OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

APRIL 1, 2010

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, April 1, 2010, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  C.A. Pantle, Chairman
                  Ward Pedley, Vice Chairman
                  Ruth Ann Mason, Secretary
                  Gary Noffsinger, Director
                  Madison Silvert, Attorney
                  Rev. Larry Hostetter
                  Marty Warren
                  Sean Dysinger
                  Clay Taylor

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CHAIRMAN: Let me call the Owensboro Metropolitan Board of Adjustment to order. We start our program each month with a prayer and the pledge of allegiance. We invite you all to join us. Father Larry will have our prayer this evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Again, I want to welcome you to the Board of Adjustment meeting this evening. If you have any comments on any item, please come to one of the podiums. State your name and you'll be sworn in and we'll proceed with that.

With that the first item is consider the minutes of the March 4th meeting. They're in the

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office. We haven't found any problems with it. With
that I'll entertain a motion to dispose of the item.

MR. PEDLEY: Motion to approve.

MR. DYSINGER: Second.

CHAIRMAN: A motion has been made to approve
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 PERMIT

ITEM 2

2300 Harbor Road, zoned I-2

Consider a request for a Conditional Use Permit in
order to replace an existing beltline system with a
new beltline system in the floodway.

Reference: Zoning Ordinance, Article 18,
Section 18-4(b)3, 18-5(b)4, 18-6(b)3

Applicant: Bunge North America, Inc.; Owensboro
Riverport Authority

MR. NOFFSINGER: Mr. Chairman, the applicant
has submitted a letter asking that this board take
action to postpone this item until our meeting in May,
and that will be the first Thursday in May at 5:30 at
this location.

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

MS. MASON: Second.
CHAIRMAN: A motion has been made and a second. Any other questions on it?

(NO RESPONSE)

CHAIRMAN: If not, all in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item.

ITEM 3

4101 Vincent Station Drive, zoned I-1
Consider a request for a Conditional Use Permit in order to operate an indoor recreational facility. Reference: Zoning Ordinance, Article 8,
Section 8.2B11/13
Applicant: Majesty Academy, Inc.; Hayden Development Company, Inc.

MR. SILVERT: State your name, please.

MS. EVANS: Melissa Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

ZONING HISTORY

There have been no Zoning Map Amendments for the subject property.

This Conditional Use Permit application is to operate an indoor recreational facility. The applicant is initially proposing to have 24 participants and 50 spectator seats.

LAND USES IN SURROUNDING AREA

All the surrounding properties are zoned I-1

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Light Industrial.

The applicant has met the parking and landscaping requirements as shown on the site plan submitted with the application.

We would like to enter the Staff Report into the record as Exhibit A.

CHAIRMAN: Thank you.

Is there any opposition or questions filed in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Does the Staff have any comments at this time to add on to it?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Any board member have any questions or comments?

MS. MASON: I think there's a little confusion because our paperwork here says the applicant is Brescia University, but then the other it says the applicant is Majesty Academy. So it is Majesty Academy, correct?

MS. EVANS: Yes. That's a mistake on the Staff Report.

MS. MASON: Okay. I was just confused.

CHAIRMAN: Is there any other comments from the board members?
CHAIRMAN: Hearing none I'll entertain a motion to dispose of the item.

MR. PEDLEY: Mr. Chairman, I make a motion for approval based on findings that it is compatible. It will not have an adverse influence on the future development, and the applicant has met all its requirements.

CHAIRMAN: Is there a second to the motion?

MR. DYSINGER: Second.

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

MR. NOFFSINGER: No, sir.

CHAIRMAN: Any other comments or questions from the board?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

VARIANCES

ITEM 4

34 Booth Field Road, zoned I-1

Consider a request for a Variance in order to Ohio Valley Reporting

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eliminate the required 6' high continuous solid wall
or fence for outdoor storage along the north, south
and west property lines.
Reference: Zoning Ordinance, Article 17,
Section 17.3115A(D)
Applicant: Lamsco Transfer, LLC

MR. EVANS: The applicant is requesting to
eliminate the required 6 foot high continuous solid
wall or fence for screening for outdoor storage along
the north, south and west property lines.

The topography of the property to the north
justifies eliminating the required screening element
because it is wooded and has a fairly steep hill
providing accurate screening.

The property to the west is zoned by the
applicant and is used in conjunction with the subject
property for outdoor storage of equipment and
material. Behind this property the topography
provides a natural screening from other properties;
therefore, screening along the west property line of
the subject property would not be warrant.

The property line to the south, 22 Booth Field
Road, is also used for outdoor storage in conjunction
with the subject property. The equipment and
materials stored on this lot is visible from Booth
Field Road and US Highway 60 West. The installation
of screening along the property line, along the south
property line of the subject property, 34 Booth Field Road, would place the screening in the middle of the storage area between 22 Booth Field Road and the subject property, which is 34 Booth Field Road.

It would not serve the purpose of screening the storage area from the road or neighboring properties; however, screening along the south property line of 22 Booth Field Road would place the screening on the outside of the entire outdoor storage area between 22 Booth Field Road and the adjoining church property.

We would support the variance for the elimination of the screening along the south boundary of 34 Booth Field Road if screening is provided along the south property line of 22 Booth Field Road.

In the event the adjoining properties are sold or developed, the 6 foot high continuing solid wall or fence shall be installed.

Findings of Fact:

1. Granting this variance will not adversely affect the public health, safety or welfare because the topography of the property to the north provides natural screening and the properties to the south and west are used in conjunction with the subject property for storage of equipment and materials.
2. It will not alter the essential character of the general vicinity because the surrounding property is also zoned I-1 and is used for industrial purposes or is vacant.

3. It will not cause a hazard or a nuisance to the public because there is natural screening to the north and the properties to the south and west are also used for outdoor storage by the applicant.

4. It will not allow an unreasonable circumvention of the requirements of the zoning regulations because of the natural screening already in place and the existing use of the adjoining properties if screening is provided along the south property line of 22 Booth Field Road.

Staff recommends approval with the following Conditions:

1. In the event the adjoining properties are sold or developed, the 6' high continuous solid wall or fence shall be installed along the north, south and west property lines.

2. Install the required screening of a 6' high continuous solid wall or fence along the south property line of 22 Booth Field Road to provide the appropriate screening for the outdoor storage area being used by 22 and 34 Booth Field Road.
We would like to enter the Staff Report into the record as Exhibit B.

CHAIRMAN: Thank you.

Has there been any comments in the office for or against?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone in the audience wishing to speak in opposition on this?

(NO RESPONSE)

CHAIRMAN: Is the applicant here have any comments you would like to add at this time?

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Entertain a motion to dispose of the item.

