

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 NOVEMBER 6, 2008

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:30 p.m. on Thursday,
5 November 6, 2008, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

- 8 MEMBERS PRESENT: Ward Pedley, Chairman
- 9 Judy Dixon, Vice Chairman
- 10 Ruth Ann Mason, Secretary
- 11 Gary Noffsinger, Director
- 12 Madison Silvert, Attorney
- 13 Marty Warren
- 14 Sean Dysinger
- 15 Clay Taylor
- 16 C.A. Pantle

17 * * * * *

18 CHAIRMAN: Call the Owensboro Metropolitan
19 Board of Adjustment to order. We'll begin our meeting
20 with a prayer and pledge of allegiance to the flag.
21 Mr. Noffsinger will lead us. Please stand.

22 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

23 CHAIRMAN: I would like to welcome everyone.
24 Anyone wishing to speak on any item we welcome your
25 comments and your questions. We ask that you step to
one of the podiums and state your name and be sworn
in.

First item on the agenda is consider the
minutes of the October 2, 2008 meeting. Are there any

1 additions or corrections?

2 (NO RESPONSE)

3 CHAIRMAN: If not chair is ready for a motion.

4 MR. PANTLE: Move to approve as in the office.

5 CHAIRMAN: Is there a second?

6 MS. MASON: Second.

7 CHAIRMAN: All in favor of the motion raise
8 your right hand.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries unanimously. The
11 minutes are approved.

12 Next item.

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14 CONDITIONAL USE PERMITS

15 ITEM 2

16 101-401 Blocks Veterans Boulevard, zoned B-2, B-4
(Postponed at the October 2, 2008 meeting)
17 Consider a request for a Conditional Use Permit to
construct a phase of the riverfront project consisting
18 of the Owensboro Riverwall construction within the
floodway for approximately 1800 feet along the bank of
19 the Ohio River from the River Park Center to the
Veterans of Foreign Wars building. This phase of
20 construction does not include improvements in Smothers
Park.

21 Reference: Zoning Ordinance, Article 18,
Section 18-4(B)(3) and 18-5(B)(4)

22 Applicant: City of Owensboro

23 MR. SILVERT: State your name, please.

24 MR. WILLIAMS: Zack Williams.

25 (ZACK WILLIAMS SWORN BY ATTORNEY.)

1 ZONING HISTORY

2 OMPC records indicate that two public facility
3 reviews have been conducted for the construction of a
4 MSE wall from the River Park Center patio to west of
5 the Executive Inn Rivermont and to consider comments
6 regarding the construction of the Riverfront West
7 Plaza located adjacent to the Executive Inn
8 Rivermont.

9 LAND USES IN SURROUNDING AREA

10 The north boundary of the property is the Ohio
11 River.

12 The adjacent property to the west is zoned
13 B-4, General Business and contains the Executive Inn
14 Rivermont.

15 The adjacent property to the east is zoned
16 B-2, Central Business and contains the River Park
17 Center.

18 The adjacent properties to the south are zoned
19 B-2, Central Business and contain several business
20 activities.

21 ZONING ORDINANCE REQUIREMENTS

22 All of the following requirements have been
23 met by the applicant:

24 1. Certification from a registered
25 professional engineer that encroachments into the

1 floodway shall not result in any increase in flood
2 levels during occurrence of the base flood discharge.

3 2. A stream construction permit from the
4 Kentucky Division of Water.

5 3. Authorization from the Army Corps of
6 Engineers.

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

9 CHAIRMAN: Anyone here representing the
10 applicant?

11 APPLICANT REP: Yes.

12 CHAIRMAN: Anyone here that would have any
13 comments or opposition of this application?

14 (NO RESPONSE)

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

17 (NO RESPONSE)

18 CHAIRMAN: Chair is ready for a motion.

19 MR. DYSINGER: Mr. Chairman, given the
20 findings that all the zoning ordinance requirements
21 have been met and this project is long overdue I move
22 that we grant the conditional use permit.

