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

MEMBERS PRESENT: C.A. Pantle, Chairman
Becky Stone
Ward Pedley
Marty Warren
Sean Dysinger
Ruth Ann Mason
Judy Dixon
Stewart Elliott, Attorney
Madison Silvert, Attorney

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

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

With that Marty Warren will give our prayer.

(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
proceed from there.

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

MS. DIXON: Move to approve.

MR. PEDLEY: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

----------------------------------------------

CONDITIONAL USE PERMITS

ITEM 2

2402 French Street, zoned R-4DT
Consider request for a Conditional Use Permit in order to place a 16'x80' Class 2 manufactured home on the property.
Reference: Zoning Ordinance, Article 8, Section 8.2 A10B, Section 8.4/7
Applicant: Carl and Tracey Kimbley

MS. STONE: The application is in order. The property was recently rezoned to R-4DT. They are requesting a sidewalk waiver on the application.

Brian Howard will read a brief Staff Report into the record.
MR. ELLIOTT: State your name, please.

MR. HOWARD: Brian Howard.

(MR. BRIAN HOWARD SWORN BY ATTORNEY.)

ZONING HISTORY

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

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

LAND USES IN SURROUNDING AREA

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

ZONING ORDINANCE REQUIREMENTS

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

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

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

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

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

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

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

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

8. The manufactured home shall be permanently connected to an approved water and sewer system when available.
MR. HOWARD: They have addressed all these site requirements in a site plan that has been submitted in conjunction with the Conditional Use Permit. With that I'd like to enter the Staff Report as Exhibit A.

CHAIRMAN: Thank you.

Was there any opposition filed in the office?

MS. STONE: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Is the applicant here?

APPLICANT REP: Yes.

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

APPLICANT REP: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other questions or comments?

MS. STONE: No, sir.

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

MR. PEDLEY: Mr. Chairman, I make a motion to
approve it based on finding it is compatible with the
neighborhood since there are similar manufactured
homes in the neighborhood, and it will not have an
adverse influence on the neighborhood. With the
conditions that all zoning ordinance requirements be
met according to the application, except Number 3, a
concrete sidewalk may be waived.

CHAIRMAN: Is there a second to the motion?
MR. WARREN: Second.
CHAIRMAN: A motion has been made and an
second. Any other questions or comments from the
board?
(NO RESPONSE).

CHAIRMAN: Any other comments from the Staff?
MS. STONE: No.
CHAIRMAN: Hearing none all in favor raise
your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries.

Next item, please.

ITEM 3

9300 KY 815, zoned A-R (Postponed at March 1, 2007
meeting)
Consider request for a Conditional Use Permit to add a
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
MS. STONE: This was postponed from the March 1, 2007 meeting. The board requested that expert testimony be presented regarding the safety of the facility.

CHAIRMAN: Is the applicant here and present?

MR. JONES: Yes.

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

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

CHAIRMAN: Interrupt you just a minute. I wasn't at the last meeting so show that I will not note.

Proceed, sir.

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

MR. ELLIOTT: Let me swear you in.

(MR. EDDIE JONES SWORN BY ATTORNEY.)

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

CHAIRMAN: Please.

MR. JONES: I'm handing you a couple of letters from individuals who have some expertise in rifle range. I'm also handing you a Kentucky Statute. I can tell you a couple of weeks ago I visited
this gun range and it has substantial acreage, as you
know from the application. It is a pre-existing
operation in which there are several ranges already in
existence I think going from 50 yards to 300 yards.
This proposal would simply add one more range of 600
yards, which would be adjacent to the 300 yard range.
The same rifles will be used. The same number of
persons who could use the range at this time will be
using it. The same ammunition will be used. There
will be no increase in noise. There basically will be
no change to the operation which is existing and is
present today.

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

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

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

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

CHAIRMAN: Thank you.

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

(NO RESPONSE).

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

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

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

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

MS. STONE: The conditional use permit that was approved in 1994 has the range oriented a different direction. So they are applying for the
additional rifle range, but also to legalize how the
original gun range was built opposite direction of how
it was approved on the conditional use permit.

MR. JONES: You want to speak to that.

CHAIRMAN: State your name.

MR. FULKERSON: Chuck Fulkerson.

(MR. CHUCK FULKERSON SWORN BY ATTORNEY.)

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

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

The reason that it's shooting the other way is
to me that's a safer way to shoot.

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

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

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

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

MR. FULKERSON: We appreciate it..

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

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

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

CHAIRMAN: Any other comment from the Staff?

MR. ELLIOTT: State your name, please.

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

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

It's not only the direction of the shooting,
but the original application had the back part to be a
trap and skeet shooting area back there. That has
been changed to a rifle range. I think right now they
want a 600 yard rifle range. It went from trap and
skeet shooting to a 600 yard rifle range.

