

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 APRIL 5, 2007

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

7 MEMBERS PRESENT: C.A. Pantle, Chairman
8 Becky Stone
9 Ward Pedley
10 Marty Warren
11 Sean Dysinger
12 Ruth Ann Mason
13 Judy Dixon
14 Stewart Elliott, Attorney
15 Madison Silvert, Attorney

16
17 CHAIRMAN: Want to welcome all of you to the
18 Owensboro Metropolitan Board of Adjustment meeting
19 this evening. Want to apologize for being just a few
20 minutes late. We're ready to start now.

21 We start our meeting each month with a prayer
22 and pledge to the flag. We invite you all if you so
23 desire to join with us.

24 With that Marty Warren will give our prayer.

25 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Again, I want to welcome you to the
meeting this evening. If you have any comments on any
of the items, please come to one of the podiums, state
your name and be sworn in by our attorney, and then

1 proceed from there.

2 With that the first item we've got is the
3 minutes of the last board meeting. They're on record
4 at the office. We don't have any problems with it we
5 don't think. With that we'll entertain a motion to
6 dispose of the item.

7 MS. DIXON: Move to approve.

8 MR. PEDLEY: Second.

9 CHAIRMAN: A motion made and a second. All in
10 favor raise your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries.

13 Next item, please.

14 -----

15 CONDITIONAL USE PERMITS

16 ITEM 2

17 2402 French Street, zoned R-4DT
18 Consider request for a Conditional Use Permit in order
19 to place a 16'x80' Class 2 manufactured home on the
20 property.

21 Reference: Zoning Ordinance, Article 8, Section 8.2
22 A10B, Section 8.4/7

23 Applicant: Carl and Tracey Kimbley

24 MS. STONE: The application is in order. The
25 property was recently rezoned to R-4DT. They are
26 requesting a sidewalk waiver on the application.
27 Brian Howard will read a brief Staff Report into the
28 record.

1 MR. ELLIOTT: State your name, please.

2 MR. HOWARD: Brian Howard.

3 (MR. BRIAN HOWARD SWORN BY ATTORNEY.)

4 ZONING HISTORY

5 The subject property is currently zoned R-4DT
6 Inner-City Residential. It was rezoned from I-1 Light
7 Industrial to R-4DT at the January 2007 Planning
8 Commissioned meeting and finalized by the Owensboro
9 City Commission in March 2007. OMPC records indicate
10 that four Conditional Use Permits have been approved
11 for manufactured homes along French Street; 2403
12 French Street - September 1986, 2406 French Street -
13 April 1999, 2508 French Street - December 1996, 2510
14 French Street - November 1989, and 2521 French Street
15 - February 1995.

16 The applicant is proposing a waiver of the
17 sidewalk requirement since there are no sidewalks in
18 the surrounding area. It does not appear that
19 sidewalks were required for the three previously
20 approved CUP's.

21 LAND USES IN SURROUNDING AREA

22 The properties to the north, west and south
23 are all zoned R-4DT and occupied by single-family
24 residences including several manufactured homes. The
25 property to the east is zoned I-2 and is across the

1 CSX railroad.

2 ZONING ORDINANCE REQUIREMENTS

3 The class-2 manufactured home site standards
4 based on the requirements of the Zoning Ordinance are
5 as follows:

6 1. A concrete or asphalt parking pad to
7 accommodate two 9'x18' spaces is required.

8 2. A minimum 10'x10' deck or patio is
9 required.

10 3. A concrete sidewalk is required, but may
11 be waived along rural roads (w/o curbs).

12 4. The driveway apron shall not exceed 40
13 percent of the lot width.

14 5. The property is required to have at least
15 three trees.

16 6. The manufactured home shall be permanently
17 installed on a permanent foundation. A poured
18 concrete or masonry block skirting wall shall be
19 constructed beneath and along the entire perimeter of
20 the manufactured home.

21 7. All wheel, trailer-tongue and hitch
22 assemblies shall be removed upon installation.

23 8. The manufactured home shall be permanently
24 connected to an approved water and sewer system when
25 available.

1 MR. HOWARD: They have addressed all these
2 site requirements in a site plan that has been
3 submitted in conjunction with the Conditional Use
4 Permit. With that I'd like to enter the Staff Report
5 as Exhibit A.

6 CHAIRMAN: Thank you.

7 Was there any opposition filed in the office?

8 MS. STONE: No, sir.

9 CHAIRMAN: Is there anyone wishing to speak in
10 opposition of the item?

11 (NO RESPONSE)

12 CHAIRMAN: Is the applicant here?

13 APPLICANT REP: Yes.

14 CHAIRMAN: Do you have anything you would like
15 to add at this time, please?

16 APPLICANT REP: No, sir.

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

19 (NO RESPONSE)

20 CHAIRMAN: Staff have any other questions or
21 comments?

22 MS. STONE: No, sir.

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

25 MR. PEDLEY: Mr. Chairman, I make a motion to

1 approve it based on finding it is compatible with the
2 neighborhood since there are similar manufactured
3 homes in the neighborhood, and it will not have an
4 adverse influence on the neighborhood. With the
5 conditions that all zoning ordinance requirements be
6 met according to the application, except Number 3, a
7 concrete sidewalk may be waived.

8 CHAIRMAN: Is there a second to the motion?

9 MR. WARREN: Second.

10 CHAIRMAN: A motion has been made and an
11 second. Any other questions or comments from the
12 board?

13 (NO RESPONSE).

14 CHAIRMAN: Any other comments from the Staff?

15 MS. STONE: No.

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

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries.

20 Next item, please.

21 ITEM 3

22 9300 KY 815, zoned A-R (Postponed at March 1, 2007
23 meeting)
24 Consider request for a Conditional Use Permit to add a
25 600 yard rifle range to an existing pistol and rifle
range.
Reference: Zoning Ordinance, Article 8,
Section 8.2K7/42
Applicant: Darrel and Rebecca Whitaker

1 MS. STONE: This was postpone from the March
2 1, 2007 meeting. The board requested that expert
3 testimony be presented regarding the safety of the
4 facility.

5 CHAIRMAN: Is the applicant here and present?

6 MR. JONES: Yes.

7 CHAIRMAN: Do you have anything else to add at
8 this time, sir?

9 MR. JONES: I do. My name is Eddie Jones. I
10 represent Darrel and Rebecca Whittaker.

11 CHAIRMAN: Interrupt you just a minute.

12 I wasn't at the last meeting so show that I
13 will not note.

14 Proceed, sir.

15 MR. JONES: My name is Eddie Jones and I'm
16 here on behalf of Darrel and Becky Whittaker.

17 MR. ELLIOTT: Let me swear you in.

18 (MR. EDDIE JONES SWORN BY ATTORNEY.)

19 MR. JONES: May I approach with a couple of
20 documents?

21 CHAIRMAN: Please.

22 MR. JONES: I'm handing you a couple of
23 letters from individuals who have some expertise in
24 rifle range. I'm also handing you a Kentucky Statute.

25 I can tell you a couple of weeks ago I visited

1 this gun range and it has substantial acreage, as you
2 know from the application. It is a pre-existing
3 operation in which there are several ranges already in
4 existence I think going from 50 yards to 300 yards.
5 This proposal would simply add one more range of 600
6 yards, which would be adjacent to the 300 yard range.
7 The same rifles will be used. The same number of
8 persons who could use the range at this time will be
9 using it. The same ammunition will be used. There
10 will be no increase in noise. There basically will be
11 no change to the operation which is existing and is
12 present today.

13 I point you to the letters from individuals
14 who know more about this business than I do. They
15 have visited the range and they are completely
16 satisfied with the safety nature of this range.

17 I also wanted to point out the Kentucky
18 Statute, which I believe is a preempted statute, and
19 has been designed by the Kentucky Legislature to
20 protect existing gun ranges.

21 You'll notice there I don't believe noise
22 should be a factor in the factor in your
23 consideration. I believe the Kentucky Legislature has
24 preempted that issue.

25 We're here to respond to any questions. Mr.

1 Fulkerson is here who also has expertise in the area.
2 I know there were some questions raised. We're not
3 quite sure exactly what questions were raised, so I'll
4 yield to the chairman. It's our commission to come
5 back and answer questions as they get presented.

6 CHAIRMAN: Thank you.

7 Do you have a list of questions that any board
8 members want to ask at this time? Do the board
9 members have any questions?

10 (NO RESPONSE).

11 MS. STONE: I might ask the attorneys
12 regarding this is being existing gun range. It is a
13 gun range that was approved previously by this body.
14 So I wasn't sure if the attorney was aware that there
15 is a previous conditional use permit.

16 MR. JONES: Yes. And I believe that we are in
17 compliance with that conditional use permit.

18 MS. STONE: No, you're not. That was one of
19 the issues at the meeting last month. So I wanted to
20 make sure you understood that.

21 MR. JONES: In what manner are we not
22 compliant?

23 MS. STONE: The conditional use permit that
24 was approved in 1994 has the range oriented a
25 different direction. So they are applying for the

1 additional rifle range, but also to legalize how the
2 original gun range was built opposite direction of how
3 it was approved on the conditional use permit.

4 MR. JONES: You want to speak to that.

5 CHAIRMAN: State your name.

6 MR. FULKERSON: Chuck Fulkerson.

7 (MR. CHUCK FULKERSON SWORN BY ATTORNEY.)

8 MR. FULKERSON: This KRS statute says,
9 "Subsequent physical expansion of the range or
10 expansion of the types of firearms in use at the range
11 shall not establish a new date of commencement of
12 operations for purposes of this section unless the
13 change triples the amount of the noises."

14 A 600 yard range will add no additional noise.
15 It doesn't change anything. The way I understand this
16 is once this range has been established prior to 1998,
17 has been in business for more than a year, anything
18 that happens inside that range is subsequent
19 expansion. Basically the range -- the state law is
20 protecting ranges to be able to change within. I'm
21 sure if there are safety concerns or anything, you
22 know, they need to be brought to attention, but my
23 understanding is this covers the ability to be able to
24 do that.

25 The reason that it's shooting the other way is

1 to me that's a safer way to shoot.

2 MS. STONE: I'm not arguing that statute. I
3 just wanted to make sure that your attorney was aware
4 that the original conditional use permit was in
5 violation.

6 MR. FULKERSON: As far as the direction that
7 it's shooting in, if the board wants to make a
8 proposal to change it the other way, I don't know we
9 couldn't look at it. I think that with the letters of
10 the people have looked at it, they would also agree
11 that that's the direction that it's in now is the
12 direction it should be in.

13 Again, we talked last month, I think when it
14 was requested, you know, I don't think it's in the
15 notes. We can't go back and prove it. It's not a
16 pointing finger issue. We were under the assumption
17 that this board wanted it changed in the other
18 direction. That's why that it was changed. Not after
19 the fact that it was approved. Just someone decided
20 to do it. It was trying to accommodate the request of
21 the feedback we got whenever it was proposed.

22 MS. STONE: I think the board has the
23 authority to approve it as it is if they're satisfied
24 that that's an appropriate use on that property. So
25 that's why they're asking for additional information

1 regarding the safety.

2 MR. FULKERSON: We appreciate it..

3 MR. JONES: I guess I would point you to the
4 letters. Having been on the site, I don't see --
5 given that location, there's certainly no residence
6 behind the berms as they exist now. I think if it
7 were opposite -- I don't know that there would be a
8 change in the safety one way or the other given the
9 direction of the fire.

10 CHAIRMAN: I don't think what we're trying to
11 inform you that it's good or bad the way it is. We
12 just want you to know that your original asking or
13 design that you give us were different from what you
14 filed with us at the original time.

15 MR. JONES: I don't know that I clearly
16 understood that. Thank you for letting me know.

17 CHAIRMAN: Any other comment from the Staff?

18 MR. ELLIOTT: State your name, please.

19 MR. MISCHEL: Jim Mischel.

20 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

21 MR. MISCHEL: I'd just like to clarify just
22 for the record why they're proposing or trying to
23 amend this application.

24 It's not only the direction of the shooting,
25 but the original application had the back part to be a

1 trap and skeet shooting area back there. That has
2 been changed to a rifle range. I think right now they
3 want a 600 yard rifle range. It went from trap and
4 skeet shooting to a 600 yard rifle range.

5 That's one of the reasons why we're here. I
6 just wanted to put that on the record. Thank you.

7 CHAIRMAN: Staff have any other comments?

8 (NO RESPONSE)

9 CHAIRMAN: Board members have any other
10 questions or comments?

11 (NO RESPONSE)

12 CHAIRMAN: Anyone else have any comments to
13 add on the item for or against?

14 MR. KIRTLEY: Robert Kirtley. I'm attorney
15 representing the Haydens. We were here last month in
16 opposition of this and we're again in opposition.

17 (MR. ROBERT KIRTLEY SWORN BY ATTORNEY.)

18 MR. KIRTLEY: At this time I would like to
19 hand you a little summary of what I found from last
20 month, nothing of which has been addressed tonight by
21 the applicant or applicant's son-in-law.

22 I made it simple. It's four exhibits. Give
23 you a second and you can go down the thing with me.

24 If I may calling out of order, I'd like to
25 call Frank Hayden as a witness to testify to certain

1 conditions out there, if that's all right with the
2 board. Does it work that way?

