OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

MARCH 3, 2011

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, March 3, 2011, 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
Shannon Raines

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CHAIRMAN: Let me call the Owensboro Metropolitan Board of Adjustment to order. We start our meeting each night with a prayer and pledge of allegiance. We invite you to join us at this time. Madison will have our prayer tonight.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: At this time I want to welcome you all to the meeting this evening. If you have any comments on any of the items on the agenda, please come to one of the podiums, state your name so we can swear you in and have the information on record.

First item at this time is the minutes in the office of the February meeting. I don't think we
found any problems with it.

MR. NOFFSINGER: No, sir.

CHAIRMAN: With that I'll entertain a motion to dispose of the minutes.

MR. PEDLEY: Motion for approval, Mr. Chairman.

FATHER LARRY: Second.

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

(ALLO BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

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CONDITIONAL USE PERMIT

ITEM 2

926 Maple Street, zoned I-1

Consider request for a Conditional Use Permit in order to operate an outdoor storage facility.

Reference: Zoning Ordinance, Article 8, Section 8.2L8

Applicant: River City Industrial Services, Inc.

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

MS. EVANS: Melissa Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property is currently zoned I-1 Light Industrial. OMPC records indicate there was a
zoning map amendment application approved for the subject property from R-4DT to I-1 in 1989.

There was a Development Plan for 925 Maple Street and the subject property approved in April of 2006. In conjunction with the Development Plan there was an Administrative Appeal approved at the April 2006 OMBA meeting allowing trucks to back across the right-of-way on a local street from the loading dock at 925 Maple Street to the parking lot at 926 Maple Street.

The applicant is requesting to use the existing parking lot as outdoor storage for various materials in addition to the uses previously approved by the Administrative Appeal and Development Plan.

LAND USES IN SURROUNDING AREA

The property to the north, west and south are zoned R-4DT Inner City Residential. The property to the east is zoned I-1 Light Industrial.

ZONING ORDINANCE REQUIREMENTS

1. Parking - 5 spaces as required by the previous Development Plan and shown on the site plan submitted.

2. Landscaping - 1 tree for every 40 feet of linear boundary between the subject property and residually zoned property, a 10 foot landscaping

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easement between the subject property and
residentially zoned property and a continuous 6 foot
high solid wall or fence around the perimeter of the
subject property.

SPECIAL CONDITIONS

1. Approval of an amended Final Development
Plan.

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

CHAIRMAN: Thank you.

Have we had any opposition or comments in the
office?

MR. NOFFSINGER: Yes, sir, we have had some
comments registered in the office. I believe some of
those folks are here tonight.

CHAIRMAN: With that the applicant, you want
to present?

MR. SILVERT: State your name, please.

MR. WILSON: Bill Wilson.

MR. SILVERT: You're duly sworn.

MR. WILSON: Mr. Chairman and Members of the
Board, I'm here on behalf of River City Industrial
Services. The applicant isn't here, Mike Butler.
Mike got tied up. He's on his way down here now. I
apologize for him getting hung up. He's coming to

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explain anything that he might be able to.

Don Bryant is here. Don has done the work on this. I know that there's some issues with the screening and using this lot that's already paved and Mike has probably used it. I understand he had some shrubberies planted. I don't know how they disappeared. I know we're talking about some type, one of these fencing screening mechanisms. We're certainly willing to do those things that were recommended by the Staff. We would like to use this in conjunction with the industrial use that's going on with those other properties adjacent across the street. I'll ask Don Bryant, if he would, to generally describe what he intends to do.

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

MR. BRYANT: Don Bryant.

(DON BRYANT SWORN BY ATTORNEY.)

MR. BRYANT: The existing parking lot across Maple Street is presently being used for some outdoor storage in conjunction with the warehouse. The client has found that does require a conditional use permit. It is zoned industrial, but it doesn't allow for outdoor storage and that's why he's requesting the conditional use permit to allow that.

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We have submitted a site plan and we're in agreement to comply with all the Staff's requirements including the screening. There is a chain-link fence around the property now and probably will bring that into compliance by adding the slats to meet the capacity requirements.

So we're in total agreement to meet all of the conditions requested and if approved then we will submit an amended final development plan to reflect that.

CHAIRMAN: Board members have any questions of Mr. Bryant at this time?

(NO RESPONSE)

MR. BRYANT: Mr. Butler is here so if you've got any questions specific about the use or whatever we can address those. I'm not sure what the concerns are.

CHAIRMAN: Thank you.

Staff have any other comments at this time?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Anyone in the audience, you all have any comments or questions?

MR. ATWELL: Yes.

CHAIRMAN: Come forward and state your name, please.
MR. SILVERT: Would you state your name, please?

MR. ATWELL: James Atwell.

