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

MEMBERS PRESENT:  C.A. Pantle, Chairman  
Gary Noffsinger, Director  
Ward Pedley  
Sean Dysinger  
Ruth Ann Mason  
Clay Taylor  
Madison Silvert, Attorney  

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CHAIRMAN: Let me call the meeting to order.  

Want to welcome you to the Owensboro Board of Adjustment meeting this evening. We start our meetings each night with a prayer and the pledge to allegiance. We invite you all to join us if you so desire. Ruth Ann will have the prayer, please.  

(INVOCATION AND PLEDGE OF ALLEGIANCE.)  

CHAIRMAN: Again, I want to welcome you to the meeting. If you have any comments on any item, please come before the podium and state your name. You will be sworn in because we'll have a record for the transcript if we have problems down the road.  

With that the first item on the agenda is the minutes of the last meeting of June 7th. They are in
the office. We haven't found any problems. Anyone have anything in addition?

(NO RESPONSE)

CHAIRMAN: If not entertain a motion.

MR. DYSINGER: Move to approve.

MR. PEDLEY: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

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CONDITIONAL USE PERMITS

ITEM 2

15 Carter Road, zoned A-U
Consider request for a Conditional Use Permit to increase the size of the church building from 3070 square feet to 4870 square feet and to add additional parking.
Reference: Zoning Ordinance, Article 8, Section 8.2B3
Applicant: Audubon Church of the Nazarene, Inc.

MR. SILVERT: State your name, please.

MR. HOWARD: Brian Howard.

(MR. BRIAN HOWARD SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property is currently zoned A-U Urban Agriculture and a church is conditionally permitted under the zoning classification. Based on
OMPC records, three Conditional Use Permits have been approved for the subject property. The first application was heard by the OMBA in October 1992, to consider a request for the construction of a church. In October 1993, a request was made to rehear the request for a Conditional Use Permit in order to construct the church facility. The most recent application was for the construction of a building on the church property for use as church related classrooms. All three applications were approved by the OMBA.

The applicant has submitted an amended development plan for an addition to the existing church facility. The proposed expansion will not increase the size of the sanctuary and will not alter the parking requirement for the church.

LAND USES IN SURROUNDING AREA

The property to the north, east and west are all zoned A-U Urban Agriculture and are occupied by a botanical garden and city park. The property across Carter Road to the west is zoned B-4 and is location of the Humane Society.

ZONING ORDINANCE REQUIREMENTS

1. One (1) paved parking space for every five (5) seats in the main auditorium.
2. Vehicular use area screening as required.

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

CHAIRMAN: Has there been any objections filed in the office on this?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Staff have anything to add?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board members have any questions before we call the applicant forward?

(NO RESPONSE)

CHAIRMAN: Anyone wishing to object to this item?

(NO RESPONSE)

CHAIRMAN: The applicant have anything you want to bring forward or state at this time?

(NO RESPONSE)

CHAIRMAN: Board members have any questions of the applicant?

(NO RESPONSE)

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

MR. PEDLEY: Mr. Chairman, make a motion for approval based on this is an existing use and it is compatible with the neighborhood, and will not have an
adverse influence on the neighborhood.

CHAIRMAN: Is there a second?

MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

MR. NOFFSINGER: Mr. Chairman, Staff would recommend that you suspend the rules and consider amending the agenda tonight to place Item 3 at the end of the agenda and to hear these other items which I think will go very quickly, in the interest of the number of people that are here. That would need to be voted on.

MR. DYSINGER: So moved, Mr. Chairman.

MS. MASON: Second.

CHAIRMAN: A motion has been made and a second. All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: The third item will be put on the end of the agenda.

ITEM 4

9255 US 431, zoned A-R
Consider request for a Conditional Use Permit in order to construct and operate a farmer's market.
Reference: Zoning Ordinance, Article 8, Section 8.2E1 and Section 8.2E3
Applicant: Kevin Trunnel; Edward and Shirley Trunnel

ZONING HISTORY

The subject property is currently zoned A-R Rural Agriculture. The applicant proposes to use the subject property as a farmer's market to include the sale of fresh fruit, vegetables, flowers, dairy products and meat, some of which may come from sources outside of the farm. The use as a farmer's market requires a conditional use permit within an agricultural zone.

The site plan submitted with the Conditional Use Permit shows two existing driveways to US 431 that have been approved by the state according to the applicant. The parking and drive areas are proposed to be gravel. However, the handicap unloading aisle must be paved and the drive approaches to the site should also be paved to prevent gravel from spilling into US 431.
LAND USE IN SURROUNDING AREA

All adjoining property is currently zoned A-R Rural Agriculture with farming and rural lot residential land uses in the vicinity.

ZONING ORDINANCE REQUIREMENTS

1. Six (6) parking spaces plus one per 250 square feet.
2. Vehicular use area screening along the road frontage.
3. A 50 foot roadway buffer from the street centerline.
4. A 75 foot building setback from the street centerline.

SPECIAL CONDITIONS

Pave drive approaches from the edge of US 431 pavement 50 feet in order to prevent gravel from spilling into US 431.

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

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

(NO RESPONSE)

CHAIRMAN: Was there any opposition filed in the office?

MR. NOFFSINGER: No, sir. I might add, Mr.
Chairman, that this is a use that certainly can be considered compatible with an agricultural zone in the area because it is just that, a farmer's market.

It's our understanding that the commodities to be sold on the premises will be farm grown local products as well as meats.

Just want to remind the applicant that the provisions that you're applying under, farmer's market, which is a very limited use. Grocery stores, for example, that we're accustomed to would not be allowed in this zone. It would have to be zoned to a commercial type zoning classification. They are not doing that. They're coming in under the clause of the zoning ordinance that allows agricultural activities and those uses that need to be near such activities to be located in rural areas. They are activities that are not to change the rural character of the area.

So with that I think certainly a farmer's market would be compatible with the area, but the applicant needs to be reminded that products that are typically sold at a grocery store that are shipped in from elsewhere and sold and stocked on the shelves such as bread, a loaf of Colonial bread, if you will, and whatnot, will generally not be acceptable items. The other items you would think about at a farmer's
market such as fresh vegetables and things like that
would be. We've talked with the applicant and I think
the applicant understands the provisions.

CHAIRMAN: The applicant have anything you
want to come forward and bring at this time, please?

MR. SILVERT: State your name, please.

MR. TRUNNELL: Kevin Trunnell.

(KEVIN TRUNNEL SWORN BY ATTORNEY.)

MR. TRUNNELL: I really don't have anything to
add unless there are any questions.

I am aware of what Gary was saying about this
conditional use permit, what it will allow and what it
will not allow. Aware of those conditions. We don't
want to be a grocery store. We don't want to be a
convenient store. That's what makes this project
unique and that's why we want it on our farm. If
there are any questions.

CHAIRMAN: You understood the special
conditions that the Staff recommend, the paving of 50
foot?

MR. TRUNNELL: Yes, I'm aware of that. I've
had several conversations with Brian, and Becky, and
Jim. I'm understanding what they're recommending.

CHAIRMAN: Any board members have any
questions of the applicant?
1   (NO RESPONSE)
2   CHAIRMAN: Staff have anything else?
3   MR. NOFFSINGER: No, sir.
4   CHAIRMAN: Hearing none entertain a motion to dispose of the item.
5   MR. DYSINGER: Mr. Chairman, given the findings that this use would provide a benefit to the surrounding area, will provide an outlet for local produce, further as the surrounding area is rural agricultural it is compatible and does not conflict with the comprehensive plan. Move to grant the conditional use permit with the special condition that the paved drive approaches from the edge of US 431 be paved 50 feet in order to prevent gravel from spilling into US 431.
6   CHAIRMAN: Is there a second?
7   MS. MASON: Second.
8   CHAIRMAN: A motion has been made and a second. Any other comments or questions from the board?
9   (NO RESPONSE)
10  CHAIRMAN: Staff have anything else?
11  MR. NOFFSINGER: No, sir.
12  CHAIRMAN: Hearing none all in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

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VARIANCE

ITEM 5

300, 301, 307, 313, 321 Links Cove, zoned R-1C
Consider request for a Variance in order to increase
the front yard fence height from 3 feet to 8 feet to
the rear of the proposed single family residential
homes on these lots having double street frontage. Reference: Zoning Ordinance, Article 3,
Section 3-7(g)(2)
Applicant: Thompson Homes, Inc., PKP 79 Co.

MR. NOFFSINGER: Mr. Chairman, the Planning
Staff has reviewed this application. The application
is found to be in order. All adjoining property
owners have been notified.

The Planning Staff has submitted or has
prepared a Variance Staff Review that we would like to
submit into the record here tonight.

You approved a similar variance on property in
this development last month. This is a new
development. It's the Fiddle Sticks development.

In that development we have some of the lots
that have double street frontage; in other words, you
could say two front yards. The zoning ordinance
requires that a fence not be any higher than three feet in the front yard. We've had several request for pools to be located on some of these lots. In order to construct a swimming pool, you have to have by the Kentucky Building Code a four foot high fence. Well, on these lots, if they do not receive this variance they would be unable to construct a pool in the rear yards of these residences, which the rear yards do front a street.

We feel in this review that since we have granted one variance, which was last month, and the fact that this is a planned development and it's still in the construction phases that the variance would not circumvent the zoning ordinance and it would not alter the essential character of the area because it is a neighborhood that is in the development stages. So with that we're certainly recommending that it be approved.

CHAIRMAN: Any other suggestions?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Any objections filed in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Anyone in the audience wishing to object to this item?

(NO RESPONSE)
CHAIRMAN: Entertain a motion to dispose of
the item.

MS. MASON: Mr. Chairman, I move for approval.

My findings of fact is 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.

CHAIRMAN: Is there a second?

MR. PEDLEY: Second.

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

(NO RESPONSE).

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

ITEM 6

557, 561, 565, 571 Snap Hook Court, zoned R-1C
Consider request for a Variance in order to increase
the front yard fence height from 3 feet to 8 feet to
the rear of the proposed single family residential
homes on these lots having double street frontage.
Reference: Zoning Ordinance, Article 3,
Section 3-7(g)(2)
Applicant: Thompson Homes, Inc., PKP 79 Co.

MR. NOFFSINGER: Mr. Chairman, the Planning Staff has reviewed this application. This application is found to be in order.

Everything I said in Item 5 is related to this application and the record will so reflect that. We would recommend it's approval.

CHAIRMAN: Anyone in opposition of this item?
(NO RESPONSE)

CHAIRMAN: The applicant have anything you want to add at this time?
(NO RESPONSE).

CHAIRMAN: Entertain a motion to dispose of the item.

MR. TAYLOR: Mr. Chairman, vote to approve this Variance based upon the finding it is a new neighborhood and the previous decision made by this board, as well as 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.
CHAIRMAN: Is there a second?

MR. PEDLEY: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else you want to add?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 7

1600 River Road, zoned I-2
Consider request for a Variance in order to eliminate perimeter trees along the southern, western and western 312 +/- feet of the northern property line and to eliminate the solid fence along the entire western limit of the working area.
Reference: Zoning Ordinance, Article 17, Section 17.311
Applicant: Dixieland Properties, LLC; Marnic, LLC

MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this application. The application is found to be in order. This board approved last month a conditional use permit in order to operate a salvage yard on the property. There were several instances,
cases where the applicant agreed to exceed the screening requirements of the zoning ordinance.

However, they are coming back to you this month, which they stated that they would, to ask that some of the fencing and perimeter trees that they not have to be installed. This is due to, one, the fencing along the southern boundary. They intend to provide, however it adjoins another salvage yard. Therefore they are requesting that the trees not to be installed there.

They are also requesting that the fence and the trees be waived along the western boundary. This is due to topography. There's a very steep grade there, incline, whereby putting up a fence would do absolutely nothing to screen the adjoining property because that adjoining property is many, many times higher than what this property is the finish grade.