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

CHAIRMAN: Staff have any other comments?
(NO RESPONSE)

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

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

MR. KIRTLEY: Robert Kirtley. I'm attorney
representing the Haydens. We were here last month in
opposition of this and we're again in opposition.
(MR. ROBERT KIRTLEY SWORN BY ATTORNEY.)

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

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

If I may calling out of order, I'd like to
call Frank Hayden as a witness to testify to certain
conditions out there, if that's all right with the
board. Does it work that way?

All right. Mr. Hayden.

CHAIRMAN: State your name.

MR. HAYDEN: My name is Frank Hayden.

(MR. FRANK HAYDEN SWORN BY ATTORNEY.)

MR. KIRTLEY: May I question the witness?

I'm showing you this diagram that's Exhibit A.

Do you recognize it?

MR. HAYDEN: Sure.

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

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

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

MR. HAYDEN: Everything has been strip mined.

There's rocks all on top of the ground. We use it for
pasture land. I have cattle running over there.

We've got fences around this area. We have to check
these fences all the time and we don't like people
shooting at us when we're checking the fences. I
don't like them shooting at my cattle. I've got
probably 200 head of cattle around that farm, in front
of that gun range.

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

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

MR. KIRTLLEY: That's all.

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

CHAIRMAN: Any other comments?

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

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

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

CHAIRMAN: Are you saying that this is a new
noise?
MR. FULKERSON: No. It's been there all the time. The noise is going to increase. That's why they want a 600 yard range for high power rifles. I mean they're not living up to what they've agreed anywhere and they're not agreeing to anything they're proposed to do.

CHAIRMAN: Any other comments?

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

CHAIRMAN: Thank you.

MR. KIRTLEY: If I may, having gotten that testimony about there being rock and gravel, reclaimed land. Now, if you'll look at the points I've pointed out here, point Number 2 of this thing, the property, and I did this in yard to give you have some idea. If you look at Exhibit A that's there, the long line coming from 815 is a total of 961 yards. I use that for a reference for velocity and distance of shells or weapons. So this property is 961 yards long. It's 120 yards wide at its widest point and it's cut out. Number 2, the applicant does not own this property. That's Exhibit B. Four months after you gave this approval in '94, they put it in the Rock, appropriated named, Rockhill Gun Range Club, or I guess the topography there. That's Exhibit B. It
still remains in that name and that ownership by that deed.

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

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

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

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

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

Now, your law says, and I set it out there, if they don't exercise the conditional use within one year, it lapses back. They have no conditional use out there at this time, based on their own acts.
They came at the last meeting and said, board member told them that this is the way to go. They presented nothing to that here tonight. In fact, they dodged that. In fact, I think Jim -- that it was mentioned about the testimony that was given at that and Mr. Pantle was the one that questioned why it was going that way and it was because of the topography. That they had to shoot it to go uphill so that the ballistics would not kill people the other way or danger other people.

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

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

What they're talking about, and they never talk about noise the last time. I don't know where that came from. It's safety. These bullets ricochet,
contrary to what Mr. Fulkerson said last month. Hollow points may shatter. Steel points may shatter, but led bullets they ricochet. You know why? Because they're warned about it.

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

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

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

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

Now, you have letters of people last month that said had aerial view of this. Now, how can an
aerial view by the state police, if in fact that took
place, say how you can possibly properly conduct an
outdoor range? I'm simply saying that this was done
'94 wrong. It has never been done. They were going
to be cited for not being in compliance to that
conditional use permit because they built it the other
way, the way they wanted to. Not the way you approve
it.

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

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

Now, if you look further on that Exhibit A,
this path to the Hayden property is a whole roll of
houses. They don't show on this. They're not two
miles away. They're just right straight over on the
other road there. There's maybe 14 houses right there.

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

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

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

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

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

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

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

Thank you.

CHAIRMAN: Any other comments from the
opposition?

Come forward and state your name, please.

MR. ELLIOTT: State your name, please.

MR. DARLING: Bob Darling.

(BOB DARLING SWORN BY ATTORNEY.)

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. FULKERSON: The property layout here on who owns around the range, I don't know how you would do exact percentage, but Mr. Hayden would own the right. If you're facing away from 815, he would own the right side, the left side and the rear end.
Nothing on the 815 side.

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

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

To answer Mr. Kirtley's question, and apologize for not giving you one of these. You asked that it be NRA approved safety-wise. The second letter is from Jim Higginbotham, Combat Weaponcraft Specialist, Kentucky National Guard, who is a Certified NRA Basic Rifle, Pistol, Shotgun and Muzzle Loader Instructor, graduate of the NRA Law Enforcement Firearms Instructor Development School, FBI Firearms Instructor School, American Pistol Institute (now Gunsite) Provost and Senior Expert, Officer Survival Instructor Grayson County Sheriff's Office, and Weaponcraft Instructor, Kentucky National Guard.
He says, "I have looked over this range and in the past conducted training on this range. In my opinion there is nothing about the layout or nature of the range that is unduly dangerous to people or property outside the boundaries of Mr. Whittaker's property as compared to any other NRA approved range in the country."