MR. DYSINGER: Mr. Chairman, given the findings that the strict application would cause an undue burden on the applicant at this time, further that the proposed action is bettering the stipulations of the zoning ordinance, I move that we grant the variance with the following conditions: 1) In the

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event the adjoining properties are sold or developed, the 6' high continuous solid wall or fence shall be installed along the north, south and west property lines; 2) Install the required screening of a 6' high continuous solid wall or fence along the south property line of 22 Booth Field Road to provide the appropriate screening for the outdoor storage area being used by 22 and 34 Booth Field Road.

MR. TAYLOR: 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: Is the applicant here this evening?

APPLICANT REP: Yes.

CHAIRMAN: Do you understand the conditions and you accept those?

APPLICANT REP: Yes, sir.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

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ITEM 5

201 West 17th Street, zoned R-4DT

Consider a request for a Variance in order to allow a
1,040 square foot addition to an existing residential
garage exceeding the ground floor square footage of
the principle structure on a lot less than a one-half acre.

Reference: Zoning Ordinance, Article 3,
Section 3-6(c)

Applicant: Gary Postlewaite

MS. EVANS: The applicant is requesting to
build a 1,040 square foot addition to the existing
1,104 square foot garage. The existing square footage
of the ground floor of the principal structure is 980
square feet.

The total lot coverage will be 29 percent
according to the applicant.

A revision to the zoning ordinance in 2003
prohibits the square footage of an accessory structure
exceeding the square footage of the ground floor of
the principal structure on lots that are less than
one-half acre.

There are other properties where the square
footage of the accessory structures may exceed that of
the ground floor of the principal structures, at 111
and 203 West 17th Street.

Also, the existing garage on the property
already exceeds the ground floor of the principal
structure. These structures all predate the zoning
ordinance requirements.

Findings of Fact:

1. Granting this Variance will not adversely affect the public health, safety or welfare because the addition will be built in the interior of the property and not visible from the street.

2. It will not alter the essential character of the general vicinity because there are other properties on this street where the square footage of accessory structures may exceed that of the ground floor of the principal structures.

3. It will not cause a hazard or a nuisance to the public because the addition is being constructed in the interior of the property not visible from the street.

4. It will not allow an unreasonable circumvention of the requirements of the zoning regulations because there are other properties on this street where this same scenario may exist and the total lot coverage will still be below the allowable lot coverage.

Staff recommends approval with the following Conditions:

1. The garage shall only be used for residential purposes.

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We would like to enter the Staff Report into the record as Exhibit C.

CHAIRMAN: Any comments or opposition in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is the applicant here this evening?

APPLICANT REP: Yes, sir.

CHAIRMAN: Do you have any comments you want to bring at this time?

APPLICANT REP: No, not unless you have any questions.

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

(NO RESPONSE)

CHAIRMAN: Anyone wishing to oppose this item?

(NO RESPONSE)

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

MR. TAYLOR: Mr. Chairman, move to grant the Variance based that the building structure will not alter the essential character of the neighborhood. The existing garage already exceeds the only ordinance that this is going against. So it will not alter anything that is against the ordinance. The only condition that I put on this is that the garage can

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only be used for residential purposes.

MR. DYSINGER: Second.

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

MR. NOFFSINGER: No, sir.

CHAIRMAN: Any other questions or comments from the board?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 6

1708 Todd Court, zoned R-3MF (postponed from the March 4, 2010 meeting.)

Consider a request for a Variance in order to reduce the street yard building setback line from 25 feet from the property line to 10 feet from the property line.

Reference: Zoning Ordinance, Article 8, Section 8.5.10(c)

Applicant: CTC Investments, LLC

MS. EVANS: The applicant is requesting to reduce the street yard building setback line along Southtown Boulevard from 25 feet from the property line to 10 feet from the property line.

Recently the City of Owensboro acquired right-of-way along Southtown Boulevard for the roadway.
widening project of Southtown Boulevard. This acquisition caused the existing building to encroach into the newly applied setback of 25 feet. This building also encroaches into the permanent utility easement that was dedicated with the widening project.

The applicant proposes to remove only a portion of the structure leaving the remainder of the building encroaching 15 feet into the new setback.

There was a Minor Subdivision Plat approved for the property in December of 2009 for the dedication of the right-of-way that states in a note on the plat, "The structure encroaching into the utility easement at 1708 Todd Court to be removed."

If the building is removed a smaller building could be constructed within the new building setbacks on the lot. The applicant appears to have been compensated for the value of the removal of the entire building as a part of the widening project under way. The acquisition of the right-of-way and the utility easement by the City of Owensboro do not provide a basis for granting this variance as the owner signed the plat dedicating the right-of-way and showing the structure to be removed.

While the structures at 1700 and 1704 Todd Court both encroach into the new setback line along Ohio Valley Reporting (270) 683-7383
Southtown Boulevard as a result of the right-of-way
acquisition by the City of Owensboro, they do not
encroach as far as the subject building and it was
determined that the structures did not need to be
purchased for the widening project to proceed.

Granting this variance may adversely affect
the public health, safety or welfare because it was
determined with the widening project that the building
should be removed based on its proximity and
encroachment into the right-of-way easement. It will
alter the essential character of the general vicinity
if the variance is granted because the building will
be closer to the new right-of-way than the surrounding
buildings. The variance would unreasonably circumvent
the requirements of the zoning regulations because
negotiations have already taken place regarding the
removal of the building and there is a plat approved
by the OMPC and signed by the applicant stating the
structure is to be removed.

Would strict application of the regulations
deprive the applicant of the reasonable use of the
land and create an unnecessary hardship on the
applicant?

No. If the Variance is not granted, the
applicant will be required to remove the entire
existing building instead of just a portion of it, but
has already been compensated to do so. The applicant
had agreed and signed the plat showing the structure
to be removed. As the applicant appears to have
received the compensation for the value of the entire
building and its removal, removing the building should
not pose a financial hardship.

Findings of Fact:

1. Granting this Variance may adversely
affect the public health, safety or welfare because
the applicant has already agreed for the building to
be removed as part of the negotiation for the
right-of-way to accomplish the widening project as
evidenced by the owner's signature on the plat
dedicating the right-of-way and showing the building
to be removed.

2. It will alter the essential character of
the general vicinity because if a portion of the
building is left standing it will be considerably
closer to the right-of-way than the surrounding
buildings.

3. It may cause a hazard or a nuisance to the
public because the negotiation for the right-of-way
included a commitment from the owner to remove the
building as evidenced on the approved subdivision plat

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dedicating the right-of-way.

4. It will allow an unreasonable circumvention of the requirements of the zoning regulations because a plat approved by the OMPC and signed by the applicant shows the structure as to be removed. Also, if the building were completely removed, a smaller building could be accommodated on the lot meeting the required setbacks.