3 All right. Mr. Hayden.

4 CHAIRMAN: State your name.

5 MR. HAYDEN: My name is Frank Hayden.

6 (MR. FRANK HAYDEN SWORN BY ATTORNEY.)

7 MR. KIRTLEY: May I question the witness?

8 I'm showing you this diagram that's Exhibit A.
9 Do you recognize it?

10 MR. HAYDEN: Sure.

11 MR. KIRTLEY: The property described there, do
12 you own property all the way around that?

13 MR. HAYDEN: I own all the way around that
14 property. The 20 acres is where the gun range is. I
15 own in front of it, beside it. I own about 1,000
16 acres around that area.

17 MR. KIRTLEY: Was this strip mined, the whole
18 thing, your property and everything?

19 MR. HAYDEN: Everything has been strip mined.
20 There's rocks all on top of the ground. We use it for
21 pasture land. I have cattle running over there.
22 We've got fences around this area. We have to check
23 these fences all the time and we don't like people
24 shooting at us when we're checking the fences. I
25 don't like them shooting at my cattle. I've got

1 probably 200 head of cattle around that farm, in front
2 of that gun range.

3 MR. KIRTLEY: Are you saying though there's
4 large rocks and stuff throughout the whole property?

5 MR. HAYDEN: If a bullet hit it, it could go
6 no telling where.

7 MR. KIRTLEY: That's all.

8 MR. HAYDEN: I can't so no more.

9 CHAIRMAN: Any other comments?

10 MR. FULKERSON: Yes, I do. It's suppose to be
11 a pistol and rifle range, right? That's what they've
12 got now, pistol and rifle range. Pistol and rifle
13 range, they've got signs up there, nothing larger than
14 a .22 caliber and handguns. They've got that sign up
15 there on the property.

16 MS. STONE: Well, they're requesting -- that
17 hasn't been approved yet. They're requesting the 600
18 yard rifle range at this meeting tonight. So they
19 haven't actually started that use on the property yet.

20 MR. FULKERSON: He made a statement awhile ago
21 that there'd be no added noise or anything like that.
22 I've got 60 signatures here of people around that that
23 says it sounds like a war zone.

24 CHAIRMAN: Are you saying that this is a new
25 noise?

1 MR. FULKERSON: No. It's been there all the
2 time. The noise is going to increase. That's why
3 they want a 600 yard range for high power rifles. I
4 mean they're not living up to what they've agreed
5 anywhere and they're not agreeing to anything they're
6 proposed to do.

7 CHAIRMAN: Any other comments?

8 MR. FULKERSON: That's my story. I'm sticking
9 to it.

10 CHAIRMAN: Thank you.

11 MR. KIRTLEY: If I may, having gotten that
12 testimony about there being rock and gravel, reclaimed
13 land. Now, if you'll look at the points I've pointed
14 out here, point Number 2 of this thing, the property,
15 and I did this in yard to give you have some idea. If
16 you look at Exhibit A that's there, the long line
17 coming from 815 is a total of 961 yards. I use that
18 for a reference for velocity and distance of shells or
19 weapons. So this property is 961 yards long. It's
20 120 yards wide at its widest point and it's cut out.

21 Number 2, the applicant does not own this
22 property. That's Exhibit B. Four months after you
23 gave this approval in '94, they put it in the Rock,
24 appropriated named, Rockhill Gun Range Club, or I
25 guess the topography there. That's Exhibit B. It

1 still remains in that name and that ownership by that
2 deed.

3 Now, Exhibit C. That corporation is in default
4 with the State of Kentucky. It was dissolved in
5 November 2004. That is Exhibit C and D.

6 Now, all I'm simply saying is the applicant
7 isn't the applicant and ownership of this. The owner
8 is a dissolved corporation.

9 Now, last month Mr. Whittaker's son in-law
10 spoke to the idea of limited liability. That's a
11 perfect limited liability. You have nobody liable at
12 all for anything that goes on there.

13 The Haydens are not concerned with noise.
14 They're concerned with distance traveled by these
15 bullets.

16 Now, here's the thing about it. Point 3 that
17 I raised here why it should be denied, they have never
18 exercised a Conditional Use Permit in 1994 because
19 they took it on themselves to build it totally
20 non-consistent with it. So they haven't exercised it.
21 It's going in the wrong direction.

22 Now, your law says, and I set it out there, if
23 they don't exercise the conditional use within one
24 year, it lapses back. They have no conditional use
25 out there at this time, based on their own acts.

1 They came at the last meeting and said, board
2 member told them that this is the way to go. They
3 presented nothing to that here tonight. In fact, they
4 dodged that. In fact, I think Jim -- that it was
5 mentioned about the testimony that was given at that
6 and Mr. Pantle was the one that questioned why it was
7 going that way and it was because of the topography.
8 That they had to shoot it to go uphill so that the
9 ballistics would not kill people the other way or
10 danger other people.

11 Now, I can't make a copy of this. I'm now
12 member - don't take that wrong - of the NRA. I've got
13 the NRA Range Source book. Now, I am going to pass
14 this around because this is my copy and I don't have
15 copyright permission to make copies of it. I'd like
16 to show you, in case you're not familiar. These are
17 in yards, the distance that these bullets will travel.

18 A .22 Remington will travel 1.42 miles or
19 2500 yards. Two and a half times the length of this
20 property. That's the smallest thing here. None of
21 these will travel less than 3 or 4,000 yards when
22 they're shot.

23 What they're talking about, and they never
24 talk about noise the last time. I don't know where
25 that came from. It's safety. These bullets ricochet,

1 contrary to what Mr. Fulkerson said last month.
2 Hollow points may shatter. Steel points may shatter,
3 but led bullets they ricochet. You know why? Because
4 they're warned about it.

5 Here, I'd like to show this and have you look
6 at this. I can't make copies so you have to circulate
7 it.

8 This is out of the range book. It goes about
9 what you should do regarding having an outdoor range.
10 I wish you'd just look at this.

11 The material, the ground between the targets
12 and firing line must be free of any harden surface,
13 smooth surface, walkways, etcetera. This is 3.043 of
14 this range manual. Material: The ground between the
15 target and firing line must be free of any harden
16 surface, smooth surface, walkways, etcetera, such as
17 rocks or other ricochet producing materials. The
18 surface may be sodded or planted with low growing
19 ground cover.

20 Now, this place is filled with rock, small
21 border type thing because it was a strip mine. It's
22 been recovered. Mr. Hayden testified to that. Nobody
23 has refute that.

24 Now, you have letters of people last month
25 that said had aerial view of this. Now, how can an

1 aerial view by the state police, if in fact that took
2 place, say how you can possibly properly conduct an
3 outdoor range? I'm simply saying that this was done
4 '94 wrong. It has never been done. They were going
5 to be cited for not being in compliance to that
6 conditional use permit because they built it the other
7 way, the way they wanted to. Not the way you approve
8 it.

9 So by law under that statute I cite there,
10 they've never exercised this permit. Everything
11 stops. This should be denied and they should be
12 ordered to cease and exist because they don't have a
13 conditional use permit for the shooting range of
14 anything they've put in there. I'm just simply saying
15 that NRA -- I'm not against NRA.

16 Anyway, these people take shooting ranges
17 seriously. They say you ought to have architects.
18 You ought to have engineers because their primary
19 purpose throughout this book is the safety of the
20 people who use the range and the safety of the people
21 around the range.

22 Now, if you look further on that Exhibit A,
23 this path to the Hayden property is a whole roll of
24 houses. They don't show on this. They're not two
25 miles away. They're just right straight over on the

1 other road there. There's maybe 14 houses right
2 there.

3 Now, when a ricochet ricochets, I mean Mr.
4 Hayden testified last month and again today about the
5 bullets ricocheting. Sound is not an issue. They
6 live out in the boondocks. I don't mean to be
7 disrespectful there.

8 What I'm saying to you is that this is a very
9 dangerous sport that needs to be safely authorized.
10 Nothing presented by the applicant, even though
11 they're not the proper applicant. You've got to
12 defunct corporation that is "owner" of this piece of
13 property. That if a person goes out there and shoots
14 their guns and someone gets killed, well, get that
15 corporation, I guess. Well, it's defunct. You don't
16 have to buy insurance policies for that. You've got
17 it self-made just by letting it dissolve. Now, with
18 that that's secondary issue.

19 The more primary issue is safety of the public
20 and everyone here. This is very poorly laid out.
21 They did not bring in somebody that would say -- just
22 these letters. I don't know what they are, but if
23 they say they didn't see any rock, I question the
24 credibility of their letters.

25 I'm simply saying on behalf of the Haydens and

1 the 60 other people who joined in with this, this is
2 not the Hayden versus the Whittakers. This is the
3 community there's wanting something safe and it's not
4 noise. I don't even know where noise came from.
5 Because the first time I heard it was tonight because
6 some statute about rights of noise. The noise isn't
7 it. It's the safety of ricocheting and the way it's
8 properly laid out.

9 Do you realize that a 600 yard range there's
10 only 300 yards. That's it. It's 961 yards long. You
11 have a 600 yard range and you're going to contain this
12 within that property shooting at it.

13 I think it should be denied. If they want to
14 come and bring in some engineering experts or
15 something to say that they meet safety standards at
16 minimum set by the NRA, I think that's an appropriate
17 body. I'll give them my book. Transfer my right to
18 it if they'd like.

19 I really believe this should be denied.
20 Further you should make a finding, they don't even
21 have the original conditional use because they never
22 exercise it. Exercising in the wrong direction
23 doesn't mean exercising it. It's just not there.
24 Thank you.

25 CHAIRMAN: Any other comments from the

1 opposition?

2 Come forward and state your name, please.

3 MR. ELLIOTT: State your name, please.

4 MR. DARLING: Bob Darling.

5 (BOB DARLING SWORN BY ATTORNEY.)

6 MR. DARLING: I don't know if this board
7 remembers, but about three or four years ago Owensboro
8 Neighborhood Alliance was in opposition to an indoor
9 gun range that was planned for Owensboro.

10 We brought up the opposition of led
11 contamination. I'd just like that mentioned in the
12 record tonight. I haven't seen anything discussed or
13 talked about led contamination on gun range. This, of
14 course, is an outdoor gun range, but the federal
15 government is shutting down a lot of their gun ranges
16 because they have found led contamination. So I think
17 that's one issue that should always be brought up when
18 gun ranges are mentioned. That is what is going to be
19 done about any led contamination, how it's going to be
20 checked, what's the safety on a gun range for those
21 issues.

22 This board voted against the gun range, indoor
23 gun range when it was brought before you. I just
24 think that should always be mentioned whenever gun
25 ranges are brought up.

1 CHAIRMAN: Thank you.

2 MR. SILVERT: I just need to clarify a
3 statement that was made last month by myself.

4 The issue was brought up by Robert Kirtley.
5 The question was whether or not the proper applicant
6 was bringing this application.

7 At that point this board learned for the first
8 time that in fact Rockhill Gun Range, Inc. was in bad
9 standing and had been dissolved and had been
10 administratively dissolved. The question was whether
11 or not Rockhill Gun Range having also been the grantee
12 of a certain deed regarding this property was the
13 appropriate applicant. Of course, the question is
14 whether or not the person who signed the applicant is
15 the true successor and interest to a dissolved
16 corporation. If they are, the shareholder then -- I
17 do want to clarify that that property would then flow
18 to the remaining shareholders under our rules of how
19 title passes. It's very possible that this
20 application is in order. We just don't know. We do
21 not know if the successors and interest to Rockhill
22 Gun Range at this time were the applicants. That is a
23 question that is before the board. I just wanted to
24 bring that up and clarify that from last month.

25 CHAIRMAN: The applicant come forward, please.

1 MR. JONES: I can tell you that Darrel and
2 Becky Whittaker are the owners and members of that
3 LLC. Of course, even your brochure that I picked up
4 as I came in the door says that a conditional use
5 permit runs with the land. When Darrel and Becky get
6 their permit, it would run with the land and
7 transferred to the LLC. If the LLC is defunct, I
8 think you're right. Then it would revert back to
9 Darrel and Becky. I don't see that as an issue that
10 should prohibit this board's action, but certainly
11 we'll fix that issue. The LLC needs to be reinstated
12 we can get that done and will.

13 I responded noise, well, I heard the petition.
14 If you read the statute with regards to noise, first
15 of all, you have to be adjacent land, you have to live
16 next to this to even have standing in the State of
17 Kentucky to object to the noise. This change or
18 testimony to you is it will not increase noise three
19 times, which is what the statute would need to be in
20 order for noise to be considered.

21 If a rifle can shoot 300 yards, it can also
22 shoot 600 yards. So we're dealing with the same
23 safety issues at 300 yards as we're dealing at 600
24 yards.

25 This range is open a couple days a week, two

1 days a week. Prior to this application, there just
2 hasn't been any complaints. What's interesting about
3 this legal issue is that -- I'm standing here
4 pontificating with a roomful of lawyers. I don't know
5 that if they decided to close the gun range that they
6 couldn't invite all their friends out to shoot guns.
7 I think the second amendment might actually protect
8 that. Actually we're safer because of the way they're
9 doing it and providing somewhere to shoot guns.