They're also requesting that the trees not be required along a portion of the northern boundary line, which is shown on the site plan.

So with that these screening requirements are in affect to protect the adjoining properties and that they're asking for the waiver on. If the adjoining property owners do not have an interest or do not object to the waiver of these fencing and other screening requirements, we would recommend that they
be approved, waived to be approved.

CHAIRMAN: Any objections filed in the office?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Does the applicant have anything you want to add at this time?

APPLICANT REP: No.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Entertain a motion to dispose of the item.

MR. PEDLEY: Mr. Chairman, make a motion for approval based on Staff's findings and recommendations; and it will not adversely affect the public health, safety or welfare; will not alter the essential character of the general vicinity; 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.

CHAIRMAN: Is there a second to the motion?
MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 3

9300 KY 815, zoned A-R (POSTPONED at June 7, 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 Whittaker

MR. NOFFSINGER: Mr. Chairman, this application has been postponed over the course of the past several months due to the applicant needed additional time to gather information regarding the construction of the range and the safety of that range.

The applicant is here tonight to make a
presentation. Each board member has received a copy of the summary or the findings of the National Rifle Association. I won't elaborate on that. Certainly let the applicant do that.

There is on record opposition to this application. They are represented by Mr. Bob Kirtley. He also has received a copy of that summary.

We wish to enter a copy of that into the record, as well as Mr. Kirtley has given me a piece of paper talking about the Rock Hill Gun Range being their status as a corporation. We certainly like to give the applicant a copy of that because I'm sure Mr. Kirtley will make reference to it as well as enter that into the record.

With that it's ready for consideration.

CHAIRMAN: Is the applicant ready to present your side at this time?

MR. SILVERT: State your name, please.

MR. JONES: My name is Eddie Jones.

(MR. EDDIE JONES SWORN BY ATTORNEY.)

MR. JONES: Let me first speak to the issue of the Rock Hill Gun Range, Incorporated. We have prepared a deed conveying the property back to Darrel and Becky Whittaker individually. I had that deed fully executed and I have the deed with me here
tonight. I believe that we have provided to Mr. Mischel a copy of the dec sheet of the liability insurance policy insuring the gun range in the amount of $1 million.

You will recall some months ago when we met the opposition's reference to this corporation status was a concern that somehow there wouldn't be anybody to sue or there wouldn't be anybody to be liable for some negligence. We have taken steps to correct that. Darrel and Becky are going on individually as the owners of this property and we have given you the proof of insurance to cover the liability to alleviate that concern.

It also puts us in a bit of a mix as far as procedurally.

Mr. Chairman, you'll have to tell me how you want to proceed.

We have reviewed the NRA report and I think you've reviewed an advanced copy. I can tell you that while I'm not doing it right now at this moment because I want to preserve the ability to give you evidence on the issue of safety, but at the end of the day we intend to withdraw our application for a 600 foot range. Simply want to continue to exist as we have been existing under the existing conditional use
permit.

That puts us then at a position where we are responding to the April 9, 2007 issue of the notice of violation.

You gentlemen will have to tell me how you want to proceed from here so that I don't waste your time.

CHAIRMAN: Whatever you've got information to give to us that will assure us it is a safe facility go from there.

MR. JONES: That's what I understood from you the last time.

I think what I'd like to do so that I can preserve the record is first ask Mrs. Becky Whittaker to come forward and with your permission I'd like to present this testimony by question and answer.

Becky, would you state your name and somebody is going to give you the oath.

MS. WHITTAKER: Becky Whittaker.

(MS. BECKY WHITTAKER SWORN BY ATTORNEY.)

MR. JONES: Becky, would you tell the board the history of the gun range.

MR. KIRTLER: Can I ask the board --

MR. SILVERT: Could you state your name, please.
MR. KIRTLLEY:  Robert Kirtley.

I was told when I was first here that we're not allowed to cross exam direct questions to witnesses. They speak from their own position. Has that now changed? Because I tried to do that and I was told I couldn't do it.

CHAIRMAN:  We're trying to get the information all we can possible to support everything we need.

MR. KIRTLLEY:  So cross examining or asking question is now permissible.

MR. SILVERT:  I believe what you were told was that you shouldn't ask questions directly of the witness. That you should ask the board to direct them to the witness.

MR. KIRTLLEY:  Is that going to be procedure here tonight?

MR. SILVERT:  That is.

MR. KIRTLLEY:  That's fine.

MR. NOFFSINGER:  What has been my experience is that what we wanted to avoid would be having this side ask question of this side. You need to direct questions that you have of this side say to the chairman. Then the chairman will get your answers. If you want to do what Mr. Jones is doing, I think that has been allowed.
MR. SILVERT: I don't think anyone directed you not to ask questions of your own client.

MR. KIRTLLEY: Well, I got that impression and I stopped doing it.

CHAIRMAN: Proceed.

MR. JONES: Becky, just give us the history. I think this gun range started in 1994. Tell us what you did to start this gun range.

MS. WHITTAKER: We applied for a conditional use permit. Submitted a drawing of what we wanted. Was granted a conditional use permit. Then we were told that the direction we were shooting might be a better idea if we were shooting away from Highway 815 instead of toward Highway 815.

There was a natural hill there that would have been cheaper for us to build the range shooting towards Highway 815, but we thought, okay, do they think it might be safer we'll change direction. Shoot away from the highway. Move all this dirt down there. Build the berm and shoot away from Highway 815. We did that.

MR. JONES: Did that modification cost more expense than it would have?

MS. WHITTAKER: Yes. It was more expensive to do it that way, but it made sense that they would
suggest to shoot away from the highway. So we did that.

MR. JONES: When we're talking "they," who is the "they"?

MS. WHITTAKER: Someone just suggested that -- I don't remember who it was.

MR. JONES: Someone from the government though?

MS. WHITTAKER: I don't know if it was Jeff Dame. I remember working with him back then when I was doing this. I don't know if it was him or somebody from -- somebody suggested that we shoot away from the highway. Would be like common sense.

MR. JONES: So then the plan was redesigned. Now the gun range is such that the bullets go down range and there's no road on the backside of the range?

MS. WHITTAKER: Correct.

MR. JONES: How long has the gun range been in operation?

MS. WHITTAKER: Close to 13 years.

MR. JONES: What do you charge?

MS. WHITTAKER: Four dollars. They shoot all day for $4.

MR. JONES: Do you make money off this?
MS. WHITTAKER: No. We just hope to break even. Sometimes that doesn't happen. Sometimes it does. We're giving people a safe place to go shoot. If they want to go in the afternoon with their kids to learn to shoot their .22. Just someplace to go.

MR. JONES: You and your husband are in the business. You own Whittaker's Gun. So it is a sport that is consistent with the business in which you do make money?

MS. WHITTAKER: Correct. Yes.

MR. JONES: But as far as making money off the range?

MS. WHITTAKER: No. Hopefully they'll come down and buy some ammunition and go to the range and shoot. It's kind of related.

MR. JONES: During the 13 years that you've been in operation, has there ever been an incident that you're aware of where anyone has been injured or there's been any property damage with regard to this gun range?

MS. WHITTAKER: Never.

MR. JONES: I'm going to hand you. You've taken a look at a note that Darrell Whittaker signed. Is that his handwriting?

MS. WHITTAKER: Yes.
MR. JONES: Darrel is not able to be with us tonight, is he?

MS. WHITTAKER: No.

MR. JONES: I would ask that this be into the record.

If the board members have any other, I'll go on to another witness.

MR. SILVERT: I think the opposite side needs to have the opportunity to cross examine. I think the opposition needs to have the opportunity to cross examine the witness.

CHAIRMAN: Mr. Kirtley, you have anything you want to ask at this time?

MR. KIRTY: Yes.

Were you with your father when he filed this application?

MR. SILVERT: You haven't been sworn in yet, Mr. Kirtley.

(MR. BOB KIRTY SWORN BY ATTORNEY.)

MR. KIRTY: I ask that question.

CHAIRMAN: Would you answer it, please.

MR. JONES: Actually she's the wife of Darrel Whittaker. She signed the application.

MR. KIRTY: I'm sorry. I apologize.

MR. NOFFSINGER: Before we go any further.
Mr. Kirtley, if you have questions, what you will do is state those to the chairman. The chairman or the attorney or I, after we hear your questions, will then look to them to answer those questions.

MR. KIRTLEY: Does she or her husband have anything in writing that was issued by this board contrary to what the original application was approved for; in other words, reversing the range? That's my question.

MR. NOFFSINGER: Is that all?

MR. KIRTLEY: That's one.

MR. NOFFSINGER: I think you heard the question.

MR. JONES: Assist from counsel because that kind of calls for a legal conclusion.

You probably have a copy of my letter dated May 10th which is the response to Notice of Violation. We did an open record request. We came and we looked at the review. While there was a proposed site plan with the initial application in 1994, that proposed site plan was not made a part of the conditional use permit. Rather the conditional use permit only addressed the types of activities that are to be conducted on this property. It did not say, you've got to fire it this way or you've got to fire it that
way. It just simply said, these are the activities you can do on this property under this conditional use permit.

Apparently somebody from the government then went out and said, you know, you ought to shoot that way. Shoot away from the road. They simply made that suggestion. There's nothing in writing about that, nor is there anything in writing that says you have to shoot anyway. All this application does is simply say the conditions are the activity. The argument seems simple.

If Mr. Kirtley had a conditional use permit for a law office, but he wanted to have his bathroom in the back, but for whatever reason decides he wants to move his bathroom in the front. It has no relation to the activities.

In fact, this only deals with the activity. He's still practicing in his office building. They're still having a rifle range consistent with this conditional use permit. There were no conditions as to which way to fire. The agency suggested they fire that way. They built it the way that they did. It's a long-winded answer, but I think that's the answer.

MR. KIRTLLEY: Point of order, I was always of the impression the site plan was incorporated into the
conditional use; otherwise, they could be shooting
north, south, any which way for any activity. I
believe it's part of that. That's a point of origin.
You tell me.

MR. NOFFSINGER: All I can tell you is the
extent of time that I've been here, which has been 18
years, a conditional use permit included an
application. It's called an application for a
conditional use permit. This board relies on the
application and all matters of evidence in their final
action. The site plan that was submitted as a part of
that application, the board relied on that when they
took action to approve. What you have filed over in
the courthouse would be the certificate of conditional
use permit application which summarizes that this
board took action to approve the range.

I can tell you what has been my experience
over the years. Certainly we've been consistent in
terms of you amend the application if you do something
different on that site plan or out in the field from
what's shown on that site plan. You have to come back
in for a rehearing on that conditional use permit
which you've altered. It may be something as simple
as adding square footage. Maybe it's 10, 20 square
feet. You have to come back in. That is the way
we've operated at least for the time that I've been here.

MR. DYSINGER: Mr. Chairman, it seems to me this issue is irrelevant. We have a new conditional use permit in front of us that shows how they want to do business.

With all due respect, Mr. Kirtley, if we can move on from that issue, unless somebody else feels different about it, but we've got a lot of ground to cover.

MR. NOFFSINGER: Too, you might consider, and I would recommend that legal counsel advise you here in that an application was submitted to this board to add a 600 yard range. The applicant has stated it's their intent to withdraw that tonight.

Is this the proper venue at this time to be considering since the application, you know, we have a Notice of Violation out there. Perhaps it's a whole separate issue.

MR. SILVERT: If they're withdrawing the application as it exist today, they would have to reapply. As for the Notice of Violation, we would look at that at a separate hearing for an administrative appeal.

MR. DYSINGER: Wouldn't they have to contest
that violation for us to need an administrative?

They're already shutdown.

MR. SILVERT: Yes. That's correct.

