OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

JANUARY 3, 2008

The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, January 3, 2008, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  Ward Pedley, Chairman
                      Gary Noffsinger, Director
                      Ruth Ann Mason, Secretary
                      Madison Silvert, Attorney
                      Marty Warren
                      Sean Dysinger
                      Judy Dixon
                      Clay Taylor

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CHAIRMAN:  Call the Owensboro Metropolitan Board of Adjustment January 3, 2008 meeting to order.

We'll begin our meeting with the prayer and the pledge of allegiance to the flag. Mrs. Dixon will lead us.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  First item on the agenda tonight will be the election of officers. We'll turn it over to counsel for that.

MR. SILVERT:  Every January we hold the election of officers. That being chairman, vice chairman and secretary.
We'll now take motions for the office of chairman.

MR. DYSINGER:  I nominate Ward Pedley.

MS. MASON:  Second.

MR. SILVERT:  Any other nominations?

MR. WARREN:  I move that nomination cease and that Ward be appointed by acclamation.

MR. SILVERT:  All in favor.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MR. SILVERT:  Thank you, Mr. Chairman.

Second is the nomination for vice chair.  Any nominations on the floor?

MR. PEDLEY:  I nominate Judy Dixon.

MR. WARREN:  Second.

MR. PEDLEY:  I make a motion that nomination cease.

MR. SILVERT:  Is there a second on that motion?

MS. MASON:  Second.

MR. SILVERT:  All in favor of Ms. Dixon.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN:  Thank you, Madam Vice Chair.

Now, nominations for secretary.

MS. DIXON:  I nominate Ruth Ann Mason.

MR. WARREN:  I'll second that.
MR. SILVERT: Any other nominations on the floor?

(NO RESPONSE)

CHAIRMAN: Do we have a motion that nomination cease?

MS. DIXON: So moved.

MR. SILVERT: Is there a second?

MR. DYSINGER: Second.

MR. SILVERT: All those in favor.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Next item on the agenda will be to consider the minutes of the December 6, 2007, meeting. They have been read and placed on file in the Planning Office. Are there any additions or corrections?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Move to approve.

MR. WARREN: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item.
ITEM 3

2502 Ebach Street, zoned R-4DT
Consider request for a Conditional Use Permit in order
to place a 14'x62' Class-2 manufactured home on the
property.
Reference: Zoning Ordinance, Article 8,
Section 8.2A10B, Section 8.4/7
Applicant: Daniel R. Goodwin

MR. SILVERT: State your name, please.

MR. HOWARD: Brian Howard.

(MR. BRIAN HOWARD SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property is currently zoned R-4DT
Inner-City Residential. OMPC records indicate that
five Conditional Use Permits have been approved for
manufactured homes within this block of Ebach Street.
Based on a site visit, seven manufactured homes are
located along this section of the street. A
Conditional Use Permit was approved for the subject
property in December 2005, for a 14'x46' home.

The applicant is requesting a waiver of the
sidewalk requirements since there are no sidewalks in
the surrounding area. It does not appear that
sidewalks have been required in the past for the
previous Conditional Use Permits.

LAND USES IN SURROUNDING AREA

All surrounding properties are zoned R-4DT
Inner-City Residential and are occupied by single-family residences including several manufactured homes.

ZONING ORDINANCE REQUIREMENTS

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

1. A concrete or asphalt parking pad to accommodate two 9'x18' spaces is required.
2. A minimum 10'x10' deck or patio is required.
3. A concrete sidewalk is required, but may be waived along rural roads (without curbs).
4. The driveway apron shall not exceed 40 percent of the lot width.
5. The property is required to have at least three trees.
6. The manufactured home shall be permanently installed on a permanent foundation. A poured concrete or masonry block skirting wall shall be constructed beneath and along the entire perimeter of the manufactured home.
7. All wheel, trailer-tongue and hitch assemblies shall be removed upon installation.
8. The manufactured home shall be permanently
connected to an approved water and sewer system when available.

MR. HOWARD: I would like to enter the Staff Report into the record as Exhibit A.

CHAIRMAN: Anyone here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Any board members have any questions?

MR. NOFFSINGER: I do of Mr. Howard. Looking at the site plan, what is the right-of-way width on Ebach Street?

MR. HOWARD: I was not able to find that out today. I called the city engineer's office, but I didn't get an answer. I'm not sure.

MR. NOFFSINGER: The reason I bring that up they are asking for a waiver on the sidewalk requirement along Ebach Street, and I certainly understand that and would support that because Ebach Street does not have curb and gutter. So where we have a roadway without curb and gutter, an unimproved city street, we have traditionally waived that requirement. However, the right-of-way along Ebach Street is likely substandard. With future improvements to that street, it would require
additional right-of-way. Should there be a	right-of-way dedication in lieu of constructing a
sidewalk for the future improvements on Ebach Street.
Two, the parking is shown to where it's in front of
the home and with future right-of-way dedication it
could put that parking in the right-of-way. It's just
something that we need to be mindful of. Make sure
we're looking at it when reviewing these site plans.
It sounds like we don't have the answer here tonight.

MR. DYSINGER: Mr. Chairman, we had an action
December 2005. If we could ask Staff, if additional
setback was included in that action or not?

MR. NOFFSINGER: I don't recall that. I doubt
that it was, but the situation could have been
different. It may be a situation where we need to
consider that as policy in lieu of not constructing
the sidewalk, which would require others to do. That
right-of-way be dedicated for future roadway
improvements. Then they're not out the cost of
constructing the sidewalk. It's something that I
think you need to consider for future applications.
Certainly here, depending on what that right-of-way
is, it could have a bearing on how this site is laid
out.

MR. DYSINGER: The diagram I have shows a ten
foot apron. In other words, that area could be moved into without affecting what looks like 18 feet of parking space. In Staff's opinion, is that enough or does it need to be more formalized?

MR. NOFFSINGER: Typically this type of street would require a 25 foot half right-of-way. Looking at this scale, and I doubt its to scale here, but I think the right-of-way would be less than 20 feet now. I don't know if there would be an additional ten foot right-of-way necessary. I just don't know.

We need to be mindful of that on the Staff level in the review of these plans. We need some guidance on it too and a policy. That if we're going to waive the sidewalk requirement on unimproved streets, then we should be taking a look at the right-of-way width so as to get the necessary right-of-way for future roadway improvements.