10 What I'm saying is if you have enough property
11 and you want to invite your friends over to shoot guns
12 in your backyard, you can do that.

13 In this matter, we are attempting to provide a
14 safe place for the citizens of Daviess County to do
15 that.

16 The firing berms are located the way they are
17 because of the way the roads are located. Because if
18 we did it opposite, it would be firing towards a road
19 and it only makes sense to do it the way they've done
20 it.

21 MR. FULKERSON: The property layout here on
22 who owns around the range, I don't know how you would
23 do exact percentage, but Mr. Hayden would own the
24 right. If you're facing away from 815, he would own
25 the right side, the left side and the rear end.

1 Nothing on the 815 side.

2 Also signatures or whatever complaining to
3 noise, it sounding like a war zone, anyone that lives
4 on a property adjacent to that has moved there years
5 after that range was there. It's like moving next to
6 a hog farm and complaining that it stinks. They took
7 the initiative to do that. To complain later is -- we
8 don't want it to be loud. We don't want to cause them
9 any inconvenience, but they should have taken that
10 into consideration when they moved there.

11 It says in the statute that you have to live
12 on the property adjacent to adjoining that facility in
13 order to have a right to complain.

14 To answer Mr. Kirtley's question, and
15 apologize for not giving you one of these. You asked
16 that it be NRA approved safety-wise. The second
17 letter is from Jim Higginbotham, Combat Weaponcraft
18 Specialist, Kentucky National Guard, who is a
19 Certified NRA Basic Rifle, Pistol, Shotgun and Muzzle
20 Loader Instructor, graduate of the NRA Law Enforcement
21 Firearms Instructor Development School, FBI Firearms
22 Instructor School, American Pistol Institute (now
23 Gunsite) Provost and Senior Expert, Officer Survival
24 Instructor Grayson County Sheriff's Office, and
25 Weaponcraft Instructor, Kentucky National Guard.

1 He says, "I have looked over this range and in
2 the past conducted training on this range. In my
3 opinion there is nothing about the layout or nature of
4 the range that is unduly dangerous to people or
5 property outside the boundaries of Mr. Whittaker's
6 property as compared to any other NRA approved range
7 in the country."

8 Also on the first letter is from Robert Purdy,
9 Assistant Professor, Criminal Justice. He conducts
10 the weapon training classes at the range.

11 In order to be able to do that, because he is
12 a professor and with the Owensboro Community &
13 Technical College, he notes here that "I have
14 conducted firearms (and other) classes at this
15 location. This required the approval of first the
16 University of Kentucky and later KCTCS authority. You
17 may trust me, if there were issues relating to safety,
18 this approval would not have been made. Additionally,
19 I have assisted the local LE Explorers Post with
20 presentations at this location. I am aware of other
21 groups, military, Law Enforcement, 4H, and others who
22 have used this range."

23 That would require the same stringent, test
24 that they have to have approved for their liability to
25 be able to use it. It's definitely a safe place.

1 I should probably take these letters to him.
2 I think this will ease his mind.

3 MR. JONES: I put issue with the regard to led
4 contamination. That is an issue with indoor fire
5 ranges, but with the outdoor fire range that is not a
6 regulated issue.

7 CHAIRMAN: The applicant have any other
8 comments?

9 (NO RESPONSE)

10 CHAIRMAN: Any other questions of the
11 applicant at this time, board or staff?

12 (NO RESPONSE)

13 CHAIRMAN: Okay, Mr. Kirtley.

14 MR. KIRTLEY: Going back previously to this
15 ownership.

16 Then why did the applicant submit the prior
17 deed and not recognize the deed that is the true owner
18 of this? They put the deed in. They purchased it in
19 '91, I believe, and not this or prior deed, and not
20 the deed of record. That was the deed of record for
21 some ten years now.

22 The only reason why I'm saying, noise has
23 never been -- Mr. Pantle, you weren't here last month.
24 Noise has never been an issue. Never raised until
25 tonight by the applicant about complaining. A deer

1 rifle is the common shooting. 30-06 I believe is what
2 is used to shoot deer. They have a range of 3.12
3 miles. 3.12 miles or 5500 yards.

4 Now, like I say 961, that goes five times,
5 over five times or the length of that range.

6 Now, in that putting up safety berms, putting
7 up all these other things are critical for the safety
8 of the people that shoot. You have range cabins. You
9 have monitors that come out there, if in fact they do.
10 What I'm saying is the two people that talk I believe
11 they're pistol shooting for qualification. I don't
12 think you use a rifle for a carry conceal. It would
13 be pretty hard to do, at least for me it would.

14 What I'm saying is that those are pistol shot,
15 50 yard thing. A lot less velocity. A lot less
16 distance they travel. The point is you've got to
17 recognize these people arrogantly without right
18 reversed what you approved. So they have really never
19 been properly approved. They don't have timing grade
20 here.

21 In 1994 they went about their business and
22 built it the other way. Now, I'm sorry, but the point
23 of fact they have never exercised the '94 conditional
24 use permit period. Exercising it wrong doesn't mean
25 exercising it. You have to exercise it properly. So

1 what we're requesting is you deny their application
2 and find that they no longer even have the original
3 condition. They never did it. It failed by operation
4 of statute. They said it would be done in one year.
5 Thank you.

6 CHAIRMAN: Do you have any other --

7 MR. JONES: I served at Fort Campbell for
8 three years. I fired on every firing range down
9 there. You simply cannot judge your firing range by
10 the range of a rifle. If you did so, there just
11 wouldn't be enough real estate for Fort Campbell. You
12 make it safe by the berms. That's how every firing
13 range does it. I bet you can't find a rifle range in
14 this country that says, well, if a rifle shoots three
15 miles, we've got to have a 3 mile range. That's just
16 not practical and it's not what's required and it's
17 not what is done in the industry. This is a safe
18 range.

19 I just have to say, I know Darrel and Becky
20 Whittaker and there's nothing arrogant about them.
21 They are humble people and they certainly did not mean
22 to deceive this board with regard to the deed or
23 ownership of this property.

24 Mr. Kirtley knows very well that if there's
25 some liability associated with this range, they are

1 not going to somehow evade liability by the way they
2 have structured this ownership. Every lawyer in this
3 room knows that.

4 Thank you for your time and consideration.

5 MR. KIRTLEY: One other thing about liability.
6 We have a \$10 million Superfund at Maceo that the
7 owner of that corporation has void any financial
8 responsibility since the Superfund came in and paid
9 millions of dollars.

10 CHAIRMAN: Does the board members have any
11 questions of either the applicant or the opposition or
12 did you get your questions answered from last time?

13 MR. PEDLEY: Mr. Chairman, I'd like to bring
14 Mr. Fulkerson back to the microphone. I have some
15 questions.

16 Mr. Fulkerson, when this permit was issued in
17 1994, did you construct it according to the plat that
18 you submitted, and was it done according to the plat
19 we're looking at today, or did you reverse it?

20 MR. FULKERSON: I was not in affiliation with
21 that range in 1994. It was 1997 before I married into
22 the Whittaker family.

23 It was my understanding from Darrel that
24 whenever they asked, talked to Planning & Zoning, they
25 came out and did a look. They said, we think we would

1 rather you shoot in this direction. Darrel's original
2 plan was to shoot in the other direction. He's
3 adamant about the fact that it was Planning & Zoning
4 that suggested you shoot the other way. He just opted
5 to turn it around. It's not an issue to turn it
6 around now.

7 The way the statute reads it says,
8 "subsequently" -- the way I'm reading this, the way
9 I'm interpreting this is no matter which way the range
10 faces, that the statute is protecting existing rifle
11 ranges prior to 1998 that have been in business for
12 one year to allow them the opportunity to change
13 things within that range. However they please. I'm
14 not saying if it added a handicap range, you wouldn't
15 need to put handicap rail. I'm not saying that this
16 board does not have any say in the matter. I'm saying
17 that they're protecting these ranges because if
18 they're there, to me someone needs to complain prior
19 to it being there. Not after it been there for a
20 year, been an existing business. To me that's what
21 the Kentucky state law is saying. That once this
22 range has been approved, you know, that Darrel can add
23 a 600 yard berm, a 500 yard berm, a 300 yard berm.
24 May be able to turn around and shoot in the opposite
25 direction. Now, if someone has an issue, I'm sure

1 we'd be up here.

2 The way I'm reading this, "expansion of the
3 range or expansion of the types of firearms in use at
4 the range shall not establish a new date of
5 commencement of operations."

6 It's okay to change it. You may see a reason
7 you need to change something to be safer, as well as
8 to change it to grow or accommodate different people's
9 the way they want to shoot. Someone may move on a
10 hill or something. You may feel uncomfortable, even
11 though the berm is there, shooting in that direction.
12 Someone did that.

13 The rifle range needs the opportunity to be
14 able to change it. I think that's what this is
15 providing.

16 MR. PEDLEY: The question is: Did you submit
17 a plat in your application and was it approved based
18 on your plat and the design and was it constructed
19 according to that plat?

20 MR. FULKERSON: I understand the question. I
21 do not have a copy of the original plat. I do not
22 know what the original plat looks like. It was not
23 even brought to my attention until the last meeting
24 that perhaps the original plat had the rifle range
25 originally planned as shooting towards the road.

1 Now, when it came to my attention, I asked and
2 Darrel said that, yes, sir, he thought that whenever
3 they drew that up originally, with the aid of Planning
4 & Zoning, that it was drawn that way. At the request
5 of Planning & Zoning, it was turned in the opposite
6 direction for safety reasons. That's why he did it.

7 MR. PEDLEY: Let me bring Mr. Mischel up.

8 MR. JONES: We certainly will admit that we
9 are firing away from 815.

10 MR. FULKERSON: Correct.

11 MS. STONE: I do have a copy of the original
12 conditional use permit, Mr. Pedley, if you'd like to
13 see it.

14 MR. PEDLEY: It's in exact reverse. What we
15 have before us today, is exact reverse of what you
16 submitted for a conditional use permit. I don't know
17 who in Planning Staff or Planning suggested that you
18 turn it around.

19 MR. JONES: I understand.

20 MR. PEDLEY: Was it resubmitted before this
21 board to be amended and altered? That's why I want to
22 bring Mr. Mischel up. See if he has any knowledge of
23 anyone requesting that it be turned around.

24 MR. MISCHEL: Jim Mischel.

25 No. The original application has not been

1 amended up to this point. At the time that I met with
2 Mr. Whittaker at his gun shop, I showed him the plat
3 that was approved back in '94, '95.

4 MS. STONE: '94.

5 MR. MISCHEL: '94. He admitted at that time
6 at his gun shop that it was not being operated that
7 way. We talked about the back of that property was
8 originally approved for a skeet and trap shooting. I
9 asked him if that was occurring. He said, no, it's
10 not. The reason for that because Daviess County
11 started a trap and skeet shooting club up on the
12 county property. Since they had that in operation,
13 there was no need for it here. So they decided to
14 change that into a rifle range. I made him aware it
15 wasn't in compliance at that time. That's why they
16 turned in a new application to file to show a rifle
17 range back there and to show it going the direction
18 it's going. From '94 to the present, it has not been
19 amended.

20 MR. PEDLEY: After a period of one year, the
21 zoning administrator, isn't it correct, on a
22 conditional use permit that it should be inspected and
23 see that it is in compliance according to the
24 conditional use permit?

25 MR. MISCHEL: Yes. If the use is not acted

1 upon within one year, then it loses that, if it was
2 approved on an approval plat, and would come back
3 before the board. That's with any conditional use
4 permit.

5 MR. PEDLEY: If it were inspected and it was
6 not according to the plat and the permit, then would
7 it be in compliance or would it need to come back to
8 this board for amended?

9 MR. MISCHEL: It would have to come back in
10 front of the board to be amended.

11 MR. PEDLEY: And that has not been done?

12 MR. MISCHEL: That has not been done.

13 MR. PEDLEY: So at present we don't have a
14 valid conditional use permit.

15 MR. MISCHEL: That's the condition, that they
16 did not act on it. So I would say I would turn that
17 over to our attorney. I would say if they reversed
18 it, then possibly it's out of compliance.

19 MR. ELLIOTT: That's correct.

20 MR. PEDLEY: So it's not a valid permit?

21 MR. ELLIOTT: No, it's not.

22 MR. PEDLEY: So at this point we're not
23 amending the permit. We're finding a new conditional
24 permit based on submitted plat, which is exact
25 opposite direction as originally.

1 MR. MISCHEL: Yes, with the addition of a 600
2 yard rifle range.

3 MR. PEDLEY: Right. That's what we're
4 considering. Not amending an old conditional use
5 permit. New conditional permit.

6 Would that be correct, counselor?

7 MR. ELLIOTT: Yes.

8 MR. PEDLEY: Is this a safe application? Will
9 this meet the standards of a safe application for a
10 gun range? You cannot look at this plat and determine
11 how long that berm is or how high that berm is,
12 whether you're shooting down on it or whether you're
13 shooting up on it.

14 MR. MISCHEL: You couldn't tell by the plat.
15 I think you would need somebody with some authority in
16 that area. Either an engineer that's set these ranges
17 up before.

