

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT
2 NOVEMBER 3, 2011

3 The Owensboro Metropolitan Board of Adjustment
4 met in regular session at 5:30 p.m. on Thursday,
5 November 3, 2011, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

- 8 MEMBERS PRESENT: C.A. Pantle, Chairman
- 9 Ward Pedley, Vice Chairman
- 10 Ruth Ann Mason, Secretary
- 11 Gary Noffsinger, Director
- 12 Madison Silvert, Attorney
- 13 Rev. Larry Hostetter
- 14 Sean Dysinger

15 * * * * *

16 CHAIRMAN: Let me call the Owensboro
17 Metropolitan Board of Adjustment to order. We start
18 our program each evening with a prayer and the pledge
19 of allegiance. We invite you all to join with us.
20 Madison will have our prayer this evening.

21 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

22 CHAIRMAN: Again, I want to welcome you all to
23 the meeting this evening. If you have any comments on
24 any of the items, please come to one of the podiums.
25 State your name so we'll have record of it. With that
we'll go ahead and proceed.

The first item on the agenda is the minutes of
the October 6th meeting. We have no additions to add

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1 in the office.

2 MR. NOFFSINGER: No, sir.

3 CHAIRMAN: I'll entertain a motion to dispose
4 of the item.

5 MR. PEDLEY: Motion for approval.

6 MS. MASON: Second.

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

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries.

11 Next item, please, sir.

12 -----

13 CONDITIONAL USE PERMIT

14 ITEM 2

15 5712 Highway 56, zoned A-R

16 Consider a request for a Conditional Use Permit in
17 order to operate a child care facility for up to 100
18 children.

17 Reference: Zoning Ordinance, Article 8, Section 8.2B3

18 Applicant: Pleasant Grove Baptist Church

18

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

21 MS. EVANS: Melissa Evans.

22 (MELISSA EVANS SWORN BY ATTORNEY.)

23 ZONING HISTORY

24 The subject property is currently zoned A-R
25 Rural Agriculture. OMPC records indicate there have

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1 been no Zoning Map Amendments for the subject
2 property.

3 A conditional use permit was approved by the
4 OMBA in 2005 to operate a daycare for up to 90
5 children.

6 This application is to increase the number of
7 children being cared for from 90 to 100.

8 LAND USES IN SURROUNDING AREA

9 All surrounding properties are zoned A-R Rural
10 Agriculture.

11 ZONING ORDINANCE REQUIREMENTS

12 1. Parking - Child day-care-centers - 2 plus
13 1 per every 1- persons under care. Total required =
14 12 spaces, as shown on the site plan submitted.

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

17 CHAIRMAN: Have we had any comments or
18 questions in the office?

19 MR. NOFFSINGER: No, sir.

20 CHAIRMAN: Is the applicant here and wish to
21 make any comments?

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

24 MR. BAYLOUS: Edward A. Baylous, II. I'm the
25 attorney for the applicant.

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1 I think the report kind of sums it up. What
2 had happened was the initial permit was for 90
3 children ages infant to six. We've just asked to
4 modify that. They're working at or near the capacity.
5 They don't plan on really expanding, but they have to
6 be in compliance on everything for the Division of
7 Licensing and Regulation in Frankfort that regulates
8 day cares. So we just want to make sure that the
9 permit here conforms to any operations that are going
10 to undertake there.

11 CHAIRMAN: Are there any questions or comments
12 from the board or the Staff of the applicant?

13 (NO RESPONSE)

14 CHAIRMAN: Anyone wishing to speak in
15 opposition?

16 (NO RESPONSE)

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

19 MR. PEDLEY: Mr. Chairman, make a motion for
20 approval based on the findings it's an expansion of
21 the existing use and it will not have an adverse
22 influence on the neighborhood.

23 MR. DYSINGER: Second.

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

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1 board?

2 (NO RESPONSE)

3 CHAIRMAN: Staff have anything else?

4 MR. NOFFSINGER: No, sir.

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

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries.

9 Next item, please.

10 ITEM 3

11 5050 Highway 144, zoned A-U

12 Consider a request for a Conditional Use Permit in
13 order to construct an expansion to an existing
14 mausoleum and a crematory building.

15 Reference: Zoning Ordinance, Article 8, Section 8.2J1

16 Applicant: Owensboro Memorial Garden Corporation

17

18 ZONING HISTORY

19 The subject property is currently zoned A-U
20 Urban Agriculture. OMPC records indicate there have
21 been no Zoning Map Amendments for the subject
22 property.

23 There have been three previous Conditional Use
24 Permits approved for the subject property; in 1981 and
25 1998 and most recently in July of 2011 to expand the
existing mausoleum.

The applicant is now asking to continue to
construct that expansion of the mausoleum, but also to

1 construct a crematory with parking and paved driveway.

2 LAND USES IN SURROUNDING AREA

3 The properties to the north are zoned R-1A
4 Single Family Residential, A-U Urban Agriculture and
5 I-1 Light Industrial. The properties to the south are
6 zoned A-U Urban Agriculture. The properties to the
7 west are zoned I-1 Light Industrial and A-U Urban
8 Agriculture. The properties to the east are zoned MPH
9 Manufactured Housing Park and A-U Urban Agriculture.

10 ZONING ORDINANCE REQUIREMENTS

11 1. Parking - None required.