23 MR. WARREN: Second.

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

1 (NO RESPONSE)

2 CHAIRMAN: All in favor raise your right hand.

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: Motion carries unanimously.

5 Next item.

6 ITEM 3

7 609 Wing Avenue, zoned R-4DT

8 Consider a request for a Conditional Use Permit to
9 operate a homeless shelter with an occupancy of 90
10 residents providing educational, spiritual, financial
11 and substance abuse recovery services to the residents
12 and to non-residents, with a vehicular access point on
13 Benita Avenue for emergency vehicles only.

14 Reference: Zoning Ordinance, Article 8, Section 8.2C1

15 Applicant: Boulware - The Mission on the Hill, Inc.

16 ZONING HISTORY

17 The property located at 609 Wing Avenue is
18 zoned R-4DT Inner City Residential. OMPC records
19 indicate that four previous Conditional Use Permits
20 (CUP) have been approved for the Boulware Center at
21 this address. On June 3, 1999, on April 7, 2005, on
22 September 7, 2006. Details are contained on your
23 staff report.

24 On September 4, 2008 was specifically to
25 operate a homeless shelter with an occupancy of 90
26 residents providing educational, spiritual, financial
27 and substance abuse recovery services for the
28 residents and to non-residents, and to revise the
29 previously approved site plan to increase the number

1 of parking spaces, to revise the loading dock and to
2 include a vehicular access point on Benita Avenue.
3 Approval was granted with the condition that the
4 Benita Avenue access point be closed to vehicular
5 traffic.

6 The current application has been made to alter
7 that condition, allowing the access point to be gated,
8 locked and only available to emergency vehicles by
9 means of a key box (Knox Box). Past CUP approvals
10 have required closing the Benita Avenue access point
11 physically so that no vehicle may access the facility
12 from the residential street.

13 LAND USES IN SURROUNDING AREA

14 All adjoining properties are zoned R-4DT Inner
15 City Residential.

16 ZONING ORDINANCE REQUIREMENTS

17 1. Article 13, Section 13.8C1 requires one
18 parking space for every four beds and one space for
19 each employee on maximum shift.

20 2. Article 17, Table 17.312 requires a 3'
21 high continuous screening element and a tree for every
22 40 lineal feet of vehicular use area boundary when the
23 area is adjacent to residential zoning.

24 3. Article 17, Section 17.32 requires
25 interior landscaping for vehicular use areas that are

1 at least 30,000 square feet, but less than 50,000
2 square feet in area, except in industrial zones.

3 SUGGESTED CONDITIONS

4 1. Reviews must be conducted at six month
5 intervals after occupancy for a period of one year.

6 2. The number of residents will not exceed
7 90.

8 3. At no time will there be more than 120
9 people in the facility.

10 These three conditions were identical to the
11 last approval.

12 4. The vehicular access point along Benita
13 Avenue must be gated, locked with Knox Box access, and
14 accessible only by emergency vehicles.

15 MR. WILLIAMS: I would like to enter the Staff
16 Report into the record as Exhibit B.

17 CHAIRMAN: Anyone here representing the
18 applicant?

19 MR. CRAIG: My name is Bill Craig. I'm here
20 on behalf of the applicant.

21 MR. SILVERT: Mr. Craig, I recognize the oath
22 you took as an attorney.

23 MR. CRAIG: Thank you.

24 I'm sorry to intrude on your time again. I
25 didn't expect to be here. Funny thing happened on the

1 way to the occupancy permit.

2 We had the usual customary inspection by the
3 fire inspector's office. Their judgment was that the
4 Benita Avenue access point should remain in existence.
5 They understood the issues about it not going used for
6 any purposes. So we are agreeable, of course, that it
7 be closed and remain completely secured with access
8 for emergency vehicles only.