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

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

That would require the same stringent, test that they have to have approved for their liability to be able to use it. It's definitely a safe place.
I should probably take these letters to him.

I think this will ease his mind.

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

CHAIRMAN: The applicant have any other comments?

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: Okay, Mr. Kirtley.

MR. KIRTLEY: Going back previously to this ownership.

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

The only reason why I'm saying, noise has never been -- Mr. Pantle, you weren't here last month. Noise has never been an issue. Never raised until tonight by the applicant about complaining. A deer
rifle is the common shooting. 30-06 I believe is what is used to shoot deer. They have a range of 3.12 miles. 3.12 miles or 5500 yards.

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

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

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

In 1994 they went about their business and built it the other way. Now, I'm sorry, but the point of fact they have never exercised the '94 conditional use permit period. Exercising it wrong doesn't mean exercising it. You have to exercise it properly. So
what we're requesting is you deny their application
and find that they no longer even have the original
condition. They never did it. It failed by operation
of statute. They said it would be done in one year.
Thank you.

CHAIRMAN: Do you have any other --

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

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

Mr. Kirtley knows very well that if there's
some liability associated with this range, they are
not going to somehow evade liability by the way they
have structured this ownership. Every lawyer in this
room knows that.

Thank you for your time and consideration.

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

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

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

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

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

It was my understanding from Darrel that
whenever they asked, talked to Planning & Zoning, they
came out and did a look. They said, we think we would
rather you shoot in this direction. Darrel's original plan was to shoot in the other direction. He's adamant about the fact that it was Planning & Zoning that suggested you shoot the other way. He just opted to turn it around. It's not an issue to turn it around now.

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

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

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

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

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

MR. FULKERSON: I understand the question. I do not know what the original plat looks like. It was not even brought to my attention until the last meeting that perhaps the original plat had the rifle range originally planned as shooting towards the road.
Now, when it came to my attention, I asked and Darrel said that, yes, sir, he thought that whenever they drew that up originally, with the aid of Planning & Zoning, that it was drawn that way. At the request of Planning & Zoning, it was turned in the opposite direction for safety reasons. That's why he did it.

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

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

MR. FULKERSON: Correct.

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

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

MR. JONES: I understand.

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

MR. MISCHEL: Jim Mischel.

No. The original application has not been
amended up to this point. At the time that I met with
Mr. Whittaker at his gun shop, I showed him the plat
that was approved back in '94, '95.

MS. STONE: '94.

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

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

MR. MISCHEL: Yes. If the use is not acted
upon within one year, then it looses that, if it was
approved on an approval plat, and would come back
before the board. That's with any conditional use
permit.

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

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

MR. PEDLEY: And that has not been done?

MR. MISCHEL: That has not been done.

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

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

MR. ELLIOTT: That's correct.

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

MR. ELLIOTT: No, it's not.

MR. PEDLEY: So at this point we're not
amending the permit. We're finding a new conditional
permit based on submitted plat, which is exact
opposite direction as originally.
MR. MISCHEL: Yes, with the addition of a 600 yard rifle range.


Would that be correct, counselor?

MR. ELLIOTT: Yes.

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

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

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

That's all I have, Jim.

CHAIRMAN: Any other questions from the board or comments?

(NO RESPONSE)

MR. JONES: I may be misunderstanding what it is that he wanted at the last meeting. If you want me
to have somebody live here who has inspected that
range and knows what they're talking about, tells us
that's the safest place to do that, I will come back
at the next meeting with an expert witness who has
been there and inspected it.

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

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

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

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

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

CHAIRMAN: Is there a second to the motion?
MS. DIXON: Second.

CHAIRMAN: Any other comments or questions from the board?

(NO RESPONSE)

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

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

CHAIRMAN: Motion carries.

Next item, please.

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

----------------------------------------------

VARIANCE

ITEM 4

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

Reference: Zoning Ordinance, Article 17, Section 17.311
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
Review. The Staff Review states that there are special circumstances on this property that don't generally apply to other property in this same zone in that the lot is typically smaller than most industrial applications. It has a small building that is used for an embroidery shop. There is not any outdoor display or storage on the property. The applicants also own the property to the south where the fencing would be required on that one side.

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

With that it's ready for your consideration.

CHAIRMAN: Any opposition in the office?

MS. STONE: No, sir.

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

CHAIRMAN: Is the applicant here at this time?

APPLICANT REP: Yes.

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

APPLICANT REP: No.

CHAIRMAN: Board members have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Staff have any comments or questions?