18 MR. PEDLEY: I don't think we have that before
19 us today.

20 That's all I have, Jim.

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

23 (NO RESPONSE)

24 MR. JONES: I may be misunderstanding what it
25 is that he wanted at the last meeting. If you want me

1 to have somebody live here who has inspected that
2 range and knows what they're talking about, tells us
3 that's the safest place to do that, I will come back
4 at the next meeting with an expert witness who has
5 been there and inspected it.

6 MR. PEDLEY: That's what was asked for at the
7 other meeting. We wanted an expert in this field to
8 testify that this is a safe range.

9 MR. JONES: We made an attempt to do that with
10 the letter. If you want something more, I want to
11 give you all the information that you want before we
12 make this decision.

13 MR. PEDLEY: We need to satisfy the safety
14 issue of Mr. Hayden and all the residents in that
15 area. This is a very serious safety issue. Once
16 someone is dead, you can't go back and undo it. This
17 is very serious. I'm not prepared to approve this or
18 disapprove this tonight.

19 MR. JONES: I would ask you to table it. I
20 understand what you want now. I'll come back with
21 what you want, the information you want.

22 MR. PEDLEY: I'm going to make a motion, Mr.
23 Chairman, to postpone this for another 30 days to get
24 in more information.

25 CHAIRMAN: Is there a second to the motion?

1 MS. DIXON: Second.

2 CHAIRMAN: Any other comments or questions
3 from the board?

4 (NO RESPONSE)

5 CHAIRMAN: Hearing none all in favor to
6 postpone this until the next board meeting raise your
7 right hand.

8 (ALL BOARD MEMBERS PRESENT - WITH MR. PANTLE
9 NOT VOTING AND THE ABSENCE OF MR. DYSINGER - RESPONDED
10 AYE.)

11 CHAIRMAN: Motion carries.

12 Next item, please.

13 (MR. SEAN DYSINGER JOINS MEETING AT THIS
14 TIME.)

15 -----

16 VARIANCE

17 ITEM 4

18 8757 KY 2830, zoned I-1
19 Consider request for a Variance to waive the
20 requirement for a six foot tall fence and one tree
21 every 40 linear feet along the north and south
22 property boundary as required between industrially and
23 residentially zoned property.

24 Reference: Zoning Ordinance, Article 17,
25 Section 17.3111

Applicant: Beech Hill Enterprises, Ann W. Henderson.

MS. STONE: This application is in order and
ready for your consideration.

You have in your packet a Variance Staff

1 Review. The Staff Review states that there are
2 special circumstances on this property that don't
3 generally apply to other property in this same zone in
4 that the lot is typically smaller than most industrial
5 applications. It has a small building that is used
6 for an embroidery shop. There is not any outdoor
7 display or storage on the property. The applicants
8 also own the property to the south where the fencing
9 would be required on that one side.

10 The Staff made a recommendation that it would
11 not adversely affect the public health, safety or
12 welfare; it would not alter the essential character of
13 the general vicinity; would not cause a hazard or a
14 nuisance to the public; and would not allow an
15 unreasonable circumvention of the requirements of the
16 zoning ordinance, with the conditions that no outdoor
17 storage or display shall take place on the subject
18 property and that a three foot landscape screening row
19 of bushes shall be planted along the back parking lot
20 area where it's visible from US 60 East.

21 With that it's ready for your consideration.

22 CHAIRMAN: Any opposition in the office?

23 MS. STONE: No, sir.

24 CHAIRMAN: Is there anyone wishing to speak in
25 opposition of this item?

1 (NO RESPONSE)

2 CHAIRMAN: Is the applicant here at this time?

3 APPLICANT REP: Yes.

4 CHAIRMAN: Do you have anything you would like
5 to add at this time?

6 APPLICANT REP: No.

7 CHAIRMAN: Board members have any questions of
8 the applicant?

9 (NO RESPONSE)

10 CHAIRMAN: Staff have any comments or
11 questions?

12 MS. STONE: No, sir.

13 CHAIRMAN: Hearing none I'll entertain a
14 motion to dispose of the item.

15 MS. MASON: Mr. Chairman, I move for granting
16 this variance. My Findings of Fact it will not
17 adversely affect the public health, safety or welfare;
18 it will not alter the essential character of the
19 general vicinity; it will not cause a hazard or a
20 nuisance to the public; and it will not allow an
21 unreasonable circumvention of the requirements of the
22 zoning regulations. With the conditions that no
23 outdoor storage or display shall take place of the
24 subject property and a three foot tall row of bushes
25 shall be planted along the back of the parking lot

1 where facing US 60 East.

2 CHAIRMAN: Is there a second?

3 MR. DYSINGER: Second.

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

7 (NO RESPONSE)

8 CHAIRMAN: Staff have anything else?

9 MS. STONE: No, sir.

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

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 Next item, please.

15 ITEM 5

16 2023 West Second Street, zoned I-2
17 Consider request for a Variance to reduce the fence
18 height as required around junk or salvage yards from
19 eight feet to six feet.
20 Reference: Zoning Ordinance, Article 17,
21 Section 17.3111
22 Applicant: Nina B. Cambron

23 MS. STONE: The application is in order and
24 ready for your consideration.

25 We do have a Staff Report. The Staff found
that there are no special circumstances in this zone
that make it different than other properties in the
same zone. The property was rezoned in 2001 to I-2.

1 It went through the process for a conditional use
2 permit and a variance to operate these storage of
3 vehicles at that location.

4 At that time I guess the 6 foot fence was an
5 existing fence. It was presented that he buffering
6 was already installed. It was found out through a
7 complaint in the office that that buffering is only a
8 6 foot fence instead of an 8 foot fence. So they were
9 asked to be brought into compliance with the zoning
10 ordinance. Jim Mischel had talked to them several
11 times. They decided they wanted to ask for a variance
12 from that application.

13 The complaint that came into the office
14 originally was that the stacking of the vehicles was
15 higher than the 6 foot fence that was surrounding the
16 property.

17 Also there were other uses that were occurring
18 on the property this were not part of the conditional
19 use permit.

20 Mr. Mischel has talked to them about that and
21 they are eliminating those other uses and it will just
22 be the storage of vehicles, which is what their
23 conditional use permit allowed them to do.

24 We have made a recommendation for denial of
25 this application. It may adversely affect the public

1 health, safety or welfare; would not alter the
2 essential character of the general vicinity; could
3 cause a hazard or a nuisance to the public. The
4 recommendation is for denial.

5 We do have two letters that have been
6 submitted in writing in opposition of granting this
7 variance. Would you like me to read them into the
8 record?

9 CHAIRMAN: Read them into the record.

10 MS. STONE: One is dated today, April 5, 2007,
11 to the Owensboro Metropolitan Board of Adjustment.

12 "To Whom It May Concern: This is a formal
13 objection to the variance request to lower the
14 standard height of fences around junk or salvage yards
15 from 8 feet to 6 feet. An 8 foot fence is necessary
16 to block the public's view of unsightly junked
17 vehicles.

18 "The property located at 2023 West Second
19 Street is unkempt. The grass is sparse, weedy and
20 unmowed. The shrubs and trees have not been trimmed.
21 The shrubs and weeds are encroaching over the public
22 sidewalk. This property is located across the street
23 from my business, Owensboro Body Shop.

24 "Mr. Harry Pedley and I take pride in the
25 appearance of our property in the 2000 block of West

1 Second Street. Lowering the height of the fence
2 around the salvage yard would detract even more from
3 the esthetics of the neighborhood.

4 "Thank you for your time.

5 "Margaret C. Cambron, Owner, Owensboro Body
6 Shop, 2016 West Second Street, Owensboro, Kentucky
7 42301."

8 The other letter is dated April 2, 2007.

9 "In response to the hearing set for April 5,
10 2007, concerning the proposal made by Nina Cambron,
11 concerning property at 2023 West Second Street.

12 "I, Harry Pedley, own and operate Pedley's
13 Garage, Inc. for the past 40 years plus at 2017 West
14 Second Street. I added on to my business in the year
15 1998 and was required to landscape to meet certain
16 requirements enforced by the City of Owensboro.

17 "I am opposed to variance of a 6 foot fence
18 versus a 8 foot fence. The property at 2023 is being
19 used as a salvage yard and is unsightly, both on the
20 outside of the fence and also on the inside of the
21 fence. The property is not being maintained. The
22 property has been crushing junked cars and posing a
23 danger to my property by piercing holes in gas tanks
24 and draining gasoline on site.

25 "I have spoke to Nina Cambron several times

1 concerning this issue. I was willing to allow her to
2 have access to my fence to add 2 feet to my fence
3 instead of constructing a new one.

4 "Now I have been informed that she is
5 requesting a variance.

6 "Also, I have mentioned that a guard rail be
7 placed against my building to prevent vehicles from
8 butting up against my building. This has not been
9 taken care of as of this date.

10 "Please take note that I am strongly against
11 the variance. I take pride in my property and do not
12 want to see the property beside me looking like a
13 salvage yard.

14 "Sincerely, Harry Pedley, President of
15 Pedley's Garage, Inc."

16 The uses that he's talking about in this
17 letter, crushing junk cars and piercing the gas tanks,
18 we believe has been discontinued on the site.

19 CHAIRMAN: They need to be put in the record.

20 MR. PEDLEY: Mr. Chairman, I need to
21 disqualify myself on this item.

22 CHAIRMAN: So noted.

23 Is there any other opposition or comments in
24 the office?

25 MS. STONE: That's all.

1 CHAIRMAN: Is anyone here this evening
2 speaking in opposition of this item?

3 Let me get the applicant first. I just want
4 to see if there's anyone here.

5 Does the applicant have anything you would
6 like to add at this time?

7 MR. SILVERT: State your name, please.

8 MR. NORRIS: Wilbur McDonald Norris, Jr.

9 (MR. WILLIAM NORRIS SWORN BY ATTORNEY.)

10 MR. NORRIS: I don't understand Margaret's
11 objection to the variance request. My hearing is not
12 all that good. I couldn't hear the reasons for her
13 objection. I did hear junk yard. It's not a junk
14 yard. It never has been a junk yard. Presently it's
15 used for vehicle storage and repair. When the
16 vehicles can no longer being repaired, they are taken
17 away and crushed, but not there on site. That did
18 occur once before. It will never happen again.

19 Owensboro Body Shop is right across the street
20 from Ms. Cambron's property, Nina Cambron's property.
21 When Owensboro Body Shop collapsed from ice and snow,
22 that operation, the business operation was moved
23 across the street to this particular location.

24 Now, the request of the variance is simple.
25 Right now there's a private receive, a 6 foot privacy

1 fence and 2 feet bobwire. Jim came along and said 8
2 feet. Then we made the application to request the
3 variance. It is not an unsightly site. It is not a
4 junk yard, as she so stated.

5 Owensboro Body Shop is now, the property is
6 owned by Nick and Margaret Cambron. The business is
7 still owned by Nina Cambron. Why she is objecting, I
8 have no earthly idea. The reasons that she has
9 stated, if I understand correctly, are incorrect.

10 You have pictures that I took that I would
11 like for the members to see, the board to see. It is
12 the trees, landscaping is all in place. It's taken
13 care of.

14 When this was zoned to I-1, it was used --
15 I-2. The second was I-1 or vice versa.

16 This property has always been used for what
17 it's being used for now. There's been no change.

18 Nina is in the process of selling that
19 property to Scott. He's doing an awfully good job.

20 CHAIRMAN: Any questions from the board of the
21 applicant?

22 MR. DYSINGER: I have a question, Mr.
23 Chairman. First of all I'd like to apologize to the
24 Chair and all the applicants for being tardy.
25 Babysitter trouble.

1 Sir, in the letter that we received, it stated
2 that cars are sometimes stacked above height of the
3 fence.

4 MR. NORRIS: No.

5 MR. DYSINGER: That's never occurred.

6 MR. NORRIS: That is incorrect.

7 MR. DYSINGER: No crushing or destruction of
8 cars happens at this location?

9 MR. NORRIS: In the past on one occasion, but
10 that won't ever happen again.

11 MR. DYSINGER: Can you tell me how far in the
12 past, sir?

13 MR. NORRIS: What?

14 MR. DYSINGER: How recent that sort of thing
15 was done?

16 MR. NORRIS: About three months, four months.

17 MR. DYSINGER: That's all I have, Mr.
18 Chairman.

19 MS. STONE: We did have a complaint in the
20 office that there was materials stacked above the
21 fence. Jim Mischel took that complaint. So if the
22 board decided to grant this application, we would
23 certainly want a condition that material not be
24 stacked above the fence.

25 CHAIRMAN: Is there any other questions from

1 the board?

2 (NO RESPONSE)

3 CHAIRMAN: Does the Staff have any other
4 questions at this time of the applicant?

5 (NO RESPONSE)

6 CHAIRMAN: Does the applicant have anything
7 else to add? Anybody else?

8 (NO RESPONSE)

9 CHAIRMAN: We'll get the opposition and then
10 you'll have a chance to state or rebuttal one way or
11 the other.

12 MS. MASON: I'm going to ask if Mr. Mischel
13 could come forward.

14 CHAIRMAN: Come forward, Jim, please.

15 MS. MASON: When you received the complaint
16 and inspected the property, were the cars stacked
17 above the fence at that time when you inspected it?