Staff recommends denial of this Variance request.

We would like to enter the Staff Report into the record as Exhibit D.

We would also like to enter into the record the plat dedicating the right-of-way, the PVA card, the appraisal and the sell agreement. All was provided to the board members in their packet. Thank you.

CHAIRMAN: Is there any opposition or comments in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board members have any questions of the applicant at this time?

MR. PEDLEY: Yes, I have questions of the applicant.

Last month we postponed this because there
were issues that we weren't aware of and weren't sure of. Some of the things that I questioned. The information that I did not have until the meeting was the larger plat. The plat that I had was a reduced copy of the plat and I could not scale it.

There's two things. One, was this through negotiations with the City of Owensboro or was it through eminent domain?

CHAIRMAN: Before you start, let me get you sworn in.

MR. SILVERT: Could you just state your name, please?

MR. JOHNSON: Tyler Johnson.

MR. SILVERT: Tyler, are you a duly licensed attorney in the State of Kentucky?

MR. JOHNSON: I am.

MR. SILVERT: I don't require you to take an oath.

CHAIRMAN: Answer the question, please, sir.

MR. JOHNSON: There was a negotiation with the City of Owensboro. CTC Investments had drawn up figures on their behalf. The City of Owensboro had drawn up figures on their behalf, and they did come to an agreement.

As far as the details of that agreement, we
would dispute that removal of the building was the end 
all be all of that agreement.

MR. PEDLEY: Well, evidently you had a plat 
and you also had an appraisal by an appraising 
company. I assume that Mr. Clark saw that before he 
agreed to be compensated for that amount; is that 
correct?

I mean if the appraisal was done before the 
final negotiation and agreement was signed, he was 
agreeing to the appraisal and agreeing what the City 
was offering; is that correct?

MR. JOHNSON: Yes. The City had an appraisal 
done and Mr. Clark had an appraisal done. There were 
some differences between those and differences of 
opinion. They reach a price and he did dispute it, 
but in hopes of settling the matter accepted the offer 
from the City. I don't know if that completely 
answers your question.

MR. PEDLEY: It does. Evidently they made an 
offer and he accepted it. That's my question. Did he 
accept the offer that they made, and it was through 
appraisals. He signed the deed, according to what we 
have in front of us. He accepted it based on the 
plat, based on the appraisal. So evidently he was 
satisfied at that time. My question is now: Why is
he not wanting to honor what he --

MR. JOHNSON: It's not the fact that he doesn't want to honor that agreement. It's the fact that we don't feel that that agreement has any bearing on granting a Variance. The fact the negotiations went on to reaching a fair price and the fact that he is attempting to gain a variance through the city. They don't comingle with each other. They're two separate things.

MR. PEDLEY: It does have a lot of meaning on granting the variance because if he was adequately compensated and he agreed to it, he agreed to take that building down, and it does have affect on Todd -- actually Southtown Boulevard was rebuilt setting closer to Souhtown it will have an affect on it.

My question, I just want to make sure that he was compensated and he was in agreement. He agreed to take the building down. We don't really have any grounds to grant a variance. That's my opinion. That's why I'm asking these questions and make my statement.

Also, he was paid for the building, paid to take it down. Rent loss several things according to the appraisal. Now his lot, one things that jumped out at me, his lot doesn't have 10,500 square feet to Ohio Valley Reporting

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build a duplex, two family housing. Although, he owns 1712 Todd Court. The property we're talking about, 1708. There are two things that he could do. He could take -- there are no easements between those two lots. 1712 has adequate land that he could move the property line. Make a lot division. Make 1708 large enough to build his duplex back. He's got room between the front and back easement to turn the building the other way and build 30 by 60, 1800 square foot building. To me he's been adequately compensated and he could still build his duplex back. As far as I'm concerned, that's the big issue with me.

CHAIRMAN: Let the Staff make one comment.

MR. NOFFSINGER: Mr. Chairman, yes, please.

In that appraisal the appraiser did make an error in terms of the minimum square footage required for a duplex. The minimum square footage required in the zoning ordinance in an R-3MF zone for a duplex is 6,000 square feet. This lot is a little over 8,000 square feet. I think it's 8,712 square feet. So the size of the lot is not an issue in terms of rebuilding a duplex on the lot, the minimum lot size.

Two, in terms of this Variance, the Planning Staff only brings up the appraisal as well as any mention of compensation to acknowledge that, yes,
right-of-way was sold. There was an agreement by plat
as to what was to take place in terms of that building
being removed and there was compensation there. We
simply want to address the financial hardship issue as
it may exist in terms of a hardship with the statutes.

There are various other reasons and a number
of more important reasons I think to deny this
variance request. Certainly those are contained in
the Staff Report and will also have some more
information for you.

Again, only bringing up the compensation issue
just to show that this was not through eminent domain.
There was an agreement and there was compensation.
We've not given those numbers. If we need to address
that financial hardship issue, which is one of the
basis potentially for Variance, we can address those.

MR. PEDLEY: Mr. Noffsinger, I have a question
on your zoning, R-3MF. 6500 square feet, what I read,
is zoned in the R-4DT Inner-City Residential zone.
That's not R-4DT Inner-City Residential zone. You
going down to two family or to MF zone it states
10,500 square feet. Which is correct?

MR. NOFFSINGER: Six thousand square feet is
correct, Mr. Pedley.

MR. PEDLEY: How can it be corrected if it's
not in R-4DFT Inner-City Residential?

MR. NOFFSINGER: Well, it's in R-3MF Multi-Family.

MS. STONE: Becky Stone.

(BECKY STONE SWORN BY ATTORNEY.)

MS. STONE: The R-2MF zone, which is a two family multi-family zone requires the 10,500. The R-3MF zone for a duplex requires 6,000.

If you'll look under two family, you see R-2MF and it says 10,600. Right below that it says, R-3MF or R-4DT zone 6,000 square feet.

MR. PEDLEY: But it's not in my --

MS. STONE: It's an R-3MF zone.

MR. PEDLEY: That's right. What I'm reading, R-3MF zone only when it's in an R-4DT Inner-City Residential.

MS. STONE: I would have to look at your ordinance. My ordinance says two family, R-2MF is 10,500. R-3MF and R-4DT is 6,000. Let me see where you're looking.

MR. PEDLEY: My purpose for the questions are, does he have room to take his duplex down, turn it in the other direction and still build 1,800 square feet. If it's 10,500, he does not; however he can take some property off of the 1712 and make it 10,500 square
feet. If you take the plat and do a scale, his front easement, his rear easement, he has adequate room to turn the building the other direction and build a 30 by 60 duplex.

MS. STONE: Our opinion is that he could build a duplex on the existing lot as the lot of record exist after the taking of the right-of-way.