MS. STONE: No, sir.

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

MS. MASON: Mr. Chairman, I move for granting this variance. My Findings of Fact it will not adversely affect the public health, safety or welfare; it will not alter the essential character of the general vicinity; it will not cause a hazard or a nuisance to the public; and it will not allow an unreasonable circumvention of the requirements of the zoning regulations. With the conditions that no outdoor storage or display shall take place of the subject property and a three foot tall row of bushes shall be planted along the back of the parking lot
where facing US 60 East.

CHAIRMAN: Is there a second?

MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MS. STONE: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 5

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

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

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

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

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

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

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

We have made a recommendation for denial of this application. It may adversely affect the public
health, safety or welfare; would not alter the
essential character of the general vicinity; could
cause a hazard or a nuisance to the public. The
recommendation is for denial.

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

CHAIRMAN: Read them into the record.

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

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

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

"Mr. Harry Pedley and I take pride in the
appearance of our property in the 2000 block of West
Second Street. Lowering the height of the fence around the salvage yard would detract even more from the esthetics of the neighborhood.

"Thank you for your time.

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

The other letter is dated April 2, 2007.

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

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

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

"I have spoke to Nina Cambron several times
concerning this issue. I was willing to allow her to have access to my fence to add 2 feet to my fence instead of constructing a new one.

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

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

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

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

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

CHAIRMAN: They need to be put in the record.

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

CHAIRMAN: So noted.

MS. STONE: That's all.
CHAIRMAN: Is anyone here this evening speaking in opposition of this item? Let me get the applicant first. I just want to see if there's anyone here. Does the applicant have anything you would like to add at this time?

MR. SILVERT: State your name, please.

MR. NORRIS: Wilbur McDonald Norris, Jr.

(MR. WILLIAM NORRIS SWORN BY ATTORNEY.)

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

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

Now, the request of the variance is simple. Right now there's a private receive, a 6 foot privacy
fence and 2 feet bobwire. Jim came along and said 8 feet. Then we made the application to request the variance. It is not an unsightly site. It is not a junk yard, as she so stated.

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

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

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

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

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

CHAIRMAN: Any questions from the board of the applicant?

MR. DYSINGER: I have a question, Mr. Chairman. First of all I'd like to apologize to the Chair and all the applicants for being tardy. Babysitter trouble.
Sir, in the letter that we received, it stated that cars are sometimes stacked above height of the fence.

MR. NORRIS: No.

MR. DYSINGER: That's never occurred.

MR. NORRIS: That is incorrect.

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

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

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

MR. NORRIS: What?

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

MR. NORRIS: About three months, four months.

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

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

CHAIRMAN: Is there any other questions from
the board?

(NO RESPONSE)

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

(NO RESPONSE)

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

(NO RESPONSE)

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

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

CHAIRMAN: Come forward, Jim, please.

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

MR. MISCHEL: I went out I think back in November of this past year. On the I say the west side of the property there was probably a few cars stacked above the fence. There were some crushing of cars going on, storage of cars, things of that nature. I stopped that day and talked to the owner. Not the owner of the property, but owner of the business. He said he would take care of it. They would stop
crushing the cars, move those out and take them down
to the top of the fence. I believe they came into
compliance. As of that date, I haven't seen any cars
above the fence or anything.

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

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

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

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

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

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

MR. DYSINGER: Thank you.
CHAIRMAN: Any other questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Staff, any other comments?

MS. STONE: No.

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

Come forward, please.

MR. ELLIOTT: State your name, please.

MS. CAMBRON: Margaret Cambron.

(MS. MARGARET CAMBRON SWORN BY ATTORNEY.)

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

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

The property, Mr. Pedley and Owensboro Body Shop have tried very hard in the last few years to upgrade the appearance of our properties. This piece of property in particular is unsightly. An eight foot
fence would kind of help the looks of things because we would not be able to view the stored and disassembled cars within the storage facility.

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

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

(NO RESPONSE)

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

(NO RESPONSE)

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

Anybody else in opposition? Come forward, please.

MR. ELLIOTT: State your name, please.

MS. CAMPBELL: Paula Pedley Campbell.

(MS. PAULA PEDLEY CAMPBELL SWORN BY ATTORNEY.)

MS. CAMPBELL: I'm the one that has to go out and pull the weeds off the fence that's growing from their property. They don't mow it like they should be mowing it. So I get out there and pull weeds off the fence. The fence actually belongs to my father. It's not the Cambron's fence. It's my father's fence. I
talked to Nina and my dad talked to her several times. We told her just add to our fence and that would save you some money, and he's willing to do that. Just add two more foot to my father's fence. That would save her quite a bit of money. They're using my father's building as their fence I assume. They do have a couple of cars that are probably pretty close to my father's business. He doesn't want them butting up against his building. Plus when we look out of our windows, we see the junk cars. I mean there are several junk cars there. There's a couple of motors sitting out, you know. I know it's a repair area, but still we do keep all of ours hidden from sight.