MR. DYSINGER: On future actions, I'd certainly be open to that. I wouldn't want to arbitrarily impose something on this applicant, especially based on what appears to be precedent to the contrary.

CHAIRMAN: Mr. Howard, is this ten foot apron, is it in the right-of-way or is it actually behind the property line?
MR. HOWARD: Looking at the plan it appears as though it is on the property. It showing the property line being forward of a 10 foot apron.

CHAIRMAN: So the property line in the unit itself is sitting back 29 feet behind the property line?

MR. HOWARD: Correct.

MR. DYSINGER: If that's the case, the entire parking area and apron is in the right-of-way. Is that not correct? Did I misunderstand?

MR. NOFFSINGER: I don't think so. I think that ten foot apron is shown on their private property. That's what the drawing shows. It would not be in the right-of-way, but we don't know what that right-of-way width is.

I'm concerned that we have a very deep lot here and we're pushing everything to the front of the building setback line. Whether we dedicate right-of-way at this point or not, I think we need to be cautious that we don't have that home sitting too far forward to where it could interfere with the future roadway.

MS. DIXON: Do we know why the applicant wanted everything pushed so far forward?

MS. MASON: Is it where the slab, maybe the
concrete slab is already placed.

MS. DIXON: Where it already was.

MR. NOFFSINGER: Probably where it's currently sitting.

MS. MASON: Although this manufactured home is going to be longer. So I don't know if he's coming closer to the property line or going further back into his yard with it.

CHAIRMAN: Are there any other questions from the board members for Mr. Howard?

MR. HOWARD: I will mention, as Mr. Noffsinger brought up the point, if right-of-way were dedicated in the future, it could compromise the access. As you can see, there is a garage off the alley in the rear. It could be a possible solution that if right-of-way were required in the future that the parking in the front actually access the lot from the back where the garage is already in existence.

MR. WARREN: Through the alley?

MR. HOWARD: Right. That could be an option.

CHAIRMAN: Any other comments, Mr. Noffsinger?

MR. NOFFSINGER: No, sir. I would recommend that we consider the location of this home in terms of the front setback. That the home be located no closer to the front property line than 50 feet from the
center of the existing right-of-way. What that does is allows for a 25 foot half right-of-way and then a 25 foot setback. That's just trying to, without the detailed information is just trying to set it up where we could move forward. The two trees, I don't know if those two trees are existing or proposed. If they're existing trees, they may be trying to retain those trees.

CHAIRMAN: So you're proposing that the home be set back 50 feet from the center of the public right-of-way?

MR. NOFFSINGER: Yes.

MR. TAYLOR: Seems to me like we're making several propositions on things we don't know a fact of whether, you know, the trees are there or what his plans are or what the actual right-of-way is. I hate to postpone or delay things for somebody as minor as they may have thought it would have been, but it seems like to me without these questions asked, they're heavily considered, maybe that's what we should do.

MR. NOFFSINGER: It would help if the applicant were here tonight. Certainly we need to make sure we have that information at Staff level prior to the hearing.

MR. TAYLOR: Mr. Chairman, at this time I
propose to make a motion to postpone this item.

MS. DIXON:  Second.

CHAIRMAN:  We have a motion and a second.  Any questions on the motion or any comments on the motion?

(NO RESPONSE)

CHAIRMAN:  All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN:  It's postponed until the next meeting.

Next item.

ITEM 4

3905 Carter Road, zoned B-4, (Postponed from December 6, 2007 meeting)
Consider revocation of the Conditional Use Permit issued to Atlantis Swim and Sports Complex, Inc. and Floyd D. Tapp approved at the September 6, 2007, Owensboro Metropolitan Board of Adjustment meeting.
Reference:  KRS 100.237(4)

MR. HOWARD:  I have a letter that was submitted to the office that I would like to read into the record as well as pictures that I'm going to go ahead and hand out at this time.

MR. NOFFSINGER:  As each board member recalls, this item was postponed to give the applicant time to determine how they wish to proceed with the paint ball facility. There were some neighbors in the area that were objecting to paint balls being projected from the site over onto their property. The applicant
acknowledged that and also stated that they were trying to correct that situation. Rather than having a netting over the facility, the top of the facility, they were trying to capture all paint balls with a higher netting facility on the sides. The board instructed that the applicant may wish to file a new conditional use permit application if they were going to propose netting different from what was approved by this board. The applicant has filed a new conditional use permit application, and we'll need the applicant to verify that in Item 4A, which is the next item on the agenda.

It may be that at this point you wish to speak to the applicant to determine if in fact Item 4A is their new Conditional Use Permit. I think it would make Item 4 much simpler in terms of revocation because I think the applicant would be asking that you revoke the conditional use permit that has already been approved because you filed a new conditional use permit application.

The applicant has no intent to construct the facility as originally approved. I think you need to hear from the applicant.

CHAIRMAN: This letter that has been presented, should it be read into the record for the
benefit of the applicant?

MR. NOFFSINGER: I think it should, but I think we need to hear from the applicant to find out what their intentions are. Then we can read the letter into the record, if necessary. Certainly it would be read into the record now or the next item with the new conditional use permit.

CHAIRMAN: Mr. Tapp, would you step forward please and answer questions for the board.

MR. SILVERT: State your name, please.

MR. TAPP: Darin Tapp.

(MR. DARIN TAPP SWORN BY ATTORNEY.)

MR. TAPP: For my benefit I would like to know what's in the letter.

MR. DYSINGER: First off, Mr. Chairman, if it's all right.

I'm a little unclear, and you're the best person to answer this. Was it your intention to file a completely new permit request or conditional use permit request or were you attempting to amend your previous? It doesn't really effect anything right now except just to make sure we move forward clearly.

MR. TAPP: That's a very good question. As far as the correct terminology, I don't know exactly how to answer that.
What I was doing could be described as amending because I am modifying what we originally spoke of doing here because there was some -- it wasn't clear on some of the wording of what we were going to do initially. So that was recommended that I file a new one. I didn't word it as an amendment whenever I filed it. I just filed a complete new one. Went in another direction in an effort to minimize the paint balls going over into my neighbors yards.