MR. PEDLEY: So as is it's adequate to build a duplex back?

MS. STONE: Yes.

MR. PEDLEY: As long as he can stay inside --

MS. STONE: Within those setbacks, right.

MR. PEDLEY: And he has room to build a 30 by 60?

MS. STONE: I haven't measured the dimension of the building.

MR. PEDLEY: The other issue last month, I had a reduced copy. You can't scale it. So I didn't know if he could build that duplex back. So now you have supplied us with a full plat to an inch, 20 feet. You can do that now. Also we have appraisal. We have a lot more information here tonight than we had last month. That's my reason for asking for a postponement.

MS. STONE: Right.

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MR. NOFFSINGER: Mr. Pedley, you are right.

That option exist to adjoining property with this property if the applicant chooses. I agree that this can be somewhat difficult to read in the zoning ordinance because there are a lot of numbers here. There are a lot of zones and there are a lot of if you do this, this is what applies.

In the R-3MF zone for a duplex, the minimum lot size is 6,000 square feet.

MR. PEDLEY: That's not what the appraiser found, if you look at what the appraiser said.

MR. NOFFSINGER: That's right.

MR. PEDLEY: He said that lot has 8,936 square feet. It take 10,500. So I went to my zoning ordinance and I raised this question here. That's where it should be raised.

MR. NOFFSINGER: Yes, you're absolutely right, and there was an error in that appraisal because it should have read 6,000 square feet is the minimum lot size. It would make this lot a developable lot under the existing ordinance requirements.

MR. PEDLEY: My reason for these questions is Mr. Clark adequately compensated for his property. I could not draw that conclusion last month. I have now. I have the information. I have.

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MR. JOHNSON: I certainly understand your reasoning behind that. We're of the opinion that obviously he wasn't. Certainly when you look at the Variance statutes in conjunction with what we're proposing today, it would meet those statutes.

If you're talking changing use or the existing use of the property, we'd be conforming more so by moving the building back a few feet off of that right-of-way and granting a Variance that would look like the neighborhood has always looked. The building would remain on the city tax roll and the city would receive revenue. There's not going to be another building on there if the variance isn't granted. It would be a vacant lot. The city would draw no revenue from insurance tax premium, from property tax premium. The lot is just too small to make a usable piece of property or usable building to make it financially feasible. If you're going to address issues with adjoining landowners, it is a fact that Mr. Clark owns the adjoining piece of land, but you're asking other things to take place rather than simply turning it on the lot. You're asking for a new deed to be drawn up with a new piece of property going above and beyond what needs to be done.

Aside from the compensation argument, I would
like to just show the big picture. I do have one
drawing of Southtown Boulevard with the existing
right-of-way, if I may.

I know it's a little small, but the utility
easement as it stands right now is represented by the
blue line. This is the subject property right here
that we're speaking of. These are two other pieces of
property on the same court owned by a different
entity. Here is the setback line as it is now.

What we're asking to do is look like these
guys right here. They're a few feet past this
permanent utility easement. All we want to do is move
back. They're over the 25 foot setback by over 10
feet. We just want to move back over the utility
easement giving them access as they compensated
Mr. Clark for.

If you're talking about turning a piece of
property on its side, you're talking about changing
what the characteristics of the neighborhood looks
like the statute says, it makes sense to just move it
back and it looks exactly like it is rather than move
a building over here or turn it on its side here.
Which, again, won't happen because it's just not
economically feasible to do.

We just want to look like the rest of the
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neighborhood and conform with the right-of-way.

MR. DYSINGER: Mr. Chairman, I have a question for Staff.

I assume part of the reason for the taking or the acquisition of the property was widening plans moving forward. What kind of concerns does the Staff have regarding safety, nearing to traffic, that granting this Variance appears to me to present?

MR. NOFFSINGER: Mr. Dysinger, we have a number of concerns in question regarding the location of this structure if it were to remain or even be just slightly moved.

Melissa Evans has some information she would present in terms of the public health, safety and welfare.

MS. EVANS: We believe the public health safety hazard, the rear property -- it's located near the intersection of Souhtown Boulevard, which is a minor arterial street with over 10,000 vehicles per day and Martin Luther King, Jr. Loop, which is a minor arterial street, with under 10,000 vehicles per day. So that's an intersection of two major streets.

We feel like if allowing this building to be only ten feet from the property line on this major thoroughfare that it would pose a safety hazard to Ohio Valley Reporting

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both vehicles driving along the road and also the residents and the structure.

Now, the traffic will be right outside the doors, which could pose a nuisance and a safety issue to the residents of the structure. If there was a wreck, vehicles could easily end up going into the structure since it would be so close to the road.

The ten foot proposed setback would occupy, would be right up against the public utility easement. So if there's ever an additional widening project along Southtown Boulevard, then what are they going to do with these public utilities? You know, there's nowhere else for them to be moved. The building would at that time have to be removed or more of the building would have to be taken off.

We also feel like this is an unreasonable circumvention of the zoning ordinance. There is a plat dedicating the right-of-way showing the structure to be removed that was signed in the planning office by Mr. Noffsinger. It was also signed by CTC Investments with that note on there. There's an appraisal for the acquisition of the right-of-way. In that appraiser it indicates that there will be a vacant lot that was also signed by the owner. These were all completed prior to the application for this
Variance. So it was our understanding that he was under the impression that this building was going to be removed because he did sign this plat showing that it's going to be removed and he also signed the appraisal that indicated the building was going to be removed.

There is also on the PVA card that shows the transfer of the right-of-way has already taken place prior to the application for this Variance. So everything with all of the agreements with the city and actual transfer of the property had all taken place before he applied for this Variance.

We also feel like there is a nuisance to the public. This is a residential area and with being so close to the new road, the loud traffic noise being so close to this residence would drop the enjoyment of the quietness that they seek in their residence.

Will also need to look at setting a precedence for the area. There's a lot of undeveloped land along Southtown Boulevard. If we allow CTC Investments to build only 10 feet from the property line, you know, are we going to allow the rest of the property that's undeveloped on Southtown Boulevard to build that close to the road on this major thoroughfare that's through there.

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We do believe that there can be a building erected on this lot as a duplex. There is enough square footage on the lot that only requires 6,000 square feet. There even could be a multi-family unit built on this lot because that only requires 6,500 square feet and the applicant still has over 8,000 square feet.

They could build a new building on this lot and still meet all the zoning requirements and setback requirements.

MS. DYSINGER: Thank you, Mr. Chairman.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: Yes.

Is it, Mr. Johnson?

MR. JOHNSON: Yes, sir.

MR. NOFFSINGER: I would like to just submit an aerial photo taken from the geographic information system that shows the existing development pattern along most of Todd Court. There are two residences to the east, 1704 and 1700. They are shown in this picture as well as the subject property, 1708. Those two residents adjoining to the east are oriented in
such a fashion that Mr. Pedley was speaking of.