12 2. Landscaping - None required

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

15 CHAIRMAN: Do we have any comments or
16 questions?

17 MR. DYSINGER: Mr. Chairman, at this time, in
18 the interest of full disclosure, my wife, Jodi,
19 Dysinger, is employed by the applicant; however, it
20 would not effect my decision one way or the other. If
21 there are no objections, I'll sit on the matter.

22 CHAIRMAN: Any objections from anybody on the
23 Board?

24 (NO RESPONSE)

25 MR. DYSINGER: Thank you, Mr. Chairman.

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1 CHAIRMAN: Is the applicant here?

2 APPLICANT REP: Yes.

3 CHAIRMAN: Do you have anything you want to
4 present?

5 APPLICANT REP: No.

6 CHAIRMAN: Any questions from the board to the
7 applicant?

8 (NO RESPONSE)

9 CHAIRMAN: Any other comments from the Staff?

10 MR. NOFFSINGER: No, sir.

11 CHAIRMAN: Hearing none I'll entertain a
12 motion to dispose of the item.

13 MS. MASON: Mr. Chairman, I move for approval.
14 My findings of fact is that it's consistent with three
15 previously approved conditional use permit as it is an
16 expansion and it is compatible with the land use in
17 the area and there is no opposition.

18 MR. PEDLEY: Second.

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

22 (NO RESPONSE)

23 CHAIRMAN: Staff have anything else?

24 MR. NOFFSINGER: No, sir.

25 CHAIRMAN: The applicant have anything else

1 you want to present?

2 APPLICANT REP: No, sir.

3 CHAIRMAN: Hearing none all in favor of the
4 motion raise your right hand.

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries.

7 Next item, please.

8 -----

9 VARIANCES

10 ITEM 4

11 202 East Byers Avenue, zoned P-1

12 Consider a request for a Variance in order to
13 eliminate the required 3 foot wide landscaping buffer
14 and 3 foot high continuous element along the south
15 property line.

16 Reference: Zoning Ordinance, Article 17, Section
17 17.3121(a), 17.3122, 17.3124

18 Reference: Red Rentals, LLC; Alan Braden

19

20 MS. EVANS: The subject property was rezoned
21 from R-1B Single Family Residential to P-1
22 Professional Service at the September 2011 meeting of
23 the Owensboro Metropolitan Planning Commission.

24 At the OMPC meeting the Staff recommended
25 denial of the Zoning Map Amendment Application for a
26 variety of reasons. One of the reasons was because of
27 the site plan submitted as an exhibit with the
28 application, it was apparent that the minimum zoning
29 ordinance requirements for parking and drive aisles

1 could not be met.

2 The OMPC chose to approve the rezoning knowing
3 the restrictions of the lot.

4 Typically, the landscaping and buffer between
5 vehicular use areas and residential properties have
6 been required consistently in the community, but
7 because of the approval to change the zoning to P-1,
8 Staff would recommend that the landscaping buffer and
9 continuous 3-foot high element be waived in order to
10 maintain the maximum possible width of the driving
11 aisle. The buffer serves as protection to the
12 adjoining property to visually buffer the vehicular
13 use area from traffic and glare. However, there is an
14 existing fence on the residential side of the property
15 that serves as a buffer between that vehicular use
16 area for this property and the residential property.
17 Therefore, if there are objections from the adjoining
18 residential property owner, the buffer and continuous
19 3-foot high element should not be eliminated.

20 FINDINGS OF FACT

21 1. It will not adversely affect the public
22 health, safety or welfare;

23 2. It will not alter the essential character
24 of the general vicinity;

25 3. It will not cause a hazard or a nuisance

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1 to the public; and

2 4. And it will not allow an unreasonable
3 circumvention of the requirements of the zoning
4 regulations.

5 Staff would recommend approval.

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

8 CHAIRMAN: Thank you.

9 Has there been any comments or questions in
10 the office?

11 MR. NOFFSINGER: No, sir.

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

14 (NO RESPONSE)

15 CHAIRMAN: The applicant here and do you have
16 anything you'd like to add at time please, sir?

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

19 MR. BRADEN: Alan Braden.

20 (ALAN BRADEN SWORN BY ATTORNEY.)

21 MR. BRADEN: Mr. Chairman, I think I need not
22 to say much. I do appreciate the recommendation. I
23 have talked to my neighbor on the south side, Bob
24 Dillow, who is in Florida, but I spoke with him over
25 the weekend. He is in favor of this variance as well.

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1 If you have any questions of me, I'll be glad
2 to answer them.

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

5 (NO RESPONSE)

6 CHAIRMAN: Staff have any other comments?

7 MR. NOFFSINGER: No, sir.

8 CHAIRMAN: Entertain a motion to dispose of
9 the item?

10 MR. DYSINGER: Mr. Chairman, given the
11 specific characteristics of this property and given
12 the finding that granting the variance will actually
13 enhance safety, I move that we find for the applicant
14 and grant the variance.

15 CHAIRMAN: Is there a second?

16 MS. MASON: Second.

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

20 (NO RESPONSE)

21 CHAIRMAN: Staff have anything else to add?

22 MR. NOFFSINGER: No sir.

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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1 CHAIRMAN: Motion carries.

2 Next item, please, sir.

3 ITEM 5

4 2306 Windhaven Drive, zoned I-1 (Postponed from the
5 October 6, 2011 meeting)

6 Consider a request for a Variance in order to waive
7 the required six foot high solid wall or fence around
8 an outdoor storage lot.