MR. DYSINGER: It's not a trick question. I'm not trying to slip you up. I just want to make sure that if we revoke something that you filed previously you have the new one, which is the new business. Whereas if you were amending something, I didn't want to revoke anything until we got it. Does that make sense?

MR. TAPP: Sure.

MR. DYSINGER: You're looking at me like I'm trying to do some kind of three card thing and I'm not. Just wanted to make sure that we don't get rid of anything that we shouldn't at this point.

MR. TAPP: I may be wanting to go back into this thing, but I would like to know that the new one is going to be approved before the old one is rejected. Is that feasible, doable?
MR. DYSINGER: My answer to that, and, Counsel, please fill in any blanks, is we can't even consider a new one unless something is done to the old one. That is the question. That's why I wanted to know was it your intent to file a new application or new conditional use permit request or amend the old one? It's really just a procedural thing.

MR. TAPP: Could I go back to request hearing what's in this letter? Because I have no idea what I'm looking at here.

CHAIRMAN: Mr. Tapp, we're going to take a three or four minute recess while we talk to counsel and discuss this issue.

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

CHAIRMAN: Call the meeting back to order.

MR. SILVERT: Mr. Noffsinger had ask that I address really the question. Make sure you understand what our issue is just in procedure.

What you filed reads more like an amendment to your previous conditional use permit. So there was a question as to whether or not it was. It was filed as a new conditional use permit. So we were trying to give you the opportunity to say, what did you feel that it was?

Given that the question of amending the
previous one is really more appropriate before this
body considers whether or not to revoke the previous
conditional use permit. To do that this body would
need to make a motion to amend the agenda, to move
Item 4A to 4 and move 4 to 4A and consider them in
that order, if that is in fact your intention to amend
the previous one.

MR. TAPP: If that suits the purpose of why
we're all here, yes.

MR. DYSINGER: Is it not, Madison, from his
point of view six/one half dozen or the other? This
is really a procedural issue it seems to me.

MR. SILVERT: We put that to him and he stated
earlier that he would like to know what we were going
to do on the new application before we consider
whether or not revoked it. That's a nice
consideration for him, yes, but it may not be the only
consideration for this body. I leave that to you, how
you want to treat that application.

MR. TAYLOR: Basically what my concern is what
it seems like to me is that he has either, whether he
has or not, he's kind of sought out what he needs to
do and conveyed his plan. I'm going to raise these
nets. How do I need to go about doing that? Whether
that be amend or make a new one. Somehow, you know,
whether he's unfilling it or something else happen, it
got mixed up to where we'd have to revoke his other
one first.

What my question is, instead of him accidently
saying something wrong, like amend instead of a new
one, I would hate for him to lose business over that.
So it seems like Madison's proposal of putting an
amendment to one before revoking it would cover him to
where a slip of tongue, some technicality, is not
keeping him from operating his business. Is that
basically what's happening? Are you making an
amendment?

MR. SILVERT: No. I don't make any proposals
of any kind. I'm saying that if this board would
chose to treat Item 4A, as Mr. Tapp has stated that
he'd like to treat it, an amendment to the previous
conditional use permit and not an application for a
new conditional use permit, in my opinion it would be
more appropriate to consider that item prior to the
question of revocation.

The reasoning for that is, if you were to
consider the evidence and pass that amendment, then
the question of revocation becomes very different than
it is without that amendment. You might want to
consider that way. Again, to consider it in that
manner, a motion needs to be made to amend the agenda.

MR. NOFFSINGER: Too, I don't wish to complicate it, but if Item 4A, if the amended conditional use permit is heard first and is approved, then it makes Item 4 a mute issue.

MR. SILVERT: Yes.

MR. NOFFSINGER: Because no longer are you considering. Because the amended conditional use permit application would supercede the original conditional use permit application.

MR. SILVERT: Correct.

MR. NOFFSINGER: You've worded this in your conditional use permit, "modification of netting to minimize paint balls." So it sounds like you're asking for an amendment to your existing conditional use permit. You filed a new application, but you're asking for an amendment.

I think Madison is suggesting here that this board may consider a motion to amend the agenda, to move Item 4A to be heard before 4. If you vote to do that, then I will read 4A and we'll proceed and we'll get on with the evidence.

CHAIRMAN: So then the proper procedure would be to revoke 4.

MR. NOFFSINGER: No, sir. What I think proper
procedure would be is a motion to amend the agenda, to move 4A to be heard before Item 4. So let's hear Item 4A, the amended conditional use permit application. Then see how that goes and then we can see what we need to do on 4.

MS. DIXON: Mr. Chairman, I move that we amend the agenda to place Item 4A before Item 4 and hear the evidence.

MR. TAYLOR: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Item 4A is moved to supercede 4.

RELATED ITEM:

ITEM 4A

3905 Carter Road, zoned B-4
Consider request for an amended Conditional Use Permit in order to modify the approved netting plan around the tennis courts for paint ball related activities.
Reference: Zoning Ordinance, Article 8, Section 8.2K7/42
Applicant: Atlantis Swim and Sport Complex, Inc.; Floyd D. Tapp

MR. NOFFSINGER: Mr. Chairman, we do have a conditional use permit Staff Report that probably should be read into the record at this time by Brian Howard.
Mr. Tapp, we'll let Brian read his information into the record and then we can hear from you. Thank you.

ZONING HISTORY

The subject property is currently zoned B-4 General Business. A zoning change for the subject property for the B-4 zoning was approved in March 1987. Several Final Development Plans and Conditional Use Permits have been approved for the property over the years with the most recent approval being a CUP for a paint ball recreational facility on the subject property that was approved in September 2007.

The netting that was approved at the September 2007 meeting included all sides and the top of the playing area. The OMPC office received several complaints about paint balls landing in neighboring yards and hitting homes and vehicles. When a field inspection was completed by the Zoning Administrator, it was discovered that the screening over the top of the play area had not been installed. Since the site was not in compliance with the approval from September 2007, the item was brought before the Owensboro Metropolitan Board of Adjustments at the December 2007 meeting, to consider the revocation of the approved Conditional Use Permit. At the hearing, the applicant
testified that the height of the netting was in the process of being extended and he anticipated that the increased height would alleviate the problem. This application is submitted with a revision of the proposed netting as detailed by the applicant at the December 2007 revocation hearing.