CHAIRMAN: Any questions?

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

MS. CAMPBELL: Up until this point I just got out there and pulled them. I thought, well, I'll just pull them myself, but since this is an issue with the site, with when they were stacking the cars, it was quite unattractive. I'm the one that witnessed the gas tanks being punctured and the gasoline poured in
these buckets right in front of my office window. I thought that was quite dangerous. So we were actually the ones that called in the complaint.

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

(NO RESPONSE)

CHAIRMAN: Applicant have anything else to add, please?

MR. NORRIS: Whatever complaint that Ms. Pedley has, will be addressed and taken care of. I was unaware of the grass growing through the fence. I've been down there often. I have did not see that. As far as cars being seen by the public, that privacy fence takes care of that. There will be no more stacking. It's also my understanding that in Nina's conversation with Harry there was no problem with what we're requesting the variance from.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. WARREN: I have a question for Jim.

CHAIRMAN: Jim, come forward.

MR. WARREN: Jim, you mentioned awhile ago
that there are different requirements for body shop
versus storage or salvage. The 6 foot fence goes to
an 8 foot fence. Were they made aware of that change
in the height of the fence at that time?

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

CHAIRMAN: Any other questions of the
applicant?

(NO RESPONSE)

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

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

MS. DIXON: Second.

CHAIRMAN: A motion has been made and a
second. Any other comments or questions from the
board?
(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MS. STONE: No.

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

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

CHAIRMAN: Motion denied.

Next item, please.

ITEM 6

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

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

Applicant: William C. Mitchell

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

We do have a Staff Report. The Staff finds that there are no special circumstances that do not 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
stated that they planned to use the average setback that is allowed in the zoning ordinance that gives them the ability to average their setback between the prescribed setback and the property nearest to them. That would give them about 27 feet from the property line using that.

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

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

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

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

CHAIRMAN: Thank you.

Any other opposition or comments in the
office?

MS. STONE: No, sir.

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

(NO RESPONSE)

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

(NO RESPONSE)

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

MS. STONE: No.

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

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

MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add at this time?
MS. STONE: No.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries. It's denied.

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

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

CHAIRMAN: Call the meeting back to order, please.

Becky would you state the next item.

NEW BUSINESS

ITEM 7

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

MS. STONE: This is back on the agenda based on a court order from the judge. I will let Madison 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
this matter and a Conditional Use Permit was approved. That was later appealed to the circuit court of Daviess County on March 26th. On March 26th the Honorable Griffen entered an order giving his opinion as to that appeal.

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

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

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

Typically when we have a situation like that, our process is to not hear new evidence, but to rather follow the opinion of the court and to hear a summation of the evidence in record from both sides. At that time then issue findings consistent with those requested from the court. Those are on those three items.
I have discussed this procedure with K.T. Williams who is the attorney for the plaintiffs in this action. I've also discussed it with J.D. Meyer as well as Tom Meyer who were attorneys for the defendants in this action. They have agreed to this procedure.

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

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

So with that, again, the rules of procedure tonight is that we will hear summations from both
sides of the evidence in record as to those three
issues and that we will not hear new evidence and
testimony beyond that. With that I'll turn it over to
the Chairman.

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

MR. SILVERT: You can.

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

MR. SILVERT: That's correct.

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

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

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

MR. SILVERT: Yes, sir. Anything that is of
record as to these hearings, these two hearings that
we had.
MR. CHAIRMAN: Any particular one I need to listen to first?

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

MR. CHAIRMAN: Plaintiff first then. Come forward.

MR. ELLIOTT: State your name.

MR. WILLIAMS: K.T. Williams.

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

MR. WILLIAMS: For a moment there was hesitation on my part calling us plaintiffs. I wondered if you meant the applicants for this conditional use permit, and that we are not. Plaintiffs in the circuit court because we challenge the grant of the conditional use permit of this board.

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

If you choose to proceed, then what I do want to do is go ahead, as Mr. Silvert explained, and make
summation, description of the evidence that you could consider and that I believe demonstrates the findings that you must make.

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

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

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

Second, 30 of those, at least 30 of those the evidence shows will come from the Department of
Corrections because of criminal convictions that those individuals have had.

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

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

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

Second, if you concentrate a large number of criminals in a small area, does that increase the risk of crime? I think the answer to that is, yes, as
well. You know that at least 30 percent of the
individuals in this facility will be convicted
criminals.

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

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

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

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

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

    Is a 100 resident drug treatment facility
consistent with agricultural fields? Again, I submit to you that it's not.