9 Reference: Zoning Ordinance, Article 8,

10 Section 8.5.3(j), Article 17, Section 17.3114

11 Applicant: Mid-South Equipment, LLC, Chad Watts, Jim
12 Watts

13 MR. NOFFSINGER: Mr. Chairman, at the last
14 meeting this board instructed the Staff and the
15 applicant to sit down and meet to see if some type of
16 compromise and agreement can be reached. I can tell
17 you that the applicant was unwilling to compromise.
18 Could not offer any compromise. Said that they wanted
19 to have this item voted on by this board.

20 The applicant is here and represented by
21 counsel. I think it's appropriate to hear what he has
22 to say.

23 MR. PEDLEY: Mr. Chairman, I have disqualified
24 myself from this item previously.

25 CHAIRMAN: Be noted.

The applicant, you can have your presentation
at this time, please. Come forward.

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

1 MR. HOLTREY: Travis Holtrey, attorney.

2 MR. SILVERT: You are already sworn.

3 MR. HOLTREY: It's correct that when we were
4 last here on October 6th we agreed to carry this item
5 a month to allow my client first to meet and to
6 discuss themselves on whether or not there was a
7 viable solution to the problem. Then after we were to
8 meet we were supposed to meet with the Staff.

9 I can tell you that between October 6th and
10 October 14th, my client and various people who are
11 employed by my client, met on three different
12 occasions to discuss the viability of a solution or a
13 compromise.

14 We considered things that I didn't expect us
15 to even consider. I would like to present those to
16 the board.

17 One was that during the process of the client
18 discussing, Mid-South discussing this, on two
19 different occasions our manager, Steve, witnessed a
20 client or saw a client, a potential customer, who
21 actually was considering the difference between a
22 rental of two different pieces of equipment. That
23 customer went to the lot. Was given permission to
24 start the equipment up. Operate it. To move the
25 blade up and down and actually wanted to move a little

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1 bit of the gravel lot. Scooped a little. Dumped it.
2 Moved it around. Drove it around the lot a little.
3 Parked it. Did the other one. And then made a
4 decision based upon that, what I would call test
5 drive. Even though I don't test equipment personally.
6 It was a testing of the equipment.

7 This just brought to our mind that this is yet
8 another reason why with the special situation we have
9 with bladed equipment, with tracked equipment, that if
10 a customer comes to our lot and wants to drive the
11 equipment around or to test the blades or to move
12 those types of things, that we would not be able to
13 accommodate that if we have an asphalt lot.

14 I share that as one of the things that we've
15 considered.

16 We also considered whether or not it would be
17 advantageous for us to pave with asphalt certain areas
18 of the lot and leave certain areas as gravel and then
19 whatever areas would not be exposed to make the
20 fencing covered in those areas.

21 Again, after looking at the viability of that
22 and whether or not that was a practical solution, we
23 concluded it wasn't.

24 So I do want this board to know that we did
25 not just walk into the meeting with Planning

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1 cavalierly with an attitude of, well, we're not here
2 to compromise. We had thought through this. We
3 considered it.

4 It is accurate I do appreciate Gary and the
5 Staff meeting with us. We met with them on October
6 17th at 11:00. It was a short meeting because I
7 communicated what my client had communicated to me.

8 That is if looking at the viable solution,
9 looking at the business sense of this, we could not
10 make it seem economically feasible and viable for us
11 to reach something halfway. So we communicated that.
12 You know, we didn't want to waste their time. The
13 Staff's time is important. We communicated it to Gary
14 and the others. It was a short meeting. It was.

15 In short, what I would like to do tonight, I
16 would like to ask for just a few more minutes of the
17 board's time.

18 We are fortunate that our application package,
19 when somebody wants to apply for a zoning variance we
20 understand the importance of the Staff making
21 recommendations to this board. I think they do a good
22 job, a thorough job. This is only my second time
23 here, but I hear they do a good job.

24 However, what this board has to make their
25 decision on is the criteria that businesses have, in

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1 the application package that we get, which is
2 generated by an ordinance which you guys are familiar
3 with. I just heard it recited in the one before our
4 matter of business. It is an affective criteria and
5 it's one that my client agrees with and I think
6 probably many people have stood here before and said,
7 okay, let's look at the criteria.

8 Last time I felt like we got away from looking
9 at the criteria. Me having the opportunity with the
10 board to take a couple of minutes to say, the rule,
11 the rule that we have to follow is this four step
12 process that's given to anybody that applies.

13 That is before a variance can be awarded by
14 this board they have to find that granting it and then
15 there's a four part test. I just want us to think
16 common sense about this and go through this test
17 because that's where this board has to make the
18 decision.

19 The recommendations of the Staff being what
20 they are, this is the test:

21 Will this adversely affect the public health,
22 safety or welfare? There has not been, as I would say
23 if I'm in front of a judge or a jury, one shred of
24 evidence, there has not been anything to this board,
25 presented to this board that this variance would

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1 adversely affect the public health. That this
2 variance would affect the safety of the public. Or
3 that this variance would affect the welfare of the
4 public.

5 To the contrary we've operated as is for more
6 than a year without any, any indication of any such
7 adverse affect.

8 To the contrary we have presented the
9 affidavits of all surrounding property owners who are
10 in support of our variance. If there was a threat in
11 the least bit to the public health, safety or welfare,
12 I can assure you that the surrounding property owners
13 who would be in the best situation to look at what we
14 are requesting this variance would be here sharing
15 with this board why this is going to adversely affect
16 the health, safety or welfare.