9 Now, that wasn't a condition we imposed or
10 asked for, etcetera. I'm back because I'm lazy. If I
11 have a requirement from you that it must be blocked
12 up, and if I have a requirement from the fire
13 inspector's office that it must remain in existence
14 and available for emergency vehicles, then I either
15 ask you to modify accordingly or I go to the only
16 place I can and that's try a lawsuit because I have
17 two governmental agencies telling me two things are
18 inconsistent. As I said, I'm lazy. I know you all
19 are tired of seeing me here. If I can say this
20 without offense, I'm tired of seeing you. We have
21 other things to do. We want to honor our commitments
22 always.

23 We don't tell the fire authorities where we're
24 going to put fire extinguishers. We don't tell them
25 how we're going to put in fire suppression equipment.

1 There are lots of things that we have done over the
2 last couple of years to comply with every requirement
3 imposed upon us. This is a requirement which we were
4 requested to comply with and we are going to do that
5 unless we're prevented.

6 I did ask one of the representatives from the
7 fire inspector's office to come and speak as to why
8 they want us to do this.

9 It occurred to me at the time that other
10 emergency services might have the same view. I have
11 filed with you a request from both the Owensboro
12 Police Department and the Daviess County Sheriff's
13 Department as our most prominently local policing
14 functions. They agree with the fire inspector. That
15 it should remain in existence. They don't have
16 problem at all with it being locked and kept locked at
17 all times. They agree with the Knox Box arrangement
18 to get in if there were a need to.

19 I'm trying to keep ourselves out of conflict
20 with anyone. I think that's pretty much it.

21 Steve Leonard who represents the fire
22 inspector's office is here and available to explain
23 their thinking on the process. I would ask that you
24 let him testify in that regard.

25 CHAIRMAN: Thank you, Mr. Craig.

1 MR. SILVERT: State your name, please.

2 MR. LEONARD: Steve Leonard.

3 (STEVE LEONARD SWORN BY ATTORNEY.)

4 MR. LEONARD: Basically what Mr. Craig asked
5 us to do is come and explain our stats on why we
6 required the two means of egress or an access for fire
7 and rescue to remain open or at least available to us.
8 We did not want to lessen any of the fire protection
9 to the facility in question less than what it was when
10 it was formerly used for housing the nuns and so
11 forth.

12 Basically it's being used as a dormitory type
13 setting where you have lives to protect there. The
14 fact that it is built somewhat like a fort it limits
15 our ability to gain access to the property because of
16 the wall. We have to have that second egress for our
17 ladder company, rescue squads and so forth to gain
18 accessibility to that.

19 Mr. Craig wanted us to come over and explain
20 that to you. I think probably you were aware of that
21 because of the type of occupancy that we're dealing
22 with. Again, when we went with other city officials
23 over there to look at that, we were able to determine
24 that we needed to have that available to us.

25 The knox box that he talked about allows us,

1 we are the only ones that have accessibility to that
2 gate. It's my understanding we would be the only ones
3 using that gate for that type of services. The police
4 department and the ambulance service does not have
5 access to that, but we do.

6 Again, the reason for that is because we have
7 to have the ability to get large pieces of equipment
8 in there such as ladders and that type of thing to
9 deal with the structures. It's ordinary construction.
10 It's a rather large facility. Again, due to the fact
11 that it's got this large barrier around it, it would
12 prohibit us from doing any street fire fighting. We
13 would not have accessibility to that.

14 We're not engaged in any debate on any side.
15 We're looking at this strictly as fire protection
16 features for that community or that area up there or
17 that facility up there. That's the only way we're
18 looking at that, is how we are to best protect those
19 people in that facility. Based on that we have to
20 have that availability. To me it's pretty simple.

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

23 MS. MASON: I have a question.

24 The code on that knock box, only the fire
25 department has the code? No one at Boulware will have

1 that code?