MR. JONES: We did file those papers.

MR. SILVERT: I do think if they want to withdraw the application, certainly we have nothing to discuss tonight. If they're agreeable to remove a portion of what they're requesting, that might be done maybe perhaps as a condition. We would leave that to the applicant, if the applicant wants to withdraw the entire application. It's not nothing you can piecemeal. It was applied for in one manner. It would be up to this board as to how that application might be modified as requested.

I guess the question then to counsel for the applicant would be: Is it the desire to withdraw the application as applied for?

MR. JONES: We want to continue to operate a gun range as it has existed. We do not wish to proceed with a 600 yard gun range, that portion, at this time.

MR. PEDLEY: I'd like to clarify one thing. On my findings when we stated that you're in violation of the original conditional use permit. There is on file a plat that was a part of that application. That
was shown to us tonight of that. It's built exact
opposite of that application. Here is another
application that proves that it's built exact
opposite. That plat was part of that application. It
was built exact opposite. You are in violation, in my
opinion, of your original application for the
conditional use permit. This board has the power to
revoke your conditional use permit any time that
you're in violation. Any time. We have that power.
If that application and that plat you said is not part
of it, how did it get in that file? It's in that
file. It's got a stamp date. It's part of that
application. It's what we see. Same thing you've
submitted right here. It is part of that application.

MR. JONES: There's no question that we
originally intended to have the gun range firing
toward the road. I guess the testimony to you has
been back in '94 somebody from the office said, let's
rearrange it and shoot it the other way. Now, you can
either not believe that.

MR. PEDLEY: It's not what we saw. It's not
what was presented. You're in violation.

MR. JONES: The reason they might have gone
along with that is because there was no specific
reference to the direction of fire in the actual
action of the board.

MR. PEDLEY: You needed to come back before this board to make that adjustment and amend that application. You did not do that. You're in violation of your original.

MR. JONES: I take it that this institution has been inspected annually for 13 years. Isn't it the duty of the board to conduct annual inspections? I thought I read that in the statute where you guys conduct annual inspections.

MR. NOFFSINGER: No, it's not the duty of this board to conduct annual inspections. There is language that talks about the duty of the zoning administrator to conduct reviews at some point in time, but in terms of this board, no. At the time the conditional use permit was approved, it was approved by this board, but the county had a separate zoning administrator separate from this office. Ms. Whittaker mentioned that was Jeff Dame.

In terms of this office, the current office, the Planning Commission, we have no responsibility to review that whatsoever.

MR. SILVERT: If you would, if you would like my opinion on the application as it's written.

The question, what is requested says, "Adding
a 600 yard rifle range to the already pistol rifle range that is there." They show on their proposed plan a 50 yard range, a 300 yard range, a 600 yard range. These would be the ranges that they are requesting at this time. The plat shows multiple distances here and the request is to add one to the existing. Now, whether it existed legally or not, is not the question. The question is: What is the applicant asking for? They're asking for multiple rifle range yardages here and all of which are shown here.

If this board wanted to approve some and not others, they would have to do so by a condition. If the applicant wanted to remove the application in total, then we have nothing to discuss tonight. If they want to just remove a part of it, that would be a discretion of this board. That would be my opinion as to the application.

MR. DYSINGER: Mr. Chairman, I feel as though we've got a conditional use permit in front of us. Whatever has happened prior to this, not that I disagree with Mr. Pedley, but whatever has happened is not at issue here. If at some point they want to challenge Mr. Mischel's noncompliance order, at that time that would be appropriate.
My other concern is that the applicant has I believe made a good faith attempt to provide this board with evidence. If they would like to withdraw their application, that's certainly within their right, but I do understand that both sides are incurring expense. They both have attorneys to do this. If there's a way for us to handle this application through a condition as counsel suggested, I believe it's fair and reasonable for us to do that. Understanding, of course, it is the applicant, they can withdraw their application any time they want. It may not be a horrible idea. There's expense involved with this. That's my opinion. I would be interested in knowing what the rest of the board thinks about that.

MR. JONES: I would be willing to proceed, if I understand Mr. Silvert's suggestion. That basically we have re-applied for a gun range, pistol range of 50, a 100 and a 300. During the process you may say, find those acceptable and we're going to ask that you do so. You may decide that we're not prepared to provide you with a 600 yard gun range and make the condition that we not do the 600 yard gun range. That would allow us and these gentlemen to present their testimony to you tonight rather than crowd your docket
on another night.

CHAIRMAN: You're withdrawing the 600 foot?

MR. JONES: Only the 600 portion.

CHAIRMAN: You're proceeding. That's legal to go ahead?

MR. SILVERT: I believe that's acceptable in the way that they've worded their application.

MR. PEDLEY: Do we have to have a motion on that agreement?

MR. SILVERT: I believe that would be the discretion of the person that makes the motion as to approval or disapproval of this request.

MR. PEDLEY: As a condition?

MR. SILVERT: Yes.

MR. DYSINGER: So for clarity sake so I know what's going on. If we were to decide to allow them to continue as they are, which still hopefully some evidence to listen to this evening, we would just basically be granting them their conditional use permit with the condition that they not add a 600 yard gun range?

MR. JONES: Until further action of the board.

MR. KIRTLEY: It wouldn't be on the table.

They would only be authorized to the maximum of a 300 yard range is my understanding. Not to withdraw it.
Is that correct?

CHAIRMAN: Being as he pulled the 600 foot off, it would only be 300 yards.

MR. SILVERT: The reason you have to make it a condition is because the 600 yards was specifically requested in the application.

If you were to grant this, you grant the application of the existing rifle and pistol range as stated in the application, would be granted, but the addition of the 600, there would be a condition that the addition of the 600 would not be allowed because that's on their site plan. You can proceed that way if you believe from the evidence that you should.

CHAIRMAN: Do we legally need another motion to proceed?

MR. SILVERT: No.

CHAIRMAN: We need to proceed.

MR. KIRTLEY: You have to have on the record a formal request at this time that the applicant withdraws that portion.

MS. MASON: He did.

MR. DYSINGER: He did. I disagree. If we put a condition on there that they can't do it, they can't do it whether they ask us to take it off or not.

MR. KIRTLEY: I understand that. At the
outset he's telling you he's withdrawing, which he has
every right to do, and then you can compound that with
the condition.

    MR. DYSINGER: I believe he did do that. I'm
believe that's irrelevant, whether he asked us to or
not.

    MR. KIRTLEY: That's all I'm trying to do.

    MR. JONES: I assume you're ready for me to
proceed with some witnesses.

    MR. SILVERT: Excuse me. I do want to make
sure that Mr. Kirtley had the opportunity to ask all
the questions that he wanted to.

    MR. KIRTLEY: There's no since taking up her
time on those issues.

    CHAIRMAN: Thank you.

    MR. JONES: From this point I'll just kind of
operate as the MC and sit down. Mr. Jim Higginbotham
I think would like to give you some evidence from his
inspection of the range. He's actually inspected the
range for this purpose. I believe you have a letter
from a previous hearing regarding his opinions. I'll
let him take the microphone.

    MR. SILVERT: Would you state your name,
please.

    MR. HIGGINBOTHAM: Jim Higginbotham.
MR. HIGGINBOTHAM: My name is Jim Higginbotham. I am the firearms instructor and also survival instructor for the Grayson County Sheriff's Office. I'm also a contract weapon marksman specialist for the Kentucky National Guard. I oversee the program for the Kentucky National Guard.

In that capacity, Mr. Whittaker when this subject came up asked me to visit his range and tell him if I saw anything that was unsafe about his range.

I did so. I drove by there. I had seen the range several years before, but I haven't been there in recent years. I looked over the range. I have been to most of the ranges in the country, including the FBI Academy. I recently returned from the NRA in New Mexico. I overlooked the range and I did not see anything unsafe about his operation. The 600 yard range in question was not in operation at that time. I didn't make any judgment really on that.

I have since seen the NRA's more detail study. I certainly agree with the findings on that study. I do not see anything at all on Rock Hill Range that I would say stands out as being dangerous to the public.

I stand ready to answer any questions you would have in my field. I don't have any sense of the
legal matter before you, but I do know a bit about
ranges.

CHAIRMAN: Any board member have any questions
of this gentleman?

MR. DYSINGER: Mr. Chairman, I would be
interested to know, you mentioned the NRA report. I
know on the report it references baffles being
installed on the shorter distance ranges. Different
ranges I've been on do have that sort of thing.

Assuming you can bring expert testimony, I'd
like to know what you would think of adding baffles to
those ranges.

MR. HIGGINBOTHAM: I think that in an urban
area it would be necessary. You may be familiar with
Louisville, Kentucky Police Department range has a
baffle range. The US Army has baffle ranges mostly in
Europe. They do not have too many over here.

Baffling is a concrete structure to prevent rounds
from leaving the range. In a rural area, considering
the rarity of rounds that leave the range and even
more rarely it hitting something, I would think that
would be an unnecessary precaution. No doubt it helps
to prevent the rare occurrence when rounds are fired
in an unsafe direction. Of course, anyone can fire a
firearm in an unsafe direction at any time anywhere.
MR. DYSINGER: Whether or not they're on the range.

MR. HIGGINBOTHAM: Someone can cross the yellow line on the road coming at you. I would think that would be an unnecessary requirement in the rural area.

MR. DYSINGER: Thank you, Mr. Chairman.

MR. PEDLEY: I have questions.

We've eliminated the 600 yard berm. Can you tell me what the width of the 300 yard berm is?

MR. HIGGINBOTHAM: No, sir, not exactly. I didn't walk it. I have seen it. It looks to be possibly 25 meters maybe from memory from about a month ago.

MR. DYSINGER: What is that in American? Meters, how wide is that?

MR. HIGGINBOTHAM: Meters is 39 inches, I'm sorry. It's just a little bit more than a yard. Military folks think of meters.

MR. PEDLEY: Can you tell me what the height is?

MR. HIGGINBOTHAM: I think it's approximately 12 feet.

MR. PEDLEY: According to the submitted plat it's got a scale here of 200 feet per inch. It's
showing that 300 berm 60 feet wide.

MR. HIGGINBOTHAM: Could be.

MR. PEDLEY: It's pretty narrow.

MR. HIGGINBOTHAM: 25 meters would be 75 feet.

MR. PEDLEY: We've eliminated the 600 yards.

My question is: If you've got an inexperienced shooter, they're not going to be stable with that gun. I've watched a lot of them. I've taught my kids. An inexperienced shooter when he pulls that trigger he will pull one way. Most of the time he will pull up because he anticipates that gun kick.

MR. HIGGINBOTHAM: Yes, sir.

MR. PEDLEY: Let's assume this is the gun barrel. He pulls that up two inches. When that travels 300 yards, how high will it be? If he pulls to the right or left two inches, 300 yards, how far would that be? Have you done it? Have you put it to scale to say that berm needs to be 300 feet wide or 60 feet wide or what? I intended to do it before I got here. I did not do it. Put it to scale. Find out. If they pull that left, right or up two inches, when it travels 300 feet, what will it be each way? You need to do that to determine, in my opinion, the width of that berm, the height of that berm.

The other thing on a 300 yard range, what
caliber guns are you shooting? If you're going to
miss that berm, it don't make any difference if it's a
600 yard range or if you're shooting the same caliber
gun because it will travel two miles. All you have to
do is miss that berm.

These are the questions that's very much a
concern to me. How massive is that berm? How wide,
how high. Again, with an inexperienced shooter,
especially -- I've watched my kids shoot a high power
rifle. When they pull that trigger, they go up
because they're anticipating the shock of that gun.
They'll flinch every time.

These are my concerns. Nothing from the
National Rifle Association addressed that. They did
not say how wide those berms are. They did not say
what they need to be. They just said they need to be
increased.