17 That would lead us to the second part of the
18 criteria. That this board has to make this decision
19 on.

20 Is it going to alter the essential character
21 of the general vicinity? In the general vicinity
22 there are two other equipment operators. We did
23 discuss this the last time. Equipment sales operators
24 and rentals. We discussed this the last time. We
25 acknowledge that they're grandfathered in. However,

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1 they're within this vicinity. If you look at the
2 general character of their location, it's no
3 different. If anything, ours is cleaner and better
4 kept.

5 Across the street, Kight Lumber, is not an
6 equipment sales and lease. It's Kight Lumber. I
7 think we all know their general purpose in business in
8 this community.

9 What we are asking for, again, there has been
10 no evidence presented to this board that it's going to
11 alter the essential character of this I-1 industrial
12 area. There's been no evidence of that.

13 That leads this board to the third part of the
14 criteria.

15 Will this variance cause a hazard or a
16 nuisance to the public? Again, not one fraction, not
17 one bit of evidence to this board that what Mid-South
18 Equipment is asking for is going to cause a hazard or
19 a nuisance to the public.

20 Photographs have been furnished to the board.
21 We have given the best description we can of our
22 general business purpose to this board.

23 This is now the second time that this board
24 has heard this matter and yet no one has come through
25 these doors to show this board how this could cause a

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1 hazard or a nuisance to this community.

2 Finally, the fourth part of the criteria that
3 this board must consider is, is will the variance
4 allow an unreasonable circumvention of the
5 requirements of the ordinance. An unreasonable
6 circumvention.

7 Last time when we were here I discussed with
8 you all the options and how pavement would get torn
9 away and things of that nature and the weight of the
10 equipment and that because of all of those factors
11 this is a unique situation. That therefore it is not
12 an unreasonable circumvention from the variance.
13 That's why we have this process and procedure that we
14 can follow. In this situation, no one has presented
15 to the board why what is being asked for is
16 unreasonable, an unreasonable circumvention of what
17 the ordinance requires.

18 Now, I may not understand a whole lot about
19 how this board makes decisions, but I have sat on
20 boards and I have been in the justice system for 16
21 years and I can tell you that if there is a criteria
22 set before the decision maker and that criteria is
23 clearly met and there's no opposition in the form of
24 evidence or good substantial facts to consider, then
25 either we are going to say as a board that we don't

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1 follow that criteria or we say when that criteria is
2 met that is the time for a variance.

3 Obviously you can see I'm pretty passionate
4 about this. Because in my mind when we have satisfied
5 every requirement of this criteria and we've looked at
6 it from the standpoint of when the board considers
7 this they have to look at whether or not it's a
8 special circumstance. They have to look at whether or
9 not it's going to deprive the applicant of a
10 reasonable use of this. This is a business and
11 they're trying to conduct business in the city. When
12 you look at even how you're supposed to weigh those,
13 there's no reason not to grant this.

14 I sincerely appreciate your time. I know it's
15 a decision. There's others that may be looking at
16 this and thinking, you know, what's going to happen
17 there?

18 I trust this four point criteria. I trust
19 that the next person that comes in here and asks for a
20 variance, if their circumstances aren't such that this
21 criteria would allow it, that this board would do the
22 right thing and weigh it and not allow it. But in
23 this situation we have followed every step of the
24 application. Everything has been provided and all
25 four points of this criteria have been met.

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1 So the applicant would respectfully ask this
2 board to grant the zoning variance.

3 CHAIRMAN: Thank you.

4 Does any board member have any questions of
5 the applicant at this time?

6 MR. DYSINGER: Mr. Chairman, I do.

7 The applicant brings up the issue of
8 surrounding businesses that do not have to comply with
9 the ordinance, and we all recognize that those are
10 grandfathered in.

11 Now, one of the problems with implementing a
12 comprehensive zoning plan or plan such that we have,
13 is that sooner or later people have to start
14 complying, but you don't want to make it a hardship on
15 people who are already operating.

16 It seems to me that the applicant's counsel
17 may be kind of glossing over this idea of
18 grandfathered in.

19 If we don't hold people up to the same, if we
20 don't hold new businesses up to the standard of the
21 zoning ordinance simply because of the way people have
22 already been doing it, then you do not have a zoning
23 ordinance. There's no point at which to impose it. I
24 would ask counsel to respond to that.

25 CHAIRMAN: You wish to answer, please, sir?

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1 MR. HOLTREY: In all due respect, I'm not sure
2 I understand the question. I'll say what I think you
3 asked and then if I'm incorrect you can go from there.

4 I specifically mentioned that there are two
5 other equipment dealers in the general vicinity. Just
6 so we're clear, that would be Erb at the end of the
7 bypass and that would be CMC, which is basically a
8 neighbor.

9 My reference to them was is that they are in
10 the general vicinity. When you look at the criteria,
11 whether what we're asking is going to be dangerous or
12 it's going to be a hazard or it's going to be a
13 nuisance, then those places have not created such a
14 hazard or nuisance by continuing as they do because of
15 being grandfathered in. So therefore I was only using
16 that as a measuring stick as to whether or not we by
17 variance would be adversely affecting the public
18 safety or whether or not it was going to affect the
19 general character of the community. When within this
20 general area we have two that are already that way,
21 how are we affecting the general character? That was
22 the purpose of the reference.

23 I think we talked last time about maybe the
24 slippery slope of thinking, well, at what point are
25 people going to continue to point to the two that are

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1 getting away or the three that are getting away with
2 this is a justification for why is there a purpose of
3 an ordinance. If that is what you are asking. I
4 don't know. I don't have any other things to add.