LAND USES IN SURROUNDING AREA

The property to the north and south is zoned B-4 General Business. The property to the east is zoned R-3MF Multi-Family Residential and R-1C Single-Family Residential. The property to the west is zoned I-1 Light Industrial.

ZONING ORDINANCE REQUIREMENTS

Parking for the site is addressed on the most recent development plan approved in July 2006 and the proposed use will not require additional changes to the development plan.

MR. HOWARD: At this time we'll go ahead and read into the record the letter that was submitted as well.

MR. NOFFSINGER: At this time, Mr. Howard is going to read a letter into the record from an adjoining property owner, Ginger Carter, that was at the meeting in December where you were considering the revocation of an approved conditional use permit. She
stated that she was unable to be here tonight. She is out of town and asked Mr. Howard to read this letter into the record.

MR. HOWARD: I'll read it now into the record.

"Due to my unavailability for the Planning and Zoning Commission January meeting, I will use this letter to express my continued and increased displeasure with the Atlantis Paintball facility located directly behind my house.

"Following the December Planning and Zoning meeting, I was informed by Jim Mischel that Darin Tapp had filed for a new conditional use permit stating that he would add an additional 10 foot of netting to the existing netting, which he has done. However, the extra height and weight has caused the netting to collapse twice since its initial installation.

"After the first collapse, Mr. Tapp used a tall lift to reinstall the netting. In the meantime, he was either 'open for business' or had family/friends playing in the northernmost section, which still had the taller netting. I collected 15 paint balls from all over my backyard the following two days on December 21st and 22nd, that came from the northern section (which is further down the street from my property). Of course, I had hoped this would
not occur.

"Owensboro experienced very high winds during the night of December 22nd. I awoke Sunday, December 23rd, to see the taller netting behind my house actually draped on my stockade fence. I have attached labeled photos that I took that morning. You can see some of the damage to my fence. Two slats were totally misplaced. Three were broken at the top of the pickets with another five chipped or cracked.

"Mr. Tapp was there at 9:15 that morning collecting netting from my fence. Although he was in the ditch area between his chain-link fence and my privacy fence, he made no attempt to repair my downed slats, nor has he done so as of the writing of this letter. I also have had no contact from Mr. Tapp concerning the damage his netting caused on my property.

"December 26th was a very busy day for the paint ball participants. They were playing in the section directly behind my house without the extra 10 foot netting installed. The netting is still lying in the ditch at this current moment. I also had a lovely splatter of white paint ball in my driveway exactly where I usually park my vehicle. Good thing I had parked on the street or I would have had paint ball on
my car for the third time this fall. And yes, you
guessed it, I found seven more paint balls in my
backyard this morning.

"In the past four months I have told Mr. Tapp
several times that I was his unhappy neighbor. I am
now an extremely dissatisfied neighbor! As I stated
at the December Planning and Zoning meeting, I have no
intentions of closing down Mr. Tapp's new business.
My only intent was to protect my property and my
neighbors' property from any further damage. Now I do
request that Mr. Tapp be required to repair my fence
at his cost. I feel that is a fair request.

"If the Planning and Zoning Commission decides
to revoke Mr. Tapp's permit since he is obviously not
complying to its use, I will certainly not be upset
and more than likely will once again be a happy
neighbor on McIntire Crossing.

"Thank you for your time and consideration in
this very disturbing matter.

"Sincerely, Ginger Carter."

I would like to enter that into the record.

CHAIRMAN: Mr. Tapp, would you like to step
back up and answer some of the questions for the board
and the letter you just heard.

MR. TAPP: Yes. This is an ongoing battle
with the netting. Matter of fact, after the winds we experienced a couple of days ago, it rolled two of my three-eighths inch big rods that I had that were holding it up. So I went out today and bought five-eighths inch rods to reinstall them. I've got another lift ready.

I would like to say at this time that, you know, I saw her on the morning of the 27th and had had no phone calls. You know, I've spoken to her several times about trying to, you know, asking her to call me if the problem persist so I could make adjustments and try to do things to try to alleviate this problem. I had not heard a word from her. The morning of the 27th, the day she left to go out of town, I was up there replacing the netting she's talking about. That it was draped over her fence. I did tell her that I have insurance for that. I'll be more than glad to repair her fence. That's what I have insurance for. I'm going to take care of that for her.

I have solicited responses from all my neighbors behind me. The most recent agreement that I have come, and I haven't had the opportunity to talk to her about it yet, but basically this was designed as an off-season activity. Between the fall and the spring. In the spring, at the end of April, I've got
to shut this down and reopen the swim facility. At that time, and I've talked to Mr. Mischel about it, I have located some farm property that I am going to relocate this entire facility, but between now and then, I'm doing everything in my power to keep these paint balls from going into my neighbors yards. I've offered to send people over there and clean up on the occasion that it does happen. I seem to have, and I think I've illustrated this before, two quarters that are a problem area for me. Actually one of my neighbors behind me, he lives right next-door to the lady that wrote the letter. That's one of the areas. Basically I can't stand up here and tell you right now tonight that a paint ball is not ever going to go over into a neighbor's yard. I can't do that. What I can tell you is that I think I've got it minimized. I will do what's right with the neighbors as far as cleaning up, when there is an issue.

When I shut this down at the end of April, I will be relocating it. Not opening it back up at that facility again.

MR. DYSINGER: Mr. Chairman, since the point of the amended conditional use permit is to change it to what he intends to do with the netting, and that
doesn't appear anywhere, I think it would be helpful for me if the applicant would describe as specifically as possible what he has set up at this point and whether or not that is how he intends on finishing up the season with this. In terms of how high the fence is. That doesn't appear in writing anywhere in any of these applications. I think it needs to be in here somewhere.

CHAIRMAN: One of the things I noticed that concerns me is in order to modify the approved netting plan, did we have before an approved netting plan?

What you're stating here, Mr. Tapp, is to modify the approved netting plan around the tennis court. Was there ever an approved netting plan?

MS. MASON: I have a copy of the minutes from that original meeting. I have personally asked him, "The fencing that you're going to put around, how tall is it going to be?"

Your wording was, "It's going to be 12 foot tall and we're also going to put a netting on top to prevent it from going out and over into the neighborhood behind us."

Then I put, "And the 12 foot tall fencing, what is that going to be exactly? Inflatable?"