You said, I think you said that if you were to
change the orientation of the building that's on this
property, that would have an adverse affect on the
character of that area. I would disagree in that you
would be turning the building in such a manner that it
would be consistent with those two lots that are to
the east the way the roof lines run. I don't see that
you would have that inconsistency there.

Mr. Johnson: Which buildings are you speaking
of? These right here?

Mr. Noffsinger: Yes, sir.

Mr. Johnson: You're speaking of turning it
like this?

Mr. Noffsinger: Right.

Mr. Johnson: This would be the dimensions of
the lot as it is now or as it is with the current
setback line. Turning the building on the side,
you're squeezed to a certain degree to even fit a
building in there. I'm not so sure that you could.
Certainly not of the size that it is now. I know
we've discussed that quite a bit, but it is different
than they are now and in a cul-de-sac as it is you
don't have buildings turned on the side that aren't
facing the cul-de-sac. It just does not look like the
rest of the neighborhood. Every other place has a
driveway coming out of the cul-de-sac. So I don't
know how you would drive up to a home when its
sideways on a cul-de-sac. It just does not fit with
the rest of the neighborhood.

MR. NOFFSINGER: Okay. You can do it and it
is done. It may not be what you would propose, but
certainly it's done and it certainly can be done on
this particular lot.

I guess we're looking at alternatives in terms
of how you could build on this lot to show that it is
a developable lot under the requirements that are
shown and set forth on that plat that was approved.

MR. JOHNSON: Certainly not as it is right
now. We would disagree with that statement. The
building structure that would be similar to the one
that's currently standing you couldn't just turn it on
its side and fit it in that spot that is there now. I
just don't think you could do that with the existing
setbacks as they are.

MR. NOFFSINGER: Perhaps you couldn't with the
existing building that's there. I don't know if you
could or not. Certainly you're looking at a building
in the future that's not this size anyway. You're
certainly going to have to take some of this building

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down. That section that's in the right-of-way and the
public utility easement. So it's not going to be as
large of a structure tomorrow as what it is today.

MR. JOHNSON: Which is exactly what we're
proposing today, would be to make a smaller structure
in conformity with the neighborhood as it looks now as
it was originally developed. Make it smaller. Push
it back. The lines would be even with the lines of
the properties that are now there. It just seems like
a better solution rather than tear down a building and
create an entirely new building facing sideways to a
cul-de-sac rather than cut the bottom off a building
and it looks like the other two that are already there
that are already over the setback line rather than
push a new building up closer to the street and make
it smaller and turn it on its side.

I would like to address the hazard issue as
well that was mentioned. You mentioned the closeness
to the roadway. I said over and over again that these
two buildings that I'm assuming the city also had
negotiated with for this permanent utility easement,
they didn't ask those homeowners to move their
properties back in. You can see how close this last
property is to the permanent utility easement. If
there was an issue with it being a hazard because it
was so close to the roadway, you would assume the city
would ask these people to move their building back as
well.

MR. PEDLEY: I drove to the site today. I
wanted to see for myself. I totally disagree. That
building would be in more character if it was turned
the other direction. You can see it there on that. I
saw it when I drove down there today. You've got
adequate room to do it. You've been adequately
compensated. You agreed to do it.

I'm ready whenever you are, Mr. Chairman, for
a motion.

CHAIRMAN: Any of our board members have any
questions?

MR. PEDLEY: Mr. Clark, Mr. Riney, anyone,
I'll be glad to listen to any comments.

CHAIRMAN: Mr. Riney, you or Mr. Clark have
any new information.

MR. RINEY: Mr. Clark has a comment.

MR. SILVERT: State your name, please.

MR. CLARK: Tony Clark. Full name is Gerald
A. Clark. I'm the management member of CTC
Investments.

(TONY CLARK SWORN BY ATTORNEY.)

MR. CLARK: A brief history and little run
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This has been going on for many years from the time we first met at Apollo High School. Sat down and looked at the road and the situation and what was going to happen. Roughly ten years may have come along here. I'm not quite sure. Quite a long, but close to it.

We sat and we looked and we analyzed and it was layed out by the state highway. 1.8 miles was the winding project. Of the 1.8 miles, there was one piece of property that was affected. One piece of real estate with a building on it. It was one of the duplexes that I own. I asked and talked, I've even got the area, shot the whole area with a plane up in the air showing all the farm land to the south. What could be done. There was no budge at all from an engineer anywhere to move that road one slight degree so as not to affect this particular property.

Time has passed and time is gone. The 1.8 mile and here we are. I've been behind the scene just waiting patiently for years.

This past year, this past year my grandson is now ten years old. Played basketball with K through 3 at the elementary school. Mr. Joe Schepers, the city engineer, was his basketball coach. Not that we got
specifically in this project, but here is where it came from.

I made a decision I wanted to try to work it out for the good of Owensboro. Met several times with Mr. Ed Ray to Joe Schepers. We talked about this particular project. I did not meet with legal. I had talked to Reutlinger & Middleton, a law firm out of Louisville, how this situation happened.

Back up with the appraisal. When the appraiser first came in, his number was so ridiculously low I asked him to leave.

The bottom line, did three sets of numbers. The number that I wanted was here. The number the appraiser said was here. The number we negotiated with the city was here.

The reality of it is that compensation was paid, but relevant to the discussion I was the whole time operating that it was going to be condemned. It was fixing to happen Ed Ray will tell you the next step was, you know, they told me. I didn't have an attorney with me. It was probably my weakness, but I'm a pretty good negotiator and I'm very fair and very reasonable. If I do see something in line of the right-of-way blocking that view of Southtown Boulevard and it's dangerous, I wouldn't be here tonight. I

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would not be here tonight. I would say, that's fine.

Go on.

In my opinion, it does not. I've had other
people look at it. Once that road goes in there, the
back of my project, the back of that building to the
road line it's going to be somewhere around 30, 35
foot. Not 10 foot we're talking about, but a major
distance. A car would have to cover a lot of
territory in order to come off that road and go up in
that duplex.

By the way it happens all the time. You can
go around town right now daily and you can see where
somebody runs into a house. It does happen. So no
matter what you do, down the road something can still
run into your home.

So having said that, I spent the time with Joe
and Ed. In my conversations with them, not one time
did I discuss -- we did talk about what it would cost
to take it down, what it would cost to build and come
up with numbers and to come up with an agreeable
number for satisfaction me sign that piece of paper.

Well, every conversation I had, and they'll
have to tell you, and Mr. Ray is here, that my
discussion was for to modify that building, to modify
that building. I asked the city, I said, Ed, Joe,

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what would you all do with this? Take this and go
forward and modify it? The answer was, we cannot do
that. I accepted that. The direction was private
engineering firm to do that.