(JAMES ATWELL SWORN BY ATTORNEY.)

MR. ATWELL: We have a real concern down there about our backyards back up to that property. In the case of Mr. Weaver, his front yard is facing that property. There's tall stacks of food items out there that draw all kinds of pests and in the summertime it will take your breath if you walk out in your yard. So we're really concerned about getting that taken care of. Thank you.

CHAIRMAN: Anyone else have any other comments at this time?

Come forward and state your name, please, sir.

MR. JIM WARREN: My name is Jim Warren.

(JIM WARREN SWORN BY ATTORNEY.)

MR. JIM WARREN: I'd just like to agree with everything that he said. If he gets the conditional use permit for storage type, I think right now it's supposed to be vehicle only and there are a lot more there now than just vehicles. If this conditional use permit is agreed upon, I would like to know what type of storage would be allowed there because my biggest concern is this tomato waste product that comes, I
think, from Ragu, if I'm not mistaken, that does have
a tremendous smell. If you put a 6 foot privacy fence
or landscaping of some sort, that's not going to
affect the smell. You may not see it, but you're
going to smell it.

I moved in there almost 30 years ago. I was
told when we asked about what was going on there that
I should have thought about that before I moved there.
When I moved there, there was residential property in
that parking lot. It was residential. There was no
parking lot and it wasn't I-1 industrial.

The tobacco warehouse owned it and they had it
paved and they used the parking lot maybe twice a year
for three or four days at a time when they were
selling tobacco. Since they've taken it on, I did
think about that when I moved there because down the
street there was a business at the time that was a lot
smaller than it is now, but there was no smell and
there's no smell now. But from this tomato stuff
there are pests, rodents, as well as smell.

My concern is my wife has multiple sclerosis
and she's very, very disable, highly disabled, and she
can't get out to go out walk around or whatever, but
she can get out on the back patio when the summer is
nice, weather permits, and you can't go out there

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because the smell is terrible. I think I have the
right, all of us I think have the right to go out into
our yard and enjoy our patio or barbecue or whatever
we want to do without having to smell that.

I'm concerned about, like I said, if he gets
this permit what can he store there. Because somebody
down here told me if this permit went through,
whatever it is he's going for, he can store anything
he chose to. That's my concern. Thank you.

CHAIRMAN: Anyone else have any other
comments?

State your name, please.

MR. WEAVER: Dennis Weaver.

(DENNIS WEAVER SWORN BY ATTORNEY.)

MR. WEAVER: I agree with everything they
said. He just made a comment the smell is not bad
now. I was trying to work in my yard last week. I
couldn't stay out there. It gave me a headache it
smelled so bad. It was like that about two or three
days. Something was running out of the parking lot.
I don't know what it was, but the stench was
terrible.

Semi trailers they have sitting out there, the
doors are not always -- they leave them open. I don't
guess they lock the doors or whatever. The wind
blows. They will slam. You can hear them at night.

The landscaping and whatnot, I don't know what they're going to do to the front. I've been there 30 years too. Now, the screening they're talking about they just put down the sides. They didn't put anything in the front. My front yard looks right into that lot. So I'm seeing all this stuff. The landscaping that they have is -- they did clean it up here recently. I'll give them that, but it was just grown up and looked bad. It was terrible. I want to make sure something is done to the front of it. Well, I guess it's their back, but my front. I want to make sure something is done to that as well.

CHAIRMAN: Any other comments?

MR. ATWELL: If I may.

CHAIRMAN: State your name. You're already sworn.

MR. ATWELL: James Atwell.

MR. SILVERT: You're sworn.

MR. ATWELL: We've been told over and over by the staff at the warehouse that they want to be good neighbors for us down there. We're still waiting for that to happen. Hopefully we will tonight figure out what they're going to do. Something will have to be done to enclose those rafters that they put out there.

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I understand that they have a business to run, but we can't even use our yards. We'll have to address that problem one way or the other.

CHAIRMAN: Any board members have any questions of the opposition at this time?

FATHER LARRY: Reference was made to the front. Is that the area upon Moreland, when you say the front?

MR. ATWELL: Well, that's their back, my front.

FATHER LARRY: That's the part you were talking about?

MR. ATWELL: Yes.

MR. WILSON: Mr. Chairman, the screening that we talked about will be on all four sides including the frontage. There will be an entrance. The screening will be down both sides, across the back, and across the front.

MS. MASON: I have a question. You're saying that the smell is really bad. Is it because they're leaving the trailers open or even with the trailers closed it's bad?

CHAIRMAN: State your name again please, sir.

MR. ATWELL: James Atwell.