2 MR. LEONARD: That is correct. We are the
3 only ones that have a key to the knox box. We have
4 about 400 knox boxes.

5 MS. MASON: Oh, it's a key. It's not a code.

6 MR. LEONARD: It is a key. That I, as the
7 city fire marshall, the chief has, and each officer on
8 a rig has and they pass that to the off duty guy
9 coming on duty tomorrow. So they never leave our
10 possession. We're the only ones that have the
11 available keys for that. Not EMS. I think there's a
12 big misunderstanding that police and EMS have that
13 availability too, and they do not. That keeps it
14 secure.

15 CHAIRMAN: Thank you.

16 MR. WARREN: Mr. Leonard, also what you might
17 be saying or what I'm kind of thinking is, let's say
18 you can't get in there. This gate is closed and you
19 can't get your equipment in there and the place is on
20 fire. That could be endangering the entire
21 neighborhood?

22 MR. LEONARD: We are concerned first about the
23 property in question. Then, of course, you're dealing
24 with the exposures as well. Again, we look at that.
25 It wouldn't matter if they moved a hotel in there or

1 any other type of center. It is lives to protect. It
2 is a facility to protect and we have to protect that
3 as best we can. We have to have availability to get
4 our equipment in there to do that.

5 With a large facility like that, if we did
6 have a delay in getting necessary equipment in there,
7 you're exactly right. You would have embers and that
8 type of thing that would cause exposure problems for
9 the rest of the neighborhood.

10 History on that area over there. Eighty-eight
11 percent or better residential occupancies. We have
12 had a lot of disastrous fires occur over in that area
13 for a variety of reason just due to the fact of the
14 age of that part of the city.

15 So our goal is prevention. We want to do what
16 we can to make it as safe of an area of the city as we
17 can.

18 CHAIRMAN: Thank you.

19 Let me see if we have any opposition or
20 comments, Mr. Craig.

21 Anyone like to make comments or have
22 questions?

23 MR. SILVERT: State your name, please.

24 MR. DARLING: Bob Darling.

25 (BOB DARLING SWORN BY ATTORNEY.)

1 MR. DARLING: I would like to oppose this
2 conditional use permit. Let me explain a couple of
3 things.

4 First of all I'm not tired of seeing you all
5 because I do see you all at other places.

6 Second thing I think I need to explain real
7 fast this knock box. I work at OMU and we have knock
8 boxes all over the place. All that does is allow
9 emergency personnel a key to the door where the knock
10 box is. That doesn't stop every employee at OMU from
11 having a key to that door too. So just because
12 there's a key in there so the police and fire can
13 enter quickly, does not prevent everybody else in the
14 universe having a key to their door too.

15 The ink isn't dry from the permit of
16 September 4th. It's still not on-line on the
17 transcript.

18 We were promised this gate would be sealed
19 three times. This issue was brought up about three
20 years ago when we questioned whether there was a
21 requirement that they had to have a second entrance.
22 We were told there was no fire code requirement that
23 required that.

24 If I could go back. We want to know who has
25 keys to this gate. The police, fire? Will David

1 Osborne's jail, landscaping crew, will they have a key
2 to it? Will tree crews? If they have special events,
3 will every employee have a key to it? Will there be
4 residents that have keys to this, which means this
5 gate could be left open at any time?

6 This property really has no security now. The
7 gate that Mr. Craig took offense to when I showed him
8 pictures of it in September is now wide open. There
9 is nothing there. Just a big hole in the wall. Are
10 we to believe that this drive gate will always stay
11 locked? Who will monitor this gate that the neighbors
12 can trust?

13 The fire department, if they do any fire runs,
14 are going to have to go completely down Wing Avenue
15 because the closest hydrant is north two blocks away.
16 All hydrants are on Wing Avenue.

17 Why not put a gate on the back of the property
18 off the alley? It would be a lot closer to hydrants.

19 Like I said the neighbors were promised three
20 times. You passed this three times.

21 If Ms. Dixon makes a motion tonight just leave
22 it open ended, Lord knows they'll be back again to get
23 more access to Benita Avenue and our neighborhood.
24 We're getting this full business in the middle of our
25 neighborhood on one conditional use permit at a

1 time.