Now, the other thing that I asked in final I
said, when it's done I would like for you to put a
privacy fence or something on the backside of the
property. The reality of it was that, no, we're done.
This doesn't work it's gone straight over to
condemnation and deal with it from that side.

Having said that, that's where the bottom
line. I did sign, but all of my conversations dealt
with modifying that building and taking that building
back. There was never discussion that said I could
not do that or, no, we're paying you for this and
therefore you can't do it.

MR. DYSINGER: Mr. Chairman.

Mr. Clark, the plat you signed shows the
structure gone.

MR. CLARK: Yes. I don't deny that, but the
other side of the story, the thing that -- I did that
in order to keep from going forward with the
condemnation. Again, I was not represented by an
attorney at all on that. I did this myself. But the
reality of it, you know, I'm not so sure I can stand
up in court and tell you that I knew that -- I knew
they were paying me for it, but I also knew that I was
going to come back to this Board of Adjustment to ask
for a Variance on that.

Mr. Ray is here and Mr. Joe Schepers, city
engineer. There was never any discussion at all that
says, Tony, you cannot do that. We're paying you to
take it down. Thank you.

CHAIRMAN: Any other questions from the board
members?

MR. TAYLOR: To the Staff.

What would the difference be, because we
really haven't seen a picture of their modification.
What would the difference be from those other two
buildings? Is it going to be closer?

MR. NOFFSINGER: The building that they're
proposing where it would set, would it be closer to
the setback line than those building?

MR. TAYLOR: Correct.

MR. NOFFSINGER: It's my understand that it
would be.

CHAIRMAN: Mr. Riney, do you have anything you
could add?

MR. TAYLOR: I would just ask: Would it pose
any more danger than the other two that are
encroaching it? I realize that there's good things that have gone through the compensation and things. My question is: Would it pose any more danger than the building that are right beside it?

MR. NOFFSINGER: It appears that their proposal would be to place the building right on the public utility easement. The corner of the other two buildings are that close. One corner. However, the majority of the structure, the way they're angled, would be further away from the utility easement than what they're proposing.

CHAIRMAN: Mr. Riney, can you add anything else?

MR. SILVERT: State your name, please.

MR. RINEY: Jim Riney.

(JIM RINEY SWORN BY ATTORNEY.)

MR. RINEY: Mr. Clark asked me, and I'm going to walk up in front of the exhibit to confirm something. I didn't bring my pocket protector and my scale with me so you have to forgive me.

This is a copy of the highway plan that the highway department developed. They had the building already shown as where they were for aerial photography. So the orientation is whatever it was. I'm not sure what Mr. Noffsinger has.
What we're estimating, where my finger is is the back of the curb for the roadway for the proposed improvement. Mr. Clark has talked about removing this part of the structure. That distance appears to be somewhere in the league of 30 to 35 feet. One inch equals 20 feet on this drawing, Mr. Pedley, if you want to look at it.

MR. PEDLEY: That's what your plat is.

MR. RINEY: Yes.

MR. PEDLEY: It's 20 feet?

MR. RINEY: Yes, sir. I know Mr. Pedley is familiar with dimensions on drawings. He deals with it all the time. I'm just estimating. I haven't scaled anything. I can't certify anything. It's a fairly decent dimension across there. It looks like they could still maintain that roadway ditch.

If you drove out there today and looked at you that, you saw a ditch between the road and the property. The state highway department plan, this arrow, this line with arrow heads on it shows that it's going to have drainage boxes from the back of the curb to the drainage ditch, which is still going to be through there. The drainage ditch separates the back of the curb. There will be a curb here in the urban section. The back of the curb from the property for
protection. So you've got the curb as the first line
of the fence. Then you've got the ditch and then
ultimately the property that's cut off. I've heard
the statements about safety and I understand that, but
anything can happen.

If you just think about the intersection of US
60 East and the bypass, how far back that house was
and that road tractor ran right into the house. Stuff
happens. If you're going to protect it from one
ting, I don't know how you can protect it from all.
We've got too many situations.

The house, the structure right now is oriented
fairly parallel. I wasn't sure what the discussion
was on the orientation and roof lines and so forth,
but I can observe that the orientation right now is
fairly consistent with the neighborhood. If you come
in and put another structure on the lot, on the
remaining lot, which this red line would represent
that building envelope. The economy is faced to fit
that on there, you would need to skew that building to
the orientation of the building now. Everything is a
matter of opinion.

That picture over there, some of you might
think that art is beautiful. Some of you may not
agree with that. It's all opinion.

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My opinion is that it would be different and be out of character with the neighborhood with the orientation change from what it is now because these appear to be fairly parallel.

The note on the plat has had a lot of significance with the Staff. That note was a note that was pinned on, a review copy by the Planning Staff. We were under the impression, we were led to believe that meant that the part of the structure that was going to be inside of the setback was to be removed. We did not understand, we were lead to believe it was just part of the structure in conflict and if the balance of the structure to be remained in place, that it would be remaining in place. That note was not prepared by us on behalf of Mr. Clark or Mr. Clark. That was a note that was given to us by Planning Staff.

MR. PEDLEY: You was talking about skewing the building. If you skew that building to meet the setback, you're going to be setting on the exact same angle as to the building to the right. When you put that building -- the plat down below. You put that building in there, it's going to be setting basically the same angle as those other two buildings. So you're not getting out of the character. You're
putting more in to character.

MR. RINEY: I may be thinking different terms than you are, but I was thinking that you would end up trying to make it more -- since this is your limit.

MR. PEDLEY: Look at your bottom picture down there. You turn it to fit it in there. Turn the building. Thirty feet deep, 60 feet wide. It's going to be almost in line with those other two.

MR. RINEY: It looks like it would need to be parallel here if you put it on some sort of --

MR. PEDLEY: If you scale that, I think you'll find that 30 by 60 will go in there.

MR. RINEY: What I'm saying is for economy of space it would need to be parallel with this setback. If you put it in here on some sort of a diagonal like it is now, the longer dimension of the house is on the diagonal or some skew of that. For economy of space, you would make it parallel, depending on which size of rectangle you use. So that's my point. If you put it in there parallel, then it's going to be out of character with the other buildings. I'm using this as the base.

CHAIRMAN: Any other new comments or information?

MS. MASON: I have a question for Mr. Clark.

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The money which you were compensated for to remove this building, I don't know what it cost now to build, but was that enough money to be able to build a new duplex?

MR. CLARK: No. No, it's not. Again, the compensation factor -- let's go back to the appraisal. Got Harold Brantley from Bowling Green, Kentucky. He had me sign three items. One of the consideration that we talked was consideration for the possible demolition of that. So that goes back to day one. That fact that he was friendly and nice and he wasn't rude whenever I signed those three documents.