You said, "No. The netting is a specially
engineered netting specifically for this purpose. It won't allow anything bigger than three millimeters to go through."

I asked, "Is that around the perimeter?"

You put, "The entire perimeter and on the top as well. What I'm fencing in is my existing tennis courts. They have what's called omni turf, Astroturf surface. We're going to put inflatable soft, inflatable bunkers inside of the tennis courts to use as the barricades."

So that's what I say that we were approving at the original, back in September or whenever we did this.

CHAIRMAN: So it was approved in the conditional use permit originally what you stated. That was approved.

MS. MASON: Yes. That's what we approved it on. This was the evidence that was presented at the meeting that we approved it.

MR. DYSINGER: My statement was just that since that's what we approved at that point and what we're doing now is amending that and the proposed changes to that to my knowledge do not appear anywhere. Certainly not in writing in the application. I just think it's necessary at this
point for the applicant to state, much like he did at
the original meeting, what his intentions are. What's
there now perhaps, and what his intentions are up to
the point when you move it from that facility. Just
so that it appears in the record and we all know what
we're voting on.

MR. TAPP: What we've done initially, and I
think I spoke of this at the last meeting we had.
What I had envisioned as far as a top was like a
backstop at a ball diamond. That leaned in over the
facility. We had pictures here that illustrated that,
things of that nature. How it leaned over. But what
that did is the bunkers that were towards the middle
of the field, when we got bounces off of them it
actually lowered the netting and it was easier for
those to get over. My neighbors are so close behind
me. A 15 foot wide ditch and then there's their
backyard. They're just right butted up to each other.
That's where 90 percent of the problem is coming from.

So in theory I talked to the manufacturers of
the netting. The problem is not balls going through
the netting. It's bouncing over top of it. So
instead -- my chain-link fences are 12 feet tall.
With the backstop design I had another about six feet
that was leaning about approximately let's say a 45
degree angle. Maybe a little bit steeper than that, in over the top of the facility. That only gave me about maybe 14 or 15 feet in height.

So in theory I talked to the paint ball manufacturer and they said, well, what we have is a 20 foot netting, a hybrid netting. It was very expensive. They say, what we'll do for you is 20 foot with a foot of draping at the bottom. I have 22 foot poles that I have purchased. What that will do is take it up another four or five feet in hopes that that would catch the remainder of the bouncers.

In some areas it's almost completely eliminated. I've actually gone, and like I said I've canvassed and solicited responses from my neighbors. In the middle I'm having absolutely no problem at all. On the corners though, I'm having an adverse affect. So I made another call to the paint ball manufacturers. This is just since the 27th whenever I actually talked to, I think Carter is her name. I was up on the lift repairing the netting that had actually damaged her fence. I was up there repairing that. I kind of hollered down to her. I hadn't heard anything from her so I assumed everything was fine. That's the first time that she expressed her displeasure. Just pretty much the same thing the letter said there. Not
quite as detailed.

Immediately after that I contacted the paint ball netting manufacturer again and said, hey, look, the corners of my facility I'm still having some issues where I'm getting some bounces. They described what they called skirting in the corners. I could skirt the corners in to -- because when it comes to a corner, you know, a 90 degree corner like this you've got this whole area here where something can get out that way. What they suggest that I do is run a skirt on the corner.

I got that done just in time for the big wind storm to come and rip it all down for me again this week. It will be back up tomorrow and I'm going to put the skirts in the corners. I don't have that described anywhere. I'm going to continue to do everything that I can to prevent paint balls from going in their yards.

I don't expect them, my neighbors, to clean up our mess. I will go over there personally or send guys over there. Any time they get any in their yard, we will pick them up. If one lands on a car or something like that, I've offered to wash cars for free. Whatever.

I've got over 300 kids that have signed up to
participate in this thing. I think Dallas and my others neighbors have agreed that if I will move it and not bring it back in the fall, that they would be fine with it. I have not had an opportunity to talk to Ms. Carter and get her blessing on that because she is out of town. Everybody else has agreed to that.

MR. DYSINGER: So you currently have 20 feet high?

MR. TAPP: Minimum.

MR. DYSINGER: You currently have the skirting at the corners or not?

MR. TAPP: Actually I have nothing. I have 12 feet high right now because it all blew down. It will be -- the first of this week it was all installed. Then we had the 50, 60, 70 mile an hour gust the other night. It ripped my bolts. I mean just snapped them in two. I will have it all back up tomorrow. It's a real simple fix and I will have the skirts on the corners also.

MR. DYSINGER: Do you suspend operations when the netting is down?

MR. TAPP: Yes, I did. What she described is correct. I did have people playing on the north field. I was not aware of anybody playing on the south field whenever the netting was down on the south
field. I trust that if somebody was doing that, they
should not have been and I'll admonish my referees for
allowing that to happen. That could be what she's
describing there came into play.

CHAIRMAN: Mr. Mischel, you have some

comments.

MR. SILVERT: State your name, please.

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I would just like say we took

some pictures this afternoon. Some of you might not

be familiar with the site. I thought it would be good
to pass these out. These were taken this afternoon.

It will kind of give you an idea of what he's talking

about, what everybody is talking about. We'll put

desire into the record.

MR. TAYLOR: These picture are with the 20

foot down, right? This is just the 12 foot.

MR. MISCHEL: It shows the 12 foot and then --

MR. TAYLOR: Where the 20 foot would be up on

top.

MR. TAPP: Mr. Mischel, do you have the

pictures that I e-mailed you that showed it all up?

I sent Mr. Mischel the pictures of everything

once it was all up before the wind tore it down again.
MR. MISCHEL: I think this was in place. Like he said, the wind in the last couple of days took it down. It will give you an idea.

MR. NOFFSINGER: Mr. Mischel, did you also have some paint balls to enter into the record?

MR. MISCHEL: We went out and took the pictures today. We went at 3844 McIntire Crossing. When he took the pictures, these were in the yard.

MR. TAPP: I have more of what the netting will look like once its up. I think it's the same thing I passed out the last time.

MS. MASON: This netting that you've installed, has it blown down twice since you've installed it?

MR. TAPP: Yes, ma'am, it sure has. The bolts like I said were not adequate so I went down to Hanna Supply on Fourth and Walnut down there and got the big bolts like the telephone company uses.