2 CHAIRMAN: Anyone else like to speak?

3 (NO RESPONSE)

4 CHAIRMAN: Mr. Craig.

5 MR. CRAIG: Three things.

6 First, the first time we came here we proposed
7 to close the gate and there was an uproar. The next
8 time we came we proposed to leave it open, and there
9 was an uproar. The third time we're here on the gate
10 issue or where the gate issue is all involved, we're
11 saying we really don't care, but we want to comply
12 with what has been imposed by us at the last by the
13 fire authorities.

14 The knock box is exactly right as Mr. Leonard
15 explains it. The police and fire authorities say, if
16 we get in big enough trouble, we can call someone from
17 the fire department to get in. It's a totally
18 proposition if it exist or doesn't exist. There's a
19 wall there nobody can get in.

20 Last but not least. Other than vandalism to
21 our gates we are scheduling rod iron gates to go at
22 the person and vehicular gates.

23 Now, we can't do everything at once. Those
24 gates are going to be attractive and rod iron.
25 They're done by an artist. Trying to push them

1 sometimes is like trying to make it rain. So that the
2 gates will eventually be in place. The gate that
3 we're talking about on Benita Avenue, the corrugated
4 steal gate that was there for years will be taken down
5 simultaneously with putting up the new gate.
6 Unfortunately the corrugated steal gate was hit by a
7 major tree as a result of Ike and it is a true eye
8 sore. As soon as we can, there will be an attractive
9 rod iron gate.

10 I'm quite sure that if ever that gate is open
11 for any circumstance other than the fire authorities
12 coming or permitting some other emergency people come
13 in, we'll hear about it and you'll hear about it. We
14 comply with requirements that are imposed upon us and
15 I think the Boulware's record in that regard is
16 impeccable. We have not stated any falsehood to this
17 group at any time and we have complied at all times
18 with what has been imposed upon us by the legal
19 authority as required. As I said before, I'm lazy.
20 I'd like to get this completed and see you other than
21 here.

22 CHAIRMAN: Any board members have any
23 questions of Mr. Craig?

24 MS. DIXON: Can we get the fire personnel to
25 state again who will have access to the key for the

1 record again?

2 MR. LEONARD: This gentleman makes a good
3 point in that anyone else can have a key, but not to
4 the knox box. If they want to open the gate by other
5 means, and again that's out of my jurisdiction. All
6 I'm asking for is access to that facility by two ways
7 that were originally put there. The original reason
8 that was there is for access for apparatus and other
9 emergency equipment. We do not want to lessen that
10 protection. The knox box that we would put there,
11 again, our intent is for that to be used for us only.
12 We cannot govern whether or not they use it for other
13 purposes.

14 Now, that would have to be decided by somebody
15 other than me because that's not a fire issue as to
16 who can use that gate when we're not using it. We
17 want it there because we have to have access to the
18 structure.

19 As far as locking it, the safest way to lock
20 it and for us to assure and the knox box assures us of
21 availability to it, we do not have to find the keyer
22 to get in there and we do not have to use bolt cutters
23 to open that gate. We have the ability to unlock it
24 readily and quickly and get in there and do our jobs.

25 Again, if the Boulware Center wants to have

1 keys to open that gate, he's exactly right. They can
2 have it and that's between these two entities and not
3 us.

4 MS. DIXON: Thank you.

5 CHAIRMAN: Any further questions?

6 MR. NOFFSINGER: I do. I'm going to speak
7 about the gate, the locked gate.

8 It's my understanding that the gate will be
9 locked with the knox box. That controls the lock and
10 the emergency personnel would only have a key.
11 Boulware would not have a key to unlock this gate.

12 MR. CRAIG: That's not at all correct. The
13 gate will be locked. The key to the gate will be put
14 in the knox box. We can't guarantee -- we can
15 guarantee the Boulware will not provide a key to
16 anyone else. If we want the knox box, there will be a
17 master cut somewhere.