Now fast forward to where it comes from. No, I would not have taken it if I thought there was any option that I would not have this approved tonight, I would not have taken this and I would have gone forward.

MS. MASON: But you did sign though saying that you would remove the building?

MR. CLARK: I'm going to state this to you with the right hand up: I did not know I signed that knowing that I had to take that building down. If I had to take the building down, it was going this way, I would have sold you the whole lot. I don't want to get stuck with a little piece of a sliver in there. I
really question the position of that on that, the cul-de-sac. Granted Mr. Pedley has built for years and knows how to build well, but the reality of it is the position of that particular cul-de-sac and the modification.

So, no, I did not get enough money to wind up for me, regardless of what was signed or not signed. I was there without attorney representation. I was trying to be a good citizen. My ultimate goal was to modify the building, maintain the property on the tax roll and I present approximately $1,000 a year tax base to the City and County of Owensboro.

CHAIRMAN: Let me interrupt. The attorney, the city attorney here has a comment and then he has to leave.

MR. SILVERT: State your name, please.

MR. RAY: Good evening. I'm Ed Ray, City Attorney for Owensboro.

As such, I was involved with the negotiations with Mr. Clark as my predecessor and other members of our staff were.

His position with the City of Owensboro, a couple of things.

One, we did acquire this land during those negotiations under threat of condemnation. Had those
negotiations not gone favorably or were not favorable
to reach a solution, then we would have proceeded with
the assistance of the State of Kentucky and to
condemnation.

Secondly, during those discussions that were
brought up by Mr. Clark, we evaluate and negotiate
under the state's quo. The state at the time showed
the public utility easement going through part of this
building. The state was contacted by our engineers to
see if we could do any alterations. Based on the
entire plan, that was rejected by the state. So it
left us with evaluating how we could negotiate with
Mr. Clark to compensate him.

Based on our assessment that he would have to
then tear down the entire building. Based on our
negotiations it was our position that the compensation
that was paid would cover for demolition of the
building. It would cover loss of rent during
reconstruction of the building. It would cover the
building of a new building. That we did not discount
those figures based on the fact that I believe it's a
1982 structure, new structure put in place.

All of that being said, Mr. Clark is right in
that he did ask the city whether or not we would go
forward as a condition of the sale to approach this
body through the Planning Commission to get some type
of Variance in case he wanted to do a modification or
anything else. We told him that would not be the
position of the city and that that would be something
he would have to bring forward. He asked whether or
not we would be opposed to him modifying that building
or doing something other than tearing it down. Our
position was that based on the conditions that were
set, in that the city doesn't grant variances and the
city isn't in a position of this body, that he would
end up having to tear it down. If he was able to get
a Variance, the city is not opposed to that based on
the compensation negotiations.

Now, if our city engineer in the normal
process of getting the plan approved has an issue with
that, and I'm not speaking on behalf of him, but as
far as the contract between Mr. Clark and the City of
Owensboro, it doesn't address that we would oppose or
we would support his position to do that. If he was
able to get a Variance and do the changes to the
building or modify the building. We did have that
discussion very briefly, but we told him that we would
not support that nor would we oppose that. That would
be up to the body, this body to determine the
Variance.
So I hope that that clarifies a little bit of our position. We feel that based on the original appraised value of the building versus what was paid, those negotiations went up based on a demonstration by Mr. Clark. That our engineers verified and felt were reasonable and accurate as to what his out-of-pocket would be for demolition of the building, loss rents during the period of time in which he would have to reconstruct, and the reconstruction as square footage cost that was brought to Mr. Clark.

CHAIRMAN: Any board members have any question of the city attorney at this time?

(NO RESPONSE)

MR. RAY: Thank you.

CHAIRMAN: Does the applicant have any new information to help us make our decision, new information?

(NO RESPONSE)

MS. STONE: I would like to add one more thing just to stress because Mr. Clark talked about being left with a sliver of property. That property is a lot that meets the requirements of the zoning ordinance. He would not be required to build back on that lot. He could market that lot to somebody else to build on that lot, but it
is a standard lot in conformance with the zoning ordinance.

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

(NO RESPONSE)

CHAIRMAN: Does the applicant have anything else to add?

MR. JOHNSON: Just to reiterate the fact that Mr. Ray and the city were silent as to the contract and the contract signed by both the City of Owensboro and CTC Investments as to granting the Variance. They took no position. Did not request that he not apply for such a Variance. They felt that the compensation was such that they shouldn't be granted a Variance. If that were the case, you would think that the city would require in that contract to state, you will not apply for a Variance because the property needs to be torn down. We've paid you enough for it. That obviously wasn't their position as they stayed silent. Just like to reiterate that fact.

MR. DYSINGER: Mr. Chairman, just one more thing.

Is it your belief, Counselor, and Mr. Clark can certainly answer this if he would like. Was the city, as far as you believe, as far as you know, were
they negotiating with the idea that the structure
would be torn down as stated on the plat that was
signed?

MR. JOHNSON: Are you asking me what the city
was negotiating?

MR. RAY: I would be glad to respond.

MR. DYSINGER: That would be fine.

MR. RAY: As to the city's position on that,
the city didn't negotiate with the understanding that
the building had to be torn down or not be torn down.
The city negotiated in effort to gain the state's
required easement and permanent fee simple
acquisition.

The issue as to what the status of the
building was going to be at the time if he was able to
go in and change the status quo was an issue between
the Planning Commission and Mr. Clark. Our position
was that based on the status quo, based on his
building encroachment into that position, that we
found it reasonable to honor Mr. Clark's request that
he be compensated for tearing that down and rebuilding
it, which was a significant difference between the
appraised value or the appraisal that we had and
Mr. Clark's position. Then took Mr. Clark's position
under advisement. Had our engineers then determine

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whether or not Mr. Clark's numbers were reasonable in
the current conditions with building conditions and
everything else. We determined that they were
reasonable based on, if we were going to take that
land he would have to demolish his building, unless
there was a change, like I said, in status quo. So we
felt that was fair compensation. That's why it was
significantly higher than the original appraisal that
Mr. Brantley did that Mr. Clark was referring to.

Again, we have to enter into these
negotiations as it is and everything exist at the time
and to be fair to both sides. The tax payers in this
case and to the person in which we're going to go
acquire their land.

That being said what we were asked to support
that Variance we said we wouldn't support it or we --
if he did decide to do something other than tear it
down, would we go ahead and give him the Variance?
The answer to that question was, no. That we weren't
in a position to do that. We wouldn't neither oppose
nor support that.