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

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

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

Now, I know each of you understand real estate largely. That's what you deal with each time you have
a meeting here and maybe many of you deal with real
estate in your careers. So you understand the
distinction between a decrease of value in real estate
and a negative impact on the value of real estate.

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

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

For instance, Mr. Clark who testified to the
board, he testified that he bought property all near
the jail and it increased in value, but what we don't
know, what wasn't presented to the board is how his
property increased in value compared to other
comparable property not by the jail. I submit that
the jail didn't make his property values increase so
it must have been something else, but we just don't
know. So there's not an apples to apples comparison
if you look at jail or other sites.
What we have is Higdon Road, an agricultural land and a facility of 100 admitted drug addicts. What will be the result of putting those two things together? Well, appraiser George Cox testified to the board that based on his experience and his professional expert opinion that that facility, if put where it's proposed, will negatively effect the property values of these people here.

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

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

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

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

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

If you go ahead and make findings, I suggest that the findings that you can make are that safety of
the people on Higdon Road will be compromised.

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

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

Thank you.

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

(NO RESPONSE)

CHAIRMAN: Thank you.

Mr. Meyer.

MR. ELLIOTT: State your name, please.

MR. MEYER: Tom Meyer.

(MR. TOM MEYER SWORN BY ATTORNEY.)

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

Nevertheless, and for that reason, by the way of the presentation with regard to the summation that we are permitted to make in this instance is going to
be made by Mark Dunaway.

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

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

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

It's only these three points that the court has remanded to the board for its consideration and further findings of fact. So that's really all that you're being asked to do by the court. To that degree we're in complete agreement with your attorney's
advice. That that is the purpose of today's hearing.

I now present Mr. Mark Dunaway who is

president of the organization. He will provide for

you the summation that we've agreed to give with

regard to these various points.

MR. ELLIOTT: State your name.

MR. DUNAWAY: Mark Dunaway.

(MR. MARK DUNAWAY SWORN BY ATTORNEY.)

MR. DUNAWAY: The matters before the board to

consider a conditional use application of Phillip and

Corine Hedden and Owensboro Regional Recovery, Ltd for

the construction operation of a recovery facility

through the Recovery Kentucky Program.

The board previously unanimously approved and
decided to grant the conditional use permit. Several
neighbors have appealed the decision to the Board of
Adjustment. Judge Griffin of the Daviess Circuit
Court presided over the appeal. Judge Griffin
affirmed and approved of the board's decision in part.
The court found that the proposed use of the property
as a recovery facility was one that could
appropriately be allowed in this zone. The court also
determined that the board's decision in the hearing
satisfied the due process requirements. The court
asked the board to produce additional findings on the
impairment to the neighborhood resulting from the
proposed $5 million facility.

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

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

Thus opponents contend to this fact supports a
conclusion that Owensboro Regional Recovery should not
be permitted to construct its facility in a
residential neighborhood.

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

The board witnessed a slide show presentation
showing the Hope Center in Lexington abuts
single-family residence. Same meeting, Page 68 to 72.
Also in Exhibit H, tab A.

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

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

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

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

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

However, hearing testimony indicated that this is not strictly a residential neighborhood. Page 72.
The land to the immediate west of the property is currently vacant. Expert testimony presented by Mr. Don Bryant said this property would most likely develop as commercial property. That's on the 8/3 meeting, Page 84.

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

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

So the undeveloped land in the area and the land immediately to the south of the property appear right for commercial development. The record contains substantial evidence to prove the facility could properly integrate into the neighborhood. Homeowners characterization of the neighborhood is solely a residential facility is not fully accurate. Much of the land surrounding this neighborhood remains undeveloped. Mr. Don Bryan, the expert, testified the property immediately to the west of the property would
most likely develop as commercial property.

Conceptual plan submitted to the Owensboro Metropolitan Planning Commission proposed the vacant land is on the corner of JR Miller Boulevard on Weikel Drive as commercial developments.

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

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

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

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

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

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

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

Mr. Benny Clark, a local developer, testified that he had purchased property at 3620 River Bend Cove, Owensboro in October of 2002. This is on Page 100.
Mr. Clark stated that the razor wire fencing in the rear of the jail facilities were visible from the front porch of this property. He purchased this property for $110,000. He sold this property in March of 2006 for $199,000. This represents an increase of about 81 percent in value over three and a half years.

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

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

The evidence further supports the determination that the facility would not lead to a decrease in property values. The opponent relies solely upon the testimony and opinion of George Cox, a local appraiser, who testified that they would decline. This is just an opinion. The circumstantial testimony runs contrary to the direct proof and evidence offered using the Daviess County Detention Center, which is an institutional facility, and it showed that there was no decline in the property
values of the surrounding neighborhood. Mr. Clark testified he owned the property. It had a direct view of the jail facility. He even mentioned the razor wire.