18 MR. MISCHEL: I went out I think back in
19 November of this past year. On the I say the west
20 side of the property there was probably a few cars
21 stacked above the fence. There were some crushing of
22 cars going on, storage of cars, things of that nature.
23 I stopped that day and talked to the owner. Not the
24 owner of the property, but owner of the business. He
25 said he would take care of it. They would stop

1 crushing the cars, move those out and take them down
2 to the top of the fence. I believe they came into
3 compliance. As of that date, I haven't seen any cars
4 above the fence or anything.

5 MR. DYSINGER: You said they've come into
6 compliance. Are they in compliance?

7 MR. MISCHEL: Not with the height of the
8 fence, but as far as not putting the vehicles above
9 the fence.

10 MR. DYSINGER: So they're complying, but
11 they're noncompliance.

12 MR. MISCHEL: Of crushing the vehicles, yes.
13 The fence is still at 6 feet tall.

14 MR. DYSINGER: Do you know of any instance in
15 this area or neighborhood where we've waived this
16 requirement for any reason? Is there a precedent that
17 we as a board need to be aware of or, Becky, if you
18 know off the top of your head?

19 MR. MISCHEL: I don't know of anywhere really
20 in the city or county where the fence height has been
21 waived. Originally this was set up as a car repair
22 business, which allows six foot. The storage of
23 vehicles, that takes it into a different category,
24 which requires an eight foot tall fence.

25 MR. DYSINGER: Thank you.

1 CHAIRMAN: Any other questions of the
2 applicant?

3 (NO RESPONSE)

4 CHAIRMAN: Staff, any other comments?

5 MS. STONE: No.

6 CHAIRMAN: We'll now listen to the opposition
7 at this time.

8 Come forward, please.

9 MR. ELLIOTT: State your name, please.

10 MS. CAMBRON: Margaret Cambron.

11 (MS. MARGARET CAMBRON SWORN BY ATTORNEY.)

12 MS. CAMBRON: I'm just asking that you deny
13 this variance. That all the rest of the storage
14 facilities in the Owensboro area are required to have
15 an eight foot fence. This is for one reason and one
16 reason only. It is to protect the public from having
17 to view stored cars.

18 The business is being operated right now by --
19 Mr. Slayton has a wrecker. He does tow wrecked and
20 disabled vehicles to his lot. He currently has about
21 15 to 20 on his lot in various states of disassembly.

22 The property, Mr. Pedley and Owensboro Body
23 Shop have tried very hard in the last few years to
24 upgrade the appearance of our properties. This piece
25 of property in particular is unsightly. An eight foot

1 fence would kind of help the looks of things because
2 we would not be able to view the stored and
3 disassembled cars within the storage facility.

4 I'm just requesting that you deny that
5 variance based on the ordinances that are already set
6 forth within the City of Owensboro.

7 CHAIRMAN: Any board member have any questions
8 of the opposition?

9 (NO RESPONSE)

10 CHAIRMAN: Any staff members have any
11 questions of the opposition?

12 (NO RESPONSE)

13 CHAIRMAN: Does the applicant have anything
14 you want to add briefly?

15 Anybody else in opposition? Come forward,
16 please.

17 MR. ELLIOTT: State your name, please.

18 MS. CAMPBELL: Paula Pedley Campbell.

19 (MS. PAULA PEDLEY CAMPBELL SWORN BY ATTORNEY.)

20 MS. CAMPBELL: I'm the one that has to go out
21 and pull the weeds off the fence that's growing from
22 their property. They don't mow it like they should be
23 mowing it. So I get out there and pull weeds off the
24 fence. The fence actually belongs to my father. It's
25 not the Cambron's fence. It's my father's fence. I

1 talked to Nina and my dad talked to her several times.
2 We told her just add to our fence and that would save
3 you some money, and he's willing to do that. Just add
4 two more foot to my father's fence. That would save
5 her quite a bit of money. They're using my father's
6 building as their fence I assume. They do have a
7 couple of cars that are probably pretty close to my
8 father's business. He doesn't want them butting up
9 against his building. Plus when we look out of our
10 windows, we see the junk cars. I mean there are
11 several junk cars there. There's a couple of motors
12 sitting out, you know. I know it's a repair area, but
13 still we do keep all of ours hidden from sight.

14 CHAIRMAN: Any questions?

15 MS. STONE: I would just like to advise that
16 if there is a problem with weeds being cut, that you
17 can contact the Community Development Department at
18 the City of Owensboro and they do have maintenance
19 requirements for those types of things.

20 MS. CAMPBELL: Up until this point I just got
21 out there and pulled them. I thought, well, I'll just
22 pull them myself, but since this is an issue with the
23 site, with when they were stacking the cars, it was
24 quite unattractive. I'm the one that witnessed the
25 gas tanks being punctured and the gasoline poured in

1 these buckets right in front of my office window. I
2 thought that was quite dangerous. So we were actually
3 the ones that called in the complaint.

4 CHAIRMAN: Any other questions from the board
5 at this time of the opposition? Staff have any other
6 comments?

7 (NO RESPONSE)

8 CHAIRMAN: Applicant have anything else to
9 add, please?

10 MR. NORRIS: Whatever complaint that Ms.
11 Pedley has, will be addressed and taken care of. I
12 was unaware of the grass growing through the fence.
13 I've been down there often. I have did not see that.

14 As far as cars being seen by the public, that
15 privacy fence takes care of that. There will be no
16 more stacking. It's also my understanding that in
17 Nina's conversation with Harry there was no problem
18 with what we're requesting the variance from.

19 CHAIRMAN: Any other questions from the board
20 of the applicant?

21 (NO RESPONSE)

22 CHAIRMAN: Staff have any other comments?

23 MR. WARREN: I have a question for Jim.

24 CHAIRMAN: Jim, come forward.

25 MR. WARREN: Jim, you mentioned awhile ago

1 that there are different requirements for body shop
2 versus storage or salvage. The 6 foot fence goes to
3 an 8 foot fence. Were they made aware of that change
4 in the height of the fence at that time?

5 MR. MISCHEL: Not at the time they came in to
6 put this storage lot there. I think that fell through
7 the cracks. There was an existing fence there. So I
8 don't think it's intentional on their part. It was an
9 oversight. We probably, all parties should have saw
10 that it needed to be an 8 foot fence.

11 CHAIRMAN: Any other questions of the
12 applicant?

13 (NO RESPONSE)

14 CHAIRMAN: Hearing none entertain a motion for
15 or against..

16 MR. DYSINGER: Mr. Chairman, I move to deny
17 the variance request given the findings that there is
18 no compelling reason to grant the variance. Also it
19 may adversely affect the public health, safety or
20 welfare; and it may very well cause a nuisance to the
21 public.

22 MS. DIXON: Second.

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

1 (NO RESPONSE)

2 CHAIRMAN: Staff have any anything else to
3 add?

4 MS. STONE: No.

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

7 (ALL BOARD MEMBERS PRESENT - WITH THE
8 DISQUALIFICATION OF WARD PEDLEY - RESPONDED AYE.)

9 CHAIRMAN: Motion denied.

10 Next item, please.

11 ITEM 6

12 2337 West Second Street, zoned B-4 (proposed B-5)
13 Consider request for a Variance to reduce the building
14 setback along West 2nd Street from 60 feet from the
15 road centerline to 15 feet from the property line in
16 order to construct an auto repair shop with an office
17 and storage.

18 Reference: Zoning Ordinance, Article 8,
19 Section 8.5.4(c)

20 Applicant: William C. Mitchell

21 MS. STONE: The application is in order and
22 ready for your consideration.

23 We do have a Staff Report. The Staff finds
24 that there are no special circumstances that do not
25 generally apply to land in the general vicinity or the
same zone.

This property is in the process of being
rezoned to B-5. At the zoning application they were
aware of the size and the shape of the property and

1 stated that they planned to use the average setback
2 that is allowed in the zoning ordinance that gives
3 them the ability to average their setback between the
4 prescribed setback and the property nearest to them.
5 That would give them about 27 feet from the property
6 line using that.

7 They've been aware of the constrictive nature
8 of this since that zoning change occurred. We have
9 looked to see if there were any dimensional variances
10 granted in this area and we found one variance granted
11 along this portion of West Second Street, but it was
12 for an inline extension on an existing building that
13 already extended into the building setback line.

14 We find that this will alter the essential
15 character of the general vicinity and will allow an
16 unreasonable circumvention of the requirements of the
17 zoning regulations, and recommend that this be denied
18 for new construction on a new lot.

19 MR. SILVERT: Mr. Chairman, I need like to
20 clarify something as to Item 5.

21 It was stated on the record that the motion
22 was denied. The variance request was denied and I
23 wanted to make sure that the records reflects that.

24 CHAIRMAN: Thank you.

25 Any other opposition or comments in the

1 office?

2 MS. STONE: No, sir.

3 CHAIRMAN: Anyone in the audience wishing to
4 speak in opposition of this item?

5 (NO RESPONSE)

6 CHAIRMAN: Is the applicant here and have
7 anything you want to add.

8 (NO RESPONSE)

9 CHAIRMAN: Staff have any other thing to add
10 about this item?

11 MS. STONE: No.

12 CHAIRMAN: Entertain a motion to dispose of
13 the item by the board, please.

14 MS. DIXON: Move to deny the request for
15 variance based upon the Planning Staff's findings that
16 it will alter the essential character of the vicinity
17 and would allow an unreasonable circumvention of the
18 requirements of the zoning regulations.

19 MR. DYSINGER: Second.

20 CHAIRMAN: A motion has been made and a
21 second. Is there any other comments or questions from
22 the board?

23 (NO RESPONSE)

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

1 MS. STONE: No.

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

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: Motion carries. It's denied.

6 Before we take the next item on the agenda,
7 let's take a short break, please.

8 - - - - (OFF THE RECORD) - - - -

9 CHAIRMAN: Call the meeting back to order,
10 please.

11 Becky would you state the next item.

12 -----

13 NEW BUSINESS

14 ITEM 7

15 4301 Veach Road, zoned A-U
16 Consider request for a Conditional Use Permit to
17 construct and operate a substance abuse recovery
18 facility to serve a maximum of 100 residents.
19 Reference: Zoning Ordinance, Article 8,
20 Section 8.2 C1.
21 Applicant: Owensboro Regional Recovery, LTD, Phillip
22 and Corine Hedden

23 MS. STONE: This is back on the agenda based
24 on a court order from the judge. I will let Madison
25 or Stewart review that.

MR. SILVERT: Sure. Just A bit about the
procedure and what has gotten us here.

Of course, we've had two previous hearings on

1 this matter and a Conditional Use Permit was approved.
2 That was later appealed to the circuit court of
3 Daviess County on March 26th. On March 26th the
4 Honorable Griffen entered an order giving his opinion
5 as to that appeal.

6 Just to briefly summarize the order. The
7 order had asked that three different items come back
8 to this body so that we could issue findings of fact
9 as to these specific items.

10 These specific items were safety, they were
11 integration of the neighborhood, and they were effect
12 on property values.

13 The judge did not ask that we rehear this
14 completely. In fact, there were several things that
15 we did do that he affirmed. One of those things was
16 that we did not violate due process and that there was
17 enough evidence on the record for us to make the
18 decision.

19 Typically when we have a situation like that,
20 our process is to not hear new evidence, but to rather
21 follow the opinion of the court and to hear a
22 summation of the evidence in record from both sides.
23 At that time then issue findings consistent with those
24 requested from the court. Those are on those three
25 items.

1 I have discussed this procedure with K.T.
2 Williams who is the attorney for the plaintiffs in
3 this action. I've also discussed it with J.D. Meyer
4 as well as Tom Meyer who were attorneys for the
5 defendants in this action. They have agreed to this
6 procedure.

7 One item of note. Having discussed this with
8 Mr. Williams earlier before this meeting, yesterday I
9 received in my office a notice of appeal as to this
10 decision. We decided this being the first meeting
11 since the opinion issued by the court that we would go
12 ahead and follow the ruling of the court and follow
13 our typical procedure.

14 You may hear tonight that what we are doing
15 tonight should be stayed as a result of that notice of
16 appeal. The question lingers as to whether or not the
17 order that Judge Griffin entered as a final and
18 appealable order, it certainly is not reflected as
19 such on the order itself. As a result, in conferring
20 with my co-counsel we agree that we needed to go ahead
21 and follow the order and go ahead and listen to those
22 summations as we usually do and issue findings of fact
23 consistent with that order.

24 So with that, again, the rules of procedure
25 tonight is that we will hear summations from both

1 sides of the evidence in record as to those three
2 issues and that we will not hear new evidence and
3 testimony beyond that. With that I'll turn it over to
4 the Chairman.

5 CHAIRMAN: Am I correct, the two attorney give
6 summations, each one of them, and we can ask questions
7 of them if we so desire?

8 MR. SILVERT: You can.

9 CHAIRMAN: As the board. The general public
10 cannot add new comments to the minutes or any other
11 items, correct?

12 MR. SILVERT: That's correct.

13 MS. STONE: I would just like to additionally
14 add that the board members have all received full
15 transcripts of both meetings so that they have had
16 time to review those minutes and all the exhibits that
17 were submitted at both of those meetings at well.