MR. DYSINGER: The reason I ask that, Mr.
Chairman, is for me personally, just speaking for
myself, it's not so important whether an agreement
existed to tear it down, didn't tear it down. The
compensation to me is an issue of hardship and alleviating the hardship of the landowner. So it's helpful to me to understand what the city's thinking was going in to make my decision whether or not that there was an attempt to meet that. So that's why I ask that. It was well answered. Thank you.

CHAIRMAN: Any other board members have any questions of anyone?

FATHER LARRY: Mr. Chairman, I have a question. I don't know who to address it to.

If a variance were granted, given the fact that compensation had been given to demolish the building or what I'm understanding, what happens to that compensation, if the building is not demolished and the variance is given?

MR. SILVERT: That is a question of Mr. Ray.

MR. RAY: The deal that was brokered in the contract that was signed is done. If there is something that Mr. Clark is able to do to his property and some of those cost saving were gained by him, our position would be that that would be something to benefit Mr. Clark, the city would not be seeking any reimbursement of compensation or any type of accounting. The contract was clear. Here is the amount of money that we are paying for our easements.
and for permanent taking. Mr. Clark's ability to change or alter and do anything with the property would not cause the city to come back.

CHAIRMAN: Any board member have any other comments or questions? I think we've pretty well hashed it down.

MR. TAYLOR: My only thing that I would say or even bring up is, you know, say whether it was an unreasonable circumvention or not, you know, whether he was purposefully doing something, it seems that any time we do a Variance we're doing it in order to be a cost savings measure on whatever the owner is. I don't know if we should consider, you know, that he got paid. How much money he's saving or what we're doing because the cost really shouldn't affect us that much.

What I kind of look at is if there's that ditch there and other houses aren't any closer, what's the safety issue? Is it going to pose a larger safety issue, you know, to traffic? Which I think would be the main thing than what the other houses would.

That's kind of, I guess, is an unanswered question. I don't know how it would be answered. More of a point than a question.

CHAIRMAN: Father Larry, did your question get
answered to suit you?

FATHER LARRY: Yes.

CHAIRMAN: Any other board members have any questions or comments?

(NO RESPONSE)

CHAIRMAN: Staff have anything else you want to add?

MR. NOFFSINGER: Yes. Just in response to Mr. Taylor's comments.

Planning Staff tried to address those issues in terms of take the compensation out, how much, because we haven't even gone over those numbers. That's not our primary issue against this rezoning. However, it is a factor or we wouldn't be here tonight.

There was an appraisal. It's been stated here tonight there was an appraisal and it's very clear in that appraisal as to what was being considered. The city attorney stated to you here tonight that there's pay in excess of that appraisal. Nowhere near what that appraiser came up with. Nowhere near the assessment that's been submitted into the record tonight of the property.

So it was very clear as to what was being considered as evidence based upon plat of record which
states that the structure is to be removed. That is what I have heard here tonight, was the basis of and the settlement.

Now, but for that we wouldn't be here tonight. What are the issues in terms of if we approve this? What are we saying in terms of public safety?

Well, we stated that this is an intersection of two major streets, two arterial streets. We've also talked about the close proximity of this residence adjoin, immediately adjoining the public utilities easement, as well as the motoring public that uses this roadway and the safety hazard that prevents and closeness of this structure.

We have also attempted to state here tonight in terms of the location as to where there is a buildable lot and it can be built upon and meet the requirements of the zoning requirement.

With future roadway improvements on this roadway, if this Variance is approved, where are we going to be in the future? If the building encroaches the setback line, are we going to be back at some point in time with the public having to buy additional right-of-way to make improvements. Are they going to have to buy only additional right-of-way or are they going to be buying this building all over again?
It all centers around the taking and, of course, that's why we're here, but it's been evidenced tonight that the City in their negotiations believe it was just compensation. I think the city did negotiate in good faith. We weren't approached about a Variance on this property until after those negotiations ended, after the subdivision plat was approved. It was signed and that structure was to be removed.

Now here we are today. Sounds like we're renegotiating the deal. That's where this board and this body, and the City Attorney correctly stated that that's why they're before this body. Because this body is the body that represents the citizens of this community and the tax payers in terms of making decisions about planning and about where we place our buildings now and in the future and what that future use may be.

So that's what you really have to consider. Is not just the impact of today, but also the impact of the future of the public health, safety and welfare.

CHAIRMAN: The applicant have any other statements?

MR. JOHNSON: A few points.

I know we've gone back and forth about the

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compensation numerous times, the contract that was involved.

CHAIRMAN: We're interested in new information.

MR. JOHNSON: Sure. I would just like to point out the fact that in the deed drawn by the City Attorney it was mentioned that they were purchasing a right-of-way. Nowhere in that deed does it say, tear down your building because we need a right-of-way. The Consideration Certificate states they're buying a right-of-way. Not that they're buying a right-of-way and requiring Mr. Clark to tear down his building. I know we've heard about the negotiation.

My final point is that if he's forced to tear down the building there will not be another building built. The city will not receive any new moneys from tax revenue. No property tax bill on the building. It will be a vacant lot in a subdivision not in conformity with the normal character of the neighborhood.

CHAIRMAN: Thank you.

Any other questions from the board members?

(NO RESPONSE)

CHAIRMAN: Entertain a motion for or against.

MR. PEDLEY: Mr. Chairman, I'm going to make a
motion for denial based on that the property owner has
been adequately compensated to remove the structure
and that there was adequate money to rebuild that on
that lot. That lot is large enough to rebuild. It
will adversely affect the public health, safety and
welfare to some extent for the fact that in the future
when Southtown Boulevard is built there will be many
structures up and down through there and it does set a
precedence. We, as Mr. Noffsinger stated, will have
other applications for a Variance. It will alter the
essential character of the general vicinity because
once Southtown Boulevard is built, that will be
projected out further than anything else in that area,
especially when you have new structures built further
on down. It will cause a hazard or nuisance.
Especially a nuisance in the future for setting out
and people -- it is noticeable. It's setting out and
you're driving down new Southtown Boulevard. But the
other thing is some day Southtown Boulevard may need
to be widened again on that side and you need that
right-of-way so you don't have to start going down
through there buying more right-of-way. It does allow
an unreasonable circumvention of the requirements of
the zoning regulations because it does, again, it sets
the precedence. It puts this board in a position when
we have others to come forward. They will put that
you have approved other variances. We see that
basically monthly. So based on that those are my
conditions.

MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

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

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

CHAIRMAN: All opposed.

(BOARD MEMBERS FATHER LARRY HOSTETTER AND CLAY
TAYLOR RESPONDED NAY.)

CHAIRMAN: Four to two.

Any other business at this time?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Entertain one final motion.

MR. WARREN: Motion to adjourn.

MR. DYSINGER: Second.

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

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(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 63 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the
30th day of April, 2010.

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

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