This plat is a part of this application. It's
to scale by HRG. You're showing a berm 60 feet wide.
That's ridiculous. If you're shooting a target in the
middle and you pull two inches, you'll miss that berm
because you've only have 30 feet. If you're looking
at a 600 yard range, which we're exempting that,
there's no telling how far up or down.

MR. HIGGINBOTHAM: I can answer your question.
It depends on the range you're talking about. These are simple matters of geometry. It's called minutes of angle. If you miss by two feet at 150 meters, then you will miss by three feet at 300. Two feet is pretty far.

MR. PEDLEY: Based on how much you move -- how much are you going to move that barrel? When you move that gun barrel and pull it to a different angle, when it travels that far, it gets wider and wider and wider.

MR. HIGGINBOTHAM: Yes, sir, that's exactly what I'm speaking of.

MR. PEDLEY: The other thing is the topo map shows you're firing area above -- it's 10 feet higher, you're standing 10 feet higher than that point. At 600 you're 27 feet of that point.

MR. HIGGINBOTHAM: Yes, sir.

MR. PEDLEY: Do you think that's safe?

MR. HIGGINBOTHAM: Actually that's safer. Your declination of depression would be downward.

MR. PEDLEY: Shooting down you think is safer?

MR. HIGGINBOTHAM: Yes, sir.

MR. PEDLEY: Do you think it's --

MR. HIGGINBOTHAM: It's marginally so. We're not talking about a big difference there.
MR. PEDLEY: So a lot of safety, lot of concerns here that to me has not been answered. The national Rifle Association didn't answer it for me. We haven't got to this point yet of supervised shooting, an expert there to supervise shooting. Controlled during non-shooting hours. You can't fence that whole area. You can't close the door. What keeps people from just pulling up there and saying, I'm going to shoot. Do you have any control, supervision during hours?

The Rifle Association, they recommended that. I haven't heard what you intend to do.

MR. HIGGINBOTHAM: Sir, I'm not associated with the range in any way. I was just asked to look over the property and see if the berms were adequate. They are very similar to military ranges. Our berm where I shoot on our training site is 160 foot wide, but I shoot 40 people across the firing line at the same time. That's maybe not comparable because I have so many people shooting. I do not see anything wrong with the physical layout of his range. I don't have anything to say about --

MR. PEDLEY: But you haven't answered the question, the width of the berm as it is today and what you recommend it be about?
MR. HIGGINBOTHAM: I can only say I think it's adequate. Would I like to have a berm three miles wide and three miles high? Yes, sir, I would.

MR. PEDLEY: How wide is the berm?

MR. HIGGINBOTHAM: I have not measured it.

MR. PEDLEY: Then how do you draw that conclusion that it's adequate?

MR. HIGGINBOTHAM: I draw that conclusion from years of experience of shooting and watching new shooters.

MR. PEDLEY: But you can't tell me how wide it is. What basis do you put that on? You haven't told me how wide it is. What's the width of the berm?

MR. HIGGINBOTHAM: I did not measure it.

MR. PEDLEY: That's all I have. I'm done.

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

MS. MASON: I have a question. Maybe I'm showing my stupidity.

On these berms, there are targets up there? Is there one target, several targets?

MR. HIGGINBOTHAM: There are usually targets -- depending on how many shooters you have. There will be a target in line with that shooting position.

The target may be at the berm or it may be somewhere
MR. DYSINGER: In this case, can you guys answer how many targets are at any one time?

MR. JONES: Three.

MR. SILVERT: State your name, please.

MR. FULKERSON: Chuck Fulkerson.

(MR. CHUCK FULKERSON SWORN BY ATTORNEY.)

MR. DYSINGER: Sir, how many targets are on your berm at any given time, the 300?

MR. FULKERSON: The 300 I believe actually has an item the size of a child's swing set. I think it is a child's swingset. It's what they use to suspend. The berm is here and the level ground is here. The berm goes up. The berm reaches out. The target is actually set in front of it.

Any individual shooting at this target misses this target, there's so much space, you know, to the right, to the left, and to the height above it that if they miss it they hit the berm.

One of your questions was if he pulls to the right or to the left. If you take this piece of paper and aim a rifle, regardless of caliber, at this berm. We're calling this piece of paper the berm. Down range where the person actually shoots from, you can limit that person's ability to ever go too far to the
right or too far to the left.

In the case of this 300 yard berm, the pistol range is beside it. It would be impossible to shoot to the left-hand side of this 300 yard berm because you're going to hit the side of the pistol berm before -- there's no space. There's no plain of sight.

The 300 yard berm was engineered to develop in behind this. In the NRA report, his suggestion was to have a small berm to the right. Basically -- I was there with him when he did his inspection. He said, I have no problem with you up to the 300 berm. I do have some issues with the 600 yard berm that we could work out later, but right now I'm not going to sign off on it. As far as the 300 yard berm, I'm perfectly happy with what you have.

Your questions on if a person rises. Not that it's not a good question and I don't mean to disrespect you in any way, but that would depend on the caliber. That would depend on what the scope was zeroed at. At what distance, if that raised.

A lot of times when you get into your larger calibers, depending on a lot, it's going to run out of velocity before it ever gets there. Does that make any sense? The bullet is going to start to drop.
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1. MR. JONES: Because it's heavy.
2. MR. FULKERSON: Because it's heavy.
3. MR. DYSINGER: So how many targets do you have?
4. MR. FULKERSON: The most I've ever seen would be three. You've got to understand the guys that are shooting at 300 yards, they're not shooting at man-size targets. They're shooting for accuracy to be able to hunt a sporting rifle. Generally it's, what's the number of that? B12. B12 target. I'm guessing two and a half feet by two and a half feet.
5. MR. NOFFSINGER: I have a question.
6. We're speaking of one berm, and that's a berm that's out 300 yards, 310 yards, somewhere around there. You have a 100, 200 and a 300 yard range. I guess it's the same berm, but the targets are set up at 100 yards, 200 yards and 300 yards, and the same berm would be catching those targets.
7. MR. FULKERSON: That's exactly true. They're staggered. The 300 yards there are built in addition for safety.
8. We constantly add to that whether we need it or not. Anything we ever have to add material to that berm we just do it.
9. MR. NOFFSINGER: Do you know the height and
width of that berm?

MR. FULKERSON: The drawing is pretty adequate. I do not know if it's on here, but when I
was there with him we took pictures. That berm is significantly taller than this ceiling.

MR. NOFFSINGER: Twelve foot, but you don't know?

MR. FULKERSON: I would guess this berm is probably 14, 15, maybe 16 foot. I would say that it is, I would guess that berm is between 75 and 100 feet wide. It's a massive pile of dirt. Massive.

Be happy to get that information. If there's a ballistics table that ever said that if someone shot, you know what I'm saying, and their muzzle rolls and something, if we thought there was ability for something to go over it, we would be sure to add to it. No one wants anyone to get hurt.

MR. TAYLOR: My only question I had is for Mr. Higginbotham, I guess.

I don't know if there is a published international standard of set numbers, but since the numbers aren't already there and you are the expert, with your experience. You were just going on to say that regardless of what it does measure or whatever the international standard is, that it is safe and
that the size of the berm is adequate?

MR. HIGGINBOTHAM: Yes, sir. As compared to

with any range I've ever been on.

CHAIRMAN: Anybody else?

MR. DYSINGER: I've got a question of Staff.

We've got this NRA report with photographs in

it, but their xeroxed copies. Do we have the

original?

MR. JONES: That's my fault. The original
came today just after I left to come to Owensboro. It

has the original pictures with it.

CHAIRMAN: The pictures we got are useless.

MR. JONES: I agree. I agree. I got a faxed
copy from the NRA. The original came today just as I

left.

MR. DYSINGER: So, no, we don't.

MR. JONES: No.

CHAIRMAN: Any other questions from the board

of the applicants right now?

(NO RESPONSE)

MR. JONES: I feel like I need to probably ask

him to put a little more of his qualifications into

the record just in case this isn't the final stopping

point.

CHAIRMAN: So do.
MR. JONES: Jim, tell us about your qualifications to give an expert opinion on this gun range.

MR. HIGGINBOTHAM: I am a graduate of the FBI Academy Firearms Instructor School. Also the NRA Law Enforcement Firearm Instructor Development School. Also the American Pistol Institute, which is now known as Gunsite, which I was an instructor back in the 1980's. I don't know how much more we want to go on.

MR. JONES: Tell me how many years you've been in and around gun ranges and served as an instructor in a gun range.

MR. HIGGINBOTHAM: I've been an instructor for around 27 years.

MR. JONES: How many different gun ranges have you either shot at taught at or seen?

MR. HIGGINBOTHAM: That, sir, I probably couldn't enumerate.

MR. JONES: More than 100?

MR. HIGGINBOTHAM: Certainly more than 100.

MR. JONES: When you eyeball a berm down range, are you able to know from your past experience whether that berm matches the other berms you've seen in the past several years ago?

MR. HIGGINBOTHAM: I would think so.
MR. JONES: When you eyeballed the berm on Rock Hill Gun Range, are you satisfied with that range?

MR. HIGGINBOTHAM: I am satisfied with the berms.

MR. JONES: Does the fact that the NRA is satisfied with that berm gives you further satisfaction?

MR. HIGGINBOTHAM: It does.

MR. JONES: Have you reviewed the NRA report?

MR. HIGGINBOTHAM: I have. Just briefly tonight.

MR. JONES: You're comfortable with the type of inspection that the NRA performed?

MR. HIGGINBOTHAM: Certainly. That's their business and they do it well.

MR. JONES: That's all I have.

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

(NO RESPONSE)

CHAIRMAN: Mr. Kirtley.

MR. KIRTYLE: Would the board please ask Mr. Higginbotham what his findings were with the soil composition of the range itself?

CHAIRMAN: Would you answer that, please, sir.
MR. HIGGINBOTHAM: I did not analyze the soil. However, I looked, particularly looking for large rocks or anything like that.

Recently, and I should have brought it, when I was on NRA range in New Mexico, I noticed that it was a very similar range. The range that actually hold national ranges on. It has about the same surface as Rock Hill Gun Range. There are small rocks on it. Typically bullets hit rocks. Sometimes they'll break the rock. Sometimes they will glance off a little bit, but it always damages the bullet.

MR. KIRTLEY: But did you walk the grounds?

MR. HIGGINBOTHAM: I did walk the ground, yes. When you said, did I analyze the soil, I don't want to say anything that I didn't do, but I did look for rocks. There are some small rocks on there. We have rocks on our military range.

MR. KIRTLEY: As being an expert in NRA, does NRA recommend soil covered free of rocks and debris like that to avoid ricochet?

CHAIRMAN: Answer that, please.

MR. HIGGINBOTHAM: That I do not know. I know that they don't have it on their range.

MR. KIRTLEY: Can you ask him if he's ever read the range book put out by the NRA? I have.
MR. HIGGINBOTHAM: Many years ago.

CHAIRMAN: Any other questions at this time of this gentleman?

MR. NOFFSINGER: I have a question.

In NRA's report it looks like they're suggesting that even on the 100, 200 and 300 yard firing points that they add the side berm, which I would say would be the norm, and then also the overhead baffles.

You might have answered this earlier, but it would seem to me that with that report and your recommending, and I think I'm hearing you say that this report be followed, is that a recommendation that you have, that those baffles be added to the shed, the shooter shed?

MR. HIGGINBOTHAM: No. We discussed baffles here. Of course, I'm familiar with baffle ranges. I don't necessarily think that's required for safety on this range. Side berms add a measure of safety for rounds that go to the side. For a rifle range with three firing positions, I don't personally feel that it will add a huge measure of safety. It's another level of safety.