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

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

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

Of the 100 men, the facility will house at least 33 individuals who receive either shop probation or parole from the criminal justice system. That's in the record from the August 3rd meeting, Page 24 and
The Kentucky Department of Corrections will provide operational funds to Owensboro Regional Recovery in return for accepting such individuals. However, Owensboro Regional Recovery maintains the right to reject any individual coming to it from the Department of Corrections or any other source for that matter. This is on Page 78 of the record.

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

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

The program is utilized by Owensboro Regional Recovery have proven successful in assisting individuals to overcome their addictions to drugs and/or alcohol. The facility will not be a country club. The intensive programs require individuals to attend various meetings, group or community gatherings and individual mentoring sessions. Owensboro Regional
Recovery will randomly perform drug test of the individuals in the program. This is all from Page 76.

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

The individual develops a rigid daily routine.

At all times Owensboro Regional Recovery staff maintain a close supervision of all the individuals in the facility and missing or late individuals are immediately discovered and disciplined. This is from the August 3rd meeting, Pages 66 and 67.

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

Evidence showed the existing facility would not cause increase crime in the neighborhood. Experts Janice James, program director of the Hope Center, and Robbie Brannon, vice president of the program for the Healing Place, each testified to the safety procedures implemented in connection with their perspective programs. Owensboro Regional Recovery modeled its procedures after those existing at these facilities. Ms. James and Mr. Brannon both testified that neither recalled any incident where an individual in their
respective program harmed or posted a threat of
harming a neighbor of the facility. This is on Page
75 and Page 93 of the September 7th meeting.

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

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

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

Like-wise Lighthouse presented evidence that
in the four years since it began operating from a
house located on Clay Street in Owensboro and expanded
to three other houses in the vicinity, it never once
received a report from a neighbor or the Owensboro
Police Department that an individual in its program
caused harm to a resident in that neighborhood. This
is Page 97, same meeting.
Carol Alvey, a resident of East Third Street near Clay Street, testified that she was never threatened by any participant in the Lighthouse program. This was from Page 97.

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

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

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

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

Homeowners and others testified they fear for their safety under the proposed use of the property. However, no one presented any concrete evidence that harm actually occurred. Such testimony was simply based upon fear, stereotypical assumptions of the individuals in the program. Such testimony focused upon the individual in the state of committing a crime. Not the individual who recognized his mistake
was remorseful and is seeking to better his life for
himself and his family. A difference exist between
these two type of people, although they may be the
same person. This is from the August 3rd meeting,
Page 75 and 76.

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

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

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

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

Furthermore, Owensboro Regional Recovery will
implement appropriate screening procedures to deny
admission to those severe and persistent violent
offenders and criminals. Opponents take issues with
those referral from the Kentucky Department of
Corrections, but fail to realize or recognize that
Owensboro Regional Recovery has the authority to
reject any participant even though it's coming from
that source.

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

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

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

In conclusion, the record from the prior
hearings conducted by the board contains plenty of
evidence, some of which I've outlined in this
summation, to find the Recovery facility would not
impair the Higdon Road neighborhood.

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

CHAIRMAN: Any board members have questions of this gentleman?

(NO RESPONSE)

CHAIRMAN: Thank you.

Any comments from the board at this time?

(NO RESPONSE)

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

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

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

I want to point out that member Pedley's comments earlier, when considering the second item on your agenda, that is once a person is dead it's too late. He was making that comment related to the
Whittaker proposal for a gun range. I'm not trying to suggest to you right now that the residents of this proposed facility will kill someone, but that's possible, I guess. We just don't know.

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

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

Second, in discussing the property values, I urge you to look back through the testimony concerning that issue. It was only a few pages in length, but clearly you'll see the distinction there between the testimony from George Cox that discussed the negative impact this facility would have on the area and the testimony from Mr. Clark about his increase in values in the area around the jail. There is a key distinction. I urge you to look back through there because when read that you'll see that the testimony
that was presented to the board demonstrates clearly
that this facility will negatively impact the property
values of the folks on Higdon Road.

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

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

In addition, the record doesn't contain any
evidence as to how much an increase that property
would have had if the jail hadn't been there. That's just what we don't know. So the only thing that's not speculation, is the testimony from Mr. Cox specifically saying that this facility will decrease or at least negatively impact the property values of the folks on Higdon Road.

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

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

MR. MEYER: Just a couple of brief comments. With all due respect to Mr. Williams' argument with regard to what I say call the fear factor and how this is going to damage their property because of this
dangerous of crime or whatever. He's speculating. He's speculating on the fact that, well, these people are drug addicts, they're being rehabilitated as drug addicts, alcoholics, and therefore it's bound to have some negative effect on the property value or it's bound to have some negative effect on the crime in the area. You've got that total speculation from that fear factor which truly, if you based an opinion on that, would be totally arbitrary and capricious versus the direct evidence that you've received from the testimony from the people in Lexington operated a facility like this and in Louisville that operated a facility like this and have over 20 years experience with no increase in crime, no problem in the neighborhood, no complaints coming in, except for one about people who are cutting across the corner of a lot of a private residence there that was quickly remedied, if you recall.