MS. MASON: Is this the second time you've installed it or is this for tomorrow when you installed it?

MR. TAPP: No. This is for tomorrow. I have not used these big -- I mean it's like the ones that the telephone company uses. I have not used those.

MS. MASON: It concerns me that the neighbors
are still having problems. With the way Owensboro is known for their high winds, we could have a whole lot more wind between now and the end of April or whenever you stop operations and move to your new facility.

CHAIRMAN: Mr. Tapp, what modification have you made to prevent the wind from taking this thing down? We have 30 to 40 mile an hour wind, especially in that area down there, on a regular basis. Have you made modifications to prevent that from taking that down?

MR. TAPP: Yes, sir. The primary -- what is happening the cables aren't breaking. It's the devices that I was using to attach the cables to the i-bolts. This last one we had -- what night was it? New Year's Eve. We had straight line winds. They had to be 60, 70 mile an hour. What it actually did was it worked the three-eighths inch i-bolts back and forth until they just snapped in two. Everything else held together, but the bolts snapped in two. With that kind of wind, you know, that's about as bad as it gets.

With the new bolts that I bought, the same type that they use to run the big guide wires from the telephone pole and anchor them down into the ground, you know, that you see. That's the type that I went
and paid the extra money to get. Something that isn't
going to snap a telephone pole. I don't foresee that
happening again.

MR. TAYLOR: I think my main question is, you
know, we've had this letter and complaints and stuff.
It seems that was with the old netting plan that was
actually never in existence. It didn't go across.

Now, it seems that you've made some
consultations and talked to people on how to do it.
What probably would be considered experts in the
netting company. They can see that the 20 foot and
the skirting would prevent that from happening.

Now, do we have people that have complained
while that 20 foot and skirting was there? It seems
like we've got somebody, and I'm just assuming by your
telephone conversation, that would know, just saying
that the 20 foot nets and the skirting would work to
prevent it. Do we have any complaints or anything on
the other side saying that didn't work? I think we're
basing all of this, it not working and all the paint
balls on how it's constructed right now.

MR. TAPP: Not with the skirts, no. No. I
still was getting some problems in the corners with
the 20 foot, but not with the skirts.

MR. MISCHEL: I might just add I think Ms.
Carter's letter came half the 20 foot was up. Now, since then he's put it up again. I think originally this letter she sent was sent after it went 20 feet tall. Like he said, he hasn't put the skirts in the corners yet.

MR. TAYLOR: Is her house one of those corner houses that was affected by the --

MR. TAPP: Yes. She lives right next-door.

CHAIRMAN: Mr. Tapp, I would like to ask the gentleman in the back if he has any comments or questions of any kind?

MR. SILVERT: State your name, please.

MR. HAMILTON: Dallas Hamilton.

(MR. DALLAS HAMILTON SWORN BY ATTORNEY.)

MR. HAMILTON: Actually I come here to hear what he said. They're leaving in March and they're not going to be back. That's what I wanted to hear. I wanted to come down and make sure I wasn't getting jerked around is why I came down here.

MR. DYSINGER: Have you had more paint balls in your yard?

MR. HAMILTON: A few, yes.

MR. NOFFSINGER: That's the end of April, I believe. Not March. April.

CHAIRMAN: Thank you.
MS. MASON: Mr. Tapp, you said you did not speak to Ms. Carter about your intentions of leaving at the end of April?

MR. TAPP: No, I haven't had a chance to speak to her since -- the 27th is the only time I've spoke to her. The morning she was leaving I was up on the lift. I actually got down off the lift and tried to make it around and catch her and have a conversation with her, but she had already drove off by the time I got there. That's when I actually went over and talked to Dallas.

MR. TAYLOR: Mr. Chairman, if we're ready for a motion, I'm ready to make a motion.

CHAIRMAN: I have one other comment.

I'm not sure that the modifications that you have made are adequate. We have no way of knowing if the modifications you have made are adequate. If this board approves the modification and it's not adequate, then what is our procedure after that? Because we're approving what he says he's modified, his modifications. If that's not adequate, then where are we?

MR. TAYLOR: I'm kind of basing this as a modification of our old one. We kind of took with the paint ball netting and how they say constructing it
would work. We didn't know for sure that that would work, but we took the paint ball netting company saying that that would work, on his word, and we approved it then. If we based our findings before on that, then them saying that this would work -- I know there's no concrete way, but when we make a decisions on a lot of things there's not going to be a concrete way to know for sure that it's going to work. That's kind of where I'm approaching it from.

CHAIRMAN: Let me ask: Are there any other comments or questions from the board members?

MS. DIXON: I just feel like it's going to be a trial and error and constant monitoring. I feel for the neighbors around there. They should not have to suffer an inconvenience of this or potential property damage or pets or whatever. I wouldn't want it.

MR. DYSINGER: My concern at this point it is a trial and error. I think that's exactly right. While I think everybody seems to be getting along so far, that's going to start wearing thin. The problem I have at this point is it seems like the net itself is now a problem. It's damaged a neighbor's property. While I understand you've gotten different hardware and things like that, I'm not an engineer. I don't know if that's -- are we just going to end up
having larger hardware in this neighbor's property?

To me that's the issue at this point. Paint balls are the least of your problems if you've got this netting falling down.

You said it yourself, Mr. Chairman, those winds get pretty crazy on Carter.

MS. DIXON: Between now and April a lot can happen.

CHAIRMAN: That would be one of the issues with me. I'm not totally clear of the modifications you've made. I've listened to you. It's very difficult to listen to what you've said. The modifications you've made, whether it's adequate. What we're doing is approving this based on the modifications. You're asking for amended and you're going to modify it. Now we're going to approve your modification. We don't know whether it's adequate or not. I'm not sure where we are if we approve this. Then the neighbors immediately, Jim Mischel gets a call and he goes down and you've still got the same problem. We get a 40 mile an hour wind, it's taken it down again. I really don't know at this point what we're approving. I'm ready to ask for a motion.

MR. TAYLOR: I've kind of got a Staff question now. I know that is a great concern with that.
Can you make a motion, you know, with a revocation clause saying if the netting was to fall into someone's yard then the conditional use permit would be revoked? I'm assuming that would be to Staff or counsel, whoever would know the answer to that. I don't know if that would alleviate concerns or not. It seems that would take a bunch of concerns away. That we're acknowledging he's made steps to try to fix this. We're not going to do trial and error so much. If this one doesn't work, then we're saying we'll pull it.