MR. NOFFSINGER: I'm not trying to put words in your mouth. I'm just trying to understand.
Do you say that because there would be a trained supervisor on site at all times or are you saying that -- because when I look at this in conclusion it clearly states that, "it may not be reasonable to adopt all of these suggestions. For example, I suggested the incorporation of overhead baffles at the 100, 200 and 300 yard rifle range firing points and a side berm. If the Whittakers decide to have trained and closer range supervision, this feature may not be necessary."

So it sounds like he's saying one or the other.

MR. HIGGINBOTHAM: Right.

MR. NOFFSINGER: Are you disagreeing with that report?

MR. HIGGINBOTHAM: No, I don't necessarily disagree with that. I'm sure that the suggestions he makes, each one adds a level of safety. It wouldn't be up to me. We do not have side berms on all of our ranges at the military. We do on some. I wouldn't say that it would be necessary. The side berm will protect you against an accidental discharge, only those directed at the berm. You can have an accidental discharge anywhere. You can have an accidental discharge getting out of your car or at
Bermage is going to decrease the odds of that bullet escaping the property in an odd instance, side berm. I'm sure that's why the NRA feels that it might be beneficial. Baffles are certainly for accidental discharge. No one shoots a rifle into the air.

MR. NOFFSINGER: What about a red flag?

I think at some point we're going to have to, Mr. Chairman, hear from the other side and then find out what you're proposing. At this point I don't know if the board is clear. I can tell you I'm not clear on what the applicant is proposing to do. At some point I'd like to hear your proposal.

MR. JONES: We just got the report ourselves. I've talked to Darrel and Becky Whittaker. They have no problem with the idea of a flag. They have no problem with the signs. I think he made reference to signs. No one ever travels that way, but in the event somebody were to travel that way, there's signs posting outside this is a gun range. Their preference is to follow the NRA condition and to have a choice between close supervision. They don't believe that this is a range that requires baffles for safety because of the reasons that Mr. Higginbotham has expressed. Would like the choice between side berm
and the close supervision and will probably work
toward the side berm in the future.

MR. HIGGINBOTHAM: If I might say something. There's two areas of concern here. One is the
physical property itself, which is what I'm
addressing. I have avoided talking about the
administrative controls.

Administrative controls are a very important
part of range safety, but it's not my place to speak
on them here. I don't have any problem with the NRA's
recommendation.

CHAIRMAN: I think we've pretty well got your
information.

MR. HIGGINBOTHAM: Thank you, sir.

MS. MASON: Going back to what the Whittakers
are saying that they will agree to do. I know the
side berm they said, but what about the overhead
baffles? Have you all agreed that you're going to do
that, if it's approved this evening?

MR. JONES: Our preference is to go with the
close supervision instead of the overhead baffle.

MS. MASON: There hasn't been close
supervision in the past?

MR. JONES: I believe there has been close
supervision in the past.
MS. MASON: When he inspected it, it wasn't even in operation, correct?

MR. JONES: Right.

MR. FULKERSON: Chuck Fulkerson.

He said the overhead baffles were, in military ranges that you've been on, constructed concrete, the NRA instructor said two by fours. He said it doesn't matter.

It's just something to -- a bullet is traveling at 2300 feet per second. It hits the side of the berm. It slows down. It deflects upward at a whole lot slower velocity. It's just something to stop it. It's just something to keep it from going over there falling out that window and hitting someone in the head with a rock, small rock. That's the purpose of a baffle. I didn't want there to be -- I wanted there to be a distinction between if there was an event that this board requested there be baffles that they didn't expect orange concrete wall with overhangs. We'd be happy for Mr. Dison that wrote the report to add that. I was there. I was the one that walked him around the range. That was his suggestion.

CHAIRMAN: Thank you.

Do you have any other experts to present at this time?
MR. JONES: Yes, sir. We would like to present the Daviess County Sheriff, Keith Cain.

I believe his letter has been provided to you. Do I need to make it a part of the record or is it already a part of the record?

MR. NOFFSINGER: It's in the application. I'm not sure if the board members have a copy of it because we've been doing this, what, since February. I'm not sure.

CHAIRMAN: State your name, please.

MR. CAIN: My name is Keith Cain. I'm the sheriff of Daviess County.

(MR. KEITH CAIN SWORN BY ATTORNEY.)

SHERIFF CAIN: I have previously submitted a letter to the commission, which I understand you may not have. I can paraphrase that for you very quickly if you'd like.

It primarily deals with three particular issues.

First and probably foremost I'm well familiar with the facility that's in question. Mainly because I've utilized it countless times over the 13 years that it's been in existence myself. I will say that I certainly am not an engineer. I have not measured the berms. I have not tested the soil or anything of that
I do believe based on my extensive personal experience that I believe I can recognize a safe place to shoot when I see one. I believe this range is. Obviously if I didn't personally think that this range was safe, I would not shoot there, nor would I comfortably, be comfortable knowing that numerous officers from not only my agency, but other law enforcement agencies in the tri-state region utilize extensively themselves for both off and on-duty practice.

Regarding the latter point, I think it's important that the commission understand that my department does not have its own range. While the Owensboro Police Department's facility is available to the sheriff's office, with sufficient prior coordination for formal, scheduled training, it is not available for off-duty deputies to conduct individual practice. Most of the officers from our department, as well as other area law enforcement agencies who seek opportunities to maintain and enhance their personal firearm proficiency utilize the range that is in question on Highway 815 because it is the only place that we have available for us for that reason.

Second, the availability of a publicly
accessible range provides a safer alternative for people looking for a place to shoot than was the case before this range opened 13 years ago. As our county becomes more developed, there are fewer and fewer safe settings where it's possible to obtain permission to shoot. While there are members-only clubs in our area that accommodate some of those who engage in regular shooting activities, they do not address the needs of those who require only additional access to a range or who can go shooting only at times that may conflict with numerous competitive events conducted at those facilities on weekends, holidays, etcetera.

Should Whittaker's range become no longer available to the public, it is reasonable to expect that many people who would otherwise limit their shooting activities to a structured, supervised facility built and maintained for that purpose, will probably go elsewhere. While the overwhelming majority of them, I believe, would seek the safest possible place to shoot, invariably some will have available to them only settings that are much less than ideal. Even the best of which likely would be somewhat makeshift. Experience suggests that when this happens, safety concerns and complaints from neighbors will increase as landowners become aware of
increased shooting activities on their own and adjoining properties.

Third, as our society becomes more urbanized and fewer people have the opportunity to participate in safe shooting activities such as hunting and target shooting, I believe that our hunting and outdoor heritage becomes increasingly at risk of being lost to future generations.

I fully understand that while not everyone supports hunting or shooting activities, my personal views have been reinforced by the fact that among the countless young people whom I've watch grow up in homes that value that heritage, I've yet to see even one get into serious trouble later in life. Versely I have seen numerous become very productive members of our community.

Learning as a young person to handle firearms responsibly, appreciate wildlife, and respect the rights of others seems to go hand-in-hand with developing sound values regarding other issues as well. I am absolutely convinced by what I've seen over the years and working at your sheriff's department that having a facility available where parents can teach their children how to safely handle firearms reduces the likelihood of accidents or misuse
later on. However, teaching young people to respect firearms without access to a safe place to shoot such as Whittakers makes that task significantly more challenging for most people and indeed impossible for many.

It's for all of these reasons that I appear before you today, to tell you my thoughts in terms of keeping the range at Whittakers open. I appreciate very much the opportunity to do so.

CHAIRMAN: Does anyone have any questions of Sheriff Cain?

(NO RESPONSE)

MR. JONES: I'd just like to ask him a couple of questions.

Sheriff, I asked you at one point to do an open records check on issues of safety in the past 13 years. I think there's been some allegations that somebody's cow has been shot, and I think even a report that they called the sheriff about it.

I would like you to respond to that and tell them what you did in response to my request for an open record on that issue.

SHERIFF CAIN: Yes, sir, I did receive a formal written request under open records from Mr. Jones to conduct a research of our CAD's. CAD is the
computer-aided dispatch, which is all the incoming
calls to the 911 emergency communication system which
is housed at the courthouse and under my direction, or
any possible reportings of people being shot, cows
being shot, any type of mishap relating to the issue
that is in front of you today.

I directed Paul Nave, the director of our 911
communications, to conduct that search and he did so.
Our CAD reports go back to May of 1998. So we
researched by computer all the way back to 1998. We
did so in a number of different ways.

We first pulled up a mile radius of the Rock
Hill Gun Range, north, south, east and west, to show
if any such report had been made by any persons. We
could find none.

We also had the computer to generate a map of
that location and circle that mile radius. We found
only nine animal-related incidents with relations to a
cow.

We also did keyword searches in the computer
such as cow, cattle, shooting, accident, things of
that nature.

Finally we also researched under the names of
both Frank and Linda Hayden to see if they had
themselves called in. Virtually all of these searches
resulted in a negative response from the computer, indicating to me that no such call was ever made to the Daviess County Sheriff's Emergency Dispatch.

MR. JONES: There had been no calls to the sheriff's office because of any safety issue with regards to this range in the last 13 years?

SHERIFF CAIN: There have been no calls made to the sheriff's office that I can document since May of 1998, which is as far back as our CAD goes.

Now, in the interest of total disclosure and total honesty, a call could of that nature could have been made to the Kentucky State Police, if it were made on a call that was non-911. That would not be reflected in my report, but if it was a 911 call, it would have came to this dispatch center or if it was made to the Daviess County Sheriff's Office on the non-emergency line, it would have came into our department.

MR. JONES: Thank you.

MR. NOFFSINGER: I have a question.

Do you have a report, do you have something to submit into the record or are we going on your testimony here that what you've said are the results of your study, report?

SHERIFF CAIN: I submitted a written report
pursuant to Mr. Jones' open records. He has that I'm assuming.

MR. JONES: I do and I will make it a part of the record.

MR. NOFFSINGER: Thank you.

CHAIRMAN: Any other questions from the board?

(NO RESPONSE)

CHAIRMAN: Mr. Kirtley, do you have anything you want to add?

MR. KIRTLEY: Just one.

Can you ask the Sheriff how frequently he's been out to the range in the last 13 years?

CHAIRMAN: Can you answer that?

SHERIFF CAIN: Perhaps five or six times a year. Maybe less than that, Bob. It wouldn't be any more than that.

MR. DYSINGER: Did you say per year?

SHERIFF CAIN: Per year. It would average out probably that. That's between my deputies and then myself or with other persons.

MR. KIRTLEY: Could he be asked: On those each occasions, did Whittaker provide trained people to monitor the range or was he and his men free to shoot?

SHERIFF CAIN: My men, of course, our men
always have safety range officers.

MR. KIRTLEY: Provided by the sheriff's department?

SHERIFF CAIN: That's correct, yes, sir.

MR. KIRTLEY: So no Whittaker personnel was there for you?

SHERIFF CAIN: No. Not while I was there, no, sir.

CHAIRMAN: Any other questions from the board?

(NO RESPONSE)

MR. JONES: Sheriff, at the time that your department uses, do they close the range so that your department has exclusive use of the range at that time?

SHERIFF CAIN: That's correct, sir.

MR. JONES: And you're expected to supply the safety person?

SHERIFF CAIN: Whether we're expected, we do so, yes, sir.

CHAIRMAN: Anything else to add?

(NO RESPONSE)

MR. JONES: Our next witness is Mr. Bob Purdy. Bob, if you would go ahead and give your qualifications for the record.

MR. SILVERT: State your name.
MR. PURDY: Bob Purdy.

(MR. BOB PURDY SWORN BY ATTORNEY.)

MR. PURDY: I was a drill sergeant in the United States Army. Been handling firearms my entire life.

Of course, I retired from the Owensboro Police Department. I served 21 years. Five of those years I was the range officer.

I was trained through the Department of Criminal Justice Training. I was one of the officers selected, one firearm instructor selected to create a state program for transition from a revolver to a semi-automatic pistol.