Ma'am, they leave these -- they're bundles
about this tall from Unilever and it's food stuff.
There's open containers of cans that have food stuff
in them and it sits out there all the time. Recently
they've been picked up prior to us coming to this
meeting. In the heat of the summer, it's unbelievable
out there. It smells like something dead. Honestly.
MS. MASON: It's not from the trailers there.
It's from the --
MR. ATWELL: No. They're sitting stacked in
the parking lot with nothing around them.
MS. RAINES: Is there a way to reduce that
odor?
MR. SILVERT: If you're going to answer, I
need you to come forward. State your name, please.
MR. BUTLER: Mike Butler.
(MIKE BUTLER SWORN BY ATTORNEY.)
MS. RAINES: Is there anything you can do to
reduce or eliminate the odor? That seems to be the
biggest issue.
MR. BUTLER: I have talked to Unilever. It's
a recycling program that they have. We bale for them.
It's their product.
MS. RAINES: Does it sit on the property for
a short period of time?
MR. BUTLER: We bale big tomato bags that come
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with tomato sauce, Ragu sauce. They hired us to bale 
them. It's like 2000 pound bale of these things. 
Every time there's 20 of them they're picked up, 
supposed to be picked up. Haven't been picked up 
sometime in a timely manner, but every time there's 20 
out of them. They're coming out of Florida to make 
railroads ties out of them and they pick them up.

CHAIRMAN: You pick them up, you bring them 
down. You don't disinfect or anything to eliminate 
the smell?

MR. BUTLER: Well, I don't know how you can 
disinfect tomatoes. It's just a bag that used to 
contain tomato sauce. It's a big heavy plastic 
thing.

CHAIRMAN: But it's pollutant and smelly when 
you pick it up?

MR. BUTLER: We bag sauce every day. I don't 
know if you call it pollutant.

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

FATHER LARRY: I'd like to be clear too on 
what exactly is in these tall stacks of food items. 
Are they empty plastic bags that had tomato sauce?

MR. BUTLER: They're not completely empty. 
I've never been out there. They have a process they
get these out of California. They come in a wooden box. They sit them out there forever. They have them in a wooden box. There's a 300 gallon plastic, heavy duty plastic container inside. They come in on rail cars and they take them in and process them when they're making Ragu sauce and they dump all of that. There's a little still left in the bags.

FATHER LARRY: So the residue is what's causing the smell?

MR. BUTLER: Yes. There's a little residue in them. They send them over to us and we bale them in this big baler, this 2000 pound bale. Every time there's 20 of them they're supposed to pick them up and they sell them to a company down in Florida that makes railroads ties.

MS. MASON: You bale the plastic, is that what you're saying?

MR. BUTLER: Yes. But there is a little residue of tomato sauce left in them. I don't have any control over that.

CHAIRMAN: As they say, in the summertime when it's hot and smelly, then they get to smelling pretty good, correct?

MR. BUTLER: Well, everybody has smelled tomatoes, I guess. We're used to it. I can
understand their fight a little bit. It's just something we don't have a whole lot of control over. Those bags have to be loaded on a flatbed trailer. If we put them inside and have to come out on a dock to load them onto a truck with a forklift, you know, it's not a very good safety practice.

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

MR. WARREN: So you bale them right there on site?

MR. BUTLER: Yes.

MR. WARREN: And then you store them out there in this parking lot until you get your 20?

MR. BUTLER: They pick them with a flatbed trailer.

MR. WARREN: So when you're baling them in the warehouse, I guess, what's the process there? You just stack these things on top of each other and whatever is inside runs out?

MR. BUTLER: No. They go in a baler. It will make a 2000 pound bale. Takes about 20 galore of them to make a bale. Then they're compressed real tight where you can get 40,000 pounds on a truck to go to Florida.

CHAIRMAN: And whatever is in it happens to be
smelly or liquid you press it?

MR. BUTLER: Yes. If you don't do a good job getting all that stuff out, you know, there is going to be a little. They try to do the best they can.

CHAIRMAN: But you're not containing, when you bale it you don't have a container, a containment area to keep the stuff from running out on the ground around the area?

MR. BUTLER: Well, there is some drain, I think. You can go out and look at it. It's not -- I don't think it's that bad personally.

CHAIRMAN: Thank you.

Somebody else have any questions of him?

FATHER LARRY: What's the average turnaround time to get to 20?

MR. BUTLER: They probably pick up the truck, it's probably, we probably do 40,000 pounds a week. It's a huge savings for Unilever, as far as the waste. Week to ten days.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other comments of the applicant?

MR. NOFFSINGER: No, sir.

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MR. PEDLEY: I have some comments.

I think at this point we do not have enough information to properly address this and maybe put conditions on this Conditional Use Permit to address these neighbors concerns. They have some very valid concerns here that must be addressed. I think it needs to be investigated. Let's find out what they are. We may need to put additional conditions on the permit. I'm in favor of postponing this until the next meeting so we can investigate.