MR. DYSINGER: If we approve the net and the net comes down, it's automatically not in compliance. I mean it's automatic.

MR. TAYLOR: Right, but it wouldn't be an automatic revocation. It would just be, he'd be in noncompliance and then he would fix the net.

MR. SILVERT: He would be subject to the procedure that he went through this time. Where he'd be subject to a revocation hearing.

MR. NOFFSINGER: And I'll second that.

MR. SILVERT: Thank you.

MR. WARREN: If we put the revocation clause in there.

MS. DIXON: Basically any conditional use
permit is subject to revocation, if they don't meet the conditions, correct?

MR. SILVERT: Correct.

MR. NOFFSINGER: That's right. You go through the process where we go through on Item 4.

MR. TAYLOR: So it would not be necessary to make a special note in the motion to say that?

MR. NOFFSINGER: That's right. You have to go through the statutory provisions for revoking the conditional use permit. It just doesn't happen automatically.

MR. TAYLOR: That was my question.

CHAIRMAN: Chair is ready for a motion.

MR. TAYLOR: Mr. Chairman, I move to approve the conditional use permit based on several conditions. One of the conditions being that the conditional use permit is only granted until the end of April. Also that the 20 foot netting that was discussed is installed, the skirting is installed in the corner in order to help prevent the paint balls from going through. Obviously I know revocation is an issue, but even if it's just for a minute the net falls down that no business is obviously operational, if any parts of this conditional use permit is not in compliance. If anything happened against this permit,
that operation would not be able to go on.

I base those on the findings that we approved this conditional use permit before based on somewhat expert advice or what we thought was knowledge that would prohibit the paint balls from excessively going over the fence. I'm basing it upon that and the injection of further advice that the installation of the higher nets would help in that cause as well.

CHAIRMAN: Do we have a second?

(NO RESPONSE)

MR. DYSINGER: Mr. Chairman, what if this doesn't solve the paint ball problem? The motion does not deal with the original issue of stopping paint balls.

CHAIRMAN: Then we're back where we are right now. That's my opinion.

Mr. Noffsinger, do you have an opinion on that?

MR. NOFFSINGER: I share your privity.

CHAIRMAN: If we have complaints again, Mr. Mischel I would suspect, then he would have to come back and we'd have to go through this procedure again. If it comes back, we're going to have to have detailed drawing by an expert engineer that thing will stay. If it doesn't stay this time, then you bring
back with you a detailed drawing. It's very difficult for us to sit here and understand what you're saying. If you have your supplier or someone, an engineer, that could give us a detailed drawing. If you come back, you need to have that or you won't get it.

MR. TAPP: Sure.

MR. DYSINGER: If it stays up and everything is fine, but the neighbors still have paint balls, we will be back here next month. That wasn't overtly stated in the motion.

MR. TAYLOR: I don't think I can state that from what I asked earlier. It will have to go through a complaint process where Jim would have to go out and inspect it and then go through what it took to get to this initially.

MR. NOFFSINGER: Based upon Mr. Taylor's motion, paint balls in the adjoining yards would become I think a civil matter and not a matter before the Board of Adjustment because his motion does not include any conditions regarding that. It only states that he's to install a 20 foot netting and then the skirting in the corners and they're not to operate if the netting is down. It does not address paint balls. He's making this motion believing that this design is adequate. He's not saying it's 100 percent adequate.
I think what you're saying is you believe this is adequate and with these conditions you're comfortable in moving forward with it. It does not address, you have no expert testimony. You have no plan. You have no design plan. You have this gentleman's word, this is what I think is going to work and here is what I'm going to do. Mr. Taylor's motion is based upon his testimony and the conditions he feels would be necessary to protect the adjoining properties.

Is that a fair statement?

MR. TAYLOR: Right. Pretty much except for that we approved it the last time. Yes. Absolutely, that's what I'm saying.

MS. DIXON: But it basically doesn't address the original problem that we started with, with the paint balls.

MR. NOFFSINGER: We don't know if it will or not.

MR. TAYLOR: I don't know how to, maybe one of you all know how to make an amendment, if you approve, with what I said before to address that. I didn't know how to address that so it was not included.

MR. DYSINGER: I don't want this to become a civil matter if we -- I don't think that's fair to the
adjoining neighbors. I don't think that's what he wants either.

If it's possible to amend, is it possible to amend his motion?

MR. SILVERT: If he'll accept a friendly amendment, you won't have to have a motion to do that.

MR. TAYLOR: I will most certainly accept a friendly amendment.

MR. DYSINGER: I friendly suggest that we amend that to allow the neighbors, the adjoining neighbors to come to this board if the paint balls are a problem. I don't know the best way to handle that. Or complain to Staff or notify Staff if there's a continued problem with paint balls in their yard. Make this subject to revocation at that point.

CHAIRMAN: Do you accept his amendment to your motion?

MR. TAYLOR: I do. That's kind of what I was going for. Again, I don't know if that has to be worded. That's kind of like what we were talking about before. That's kind of their recourse anyway if this was to happen.

MR. NOFFSINGER: The recourse before was because it was not constructed as he said it would be. That's why. It has to do with the paint balls, but
technically it's because of the way he said it would be constructed. He didn't do it so he's got to come up with a plan.

MR. DYSINGER: So did we just do that?

MR. WARREN: With the amendment we're saying if there's anything wrong and you all get complaints in the office, this can come back before this board for a revocation?

MR. NOFFSINGER: It's probably going to be a mute issue because by the time it gets to this board, it's going to be April.

MR. TAYLOR: Can you put a 30 day review or so on the permit? Is that a possibility? That's kind of keeping this existing. We approve this and in a 30 day review that it will be on the agenda of the next meeting. Then if there were problems, those people could come forward. Then at that point we would determine the overall fate of the motion. That's kind of like a 30 day risk free trial. However you want to say it. I don't know if that's legal or not.

MR. SILVERT: If I might interject. I think the suggestion there may be, may be to make it subject to the 30 day review and postpone Item 4, which is the revocation.

MR. NOFFSINGER: A 30 day review, but the 30
day review has to be on conditions.