Since I retired, I am presently at the Owensboro Community College where I teach firearm. Also I teach firearm classes. The Whittakers have been very kind to allow us to use their facility.

I also teach the carry and conceal training classes required by the state for persons who apply to carry a concealed license. Have trained over 900 people on that.

Basically what I have to add, I'm trying to condense things. I think you've received two letters from me. I think they're part of it.

Safety is above all. Let me assure you that
those of us who have spoken, this does matter to us also. I appreciate your concern. I think there's an issue about that. This range was operating. I don't know the legalities of it, but it did operate for 13 years. I've been out there. Anticipate Mr. Kirtley's question. I've been out there probably between 20 and 30 times a year since it's been in operation, either conducting a class or as a shooter. I shoot quite a bit myself.

During that period of time, there have been no injuries. There have been no incidents in those 13 years. I think that speaks to the safety of the issue. Now, whether it was approved incorrectly or something, I can't address. I don't know.

Speaking of the times and I hope you can appreciate some of the people I have trained there have had, it's probably the first gun they've had in their hands. Which, of course, that's my job. The direct influence. This is what I do.

I'm quite sure some of them skills suffered very badly. There's never been a time when a bullet went over the back of the berm. Never been a time yet even though some of them, I mean they miss the whole target. Those are facts. These are things that those of us who use that are very concerned about, the
safety of it. If it were not a safe range, I wouldn't
want to be on it. I wouldn't want to be on it at all.

I also have trained the explorer scouts. I
mentioned the class. I've taken a number of people
out there as well as -- at least 900 take training
from me for conceal carry permit. I guess I stand for
questions.

CHAIRMAN: Any questions from the board?

(NO RESPONSE)

CHAIRMAN: Staff have anything?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Mr. Kirtley.

MR. KIRTLEY: Can the board ask Bob if the
firing positions, is there what is known as, I
believe, a monkey's eyebrow present?

MR. PURDY: Are you asking what that means,
I've never heard of that term.

MR. KIRTLEY: Bob Bowers told me to ask. It's
the shed to keep it from over-shooting the range. Do
you shoot under a covered --

MR. PURDY: There are covered positions, yes,
sir.

MR. KIRTLEY: In this range out there?

MR. PURDY: Yes, sir.

MR. KIRTLEY: And the purpose of that is to
keep from over-shooting?

MR. PURDY: My thoughts the purpose is if it started to rain.

MR. KIRTLEY: In other words, they would not prevent a person from over-shooting the target entirely?

MR. PURDY: It is theoretically possible that someone could over-shoot the berm. It is theoretically possible.

MR. KIRTLEY: Do most ranges have some limitations that they shoot from to permit that as a safety?

MR. PURDY: I've never seen one that wasn't. Obviously they're handling firearms is something that proposes a risk and a hazard. I've never seen a range that we could say absolutely that nothing could happen on.

The question is, are they as safe as can be humanly made possible? I'm unaware of any condition that could prevent anything. Someone could have an accidental discharge walking up to the range.

The handling of firearms are meant to be for people responsible enough to treat them safely.

MR. KIRTLEY: My question is: This is a safety feature that ranges, some ranges, NRA ranges in
their range book say to keep a person from
over-shooting a target, it prevents you, unless you're
going to blow your head off shooting at the rafters,
it limits the elevation of a shooter. You're not
familiar with that?

MR. PURDY: No. That's a new expression to
me. I've never heard of that.

MR. NOFFSINGER: Mr. Kirtley, someone correct
me. I may be wrong. I thought that the baffles were
what you're referring to as the monkey's eyebrow.

MR. KIRTLEY: No.

MR. JONES: I thought so too.

MR. KIRTLEY: I'm talking about at the
shooting point of origin of the shot. Your gun cannot
raise so far up because of this obstruction. That
keeps over-elevating from over-elevating the shot.

MR. NOFFSINGER: Then what's a baffle?

MR. KIRTLEY: He put the baffles in. I assume
is at the berm, a concrete overhang or a wood overhang
that would come back and catch it when it bounces off.

MR. NOFFSINGER: It's at the berm.

MS. MASON: The baffle is at the berm. That's
the way he explained it earlier.

CHAIRMAN: Any other questions?

MR. KIRTLEY: No, that's it.
CHAIRMAN: Thank you.

MR. NOFFSINGER: I don't think we know. I don't know. I would like for somebody to explain that to me.

MS. MASON: Did he say earlier that the baffle was at the berm?

MR. JONES: I think he did say that. We're discussing that. We think you're right. The baffles are actually at the firing point that the NRA is talking about to do this monkey eyebrow thing.

CHAIRMAN: Anything else you want to add at this time?

MR. JONES: Dr. Randy Cox is here. He would like to speak at this point if that's all right, Mr. Chairman.

MR. NOFFSINGER: Mr. Chairman, we do have in this NRA report that the baffles are at the firing position. It's on Page 7 of the report. Firing points. So they're not at -- it says, "As range improvements are done, overhead baffles from the firing points can easily and fairly economically be installed."

MS. MASON: That's what I was asking earlier. Are you all willing to put those in if this were approved this evening?
MR. JONES: I don't think that we would like to put in concrete type baffles that they're talking about, but to the degree that we needed to build some kind of wood structure that would basically give a window in which the weapon would be pointing.

MR. DYSINGER: From the point of view of the firing position, it makes it look solid. I mean they're not. There are several feet between them, but when you're at the firing position you can't fire out. I've never heard of a monkey's eyebrow either.

MR. KIRTLEY: I apologize.

MR. DYSINGER: My understanding of baffles is they're not even a solid ceiling. They're posts that are several feet away.

MR. JONES: I think that's something we could work with the Staff on in determining the right type of use for the baffle.

CHAIRMAN: State your name, please.

DR. COX: My name is Randy Cox.

(DR. RANDY COX SWORN BY ATTORNEY.)

DR. COX: All I do is use the range. I may go out there 30, 40 times a year. Usually on weekends.

Now, the way the range is set up is if you fire from the proper position where you're suppose to, either a pistol or a rifle, you're set back in this
building. There is an overhang over you that
stretches out allegedly to keep the weather out, but
it would function as I think this money's eyebrow.
You're not going to be able to go very high. There's
two long range rifle shooting positions where there is
a window that you shoot out of. I mean just a real
narrow window. So there is limitations on how high
you can go in one direction. I found it to be very
safe. You know, I taught my son how to shoot out
there. It's a good place for families. There's
always been somebody there. I swear to God. I had a
round once I couldn't get it to work right and before
I realized it there was somebody there to try to help
me fix that. Darrel always has somebody there. You
may not see them all the time, but they're there.
They're milling around constantly.

CHAIRMAN: Thank you.

Any questions from the board at this time?

(NO RESPONSE)

CHAIRMAN: Mr. Kirtley.

MR. KIRTLey: No questions.

CHAIRMAN: Next expert, please.

MR. JONES: Dr. Chuck Higdon.

DR. HIGDON: My name is Chester Higdon. I'm a
neurologist in Evansville.
DR. HIGDON: Obviously, I could shoot at several other ranges in Evansville. Red Brush, which is well established by Alcoa and subsidized or the Daniel Boone Club.

At those ranges no one is there on a regular basis as a range officer. You're assumed to be intelligent enough to use guns. That's not always the case.

The same when you give someone a driver's license. Obviously they're not smart enough to not drink and not go over 90 miles an hour.

At Darrel's range, I enjoy going there more than anyplace else. There is always someone there that does supervise it. The range officers at the other places in Evansville have titles, but you can go out there any time you want and shoot by yourself and there's no one else there.

In terms of all of the safety regulations in the world, when people go out hunting, or go down to the river, or the stripper pits, or anywhere else and go shooting, there are no safety regulations whatsoever.

The last real injury in Evansville I remember were two guys shooting their SKS rifle in the backyard
and a girl a mile away got hit.

So I think having a structured situation where people can shoot safely, and Darrel has that. It's very user friendly for people to become more proficient than shooting rather than dumber and dumber or going someplace where they're not equipped or where they shouldn't be. I think it's the worst thing in the world.

The people that go out Saturday night shooting, they don't go to the range.

These are professional people that want to go out there and hold their skills doing what they enjoy and love doing. Darrel has provided that safely for a number of years. I go out there weekly and every chance I can. I enjoy it. It's quiet. It's peaceful and it's safe. It's safe for me and I feel like it's safe for other people. It's as safe or more safe than the other places that I've shot at in Evansville.

The berms are just as big. They do not provide any overhangs. Not that they're unsafe because none of them have had any problems either.

I think that Darrel and them have done a very good job there. The community hopefully appreciates that. Thank you.

CHAIRMAN: Anyone have any questions of the
gentleman?

(NO RESPONSE)

MR. JONES: I think one of our final witnesses will be Allen Youngman would like to speak on behalf of the range.

MR. YOUNGMAN: My name is Allen Youngman.

(MR. ALLEN YOUNGMAN SWORN BY ATTORNEY.)

MR. YOUNGMAN: I was a resident of this county from birth up until not too many years ago.

The point I want to address is what Whittaker range does in the community and the alternatives and also talk about what Bob calls a monkey's eyebrow in a second from a personal perspective.

Whittaker's range is safe. Everybody knows that. There is no issue about that. If the exact dimensions have never been fully measured, 13 years of experience, hundreds of thousands of rounds, thousands of shooters later, you know, that's the best evidence of the safety of a range.

If you're comparing it with something, a fully baffled berm enclosed range. California has something that's very popular in that culture called the No Blue Sky Range. That's where you build baffles at the firing point so you cannot see blue sky over the berm at the end of the range. I think that's what concerns
parts of Daviess County is called a monkey's eyebrow maybe. I don't know of anybody that's familiar with that term.

The Owensboro Rifle & Pistol Club is available to members only. It doesn't have berms at the back or sides. No baffles. No range officer. If you're a member, you get a key and you go out there when you want to.

I'm a member of the Green River Gun Club in Warren County. It has no baffles. It has no berms in the front and side or back. There's no range officer. You get a key and you go there.

People who have access to private members only ranges are in good shape. In this county until Whittaker opened his range, there was no place. If you didn't have access to a farm or were not willing to trespass like a lot of people were, back in those days old strip pits and shoot until the sheriff came along to run you off. There was no place to shoot. There were no standards. No safety regulations. A lot of us shot where we could. I was fortunate enough, my grandfather owned a farm. That's where I learned to shoot. After I was out of high school he sold the farm. There was no place to shoot in this county. People shot anyway. You probably all have
acquaintances, you know, of places where people pull
off the road, set up a target and shoot. I think like
Sheriff Cain said they do the best they can for the
most part to be safe, but compared to what Darrel
Whittaker has provided this community over the years,
that's not a safe environment, and what Darrel
provides is safe.

I can't speak for the Whittakers. Hopefully
if they need to build the baffles they will. If they
need to extend the berm, they will, but it's not
really necessary. The range is safe as it stands.

The other point that Sheriff Cain made, people
are going to shoot somewhere. Whittakers ought to be
available. That's where I taught my son to shoot.
Without that resource in the community it's not going
to be as safe other places. That's the substance of
what I wanted to say.

CHAIRMAN: Anyone have any questions of Mr.
Youngman?

(NO RESPONSE)

MR. JONES: Mr. Youngman, could you just
compare for the record the range that you see to the
ranges you've seen in the military? I assume in your
career you've shot at many ranges.

MR. YOUNGMAN: I've not shot on as many ranges
as Mr. Higginbotham has, but I've shot on probably 100
ranges around the world. I have never shot on a range
that required the overhead baffles with one exception.
That was in Murray, Kentucky, in 1965 when the ROTC
Department, back when ROTC was mandatory, built a
range for M-1 rifles there at the city dump. They set
up a series of looked like railroad ties. They
eventually all fell down and the range remained in
operation. That's the only place I ever shot that
required any kind of baffling.