18 MR. DYSINGER: Mr. Chairman, also could I ask
19 legal counsel.

20 Summations will be based on information that
21 was entered as evidence; is that correct, in
22 transcript?

23 MR. SILVERT: Yes, sir. Anything that is of
24 record as to these hearings, these two hearings that
25 we had.

1 MR. CHAIRMAN: Any particular one I need to
2 listen to first?

3 MR. SILVERT: Yes. It would be typical to
4 hear plaintiff.

5 MR. CHAIRMAN: Plaintiff first then. Come
6 forward. .

7 MR. ELLIOTT: State your name.

8 MR. WILLIAMS: K.T. Williams.

9 (MR. K.T. WILLIAMS SWORN BY ATTORNEY.)

10 MR. WILLIAMS: For a moment there was
11 hesitation on my part calling us plaintiffs. I
12 wondered if you meant the applicants for this
13 conditional use permit, and that we are not.

14 Plaintiffs in the circuit court because we
15 challenge the grant of the conditional use permit of
16 this board.

17 As Mr. Silvert explained a moment ago, the
18 court's decision has been appealed. From our view
19 point now, and I believe the view point of the law, is
20 that the matter is now in the hands of the court of
21 appeals and not in the hands of the circuit court or
22 even this board to make any additional decisions or
23 findings.

24 If you choose to proceed, then what I do want
25 to do is go ahead, as Mr. Silvert explained, and make

1 summation, description of the evidence that you could
2 consider and that I believe demonstrates the findings
3 that you must make.

4 One of the first issues you've got to consider
5 according to the judge's order that has been appealed
6 is the safety, the safety of the residence on Higdon
7 Road, and how that safety is going to be affected by
8 this facility.

9 Now, you will recall this facility will have
10 residences 100 men who are all admitted drug addicts.
11 None of us can predict the future. I wish I could
12 because that would make my job so much easier and I'm
13 sure most of you wish you could predict the future of
14 your jobs. It would be a lot easier too, but we just
15 can't do that. We don't know what's going to happen
16 today, tomorrow, 30 days from now, a year from. So
17 it's very difficult to forecast issues such as
18 increase or decrease in safety, common sense can be a
19 guide. With the evidence that you have in the record
20 and your common sense, I think the decision become
21 clear.

22 First off, as noted this is going to be a
23 residence for 100 admitted drug addicts.

24 Second, 30 of those, at least 30 of those the
25 evidence shows will come from the Department of

1 Corrections because of criminal convictions that those
2 individuals have had.

3 Third, when you add these 100 people to this
4 area where this facility is proposed, you're adding
5 100, you're increasing the population by 100 people.
6 We're talking about an area that primarily
7 single-family residences along Higdon Road, and that's
8 agricultural land. You're inflicting in a sense a 100
9 new individuals into that area. You're increasing the
10 population.

11 The question becomes, well, does an increase
12 in the population lead to an increase in an area's
13 crime? Well, I come from a small county with only
14 about 10,000 people so we don't have a lot of crime.
15 At least that's where I grew up. If I grew up in
16 Fayette County or Jefferson County, I don't think I
17 could say the same thing. Population just has a
18 natural course to bring crime.

19 You increase the population of this area, just
20 common sense tells you crime, at least the risk of it,
21 is going to increase. Population will increase and
22 that's in the record.

23 Second, if you concentrate a large number of
24 criminals in a small area, does that increase the risk
25 of crime? I think the answer to that is, yes, as

1 well. You know that at least 30 percent of the
2 individuals in this facility will be convicted
3 criminals.

4 So, again, answering those two questions yes,
5 the answer is clear to whether putting this facility
6 in that area will increase the risk of crime to the
7 individuals along Higdon Road and also decrease their
8 safety.

9 So if you proceed to make a finding on that
10 issue, you must find that the facility will increase
11 their risk of harm and decrease the safety of that
12 neighborhood.

13 Now, going on to the next issue. You were
14 asked to consider is the integration of that facility
15 into the neighborhood.

16 Now, I've already addressed the general nature
17 of that area. Single-family residences and
18 agricultural land.

19 Again, to figure out what finding you would
20 put forth related to this issue requires that you just
21 answer a couple of simple questions. Is a 100
22 resident drug treatment facility consistent with a
23 single-family residential neighborhood? I submit to
24 you it's not.

25 Is a 100 resident drug treatment facility

1 consistent with agricultural fields? Again, I submit
2 to you that it's not.

3 Although there's some speculation that the
4 open fields and the areas around Higdon Road and this
5 property will develop into commercial or mixed use,
6 that's just a suggestion. The speculation, and I
7 suggest to you that the trend in the area is that it
8 will be developed as residential.

9 For example, in your evidence is discussion of
10 Fiddle Sticks Subdivision, which is down the road from
11 this proposed site. So the evidence you have been
12 before is that this proposed facility is suggested to
13 be placed in an area predominately of single-family
14 homes and agricultural land. If you're going to make
15 a finding related to the integration of this facility
16 into that area, it's got to be that the facility can't
17 be properly integrated in the neighborhood due to its
18 clearly distinct character from that area.

19 Now, finally you were asked to consider in a
20 sense the impact of the facility. Beyond just the
21 safety issue, but also on property values of the
22 neighborhood. Property values of these people who
23 live around Higdon Road.

24 Now, I know each of you understand real estate
25 largely. That's what you deal with each time you have

1 a meeting here and maybe many of you deal with real
2 estate in your careers. So you understand the
3 distinction between a decrease of value in real estate
4 and a negative impact on the value of real estate.

5 Property can decrease in value. It's that
6 simple, but you can have property that increases in
7 value that just doesn't increase as quickly in value
8 as comparable property.

9 Now, the testimony that was presented to the
10 board, the key expert professional testimony related
11 to these property values was that this facility if put
12 where it's proposed is going to negatively impact the
13 property values of the folks on Higdon Road. We don't
14 know that they'll decrease. The trend in property
15 value is the increase over time.

16 For instance, Mr. Clark who testified to the
17 board, he testified that he bought property all near
18 the jail and it increased in value, but what we don't
19 know, what wasn't presented to the board is how his
20 property increased in value compared to other
21 comparable property not by the jail. I submit that
22 the jail didn't make his property values increase so
23 it must have been something else, but we just don't
24 know. So there's not an apples to apples comparison
25 if you look at jail or other sites.

1 What we have is Higdon Road, an agricultural
2 land and a facility of 100 admitted drug addicts.

3 What will be the result of putting those two
4 things together? Well, appraiser George Cox testified
5 to the board that based on his experience and his
6 professional expert opinion that that facility, if put
7 where it's proposed, will negatively effect the
8 property values of these people here.

9 When you consider this issue if you decide to
10 go ahead and make findings on that particular matter,
11 on the property value issue, there's only one thing
12 you can find based on the evidence in the record, and
13 that is that this facility is going to negatively
14 impact the property values on Higdon Road and the
15 neighborhood.

16 When you consider all these issues though,
17 whether you proceed to make findings or you do not, as
18 I've suggested perhaps would be appropriate based on
19 the matter of the appeal, when you do consider it, if
20 you do though, I ask that you take out of your mind
21 the benefit that this facility will have on the
22 community, because that's not what we're left here to
23 discuss and concern ourselves with. Nobody along
24 Higdon Road, and I don't think anyone in the community
25 really questions the benefit that can be derived from

1 a drug treatment facility, if it's placed in the right
2 spot.

3 Now, even placed in the wrong spot, there may
4 be community benefits that will be derived, but will
5 those benefits come at a cost that's way too much for
6 anybody there, particularly these folks on Higdon
7 Road. We're talking about potential serious loss or a
8 negative impact at least in the value of their homes,
9 which may very well be their largest and most
10 important and prize asset and at an additional cost of
11 their safety and their risk.

12 Now, this facility is definitely a worthwhile
13 cause. Drug treatment is needed in I submit many
14 areas beyond just Owensboro and Daviess County. Thank
15 goodness this area is considered for one, but this
16 location is the wrong location. The board had
17 evidence before it that additional, even appropriate
18 locations were available that just were not
19 considered.

20 I believe it was at the second meeting before
21 the board that a different location was proposed. I
22 don't recall the exact location, but I know additional
23 locations were proposed.

24 If you go ahead and make findings, I suggest
25 that the findings that you can make are that safety of

1 the people on Higdon Road will be compromised.

2 Second, that this facility can't be properly
3 integrated into that residential and agricultural
4 neighborhood.

5 Finally, that the property values along Higdon
6 Road will be severely impacted by this facility.

7 Thank you.

8 CHAIRMAN: At this time does the board have
9 any questions of this gentleman before we listen to
10 the other?

11 (NO RESPONSE)

12 CHAIRMAN: Thank you.

13 Mr. Meyer.

14 MR. ELLIOTT: State your name, please.

15 MR. MEYER: Tom Meyer.

16 (MR. TOM MEYER SWORN BY ATTORNEY.)

17 MR. MEYER: As I stated, I'm Tom Meyer. I'm
18 standing in for J.D. Meyer who is out of town today
19 and could not attend this meeting. I do not have the
20 grasp of the facts that my son presented to the board
21 in the last two hearings that was presented back late
22 last year.

23 Nevertheless, and for that reason, by the way
24 of the presentation with regard to the summation that
25 we are permitted to make in this instance is going to

1 be made by Mark Dunaway.

2 I did want to preface his comments by stating
3 that we are in complete agreement with the statements
4 that Mr. Silvert made with regard to the procedures
5 here. The purpose here is to present a summation,
6 which we are going to going to be precise for the
7 benefit of the board in citing the particular
8 locations in the record for the various points.

9 We believe that what the court has done, and I
10 cannot emphasize this enough, the court has obviously
11 affirmed your finding that this is an appropriate
12 variance that has been granted. What the court has
13 asked you to do is supplement your findings of facts
14 on these three points.

15 The other points that were raised with regard
16 to due process, arguments that were made by Mr.
17 Williams and his co-counsel were rejected by the
18 court. The court found that you made adequate
19 findings on a number of issues such as flooding and
20 whatever else.

21 It's only these three points that the court
22 has remanded to the board for its consideration and
23 further findings of fact. So that's really all that
24 you're being asked to do by the court. To that degree
25 we're in complete agreement with your attorney's

1 advice. That that is the purpose of today's hearing.

2 I now present Mr. Mark Dunaway who is
3 president of the organization. He will provide for
4 you the summation that we've agreed to give with
5 regard to these various points.

6 MR. ELLIOTT: State your name.

7 MR. DUNAWAY: Mark Dunaway.

8 (MR. MARK DUNAWAY SWORN BY ATTORNEY.)

9 MR. DUNAWAY: The matters before the board to
10 consider a conditional use application of Phillip and
11 Corine Hedden and Owensboro Regional Recovery, Ltd for
12 the construction operation of a recovery facility
13 through the Recovery Kentucky Program.

14 The board previously unanimously approved and
15 decided to grand the conditional use permit. Several
16 neighbors have appealed the decision to the Board of
17 Adjustment. Judge Griffin of the Daviess Circuit
18 Court presided over the appeal. Judge Griffin
19 affirmed and approved of the board's decision in part.
20 The court found that the proposed use of the property
21 as a recovery facility was one that could
22 appropriately be allowed in this zone. The court also
23 determined that the board's decision in the hearing
24 satisfied the due process requirements. The court
25 asked the board to produce additional findings on the

1 impairment to the neighborhood resulting from the
2 proposed \$5 million facility.

3 Specifically the court requested the board
4 make additional findings in these three areas. These
5 aren't in order that they were presented.

6 As far as integration into the neighborhood,
7 opponents argue that the facility cannot appropriately
8 integrate into this neighborhood given current uses of
9 the surrounding neighborhood. They presented evidence
10 that none of the other facilities proposed under the
11 Recovery Kentucky Initiative to built in a residential
12 neighborhoods.

13 Thus opponents contend to this fact supports a
14 conclusion that Owensboro Regional Recovery should not
15 be permitted to construct it's facility in a
16 residential neighborhood.

17 Expert testimony given by Mr. Rick Pierce, Ms.
18 Janice James of the Hope Center and Rodney Branning of
19 the Healing Center all testified the programs upon
20 which the facility models itself are both located
21 within residential neighborhoods. This is from the
22 9/7 meeting, Page 94.

23 The board witnessed a slide show presentation
24 showing the Hope Center in Lexington abuts
25 single-family residence. Same meeting, Page 68 to 72.

1 Also in Exhibit H, tab A.

2 The slide showed the interior of the facility
3 and the communal kitchen where all resident meals were
4 cooked and eaten. Page 70.

5 Ms. James testified that the Hope Center
6 blends well into the community from an esthetic
7 standpoint. Furthermore, the facility generated only
8 one complaint from the neighborhood about Hope Center
9 participants cutting through a portion of that
10 neighbor's yard. Page 75.

11 Ms. James stated the Hope Center participants
12 have improved the facility following construction by
13 adding landscaping, flowers and other items so that
14 the facility will blend in with the community. Page
15 74.