5 MR. DYSINGER: That's all for now.

6 CHAIRMAN: Any other comments or questions at
7 the present time?

8 (NO RESPONSE)

9 CHAIRMAN: Gary.

10 MR. NOFFSINGER: Mr. Chairman, at this time
11 Becky Stone would have a presentation she would like
12 to make. She'll be using the screen so you want to
13 pull the screens up and follow along.

14 MS. STONE: The Staff has reviewed the minutes
15 of the public hearing at last month's meeting. As
16 requested by the OMBA, the director and zoning
17 administrator met with the applicants. As you already
18 know, the applicants had indicated at that meeting
19 that there were no options for them to achieve
20 compliance with the zoning ordinance in terms of
21 screening the outdoor storage area and/or paving a
22 display area so that the equipment could be visible to
23 the public.

24 MR. SILVERT: Becky, before you move on, I
25 need to swear you in.

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1 (BECKY STONE SWORN BY ATTORNEY.)

2 MS. STONE: Several concerns were expressed in
3 the public hearing last month regarding the operation
4 of the business. We have tried to consider those and
5 we've attempted to resolve those with solutions that
6 would consider both the restrictions of the business
7 in terms of the equipment weight and display and still
8 meet the requirements of the Owensboro Metropolitan
9 Zoning Ordinance.

10 Additionally, there are concerns created and
11 potential hazards that must be addressed if paving
12 and/or screening requirements are waived. We'll
13 attempt to address the owners' concerns as well as the
14 responsibility of the Staff and the Board in an
15 organized fashion; hopefully resulting in a solution
16 that can be implemented and maintain the integrity of
17 the ordinance requirements while allowing the business
18 to maintain their contractual agreements with their
19 distributors.

20 1. The weight of the equipment causes damage
21 to an asphalt or concrete surface. That certainly is
22 a valid concern. We would recommend a pavement
23 section that is typical for streets in the community
24 in order to withstand the weight of the equipment for
25 whatever display area on which heavier equipment will

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1 be stored. That would mean installation of 6 inches
2 of concrete over the existing gravel base or 6 inches
3 of dense grade aggregate and a 3 inch asphalt binder
4 coat as required for street construction in the Public
5 Improvements Specifications.

6 The concrete cost could be installed for an
7 estimated cost of \$2.56 per square foot, which would
8 include material and labor. The asphalt could be
9 installed for an estimated \$2.25 per square foot,
10 which includes material and labor. Both estimates
11 were obtained from active concrete and asphalt
12 installers.

13 If the heavier equipment were stored on the
14 graveled screened area, the display area could
15 possibly reduce the specifications of the pavement for
16 the lighter equipment display.

17 On our exhibit there you can see the area. I
18 mean that's a random area toward the front of the site
19 that could be paved or any portion of that, depending
20 on what area they would need for display of their
21 equipment to meet their contract.

22 On observations of the site it didn't appear
23 to us on 10/21/11, 11/1/11 and 10/31/11 that there was
24 a large amount of heavy equipment stored forward on
25 the lot toward Windhaven. So that would be the area

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1 we would recommend some pavement for display.

2 There's Photo A shows that and photo B that
3 you'll see on your screen which were taken 10/21/11.
4 That's the front of the fence where the access is.

5 You can see on that photo as well there is a
6 small portion of pavement in that gravel area that is
7 used to store some equipment on there. I think that
8 those may be a type of equipment that's used on an
9 indoor industrial floor so maybe that's why they're
10 being stored on pavement.

11 Photos C was taken on 11/1/2011. Again, you
12 can see the front of that storage lot, you know,
13 appears not to have a lot of heavy equipment on it.

14 Then photo D is another example that we took
15 on 10/31/2011.

16 The next concern was:

17 2. The applicants had stated in the public
18 hearing last month that the majority of the equipment
19 had tracks that would tear up concrete or the asphalt.

20 That equipment certainly should be stored in a
21 the graveled area.

22 On the days that we observing the site on
23 October 17, October 26, October 31, November 1st, 2nd
24 and 3rd, there was one piece of equipment that we
25 identified, a bulldozer, that had steel tracks. The

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1 remainder of the equipment has rubber tires or tracks,
2 with the exception there was a trench compactor which
3 had steel wheels, but was on a trailer with rubber
4 tires.

5 With the pavement sections as described above
6 the display area should accommodate the weight of the
7 equipment offered for lease. However, the bulldozer
8 could tear up the pavement certainly and should be
9 stored within the outdoor storage area on gravel.

10 3. The applicants entered in evidence that
11 they have entered into an agreement with their
12 distributor that the equipment be visible to the
13 public.

14 Again, we think this can be accomplished with
15 an area dedicated to equipment display which is either
16 paved, asphalt or concrete, and landscaped with a 3
17 foot high continuous element and one tree per 40
18 linear feet, which is the ordinance requirement for
19 paved area from public right-of-way.

20 The size of the area to be paved would be
21 dependent on what is required to be displayed and
22 visible to the public. The thickness of the pavement
23 if constructed to public improvement specifications
24 should accommodate the weight of the equipment or the
25 lighter equipment could be displayed on the pavement

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1 with the heavier equipment and the bulldozer stored in
2 the outdoor storage area. The additional landscaping
3 that would be required there would be approximately
4 125 linear feet.

5 4. Screening of the outdoor storage area.
6 With the displayed area, the remainder of the outdoor
7 storage area should be screened in accordance with the
8 ordinance requirements.

9 They have some unique situations in their
10 business, but other businesses do too. The zoning
11 ordinance needs to be consistent across properties in
12 the community.