CHAIRMAN: You put that in a motion?

MR. PEDLEY: Yes. I make a motion we postpone.

CHAIRMAN: Is there a second to the motion?

MS. MASON: Second.

CHAIRMAN: Any other comments or questions?

MR. NOFFSINGER: The only comment I would have is that with the postponement realize that this activity is currently taking place right now that's a violation of the zoning ordinance. That's why they're here, is to bring it into compliance. So this would continue that for another 30 days, if they continue to use the property in violation.

MR. PEDLEY: I understand that, but at the same time we do not know what the problem is. We do
not know the proper conditions to put on this to take
care of these neighbors concerns. If there's concerns
out there that must be addressed, we need to put the
conditions to that, that it be addressed. I don't
know what they are. It sounds to me like it needs to
be taken a look at to find out what it is. My motion
still stands.

CHAIRMAN: There's a motion and a second. Any
other discussion?

MR. NOFFSINGER: Mr. Pedley, I appreciate
that. I just want to make sure that we all understand
that it's likely this activity that is not in
compliance with the zoning ordinance will continue for
at least another 30 days.

MR. PEDLEY: I understand that. We can either
postpone it or deny it.

CHAIRMAN: We've got a motion. Any other
comments?

MR. ATWELL: Could I just ask you one question
real quick?

We have pictures of it, if you want to see.
She's got it on a camera here right now.

CHAIRMAN: You have pictures of it?

MR. ATWELL: It's on the camera.

MR. SILVERT: We'll need to be able to have

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those printed to admit into evidence.

CHAIRMAN: State your name.

MR. JIM WARREN: Jim Warren.

MR. SILVERT: You've been sworn.

MR. JIM WARREN: I don't think -- I'm not sure you all understand exactly what we're dealing with here.

There's several things that I would like to point out. He just made the statement that they were being picked up, turned over every week to ten days. If that be the case, I'm sure they have paperwork showing when the company from Florida comes to pick these up. I would like to see if they picked them up a week ago, I would like to see the manifest from the company because they have not been picked up every ten days.

What we're dealing with here is pallets of rotten tomatoes or tomato juice, tomato sauce, whatever. He says that there is not that much smell, but his statement before that was that he hasn't been down there. Have you ever smelled rotten tomatoes outside for any period of time?

I took a friend of mine down there that I work with the other day to my house to help me take a TV in the house and it was cool. It wasn't freezing, but it
was less than 40 degrees. When he got out of the
truck, the first thing he said was, what is that
smell?

What we're dealing with, like I said, is
pallets that are as tall as I am or taller. They're
four foot by four foot squares of rotten tomato or
tomato bag, big plastic bags. I've got a good friend
of mine that works at Unilever and I know exactly what
they are. They empty them. They don't squeeze them
out. They don't wash them out. There are tomatoes or
tomato product, byproduct just falling out of them.
They're in no containment other than just smashed and
baled together. This stuff is running down the sides
out onto the parking lot. Whether you would believe
this or not, I've been there 30 years and I've never
had a mouse in my house ever. There are mice all
over.

He thinks that's funny. His point was or I
would like to ask him, if I could, would you like that
in your backyard?

MR. WILSON: We're not here for that, Mr.
Chairman.

CHAIRMAN: We're not going to get into that.

MR. JIM WARREN: The bottom line is, there has
been no effort to clean this up prior to knowing that

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this hearing was going to be made tonight. Now in the past couple of days they've gone out there and cleaned up quite a bit. So you if you go and look it is cleaned up to some degree, but there's still, the trash and stuff is still there. I just want you to have a full picture of what we're talking about. Not go down there now and see a cleaned up, neat little deal, and then if they get this permit given to them to turn right around and do the same thing again. Thank you.

CHAIRMAN: Thank you. I think we've discussed it enough.

We've got a motion and a second. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries. It has been postponed until the next meeting.

The Staff is instructed to do some investigation to see.

Entertain one other motion.

MR. PEDLEY: Motion to adjourn.

MR. WARREN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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CHAIRMAN: We are adjourned.

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STATE OF KENTUCKY )

)SS: REPORTER'S CERTIFICATE

COUNTY OF DAVIESS )

I, LYNNETTE KOLLER FUCHS, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Board of Adjustment meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 22 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 21st day of March, 2011.

LYNNETTE KOLLER FUCHS
NOTARY ID 433397
OHIO VALLEY REPORTING SERVICES
202 WEST THIRD STREET, SUITE 12
OWENSBORO, KENTUCKY  42303

COMMISSION EXPIRES:   DECEMBER 16, 2014
COUNTY OF RESIDENCE:  DAVIESS COUNTY, KY

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