16 Ms. James testified that the Hope Center is
17 "kind of invisible to the community until you know it
18 because it does, as you see, blend right in." Page
19 80.

20 Homeowners and others in opposition to the
21 facility contended the neighborhood was strictly
22 residential. The facility constituted an inharmonious
23 use in the strictly residential development.

24 However, hearing testimony indicated that this
25 is not strictly a residential neighborhood. Page 72

1 and 73 and Page 162.

2 The land to the immediate west of the property
3 is currently vacant. Expert testimony presented by
4 Mr. Don Bryant said this property would most likely
5 develop as commercial property. That's on the 8/3
6 meeting, Page 84.

7 Mr. Bryant further stated the property is
8 adjacent to the US 60 bypass to the north and south
9 were being developed for mixed use. That's on Page
10 84.

11 The preliminary development plan for the lot
12 across from JR Miller Boulevard and on Weikel Drive
13 to the west of the property and the land referred to
14 above proposes a commercial development. That's on
15 Page 162, Exhibit H, tab C.

16 So the undeveloped land in the area and the
17 land immediately to the south of the property appear
18 right for commercial development. The record contains
19 substantial evidence to prove the facility could
20 properly integrate into the neighborhood. Homeowners
21 characterization of the neighborhood is solely a
22 residential facility is not fully accurate. Much of
23 the land surrounding this neighborhood remains
24 undeveloped. Mr. Don Bryan, the expert, testified the
25 property immediately to the west of the property would

1 most likely develop as commercial property.
2 Conceptual plan submitted to the Owensboro
3 Metropolitan Planning Commission proposed the vacant
4 land is on the corner of JR Miller Boulevard on Weikel
5 Drive as commercial developments.

6 Homeowners also focused on the fact that other
7 communities located facilities in the Recovery
8 Kentucky Initiative in commercial, industrial and
9 mixed use areas. The argument failed to recognize
10 that the Healing Place and the Hope Center, the models
11 of our program, both lie within residential
12 communities.

13 Pictures of the Hope Center clearly show the
14 facility abuts a residential subdivision in a similar
15 matter that this proposed facility would abut the
16 Higdon Road residences. The Higdon Road residents
17 maintain an advantage over the neighbors of the Hope
18 Center in that the pictures reveal the Higdon Road
19 residents lots are much larger and maintain a greater
20 distance from the houses to the lot line than they do
21 to the proposed facility. Considering this evidence
22 anyone would determine that the facility could be
23 integrated into the community.

24 As far as property values, the opponents
25 contend the facility would cause a decline in property

1 values.

2 Mr. George Cox, a local certified appraiser,
3 said that the construction of the facility would
4 decrease the value of the property surrounding the
5 facility. It's in the record at the 9/7 meeting, Page
6 139 to 141.

7 Mr. Cox offered an opinion, but he offered no
8 evidence. Owensboro Recovery presented direct
9 evidence to the board that the facility would not
10 negatively impair the property values of the
11 residential neighborhood.

12 Owensboro Recovery examined the property
13 values of the residential neighborhood surrounding the
14 Daviess County Detention Center as was previously
15 stated. This is in the record Page 99.

16 This examination revealed the construction of
17 the jail facility did not cause a decline in the
18 property values of property along River Bend Cove,
19 Cinderella Drive, Highway 60 East, Riverside Drive,
20 Hubert Court, Red Bud Road, Willow Way, and Coast
21 Guard Lane. This is on Page 99, Exhibit H, tab F.

22 Mr. Benny Clark, a local developer, testified
23 that he had purchased property at 3620 River Bend
24 Cove, Owensboro in October of 2002. This is on Page
25 100.

1 Mr. Clark stated that the razor wire fencing
2 in the rear of the jail facilities were visible from
3 the front porch of this property. He purchased this
4 property for \$110,000. He sold this property in March
5 of 2006 for \$199,000. This represents an increase of
6 about 81 percent in value over three and a half years.

7 He further said in his expert opinion as a
8 residential developer that the recovery facility would
9 not negatively impact the values of the property and
10 surrounding neighborhoods. This is on Page 101 and
11 102.

12 I would like to say for the record that I
13 would greatly enjoy an 80 percent return on my
14 investment in three years. That seemed to be
15 adequate.

16 The evidence further supports the
17 determination that the facility would not lead to a
18 decrease in property values. The opponent relies
19 solely upon the testimony and opinion of George Cox, a
20 local appraiser, who testified that they would
21 decline. This is just an opinion. The circumstantial
22 testimony runs contrary to the direct proof and
23 evidence offered using the Daviess County Detention
24 Center, which is an institutional facility, and it
25 showed that there was no decline in the property

1 values of the surrounding neighborhood. Mr. Clark
2 testified he owned the property. It had a direct view
3 of the jail facility. He even mentioned the razor
4 wire.

5 In the course of three and a half years he
6 sold the property for an \$89,000 profit. Proof of
7 other sales in the vicinity of the jail support this
8 conclusion.

9 Several board members directly questioned Mr.
10 Cox to explain this phenomenon. He could only state
11 his opinion. He believed property values around the
12 jail declined. Based upon this line of questioning an
13 inference exist that Mr. Cox's testimony was
14 discounted.

15 The third issue is safety and crime.
16 Homeowners and other similarly situated individuals
17 raised the issue of fear for their own personal safety
18 and increase criminal activity. The recovery facility
19 will house individuals suffering from the disease of
20 addiction. That's addiction to more than just drugs.
21 It could be addiction to alcohol.

22 Of the 100 men, the facility will house at
23 least 33 individuals who receive either shop probation
24 or parole from the criminal justice system. That's in
25 the record from the August 3rd meeting, Page 24 and

1 77.

2 The Kentucky Department of Corrections will
3 provide operational funds to Owensboro Regional
4 Recovery in return for accepting such individuals.
5 However, Owensboro Regional Recovery maintains the
6 right to reject any individual coming to it from the
7 Department of Corrections or any other source for that
8 matter. This is on Page 78 of the record.

9 Owensboro Regional Recovery will implement the
10 extensive screening procedure adopted by Lighthouse
11 Recovery which prohibits acceptance of violent harden
12 criminals. This is on Page 22.

13 Referrals from the Department of Corrections
14 will be limited to those individuals with typically
15 lesser non-violent felony convictions. The
16 individuals in this facility will not only be
17 screened, but also closely supervised and monitored.
18 Page 21.

19 The program is utilized by Owensboro Regional
20 Recovery have proven successful in assisting
21 individuals to overcome their addictions to drugs
22 and/or alcohol. The facility will not be a country
23 club. The intensive programs require individuals to
24 attend various meetings, group or community gatherings
25 and individual mentoring sessions. Owensboro Regional

1 Recovery will randomly perform drug test of the
2 individuals in the program. This is all from Page 76.

3 The facility will conduct bed checks during
4 the night. This was brought into the record on the
5 September 7th meeting, Page 69.

6 The individual develops a rigid daily routine.
7 At all times Owensboro Regional Recovery staff
8 maintain a close supervision of all the individuals in
9 the facility and missing or late individuals are
10 immediately discovered and disciplined. This is from
11 the August 3rd meeting, Pages 66 and 67.

12 Furthermore, during non-business hours,
13 Owensboro Regional Recovery employs security personnel
14 to monitor the facility and curfew is established for
15 all the individuals in the facility. Page 67.

16 Evidence showed the existing facility would
17 not cause increase crime in the neighborhood. Experts
18 Janice James, program director of the Hope Center, and
19 Robbie Brannon, vice president of the program for the
20 Healing Place, each testified to the safety procedures
21 implemented in connection with their perspective
22 programs. Owensboro Regional Recovery modeled its
23 procedures after those existing at these facilities.
24 Ms. James and Mr. Brannon both testified that neither
25 recalled any incident where an individual in their

1 respective program harmed or posted a threat of
2 harming a neighbor of the facility. This is on Page
3 75 and Page 93 of the September 7th meeting.

4 Ms. James testified that typically an
5 individual in the program who desires to revert to his
6 or her past addictive ways will actually return to
7 their old habitat. This was from Page 85.

8 She emphatically stated the individuals are
9 not utilizing drugs at the Hope Center facility. Page
10 85.

11 The person does not want to stick around and
12 be in an atmosphere where others are trying to
13 overcome their addictions. Mr. Brannon also said that
14 the facility actually serves as a repellent of deviant
15 behavior and criminal activity as the program
16 participants who want to be there and overcome their
17 addictions. September 7th meeting, Page 92.

18 Like-wise Lighthouse presented evidence that
19 in the four years since it began operating from a
20 house located on Clay Street in Owensboro and expanded
21 to three other houses in the vicinity, it never once
22 received a report from a neighbor or the Owensboro
23 Police Department that an individual in its program
24 caused harm to a resident in that neighborhood. This
25 is Page 97, same meeting.

1 Carol Alvey, a resident of East Third Street
2 near Clay Street, testified that she was never
3 threatened by any participant in the Lighthouse
4 program. This was from Page 97.

5 In fact, Ms. Alvey testified that she
6 frequently encountered Lighthouse program participants
7 while walking her dog and felt very comfortable around
8 the participants of the Lighthouse program. Page 98.

9 She never feared for her safety during those
10 encounters. Page 98.

11 Ms. Carrie Brown further testified that her
12 son attended the Healing Place. During her frequent
13 visits with him, she felt completely safe and secure.
14 Page 85.

15 Ms. Brown never witnessed any legal or
16 improper activity during these visits. Page 85
17 through Page 88.

18 Homeowners and others testified they fear for
19 their safety under the proposed use of the property.
20 However, no one presented any concrete evidence that
21 harm actually occurred. Such testimony was simply
22 based upon fear, stereotypical assumptions of the
23 individuals in the program. Such testimony focused
24 upon the individual in the state of committing a
25 crime. Not the individual who recognized his mistake

1 was remorseful and is seeking to better his life for
2 himself and his family. A difference exist between
3 these two type of people, although they may be the
4 same person. This is from the August 3rd meeting,
5 Page 75 and 76.

6 Homeowners raise concerns about their safety
7 once a facility housed men recovering from addictions.
8 Plaintiffs and appellants painted pictures of the
9 program participants as vicious individuals who are
10 ready to rape and pillage all in their neighborhood.
11 However, plaintiffs and appellants presented no direct
12 evidence concerning any harm caused by an individual
13 in any of the programs model entities.

14 Lighthouse, the Healing Place or the Hope
15 Center, representatives of all three programs
16 testified that no program participant caused any
17 physical or other harm to a resident in the
18 neighborhood surrounding the respective program.

19 The opponents concerns are based solely on the
20 fear of the unknown.

21 As a fact finder, you the board are certainly
22 free to overlook speculation in the favor of direct
23 testimony.

24 Furthermore, Owensboro Regional Recovery will
25 implement appropriate screening procedures to deny

1 admission to those severe and persistent violent
2 offenders and criminals. Opponents take issues with
3 those referral from the Kentucky Department of
4 Corrections, but fail to realize or recognize that
5 Owensboro Regional Recovery has the authority to
6 reject any participant even though it's coming from
7 that source.

8 Despite the opponents contentions these
9 individuals participate in a program due to the desire
10 to overcome their addiction and to approve their
11 lives. They do not do so merely as an opportunity to
12 get out of jail free.

13 Janice James of the Hope Center testified that
14 individuals coming from the court actually benefit
15 more from the program because they are required to
16 complete it as a condition of their release. This is
17 from Page 80 of the 9/7 meeting.

18 Statistics prove that upon completion of the
19 program, participant possesses a 65 percent chance to
20 remain clean and sober. This is from Page 89 of the
21 9/7 meeting.

22 In conclusion, the record from the prior
23 hearings conducted by the board contains plenty of
24 evidence, some of which I've outlined in this
25 summation, to find the Recovery facility would not

1 impair the Higdon Road neighborhood.

2 The board made prior findings in the areas of
3 flooding and density that the court found appropriate.
4 We ask that the board make additional findings based
5 on this evidence that's in the record that the
6 Recovery facility will not negatively impact property
7 values, cause safety issues or increase crime in the
8 neighborhood, and that the facility properly
9 integrates into the neighborhood.

10 CHAIRMAN: Any board members have questions of
11 this gentleman?

12 (NO RESPONSE)

13 CHAIRMAN: Thank you.

14 Any comments from the board at this time?

15 (NO RESPONSE)

16 MR. SILVERT: You might offer a rebuttal of
17 Mr. Williams if he has one?

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

20 MR. WILLIAMS: Yes, briefly. Thank you, Mr.
21 Chairman.

22 I want to point out that member Pedley's
23 comments earlier, when considering the second item on
24 your agenda, that is once a person is dead it's too
25 late. He was making that comment related to the

1 Whittaker proposal for a gun range. I'm not trying to
2 suggest to you right now that the residents of this
3 proposed facility will kill someone, but that's
4 possible, I guess. We just don't know.

5 Any discussion about the evidence that was
6 presented to the board concerning crime and safety
7 came from Louisville or Lexington, Hope Center, where
8 this area called living place. Again, that's not
9 direct evidence or testimony concerning what' going to
10 happen here.