18 The question would be if you make a
19 restriction on us that we'll keep that gate lock
20 except when the fire authorities go in, we're going to
21 obey it just as we're going to obey the other
22 restrictions you've imposed upon us.

23 There will be a commercial lock on that gate.
24 It will only be openable, we're telling you it will
25 only be openable by the emergency authorities. We're

1 not going to permit it otherwise to be open. I remind
2 you of our history in that respect.

3 Other gates, the gate on Wing Avenue, the
4 people gates will be opened during daylight hours and
5 closed in the evening like any home.

6 MR. DYSINGER: This knox box, it's just like
7 for real estate agents? It's outside for like open
8 house kind of thing? It's there.

9 MR. CRAIG: No. It's a lock box that they
10 have a key to and we don't have a key to. When they
11 come, they know that there's a key inside to let them
12 come in the gate. There will be a knox box at our
13 other gate on Wing Avenue which is open all day every
14 day, but at night when we close it, they would be able
15 to come in; otherwise, people can't come in.

16 MR. NOFFSINGER: There's a key hole is what
17 the knox box is.

18 CHAIRMAN: Any further comments from the
19 board?

20 MR. DYSINGER: I just have a question. This
21 may be either for Staff or legal counsel.

22 To me this is clearly a safety issue that the
23 chief is here telling us that. My question is: We
24 review this every six months. If the folks in the
25 neighborhood that complain, that have had some

1 problems come to us with evidence that this gate is
2 being misused outside of the bounds of this permit,
3 that review would allow us to resend the entire
4 conditional use permit, correct? Not just the issue
5 of the gate?

6 MR. SILVERT: That's correct.

7 CHAIRMAN: Any further comments?

8 (NO RESPONSE)

9 CHAIRMAN: Mr. Darling, you have any further
10 comments or questions?

11 (NO RESPONSE)

12 CHAIRMAN: Chair is ready for a motion,

13 MR. TAYLOR: Mr. Chairman, I move to approve
14 the conditional use permit based on the findings of
15 facts that we have approved several conditional use
16 permits for this property in the past. The only
17 change to the most recent of those conditional use
18 permits is in regards to public safety. It is
19 recommended by officials. They will still be required
20 to uphold the suggested conditions that we have
21 imposed to them as well as one other.

22 Reviews must be conducted at six month
23 intervals of occupancy for a period of one year; the
24 number of residence will not exceed 90; at no time
25 will there be more than 120 people in the facility;

1 and in regards to the new gate vehicular access point
2 on Benita Avenue must be gated, locked with a Knox box
3 access and only accessible by emergency vehicles.

4 CHAIRMAN: We have a motion.

5 MR. DYSINGER: Mr. Chairman, if Mr. Taylor
6 could amend his motion to make the interval for two
7 years. The reason I ask that, we have kind of inched
8 an inch and inched along on this conditional use
9 permit. I think for the folks that have been opposed
10 to it, it will be a source of comfort to know that
11 there's extra time that this is going to be reviewed.
12 Meaning not just two reviews but four reviews.

13 CHAIRMAN: Mr. Taylor, do you accept that?

14 MR. TAYLOR: I accept.

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

16 CHAIRMAN: We have a motion and a second. Any
17 comment or question on the motion?

18 (NO RESPONSE)

19 CHAIRMAN: All in favor raise your right hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries unanimously.

22 One more motion.

23 MR. WARREN: Motion to adjourn.

24 MR. DYSINGER: Second.

25 CHAIRMAN: All in favor raise your right hand.

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: We are adjourned.

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

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and
4 for the State of Kentucky at Large, do hereby certify
5 that the foregoing Owensboro Metropolitan Board of
6 Adjustment meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 23 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 24th day of November, 2008.

18

19

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

22

COMMISSION EXPIRES: DECEMBER 19, 2010

23

COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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