CHAIRMAN: No further questions. Thank you,

MR. JONES: If you just allow me just to tidy
up the record just a little bit and I'll be quick.

I'm not sure Lynnette has a copy of the NRA
report. Then I would like to offer a petition that
has been signed.

I'll hand that to you, Mr. Chairman. It's
been taped up and signed.

I think we mailed in, but I want to make sure
that you feel comfortable with the --

MS. MASON: The petition is what?

MR. JONES: The petition is to support the gun
range. It's basically a petition that has been signed
by those who have been in Whittaker Gun Shop. I think
there are over 600 signatures of Daviess County
residents asking you to support this range.

CHAIRMAN: We'll add that to the transcript.

MR. JONES: Then what I've handed you is the declaration of policy for the limits of liability, which addresses the issue of liability.

Then I have the original deed conveying the property back from the Rock Hill Gun Range to Darrel and Becky Whittaker, but I haven't recorded it yet. I'd like to keep the original, but I brought a copy that is unexecuted for your record.

I'm not going to belabor you with a lengthy closing. I do want to make sure that our legal position is clear. I won't quibble over that any more except to say that for the record we do feel like we've had a conditional use permit since 1994.

When I look at your rules, specifically Rule 7.321, it says, "any such conditions shall be recorded in the board's minutes and on the conditional use permit." When I look at the actual permit, I don't see the conditions about the direction of fire. I want to preserve my at least ability to argue to a different forum and make sure it's clear on that. We're trying to preserve that argument. We've had a conditional use permit since 1994.

With regard to the issue that we'd like to
certainly get it resolved tonight and get it resolved in this type of forum. Ask that you listen and then to consider the testimony that you've heard tonight from guys who simply know more about it than I do. That this range is safe.

I believe that Mr. Youngman said the most important measurement that you've heard tonight is not the measurement of width or distance, but the measurement of time. That is in 13 years this has been a safe operating gun range and it's been a valuable part of the community. I would ask you to support this permit. Thank you.

CHAIRMAN: Mr. Kirtley, do you have anything you want to add?

MR. KIRTLEY: Well, Mr. Hayden would like to give some testimony.

MR. SILVERT: State your name, please.

MR. HAYDEN: Frank Hayden.

(MR. FRANK HAYDEN SWORN BY ATTORNEY.)

MR. HAYDEN: My name is Frank Hayden. I'm the one that they're shooting at. These are the people, the ones that are shooting at me.

I've got a farm straight in front of this gun range. I run about 300 to 400 head of cattle there. We're out there working, running fences, checking
fences and baling hay. Everything you do on a farm. Also I've got 60 acres that runs right up beside this gun range that the berms come out to. I've had to abandon that 60 acres because if I run the cattle up there, you know, that 60 acres somebody will start shooting. The cattle they stay be. When cattle stay be, you know, one or two can take off running and the whole herd follows them. So I just had to abandon that 60 acres because I couldn't use it.

Now, he says they don't make any money at the gun range. I can make some money on that 60 acres of ground pasturing cattle.

Also, Mr. Cain, he said he's had no reports of any cattle being shot or anything like that. We've had numerous cattle laying out there on the hill dead, but when we find them they're all swollen up and you can't prove that somebody shot them. They could have died of a heart attack. Who could say that? I didn't call the sheriff. They've got better things to do.

Another thing when we first opened that range I was out there running and riding around on a four-wheeler and things. My brother was down there at Mr. Whittaker's. Mr. Whittaker said, is that dumb brother of yours crazy? He's out there riding around and these guns shooting at him. I said, yes, I guess
Like I say all these people here are shooting at me. They're not worried about me. They're wanting to shoot, a place to shoot. I've got cattle, and I've myself. I've got Tony there working and riding fences and things. We don't like to be shot at. That's about the sum of it. We have had cattle shot and killed, but who can prove it. From now on if we get one dead, I'll call Keith and then they can come out there and make a record of it. I'll guarantee you that it will be every now and then. I guess that's all I've got to say. That's my position. I'd just like to see the gun range close down and stay closed.

MR. JONES: Can I ask the board to ask a couple of questions?

CHAIRMAN: Yes, sir.

MR. JONES: I'd like you to inquire as to where he resides? I think the property that is actually adjacent is not a property that has a residence and that his residence is somewhere else. So the inference that he gets shot at at his home or something is not true.

Also obviously this gun range is not open 24 hours, 7 days a week. I just wonder if he's aware of the hours of operation. Does he keep track of that so
that he can do whatever he needs to do around that
area when there are many hours during the week that
there is no gun range activity.

CHAIRMAN: Can you answer that, please.

MR. HAYDEN: I live five miles away from it, you know, on another farm. This is the second farm I have where the gun range is.

Well, I've had instances that Tony rides the fence and checks the fence and they're up there shooting. He would go up there and ask them to shut down so he can check the fences. They wouldn't do it. No way they was going to shut the range down.

Also another statement I need to make. I made a statement here one time that I heard bullets ricochet over my head or zing going over my head. I've had two different people in my store telling me -- I used to let them hunt out there for ducks and geese and things during hunting season. Darrell Belcher is one of them. He says he's heard it several times go over his head. He said, I'm sure glad I come back down over that hill. George Wright, he said he's heard them.

We've been lucky. We haven't been shot, you know. Once we get shot I guess then you can close it down. Mr. Whittaker now has got enough insurance, you
know, that I'll be worth $1 million or Tony or whoever
gets shot.

CHAIRMAN: Answer one question. How many
years have you lived and owned this farm that you
have, sir?

MR. HAYDEN: I owned it before Darrel came.
I've owned this farm, I don't know. In fact, I was
pasturing the ground that Darrel's shooting range is
on now. Some guy that worked for the railroad company
he had owned it. He said, pasture that and you can
keep it and pasture it until I get ready to build out
there. I'm going to build out there some day.
Somehow or another Mr. Whittaker bought it. I didn't
even know it was for sale.

CHAIRMAN: Thank you. You answered my
question.

Are there any other questions?

MR. JONES: We've heard testimony that he's
found dead cows, but has he ever found an injured cow
that he took to the vet? Did the cows lay there
forever until he discovered they were dead? There
would have been an insurance claim for a cow that had
died in such a manner.

Finally, he was given notice of the original
application 13 years ago. Did he object then?
MR. HAYDEN: Thirteen years ago when he filed the application for it, it was suppose to be a trap shoot for shotguns and they would shoot in the other direction. Into the hill and woods that was there. I said, well, people are shooting trap shoots over here at McLean County Fish & Game. You know, trap shoots are not that bad because they're shotguns, you know. Shells don't go very far. The pellets don't. So I didn't feel, you know, that I should bail against him, but then he comes in and he does completely the opposite. They start shooting high-power rifles. They start shooting everything.

I had a man in the store, another guy that said he was out there with some boy scouts one day and they had an old jeep and .50 caliber machine guns shooting at this jeep. Just shooting it all to pieces, you know, with .50 caliber machine guns. They don't just shoot shotguns out there or .22 rifles like the sign says. That ain't what they do. They shoot machine guns. They shoot high-power rifles. They shoot anything they want to take out there.

CHAIRMAN: Anyone have anything else?
(NO RESPONSE)

CHAIRMAN: Thank you, sir.

MR. JONES: I don't think he responded to the
insurance claim question.

CHAIRMAN:  Sir?

MR. JONES:  I didn't hear a response to the insurance.

MR. HAYDEN:  I didn't file an insurance claim with anybody.  We take our losses and go on.  We take our own losses.  I don't file insurance claims.

MR. JONES:  I may not have heard the testimony, but was there testimony of a jeep and a .50 caliber machine gun?

MR. HAYDEN:  Fifty caliber machine gun and an old jeep and they were shooting at this old jeep. That's what some guy told me now.

MR. JONES:  You didn't see it, did you?

MR. HAYDEN:  I didn't see it, no.  This was told to me.

MR. JONES:  I think Mr. Silvert will tell you, and I didn't object earlier, but we still get the right to cross examine and obviously that testimony is extreme hearsay.  It's not even allowed under the Geneva Convention.

CHAIRMAN:  Any other questions?

(NO RESPONSE)

CHAIRMAN:  Thank you.

MR. KIRTL:  Mrs. Hayden.
CHAIRMAN: Come forward and state your name.

MRS. HAYDEN:  Linda Hayden.

(MRS. LINDA HAYDEN SWORN BY ATTORNEY.)

MRS. HAYDEN: There is a sign at Little Fox Cemetery that is right in line with the shooting range. I would like for all of you all to go look at it. It's shot to pieces. That's all I have to say. I mean it has holes that big in it.

CHAIRMAN: Thank you.

Another comment.

MR. KIRTLER: What we have here, we have people conflicting with themselves being NRA experts. I'll take responsibility for the monkey eyebrow because I don't know a thing about guns. Allen knows that. It's what I was told. It's a safety proceeding for the range itself.

What I am concerned with is that the NRA made suggestions here, if you do allow this -- now, Frank wants you not to and he has good reason. What I'm saying is the fact that the sheriff's office hadn't had a 911 call out to the farm when you find a dead animal, you don't usually do that. That's only 911 records that are being submitted to you here and that's fine.

I'm just saying it's a safety thing. The name
of this corporation blows my mind. Rock Hill. The
reason the NRA range book says you don't have, you
have soil composition of the range. That's the bed so
they don't ricochet. At one hearing we had these
rifles that go 2600 feet a second, when it leaves the
muzzle velocity. It's already past the property line
here in less than a second.

So these are serious safety issues. The fact
that you've said in the last 13 years, you know,
nothing has happened. We're hearing all of this about
safe. We're hearing all of this about these boxes and
everything being present here. I'm saying, but we
don't need to do this.

The NRA suggested these things be done, as far
as baffling. The NRA suggested about having a trained
range manager out there. The NRA said have a red flag
when you're shooting.

I'm simply saying you have two granted this
community about public shooting ranges. This may be
the only one, but it's only on a 40 acre tract. That
at its widest point is 120 yards wide where all this
shooting takes place. It's 961 yards in length.

Wherever you put these berms, where you put the
starting place.

I submit to you what was stated about the
reason why they reversed it is because of the parking
lot. You had more parking facility. You'd be
shooting at your own customers if you put the range
shooting towards the road and you put your parking --
you'd have to travel through it. Now, that's just
some observation of the plat itself. That's a more
logical conclusion why the range was reversed to begin
with.

Now, you have here presented, but not of
record, a deed conveying from a dissolved corporation.
I don't know the legal status of a dissolved
corporation executing a deed conveyance. Granted the
Whittakers were the sole stockholders of this
corporation, but that for four years has been totally
-- that's your perfect insurance policy.

I know you're saying there's a lot of pass it
on. Well, this is all right. I'm just simply saying
that there's so many issues that are not being -- as
to what the applicant actually is going to do here.

I would say, you know, we're going to give you
a conditional use permit and based on this you don't
have to do anything of the NRA. You do business as
conducted.

What this cries for is what this board has
asked the last three times we've been here. Somebody
with an engineer, somebody with a design concept present to this board what in fact they're going to do. The last time they drew a plan and reversed it. No record change.

Here you have a generality of visitors. No matter in which you can say, well, we interpreted it that way.

I think to have a lethal occupation and business like this. It's not like a law office where you put the bathroom over here. This can kill people.

What I'm trying to tell you is that this is serious and it's a legitimate business. They ought to be able to do it, but they need to do it in a proper way. They need an engineer or somebody design to show this board like that plat specifically what they plan to do and present these administrative regs they're going to do or follow as far as range procedure. They say, it's all done. It's all like this. I don't think it's good enough to give a conditional use permit.