There was absolutely no increase in crime in those areas. They never had any problems with any of those people. That testimony is by the experience that we've had here in Owensboro with the facilities that they've already been operating where they have not had any increase in crime as testified to. They have not had any increase in police calls to the area
as compared to what it was before. They have not
certainly had any problems we regard to the reduction
in valuations of property in the area.

I think you all may recall vividly when George
Cox was giving his testimony, which is what they
solely base their case on when it came down to the
valuation question. That J.D. didn't have to cross
examine Mr. Cox about the questions that he raised
because your board shredded his testimony. Literally
shredded his testimony. So much to the point that he
opined at one time, well, maybe Benny Clark when he
sold that property, maybe he left a Mercedes Benz in
the garage was his testimony. That testimony Mr. Cox
was totally discredited at the earlier hearing as
opposed to Mr. Clark's testimony who testified not
only about the own residence that he had there, but
also the valuations on those other streets that we
mentioned that were neighboring the facility that was
a jail facility. This isn't a jail facility. You've
seen the pictures of the renderings of these
properties, what they intend to build and what was
built in Lexington and Louisville. There's a $5
million improvement to an area that is going to
benefit by those things, and that's what Mr. Clark has
testified to.
We believe that the evidence is certainly in the record as stated in the summation and is certainly there to support your alls earlier determination that this is a proper use of a variance that should be granted and that we believe that your earlier decision should be reaffirmed and the particular facts that the court asked to be supplemented be included in the record. This project certainly needs to move forward. We're anxious to get it going and we believe that the evidence has been presented to you, hard factual evidence to demonstrate that these points are all in favor or going forward with this variance as previously granted by this board. Thank you.

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

(NO RESPONSE)

CHAIRMAN: We thank you.

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

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

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

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

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

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

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

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

MR. SILVERT: It would be the findings of fact of this board in total. So if you were to submit some findings of fact and ask that the board adopt the finding of fact that you submit, then the board will
have done so, if they agree with your findings.

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

MR. SILVERT: That can be done.

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

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

MR. DYSINGER: If you would just in essence
move that as a board we adopted these findings and
then read his findings and then we vote on that. My
question is procedural really more than anything else.
How we take his findings and make it the whole
board's; is that correct?
MR. SILVERT: That's right. It would take a motion, if Mr. Pedley wanted to state his findings of fact as to these three issues and either Mr. Pedley or another board member move that the board adopt those findings of fact as the findings of fact told to the board and submit those to the judge, then that would be appropriate.

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

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

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

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

Also stated by Mr. Meyer, they have intensive screening process for sex offenders, an other things.
That anyone who engages in any violent activity will be removed immediately by the calling of local law enforcement and with proper fencing, and that's not in a condition, with proper fencing and screening it will allow for a safe environment. That's the safety issues.

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

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

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

On adverse influence based on documents handed out and statements by Mr. Benny Clark on property values near the US 60 jail, that the values increased
in a normal way or above should integrate and will not have an adverse influence on property values or future development.

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

That is my findings on the adverse influence.

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

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

That is my findings on the three issues.

MR. WARREN: Mr. Pedley, I was glad to hear that actually. My last vote was based on what I heard then and not tonight. What was brought up tonight just reaffirmed what I have to say on the safety and crime thing. One of the most compelling arguments that I heard at the September meeting to me was, and Mr. Williams has kind of brought this up. That we're looking at other communities such as Louisville and
Lexington. That we're not Louisville or Lexington.
No, we're not, but we do have programs right here in
our city and they brought police reports and crime
reports that right out stated there has been no
increase in crime around the facilities that we have
today. So I agree with the safety and crime facts.

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

CHAIRMAN: Any other member have any comments?

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

The integration issue is something that we're
asked to speculate on. Their testimony that the areas
they were in were strictly residential and yet they
still didn't have a problem with integration was
impressive, especially in that if this neighborhood
stays residential as it is now, we have reason to be
optimistic and I don't believe would cause a problem
with integration. Especially if it does move into the
direction of mixed neighborhood, which seems likely.
We have even less reason, and more importantly that
expert testimony led me to that finding.

CHAIRMAN: Any other comments?

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

CHAIRMAN: Is there a second.

MR. WARREN: I'll second the motion.

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

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

MR. WARREN: Move to adjourn.

MR. DYSINGER: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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

I, LYNETTE KOLLER FUCHS, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Board of Adjustment meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 103 typewritten pages; and that no signature was requested to the foregoing transcript.

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

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

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