimed strip  
11 mine.

12 MR. FULKERSON: Would you agree that the soil  
13 on the other side of the fence is the same soil that's  
14 on this side of the fence?

15 MR. KIRTLEY: I can't agree with that. I  
16 don't know.

17 MR. SILVERT: You need to address the  
18 questions to the board.

19 CHAIRMAN: No discussions back and forth.  
20 Please step up to the mike and address the board.

21 MR. KIRTLEY: I'm game, but I don't have the  
22 authority, the Haydens, as far as producing evidence.

23 CHAIRMAN: Last time up, Mr. Fulkerson.

24 MR. FULKERSON: I'll just leave as stating  
25 that, one, in order to meet the requirements of '94,

1 we have to turn the range around, turn the range  
2 around.

3 Two, to me it's much better the way it is, but  
4 if there's a violation, you say there is, then we'll  
5 just turn it around.

6 If they vote to close it, then there will be  
7 no one there with supervision. We'll open it up and  
8 it will be free for the public to shoot, and that's a  
9 worse situation than you have at the moment.

10 I think that if there is a genuine concern  
11 with the 600 yard line and there are requirements that  
12 someone around it would like to see, then we would try  
13 to accommodate those requirements and go with just the  
14 600 yard berm. That's the way I'd like to leave this  
15 meeting.

16 Coming in only addressing the issue that we  
17 came here for. Not opening new ones.

18 CHAIRMAN: Okay, Mr. Fulkerson. I'm going to  
19 ask the board for their pleasure. Either vote it up  
20 or down or postpone it because I think we've heard all  
21 the comments we need.

22 MS. DIXON: Mr. Chairman, I think the whole  
23 issue tonight has been clouded from we're going to  
24 postpone it. No, we're not going to postpone it.  
25 There's enough human safety issues involved and



1 technicalities with the application and what Mr.  
2 Fulkerson thought they were asking for that I move to  
3 postpone until all of these issues can be, postpone  
4 for 30 days and hopefully these issues can be resolved  
5 and addressed more completely.

6 CHAIRMAN: Ma'am, I've already shut the  
7 comments down. We have a motion on the floor.

8 Would it be correct to hear her? She's asked  
9 to address the board?

10 MR. SILVERT: At this point if she wants to  
11 address the motion, it would be okay.

12 CHAIRMAN: She wants to address the motion.

13 MR. SILVERT: The motion of whether or not  
14 this should be postponed. That's the current question  
15 on the floor.

16 CHAIRMAN: Would you step up to the mike..

17 MR. SILVERT: State your name for the record,  
18 please.

19 MRS. HAYDEN: Linda Hayden.

20 (MRS. LINDA HAYDEN SWORN BY ATTORNEY.)

21 MRS. HAYDEN: I want to know if we're going to  
22 leave it there if they're in violation, if we  
23 postpone?

24 CHAIRMAN: That's the issue that we're going  
25 to find out before we come back before the board.

1           MRS. HAYDEN: I've been trying to find this  
2 out for two years. I've talked to Jim Mischel for two  
3 years about it.

4           CHAIRMAN: The postponement, that gives you 30  
5 days to find out those issues and come back and make  
6 your argument again.

7           MRS. HAYDEN: So we're going to leave it in  
8 violation. Is that my answer?

9           MR. NOFFSINGER: Mrs. Hayden, I'm going to do  
10 whatever this board instructs me to do.

11          MRS. HAYDEN: I understand what you're going  
12 to do. I'm pretty well up to that.

13          MS. DIXON: Are you asking if between now and  
14 the next time we vote on it if it will be in  
15 operation?

16          MRS. HAYDEN: Right. If it's in violation.

17          MR. NOFFSINGER: At this point in time Mr.  
18 Mischel, the zoning administrator, has not issued a  
19 Notice of Violation. He has issued a letter to  
20 Mr. Whittaker that they need to come in. Apparently  
21 they're not in compliance with the approval by this  
22 board. They need to file an application. They need  
23 to either come in compliance with the requirements of  
24 this board or file an amended application. They have  
25 done that. The board at this point is considering

1       postponement for 30 days.

2               Now, in my opinion that's going to postpone  
3       any action we would take for 30 days. The applicant  
4       has to understand that when they come back in 30 days  
5       we are considering everything on that property that is  
6       being done that was not approved by this board in  
7       1994. You could be 10 feet off. They're still going  
8       to consider it. The burden of proof is upon the  
9       applicant to furnish to this board information that  
10      they can rely upon if they choose to approve it.

11              MRS. HAYDEN: You will go by what you approved  
12      in '94.

13              MR. NOFFSINGER: They need information so that  
14      if they wish to approve this application they feel  
15      certain that your issues you've raised have been  
16      properly considered. We're not going out to issue any  
17      citations tomorrow, unless we're directed by this  
18      board.

19              CHAIRMAN: I have a motion on the floor. Do  
20      we have a second?.

21              MR. DYSINGER: Second.

22              CHAIRMAN: We have a motion and a second. All  
23      in favor of the motion raise your right hand.

24              (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25              CHAIRMAN: Motion carries unanimously. It's

1       postponed until the next meeting.

2               Next item.

3               MR. NOFFSINGER: Under Administrative Appeal,  
4       Mr. Chairman, the applicant has once again requested  
5       that these two items be postponed until our April  
6       meeting. So with that letter we'd recommend that both  
7       items be postponed until the April meeting.

8               CHAIRMAN: We need a motion to postpone.

9               MR. DYSINGER: Mr. Chairman, move to postpone  
10       Items 5 and 6 until our next regularly scheduled  
11       meeting.

12              MR. WARREN: Second.

13              CHAIRMAN: We have a motion and a second. All  
14       in favor raise your right hand.

15              (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16              CHAIRMAN: Motion carries unanimously.

17              We need one final motion.

18              MR. WARREN: Motion to adjourn.

19              MR. DYSINGER: Second.

20              CHAIRMAN: All in favor raise your right hand.

21              (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22              CHAIRMAN: We are adjourned.

23              -----

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

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and  
4 for the State of Kentucky at Large, do hereby certify  
5 that the foregoing Owensboro Metropolitan Board of  
6 Adjustment meeting was held at the time and place as  
7 stated in the caption to the foregoing proceedings;  
8 that each person commenting on issues under discussion  
9 were duly sworn before testifying; that the Board  
10 members present were as stated in the caption; that  
11 said proceedings were taken by me in stenotype and  
12 electronically recorded and was thereafter, by me,  
13 accurately and correctly transcribed into the  
14 foregoing 60 typewritten pages; and that no signature  
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the  
17 26th day of March, 2007.

18

19

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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