The Haydens, they've looked on it the way it was originally and there it was and then it got off on itself.

So I will submit to you that their application should be denied period because the other permit was
found back in May, I believe, to avoid because they failed to implement it within a year.

So is this simply a fresh new application like they never had one. That's on behalf of the Haydens.

CHAIRMAN: Summarize real quick. While you're doing that, what is the hours and days that you plan on operating?

MR. JONES: I think presently we had been opening, before this issue, opened just on the weekend. Saturday and Sunday 9 to 4. That's what we've been opening at this point. I guess we wouldn't want to limit our ability to open on a Thursday or Friday or some other day during the week. It seems that we probably need to open it more than two days a week. At the time of our reapplication we were only open two days a week.

With regard to the red flag and the signs, I think we've already addressed that. Those are fine. We would prefer to go with close supervision rather than baffling, but I think we've all finally agreed that baffling is at the trigger point and not at the berm level.

I'm trying to remember is we have previously, and I don't know if we even need to make it into the record, but the minutes from the 1994 hearing. I
cited you to that rule that said any addition should be in those minutes. Are those part of this record?

MR. NOFFSINGER: We have them. In fact, I saw a copy in the application. I'd be agreeable, yes, they are submitted.

MR. JONES: We would agree that the minutes of the '94 are something that are entered into the record.

We feel like we do have a safe gun range. We want to work with this community and with your board and stand ready to answer any additional questions. I don't think there's been any substantiation -- a .50 caliber is not on this range. I don't think anyone believes that.

MRS. WHITTAKER: If you're going to shoot a rifle on the pistol range, it can't be larger than a .22 caliber.

MR. JONES: We'll stay here until entertain any discussion with regard to conditions that you may want to ensue.

CHAIRMAN: Board members have any other questions of anyone at this time?

MR. DYSINGER: Mr. Chairman, I'd like to know the Staff's opinion regarding -- everybody has referenced these recommendations from the NRA report.
There's some potential for conditions to be put in there. I'd like to know Staff's opinion on the value of - God forbid - postponing this one more month and letting them meet and decide what's appropriate, what's not appropriate. My point is the NRA report is not really in a format that we can make a condition as I think the opposition pointed out. It is a little vague. You know, red flag. How high? That kind of stuff. But at the same time there does seem to be things in there that not only the applicant is agreeable to, but that the Staff seems to have indicated that they have an interest in too. I just think it just needs to be put in a little bit more definite, for the applicant's benefit as well as anybody else's.

MR. NOFFSINGER: I comment to that. I can just tell you that the Staff, we're not experts in this field. I would be reluctant to recommend to you what I feel would be safe or unsafe because we are not the experts. We can certainly facilitate the applicant in preparing what they want to formally submit to you in terms of our recommendation on what's safe and unsafe.

I think you have to rely on the expert testimony and what testimony you've heard here from
both sides that you believe and form your decision
based upon the evidence from the experts and those
from both sides and go from there.

    If it's assistance you need in formulating the
conditions, do that. In terms of safety, we're not
the experts.

    MR. DYSINGER: I agree. I'm not prepared to
formulate any conditions at this time to be honest. I
think there's some conditions that can be put on this.
I do believe there's some compelling need in the area
for this service.

    MR. NOFFSINGER: I would say that you did ask
for an expert's opinion.

    MR. DYSINGER: Absolutely.

    MR. NOFFSINGER: You have that from the NRA
and you have what's written there. The only thing
that I saw that struck me was that they're talking
about the berm on the 600 yard range needs to be
raised substantially. They didn't give any
indication. The 600 yard range is out.

    So then you go to what they're recommending
for the 300 yard range. I think you have the
conditions there, but how long it's going to take you
to put those together. Whether it's tonight or you
come back. I just caution you in terms of carrying
this over another month and then taking new testimony.

MR. TAYLOR: It seems to me that if we're referring to the NRA report as our expert advice, once we take out that 600 yard range, basically in that report it sounds like to me at least that he was saying everything was okay. So any condition, whether we say it's a 30 foot flag or whatever flag, would not really be irrelevant. It would add more safety. He's already saying in his opinion that it's safe enough.

MR. NOFFSINGER: Except in that --

MR. TAYLOR: Except for this 600 yard range.

If a motion was made, from what I understand a motion that is going to be heard here would be to exclude the 600 yard range.

MR. NOFFSINGER: He is saying on the 300 yard range that he does mention the baffles and the side berm. Then you've got the flag pole and then the warning signs along the perimeter of the property. He is saying that. Then he goes into the conclusion saying, well, it depends on what the applicant wants to do.

MR. TAYLOR: From what I understood he did it while they weren't operating. Then he acted like the trained supervisor would supercede all of that. From what I've understood, they have that trained
supervisor there the whole time. All the measures
that we would implement will be on top of what he
already said will be satisfied with the supervisor.
Being that berm, the flag. Not that they wouldn't
help on top of it. It would make it more safe as to
what he declared already safe, from my interpretation.

MR. NOFFSINGER: And you may want to look at
hours of operation too so the folks know when that
facility is going to be used. That's just a
suggestion. I'm trying to help you out in terms of
what you might want to pursue. You've certainly heard
the same information that Staff has heard tonight.

MR. KIRTLEY: If you vote on the application
and approve it and you set no conditions, you've
created what they did in '94. They set no ground
rules. If you don't set any conditions and you
approve it, the NRA, none of these things apply. You
see the red flag, the berms, all of this stuff doesn't
apply. You're saying the hours of operation and all
of this. If you are going to authorize this range,
that there be boundaries. Administrative boundaries.
That's training procedures and ground boundaries.
That's the safety features of it. If you don't,
otherwise your application, you simply approve it.
The fact that they say .22's are not allowed on the
pistol range, that doesn't mean anything. They can shoot howitzer if they want to because it's not restricted by you. That's the reason why I'm saying, I really feel that you should require some type of conditions. I think you ask counsel that and he'll have to answer that. It's just a blanket if you approve without conditions.

MR. NOFFSINGER: I think the board understands that.

MR. TAYLOR: I wasn't making a motion at all. I was just sort of clarifying on the delay. Saying if we did make a motion it more than likely would include conditions, but I was just saying if we refer to that report, those conditions are satisfied in that.

MR. DYSINGER: My statement is to conditions I think are as much for the benefit of the applicant as anybody. These folks have put a lot of work into this. We've all spent a lot of time on it. I would like them to go out of here knowing what's expected of them.

MR. JONES: I may have misspoke on the hours. Apparently the two weeks before deer season there is a heavy need for the gun range operation. At that time it's open every day for two weeks.

The law enforcement agencies, they don't
confine them to certain times. When they need to use
the range, they basically run the range themselves.
They'll do that when in fact the public is excluded.

MR. NOFFSINGER: I think that's the problem
the board is having right now because I think we've
heard a lot of testimony, but what I'm hearing from
these board members is there are still a lot of
unknowns because you haven't really given a business
plan, if you will, as to how this is going to operate.
I think you're getting close. You've provided some
information from the NRA, but there's no business plan
as to how or what you propose to do.

MR. TAYLOR: The question I have is that
really a requirement for us? It seems like to me on
something like this with the magnitude, you could keep
going deeper and deeper. You can probably do it for
five years and come back with a different thing to
say, well, you sid 8 to 9. It should be 8 to 9:15.
If we start getting deeper and deeper, it
can just keep going and keep getting more elaborate
and more elaborate.

MR. DYSINGER: Hours of operation is a great
example. It's not unusual to get that when someone is
opening a business to state that. That's a pretty
basic thing that we would expect from any business.
Ward, what do you think?

MR. PEDLEY: Number one, most of my questions were not answered. I can't believe they come before this board and you don't know how wide those berms are. You don't know how high they are even after postponing. Even after we questioned this information. I can't believe the National Rifle Association did not say what they are. They did not say what they should be. They haven't answered any of my questions. I'm not prepared to make a motion. I will abstain on this because my questions have not been answered. I'll abstain on this issue tonight.

CHAIRMAN: What's the board's pleasure?

MR. DYSINGER: I guess the first question is with an abstainer do we have a quorum?

MR. NOFFSINGER: Yes. You need four. You have four.

CHAIRMAN: We have four. No problem on that.

MR. TAYLOR: Mr. Chairman, at this time I vote to approve the conditional use permit as requested by the applicant.

I'm basing my opinion on the safety record that the range has had, the expert witnesses that have been sought out by the applicant. I will quote the site plan and the NRA evaluation when I make my
conditions.

I approve the range of the site plan on February 2, 2007, which was included in the original application, which is the way it is existing now. My only difference that I take off that site plan is removing the 600 yard range. The range as it's operating now stay in its present use.

I do recommend that the property markers are identified on each corners of the property as suggested in the NRA report saying as it's stated with the warning and the gun range.

MR. NOFFSINGER: Are you stating that as a condition?

MR. TAYLOR: Yes.

MR. NOFFSINGER: You're saying "I recommend."

MR. TAYLOR: I'm sorry.

As a condition of this approval, they will place the property markers as stated in the NRA report. They will also fly a red flag every time the gun range is hot, as said in the report. As stated in the report, also there will be a trained on-site supervisor or they will have to construct the berms to the right of the range. In place of the hours, I think the red flag, as long as it's identifiable, would be willing to show when the range is hot.
MR. DYSINGER: So either somebody on hand or the berm to the right?

MR. TAYLOR: Right, as stated in the report. Either a trained on-site supervisor or the berm to the right. I'm not making a recommendation to construct the baffles.

MR. DYSINGER: Mr. Chairman, I'll second that.

CHAIRMAN: A motion has been made and a second.

I don't know whether the Chairman needs to ask questions or not, but I want to ask one anyway to the Staff.

Who is going to enforce it to be sure that it's properly operating?

MR. NOFFSINGER: Well, based upon the conditions, they would have to meet the conditions stated. That would have to be witnessed by the zoning administrator.

Now, in terms of enforcement, if they're not flying the red flag or if they don't have a trained on-site supervisor there, that will have to be reported. I would say it will be a call to 911 because it's going to have to be documented. When that's documented, then the zoning administrator gets involved. These conditions have to be, once you place
conditions they have to be enforced. It puts public
officials in the position of having to be responsible
for enforcing them. If they don't do what they say
they're going to do here, these conditions, then we'll
be back here.

    CHAIRMAN: You understand the conditions?
    MR. JONES: We do.
    CHAIRMAN: You understand what the motion was
made?
    MR. KIRTLEY: I'm a little confused. It's a
red flag and a trained manager at all times. Cows
don't have clocks and can't read red flags, but I
guess they'll run when they see the red flag.

    I understand you're just putting the red flag
and a mandatory trained manager on site while it's in
operation.

    MR. TAYLOR: Or if the trained on-site
supervisor has been monitoring the gun safety is not
there, then that's when we move to having that berm
constructed to the right, which was suggested in the
report.

    MR. KIRTLEY: But that wasn't part of your
motion.

    MR. TAYLOR: Yes, it was. I said either an
on-site supervisor or the berm.
MR. KIRTLEY: The baffles are different than the berms.

MR. TAYLOR: Correct. I did not include the baffles with that.

MR. KIRTLEY: But the berm they recommend doing anyway.

MR. TAYLOR: I said the on-site supervisor or the berm.

CHAIRMAN: You've heard the motion. We've got a motion and a second. Is there any other comments from the board?

(NO RESPONSE)

CHAIRMAN: Any other comments from the Staff?

MR. NOFFSINGER: No.

CHAIRMAN: All in favor raise your right hand.

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

CHAIRMAN: Motion carries.

Entertain one final motion.

MR. DYSINGER: Mr. Chairman, move to adjourn.

MS. MASON: Second.

CHAIRMAN: A motion has been made and a second. All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN:  We are adjourned.

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

I, LYNNETTE 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 108 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the

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