MR. SILVERT: Yes.

MR. NOFFSINGER: So therefore you have to have a condition addressing --

MR. TAYLOR: And that was his friendly amendment.

MR. DYSINGER: I would go even further as to saying that we review it monthly, since we're just talking about since April. I wouldn't want to keep something hung up like this forever. Reviewed monthly, postpone Item 4, so that these neighbors have an outlet short of calling an attorney. I just don't think that's reasonable to -- with the conditional permit that it's reviewed monthly.

MR. TAYLOR: Is that good, Gary?

MR. NOFFSINGER: Two things.

Number one, Madison, why do we need to revoke the conditional use permit if this is approved? Because the approval of this conditional use permit supercedes the original one. So we're no longer considering that.

Two, I think you need a condition to address what you want reviewed. It's not just a 30 day review. We don't want to go through this every 30 days. We need a 30 day review of the specific
conditions so that Jim Mischel can appear before this board each month and say, this conditional use permit has been reviewed. Condition 2, 3, 4, whatever, they're in compliance or they're not. We need a specific condition in which to review and to report to you. Not just leave it open.

So if your issue is paint balls on adjoining properties, you need to address paint balls on adjoining properties.

MR. DYSINGER: I thought we already did that. That was part of the friendly amendment.

MR. NOFFSINGER: What was the friendly amendment? I didn't understand, I guess, the friendly amendment.

MR. SILVERT: The motion is whether the mechanism that is being constructed is effective to prevent paint balls from leaving the field and going into the neighbors yards.

The question and condition you may want to add is that in 30 days the mechanism is reviewed to determine whether or not paint balls in fact were able to go over the new mechanism. If so, then this would be in compliance. The idea behind the mechanism is that it prevents paint balls from going into people's yards.
MR. NOFFSINGER: So you're saying in terms of mechanism is to capture all paint balls?

MR. TAYLOR: That's my question. I agree with everything he said. Is one paint ball? Is it like a three paint ball per yard minimum? I know it's getting a little bit weird and keeps going on.

MS. DIXON: To be honest, at this point I don't think the neighborhoods ought to have to put up with one paint ball.

MR. DYSINGER: My only desire is to prevent what Mr. Noffsinger referred to. If we don't put a mechanism in there for the neighbors to come back to us next month, whether that's a review or whatever, their only hope is civil suit and nobody wants that. Nobody wants that.

MS. DIXON: They shouldn't have to bear the expense of an attorney.

MR. DYSINGER: Exactly.

MR. NOFFSINGER: If you say "no paint balls," then I think you've covered the neighbors being able to come back here. The neighbor in the back, I don't think you're going to hear from the gentleman in the back next month if there's a paint ball or two in his yard. He's looking forward to the end of April. We don't know about Ms. Carter. You just need to give us
specific conditions in which Mr. Mischel can report to
you. Okay, we've had no reports of paint balls, or
we've had one report and they said they had five or
whatever. You need to be specific.

MR. DYSINGER: Friendly amendment, with the
condition that the fence as described prevents any
paint balls from entering adjoining neighbors yards.
If the neighbors don't want to report it, it's on
them. If we hear about it we can -- I want to be
clear about this. If we hear about it, if it gets
reported to us by a neighbor that it's still a
problem, we can revoke at that time. We don't have to
add anything to be able to revoke that. He would not
be in compliance; is that correct?

MR. NOFFSINGER: At that point from the
review, I think we still have statutory requirements
that we have to properly notify revocation. We can do
the review, but then it's going to be another month
before we get to the revocation.

MS. MASON: It would be the March meeting.

MR. TAYLOR: I accept that amendment.

CHAIRMAN: So we get this in the record.

Mr. Taylor, you accept Mr. Dysinger's friendly
amendment?

MR. TAYLOR: I do accept Mr. Dysinger's
amendment.

MR. DYSINGER: In that case, I second Mr. Taylor's motion.

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

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(BOARD MEMBERS - MARTY WARREN, RUTH ANN MASON, SEAN DYSINGER, WARD PEDLEY AND CLAY TAYLOR - RESPONDED AYE.)

CHAIRMAN: All opposed.

(BOARD MEMBER JUDY DIXON RESPONDED NAY.)

CHAIRMAN: Motion carries six to one.

MR. NOFFSINGER: On Item 4, perhaps we should read that into the record and make it clear that that conditional use permit is superceded by the one just approved is no longer in affect.

MR. DYSINGER: But we amend it. We did not replace. We didn't supercede. We amended. That is the conditional use permit that's in affect.

MS. DIXON: Counsel.

MR. SILVERT: The problem with the conditional use permit was the conditional use permit. The question was whether or not it was in compliance. The question of compliance was whether or not there was a
net going across the top of it. A net going across the top is no longer required by that conditional use permit. So the question is whether or not the conditional use permit is in compliance. In other words, the question of it having a top -- because it's not longer required.

MR. NOFFSINGER: So legally we don't have to do anything at this point is what you're telling us.

MR. SILVERT: You probably need to dispose of the item.

ITEM 4

3905 Carter Road, zoned B-4, (Postponed from December 6, 2007 meeting) Consider revocation of the Conditional Use Permit issued to Atlantis Swim and Sport Complex, Inc. and Floyd D. Tapp approved at the September 6, 2007, Owensboro Metropolitan Board of Adjustment meeting. Reference: KRS 100.237(4)

MR. NOFFSINGER: Mr. Chairman, Planning Staff would recommend that you vote to revoke this conditional use permit based upon the evidence presented at the December Board of Adjustment meeting of 2007, as well as the evidence presented here tonight in reference to Item 4A on the agenda, and given the fact that you have approved a new conditional use permit for the property which supercedes the conditional use permit you're revoking.

CHAIRMAN: Do we need to vote on that?
MR. TAYLOR: Are we revoking? I thought we were just disposing of the item.

MR. DYSINGER: Mr. Chairman, based on the findings that we've amended the conditional use permit, I move that we do not revoke the conditional use permit.

MR. TAYLOR: I second.

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

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

We need one final motion.

MS. DIXON: Move to adjourn.

MR. WARREN: Second.

CHAIRMAN: 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, LYNETTE KOLLER FUCHS, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Board of Adjustment meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 55 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 26th day of January, 2008.

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

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