11 Even then there is speculation as to what's
12 going to happen. You can speculate based upon those
13 instances. You can speculate based upon what you know
14 will happen when you put 100 admitted addicted
15 individuals in this small location.

16 Second, in discussing the property values, I
17 urge you to look back through the testimony concerning
18 that issue. It was only a few pages in length, but
19 clearly you'll see the distinction there between the
20 testimony from George Cox that discussed the negative
21 impact this facility would have on the area and the
22 testimony from Mr. Clark about his increase in values
23 in the area around the jail. There is a key
24 distinction. I urge you to look back through there
25 because when read that you'll see that the testimony

1 that was presented to the board demonstrates clearly
2 that this facility will negatively impact the property
3 values of the folks on Higdon Road.

4 Yes, because it's future looking, there is
5 speculation involved. Any comment that's made related
6 to what's going to happen is speculation. That's just
7 the nature of it. When you make your findings you've
8 got to take at least the best that you do have. Here
9 the best that you have is the testimony from an
10 appraiser who's educated, skilled, and whose job is to
11 evaluate property values and then tell you what's
12 going to happen based upon his experience and what
13 he's seen with similar things.

14 Mr. Benny Clark, his testimony related to how
15 he purchased properties and they increased in value.
16 There was a question in the record to him. If he
17 owned those properties when the jail was built. If I
18 recall correctly, his answer was, no. He was
19 testifying about the property values that changed
20 after he purchased the property, which was after the
21 jail was built. Then he sold those properties even
22 later. We don't know exactly, from that testimony
23 anyway, what the exact impact of that jail was.

24 In addition, the record doesn't contain any
25 evidence as to how much an increase that property

1 would have had if the jail hadn't been there. That's
2 just what we don't know. So the only thing that's not
3 speculation, is the testimony from Mr. Cox
4 specifically saying that this facility will decrease
5 or at least negatively impact the property values of
6 the folks on Higdon Road.

7 I won't take up any more of your time. I just
8 urge you to strongly consider those issues and as the
9 testimony and the evidence, that there would be an
10 increase in risk to the folks on Higdon Road in this
11 neighborhood. There's going to be a negative impact
12 on the property values. That's what the evidence
13 demonstrated. And the evidence demonstrated that the
14 area around this property is agricultural and
15 single-family residential. It's not commercial. It's
16 proposed perhaps, but again, that's speculation to
17 what we have is agricultural and single-family
18 residential. So look at what you've got at least in
19 that instance. It can't be integrated. Thank you.

20 CHAIRMAN: Mr. Meyer, do you have anything
21 else to add briefly?

22 MR. MEYER: Just a couple of brief comments.

23 With all due respect to Mr. Williams' argument
24 with regard to what I say call the fear factor and how
25 this is going to damage their property because of this

1 dangerous of crime or whatever. He's speculating.
2 He's speculating on the fact that, well, these people
3 are drug addicts, they're being rehabilitated as drug
4 addicts, alcoholics, and therefore it's bound to have
5 some negative effect on the property value or it's
6 bound to have some negative effect on the crime in the
7 area. You've got that total speculation from that
8 fear factor which truly, if you based an opinion on
9 that, would be totally arbitrary and capricious versus
10 the direct evidence that you've received from the
11 testimony from the people in Lexington operated a
12 facility like this and in Louisville that operated a
13 facility like this and have over 20 years experience
14 with no increase in crime, no problem in the
15 neighborhood, no complaints coming in, except for one
16 about people who are cutting across the corner of a
17 lot of a private residence there that was quickly
18 remedied, if you recall.

19 There was absolutely no increase in crime in
20 those areas. They never had any problems with any of
21 those people. That testimony is by the experience
22 that we've had here in Owensboro with the facilities
23 that they've already been operating where they have
24 not had any increase in crime as testified to. They
25 have not had any increase in police calls to the area

1 as compared to what it was before. They have not
2 certainly had any problems we regard to the reduction
3 in valuations of property in the area.

4 I think you all may recall vividly when George
5 Cox was giving his testimony, which is what they
6 solely base their case on when it came down to the
7 valuation question. That J.D. didn't have to cross
8 examine Mr. Cox about the questions that he raised
9 because your board shredded his testimony. Literally
10 shredded his testimony. So much to the point that he
11 opined at one time, well, maybe Benny Clark when he
12 sold that property, maybe he left a Mercedes Benz in
13 the garage was his testimony. That testimony Mr. Cox
14 was totally discredited at the earlier hearing as
15 opposed to Mr. Clark's testimony who testified not
16 only about the own residence that he had there, but
17 also the valuations on those other streets that we
18 mentioned that were neighboring the facility that was
19 a jail facility. This isn't a jail facility. You've
20 seen the pictures of the renderings of these
21 properties, what they intend to build and what was
22 built in Lexington and Louisville. There's a \$5
23 million improvement to an area that is going to
24 benefit by those things, and that's what Mr. Clark has
25 testified to.

1 We believe that the evidence is certainly in
2 the record as stated in the summation and is certainly
3 there to support your alls earlier determination that
4 this is a proper use of a variance that should be
5 granted and that we believe that your earlier decision
6 should be reaffirmed and the particular facts that the
7 court asked to be supplemented be included in the
8 record. This project certainly needs to move forward.
9 We're anxious to get it going and we believe that the
10 evidence has been presented to you, hard factual
11 evidence to demonstrate that these points are all in
12 favor or going forward with this variance as
13 previously granted by this board. Thank you.

14 CHAIRMAN: Does any board member have any
15 questions of the either one of the gentleman?

16 (NO RESPONSE)

17 CHAIRMAN: We thank you.

18 This is all the records we've had to read in
19 the last few days. Board members have any questions
20 or comments at this time?

21 MR. DYSINGER: I guess I have a question of
22 counsel of what the procedure is here. Our decision
23 stands, as I understand the situation. So a motion to
24 grant would seem to be out of order, out of place.
25 How our findings of fact entered if not attached to a

1 motion of some kind?

2 MR. SILVERT: An appropriate motion would be
3 that this board adopt certain findings of fact.

4 CHAIRMAN: The motion would include the
5 previous facts and approve by the judge and add the
6 three that he addressed for us to review and add more
7 to it from the transcript only.

8 MR. SILVERT: Just to clarify. The judge has
9 asked that we issue findings on three issues and the
10 three issues only.

11 The other findings of fact that we've made
12 stand on the record.

13 So a proper motion from one of the board
14 members would be possibly as to one or two of the
15 facts, maybe to all three, but that this board adopt
16 certain findings of fact as to this issue.

17 MR. PEDLEY: The judge has asked us to give
18 our findings of fact for our vote to approve this;
19 isn't that correct? Is he asking for each individual
20 or is he asking to state a finding of fact and then
21 vote on it?

22 MR. SILVERT: It would be the findings of fact
23 of this board in total. So if you were to submit some
24 findings of fact and ask that the board adopt the
25 finding of fact that you submit, then the board will

1 have done so, if they agree with your findings.

2 MR. PEDLEY: I can only give my findings of
3 fact for my vote. I can do that on these three items,
4 safety, integration and property values and adverse
5 influence of the neighborhood. I can only do it for
6 my vote. That's the only thing I can do. If the rest
7 of the board wants to make a motion to approve my
8 findings, then that can be done. Is that what you're
9 saying?

10 MR. SILVERT: That can be done.

11 MR. PEDLEY: I can only refer to the minutes
12 of our September 7, 2006, meeting. I have all of my
13 notes here handwritten. I made my findings that night
14 from my vote. I stick by that. Not what I heard here
15 tonight. I spent five hours last night reading this.
16 This is what I made my vote on.

17 I voted to approve it. If that's what you
18 want I will read that. It's up to the board if they
19 want me to.

20 MR. DYSINGER: If you would just in essence
21 move that as a board we adopted these findings and
22 then read his findings and then we vote on that. My
23 question is procedural really more than anything else.
24 How we take his findings and make it the whole
25 board's; is that correct?

1 MR. SILVERT: That's right. It would take a
2 motion, if Mr. Pedley wanted to state his findings of
3 fact as to these three issues and either Mr. Pedley or
4 another board member move that the board adopt those
5 findings of fact as the findings of fact told to the
6 board and submit those to the judge, then that would
7 be appropriate.

8 MR. WARREN: Mr. Pedley, I would appreciate
9 hearing your opinion or what you heard to see if its
10 actually what I've heard because I've made several
11 notes myself. I guess that would help me to know
12 whether I truly understand what I'm hearing or not.

13 MR. PEDLEY: Then I will give you findings
14 from my vote to approve the Conditional Use Permit.

15 It was based on sworn testimony and evidence
16 presented. That's all we have. That's all we're
17 suppose to do.

18 On safety, based on testimony by Mr. J.D.
19 Meyer and representative of Lighthouse Recovery and in
20 the application that there will be a constant staff on
21 duty. There will be security, individuals in the
22 off-working hours. There will be a curfew and bed
23 check.

24 Also stated by Mr. Meyer, they have intensive
25 screening process for sex offenders, an other things.

1 That anyone who engages in any violent activity will
2 be removed immediately by the calling of local law
3 enforcement and with proper fencing, and that's not in
4 a condition, with proper fencing and screening it will
5 allow for a safe environment. That's the safety
6 issues.

7 Here's an addition on the safety. There are
8 other facilities in this community on a smaller scale
9 for alcohol and drug rehab and homeless that has been
10 no reported problem that we have been made aware of.
11 Also, there are other recovery programs in other
12 cities in Kentucky, simply this proposed facility, and
13 are quite successful. That's the issue on safety.

14 Also had the issue on floodplain, which we're
15 not addressing that tonight.

16 Integration. Proper integration into a
17 neighborhood will be allowed if proper privacy
18 screening, landscaping and esthetic appeal is
19 maintained and proper security and safety is
20 maintained according to Mr. J.D. Meyer's statement on
21 safety. Allow proper integration with proper fencing
22 and screening and landscaping and esthetic.

23 On adverse influence based on documents handed
24 out and statements by Mr. Benny Clark on property
25 values near the US 60 jail, that the values increased

1 in a normal way or above should integrate and will not
2 have an adverse influence on property values or future
3 development.

4 I choose Mr. Clark's statement and his
5 handouts because the handouts are factual over Mr.
6 Cox's opinion. Because what Mr. Clark had was
7 factual.

8 That is my findings on the adverse influence.

9 Again, with the proper screening with fencing
10 and proper screening for integration in the
11 neighborhood and a save environment and to enhance the
12 overall appearance of the neighborhood and not have an
13 adverse influence on the neighborhood.

14 We didn't put that into the conditions, but
15 some screening, fencing, screening, and landscaping is
16 a recommendation that I make.

17 That is my findings on the three issues.

18 MR. WARREN: Mr. Pedley, I was glad to hear
19 that actually. My last vote was based on what I heard
20 then and not tonight. What was brought up tonight
21 just reaffirmed what I have to say on the safety and
22 crime thing. One of the most compelling arguments
23 that I heard at the September meeting to me was, and
24 Mr. Williams has kind of brought this up. That we're
25 looking at other communities such as Louisville and

1 Lexington. That we're not Louisville or Lexington.
2 No, we're not, but we do have programs right here in
3 our city and they brought police reports and crime
4 reports that right out stated there has been no
5 increase in crime around the facilities that we have
6 today. So I agree with the safety and crime facts.

7 I too looked very strongly at Mr. Clark's
8 handouts. The slide show from the facility in
9 Louisville and Lexington was totally integrated.
10 Those facilities were totally integrated into those
11 neighborhoods. Once again very compelling evidence
12 for me.

13 CHAIRMAN: Any other member have any comments?

14 MR. DYSINGER: I'd also like to state that I
15 found the testimony of Ms. James and Mr. Brannon about
16 their programs exceptionally compelling, and
17 especially with respect to the integration issue
18 because that is something that we're often asked to
19 speculate. The word speculate comes up a lot.

20 The integration issue is something that we're
21 asked to speculate on. Their testimony that the areas
22 they were in were strictly residential and yet they
23 still didn't have a problem with integration was
24 impressive, especially in that if this neighborhood
25 stays residential as it is now, we have reason to be

1 optimistic and I don't believe would cause a problem
2 with integration. Especially if it does move into the
3 direction of mixed neighborhood, which seems likely.
4 We have even less reason, and more importantly that
5 expert testimony led me to that finding.

6 CHAIRMAN: Any other comments?

7 MS. DIXON: I agree with Mr. Pedley's findings
8 and I move that we attach these findings and revert
9 them back to the court.

10 CHAIRMAN: Is there a second.

11 MR. WARREN: I'll second the motion.

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

15 (NO RESPONSE)

16 CHAIRMAN: Hearing none all in favor raise
17 your right hand?

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries.

20 Next item, please.

21 MR. WARREN: Move to adjourn.

22 MR. DYSINGER: Second.

23 CHAIRMAN: All in favor raise your right hand.

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: We are adjourned.

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

16 WITNESS my hand and notary seal on this the
17 30th day of April, 2007.

18
19 _____
20 LYNNETTE KOLLER FUCHS
21 OHIO VALLEY REPORTING SERVICES
22 202 WEST THIRD STREET, SUITE 12
23 OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES: DECEMBER 19, 2010
23 COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY
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