13 After multiple visits to the site, there are
14 circumstances that would support a variance to waive a
15 portion of the required screening on the southeast
16 property line.

17 This was not identified by the applicant, but
18 after we were out there a number of times it's obvious
19 that there is a significant grade change from the
20 adjoining property along Parrish and also from Parrish
21 to the property. There's also a heavy tree line
22 between the two properties.

23 The topography and the trees effectively
24 screen the outdoor storage yard at this location from
25 Parrish Avenue and it's not visible to the public at

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1 this location.

2 We'll show photo E which was taken 11/1/2011
3 shows that you cannot see that for screening in this
4 area, outdoor storage in this area. There's the tree
5 line and as you can tell the elevation changes as
6 well.

7 For this reason, the Staff would recommend the
8 variance to waive outdoor screening be granted in this
9 location only as the ordinance requirements are met
10 via the trees and the elevation change. The area
11 recommended for waiver is shown on this exhibit. It
12 also shows the recommendation that we have in this
13 record.

14 This will decrease the required screening of
15 approximately 400 feet. You can see on your exhibit
16 it's the area marked with the red X's along that
17 property boundary.

18 So it's a significant portion of the back of
19 the property that would be screened by natural
20 elements rather than having to put up the screening,
21 fabric or slats.

22 By creating a display area and reducing the
23 area of the outdoor storage toward the Windhaven
24 frontage, additional linear feet of 6 foot high
25 screening could also be eliminated. That would be

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1 where you see the red line on the exhibit, that we're
2 identifying as the outdoor storage. That's just an
3 example of where that could be. Then up the sides
4 perpendicular to that up toward Windhaven would not be
5 required to be screened on those sides.

6 The other boundaries of the outdoor storage
7 area should be screened as they're visible from the
8 public right-of-way of Windhaven and Hill Valley
9 Circle and also from adjoining properties.

10 Photo F shows visibility from adjoining
11 property.

12 Number 5 wasn't brought up in the public
13 hearing last month, but there is a hazard or nuisance
14 created with gravel being dragged onto the
15 right-of-way.

16 On the dates the site was visited, there was
17 gravel that had been dragged onto the public
18 right-of-way of Windhaven created by the vehicles
19 leaving and entering the site which is currently all
20 graveled.

21 Photo G, it's kind of hard to see on that.
22 That's the entrance area, but there was gravel out
23 into the pavement of Windhaven.

24 Despite what area is determined to be a
25 display area and paved or the Board's recommendation

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1 or action on this, we feel that there should be a
2 minimum of 50 feet paved into the lot to avoid the
3 gravel being dragged out onto the public right-of-way.

4 6. Continued Display of Equipment on grass
5 areas. We have several photos.

6 Photos H and I, which was taken on 10/21/2011
7 show the equipment forward toward Parrish on that.

8 Photo I shows equipment on the grassed area.

9 Photo J on 10/26/2011 shows the display on the
10 grassed area.

11 Photo K, 10/31/2011, shows the continued
12 display of the equipment on the grassed area.

13 So clearly equipment is being displayed within
14 the grassed area along Parrish Avenue. It's difficult
15 to tell from the photographs, but there is quite a
16 large right-of-way along Parrish Avenue at this
17 location. So there's a possibility that that could
18 encroach onto the public right-of-way as well.

19 The director had stated at the previous public
20 hearing, the display area should be paved and the
21 display on the grassed area does constitute a
22 violation of the zoning ordinance.

23 Then additionally we have a list of equipment
24 that was at the site when we visited to show what
25 types of equipment are being displayed and offered for

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1 lease. As I said previously, we saw only one piece of
2 equipment with metal tracks on it.

3 We would recommend that the variance to waive
4 the screening requirement for a portion of the outdoor
5 storage yard boundary should be approved along the
6 south east boundary as shown on the exhibit plan.

7 Findings in support of this approval include:

8 1. The granting of the variance will not
9 adversely affect the public health, safety or welfare
10 because the natural topography and the tree line
11 screen the outdoor storage area from public view along
12 Parrish Avenue.

13 2. The granting of this variance will not
14 alter the essential character of the general vicinity
15 because the storage is as effectively screened by the
16 natural elements in this location as other screened
17 storage in the vicinity or community.

18 3. The granting of the variance will not
19 cause a hazard or a nuisance to the public because in
20 this location the outdoor storage cannot be seen from
21 the public right-of-way.

22 4. The granting of this variance will not be
23 an unreasonable circumvention of the zoning ordinance
24 at this particular location because the change in
25 elevation provided by the natural topography and the

1 heavy tree line effectively provide screening
2 comparable to or exceeding the zoning ordinance
3 requirements and serve to meet the intent of the
4 zoning ordinance requirements.

5 We would recommend denial on the remaining
6 outdoor storage area screening and we would add that
7 we think if the outdoor storage lot extends to the
8 fence an access point on Windhaven, a paved minimum
9 area of 50 by 50 should be provided to prevent rock
10 from entering the public right-of-way.

11 Findings to support denial of the remaining
12 outdoor storage area screening would include:

13 1. Granting the variance would affect the
14 public health, safety and welfare because visible
15 outdoor storage is required to be screened for the
16 aesthetics of the community. The applicant has the
17 choice to pave an area that can be used for display of
18 equipment with a three foot high element and one tree
19 per 40 linear feet of boundary. A pavement section
20 comparable to the Public Improvement Specifications
21 for streets would accept the weight of heavier
22 equipment if the applicant chooses to display heavy
23 equipment outside of the screened storage area. In
24 observations of the lot, it appears a portion of this
25 area is currently paved to store a particular

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1 equipment item and smaller items of a weight that
2 would not damage pavement are also stored in the
3 graveled area near the front of the lot.

4 2. Granting the variance will alter the
5 essential character of the general vicinity because
6 other businesses in the immediate vicinity and the
7 same zone, notably Kight Lumber, have screened their
8 outdoor storage along public road frontage.

9 Additionally, equipment can be seen from
10 neighboring owners. Despite the attitude of the
11 current owners at this time regarding the storage,
12 ownership may change and the visibility of equipment
13 storage may at some point become objectionable.

14 3. Granting this variance will cause a hazard
15 or nuisance to the public because outdoor storage is
16 unsightly. The community has adopted a screening
17 requirement for outdoor storage because of this. The
18 storage would be visible from the Windhaven
19 right-of-way and Hill Valley Circle right-of-way and
20 adjoining properties.

21 4. Granting this variance will allow an
22 unreasonable circumvention of the requirements of the
23 zoning ordinance because similar outdoor storage lots
24 on like zoned properties in the community with similar
25 uses have been required to provide the 6 foot high

1 solid wall or fence.

2 If you have any questions, we'll be happy to
3 try to answer them.

4 CHAIRMAN: Board member have any questions or
5 comments at this time?

6 (NO RESPONSE)

7 CHAIRMAN: Applicant, you've looked over this.
8 Do you have any comments you'd like to add at this
9 time?

10 MR. HOLTREY: With all due respect I mean this
11 is quite a bit of information to digest and respond to
12 in a matter of minutes. There are a lot of points
13 here that I would like the opportunity to consider and
14 address with the board, but I would not be prepared to
15 do so this evening.

16 MR. NOFFSINGER: Mr. Chairman, with all due
17 respect, on October 17th the Staff in good faith
18 agreed to meet with the applicant to talk over and
19 compromise a way to work this out.

20 The applicant completely rejected our offer
21 and said to us, "It's all or nothing. We're prepared
22 to move forward to the board with a vote up or down,
23 whatever it might be. Then we're prepared to go to
24 circuit court and all the way to the supreme court if
25 we have to."

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1 It's the first time in my career that I've
2 dealt with a situation like that.

3 The Staff has offered to the applicant what we
4 feel is reasonable and justified in this case. The
5 site plan is very straightforward. It accommodates
6 the applicant's request for leniency and it also
7 respects the ordinance that this community has
8 adopted.

9 What the applicant has told the Staff, it's
10 our way or no way. For them to say, well, we can't
11 respond to that now, you know, I think they can. I
12 think Staff is certainly ready to respond. We were
13 coming in here last month with they need to do it all.
14 They're saying, we don't want to do anything.

15 We're trying to offer a compromise. I
16 understand it may not be what the applicant wants, but
17 we have other businesses in this community that have
18 met the full letter of the ordinance.

19 Sterett Crane was mentioned last month.
20 Sterett Crane is a new business out on Boothfield Road
21 in terms of some rental. They do rent equipment.
22 They totally screened their equipment rental from the
23 public view.

24 I remember back years ago ABC Rental at J.R.
25 Miller Boulevard and Parrish Avenue, which was

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1 mentioned last month. They came in. They didn't want
2 to have to screen their display area. It was a big
3 issue for them. It was a big issue for the community,
4 and ultimately they screened their entire display area
5 with the exception of a small area out at the corner
6 of J.R. Miller and Parrish Avenue.

7 Here they're asking for it all. I can
8 certainly understand their position, but I would ask
9 that the applicant be willing to compromise with the
10 ordinance this community has adopted and what others
11 in this community have done to help to enhance the
12 aesthetics of our community and move it forward in a
13 positive light.

14 I think Staff has been very accommodating. I
15 think you'll see from this proposal we agree that some
16 of the screening should be eliminated, but not all of
17 it because it is visible from the public right-of-way.
18 Any display areas out front that aren't screened
19 should be paved.

20 The applicant has not offered an inventory
21 list. We have done that on our own. It's what we
22 witnessed out there. We could only find one piece of
23 equipment that had steel tracks out of all the days we
24 visited there, and that was a bulldozer. One piece of
25 equipment. That's the reason they can't pave.

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1 This other equipment is not really that heavy.
2 I mean you're talking about some air compressor.
3 You're talking about some lifts. They're not that
4 heavy. We maneuver these on regular parking lots in
5 this community all the time.

6 I submit to you that what the Staff has
7 proposed is very reasonable. And what the applicant
8 is asking you to do is to totally circumvent the
9 zoning ordinance because they feel that it's a
10 hardship for them to have to pay for the cost of
11 screening, pay for the cost of asphaltting the property
12 or putting it in concrete, and because they're
13 distributor has said, you can't screen.

14 Now, we have no signed contract from their
15 distributor. We have no dated contract from their
16 distributor. We have their word, and I will take
17 their word. But I submit to you that just because
18 they entered into a separate business agreement
19 outside of this board and outside of what the zoning
20 regulations called for is not an issue that this board
21 should consider in terms of the variance request.

22 MR. HOLTREY: May I address those comments?

23 CHAIRMAN: Yes, sir, you may.

24 MR. HOLTREY: Real quick. If you'll look at
25 what we've been handed tonight, if you'll look at

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1 this. Just start on Page 1. The photos were taken on
2 10/21. We met on 10/17.

3 If you look at the chart that was put together
4 about the numbers that were taken of the equipment on
5 the lot, those were taken on 10/31, 11/1, 11/2.

6 So even if we wanted to discuss, even if they
7 were in a position to be prepared to discuss, they
8 didn't have any of this to share with us as an option.

9 At that meeting we went in and we said, we
10 have done our best to meet and discuss among ourselves
11 our options.

12 This is a package of information I would dare
13 to say the majority of which has been put together
14 since the meeting with the Staff. So if this is what
15 the Staff is recommending the board to rule on, then
16 we should have an opportunity to digest this and to
17 come back with comments on this all of which has been
18 prepared since we met with the Staff.

19 He's correct. We went into the Staff meeting
20 and we said, based on our meetings, which we were
21 instructed to do. We were instructed to go meet with
22 our own selves. We did that on three occasions before
23 we met. We said based -- of course, we're going to
24 look at this through our day-to-day operation, and we
25 did. We came back and we said, based on our

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1 understanding of what we're doing out there on a
2 day-to-day basis we don't see a viable solution.

3 If this is what the Staff is recommending to
4 be a viable solution, it would only seem fair that
5 this board say, especially since it was developed
6 after 10/17, that we would have the opportunity to
7 take this package of information along with perhaps a
8 copy of that, which we don't have in this packet of
9 information, and we sit down with the owners and we
10 say, okay, this is what the Staff is saying they
11 believe to be reasonable.

12 Now, I have to go back and report to the
13 board. If this is reasonable, then we say so. If
14 this is not reasonable and there's reasons why they
15 are specific, then I need to be able to tell the board
16 to do so. Until then, this board is not prepared to
17 vote on this. That would be the position of the
18 applicant.

19 CHAIRMAN: Did you, sir, did you by chance be
20 interested to call back and ask was there any other
21 changes to be made or could be made from the one time
22 you were here?

23 MR. HOLTREY: Excuse me?

24 CHAIRMAN: Did you call the office and ask
25 Staff, by chance was there anything that could be

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1 changed or work together?

2 MR. HOLTREY: Our understanding from speaking
3 with Mr. Noffsinger was, okay, if that's it, we go to
4 the board. I said, okay. I had no idea that the
5 Staff was going to continue to do work on this. My
6 understanding was, okay, I'll come back to the board
7 and I'll report what happened here in this few minutes
8 and we're okay. Please do and that's how it end. It
9 was very short.

10 CHAIRMAN: Thank you.

11 MS. STONE: I think it's obvious that the
12 Staff would continue working to try to achieve some
13 kind of result so that the board could make a decision
14 on this item.

15 I don't think there's a lot to digest here.
16 We're not saying you have to pave X area for display.
17 We're saying that we agree that the outdoor storage
18 screening should be eliminated on the portion of the
19 lot that is screened by trees and elevation change.
20 The rest of the outdoor storage area that's going to
21 be remaining in gravel should be screened. If you
22 want to display items, then you pave an area for
23 display. That's in essence what it is. We're not
24 saying that this exhibit has to be executed exactly
25 like this. You want a paved area, you have a paved

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1 area. You screen the rest of the outdoor storage
2 area. The back portion of the outdoor storage lot
3 we're saying is viable for a variance.

4 CHAIRMAN: Any comments from the board?

5 MR. DYSINGER: I have a question that's
6 probably more of a procedural or a legal issue.

7 On the one hand, I hesitate to grant a portion
8 of the variance based on recommendations from the
9 Staff valid as they appear to be, and I have no doubt
10 are, when the applicant has not had a chance to review
11 it, discuss it, so on and so forth.

12 If we deny this application outright, that
13 does not prevent the applicant from coming back with
14 these recommendations and us granting it at a future
15 date, does it?

16 CHAIRMAN: Would the attorney answer that,
17 please?

18 MR. SILVERT: They do come back. They have to
19 file another variance and another fee. They would be
20 in violation at that point. Part of the addressing of
21 this variance is to address that violation.

22 I think the whole Staff and this Board is on
23 notice that it's the opinion of the zoning
24 administrator that this property is not in compliance
25 with the zoning ordinance. That issue would be true.

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1 FATHER HOSTETTER: Could I ask a follow-up
2 questions on that?

3 CHAIRMAN: Yes, sir.

4 FATHER HOSTETTER: Since one of the
5 recommendations is to grant a partial variance, that
6 partial variance hasn't actually been requested. Can
7 we act on something that's not been requested?

8 MS. STONE: It has been requested because
9 they've requested a variance along the whole outdoor
10 screening boundary. So this is less than what they've
11 asked for, but it has been requested.

12 CHAIRMAN: The Board has authority --

13 MR. HOSTETTER: To modify.

14 CHAIRMAN: Yes, sir.

15 MR. NOFFSINGER: Mr. Chairman, Staff's
16 original recommendation we still stand behind. It is
17 for denial. We think it should be denial.

18 However, what we're trying to do is to
19 compromise and provide a situation that, you know, we
20 feel protects the community and the community's
21 interest as well as alleviate some of the requirements
22 on the applicant.

23 Even though it's a portion, you could be
24 granting a portion of the variance, as Ms. Stone said,
25 they've asked for it all. They don't want to do any

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1 of it. What this does is grants them some relief, but
2 not total relief.

3 CHAIRMAN: Would you like to have about a 15
4 minute recess, sit down and look at it, come back and
5 then the board can look at their stuff and we can have
6 a vote then?

7 MR. HOLTREY: The individuals that I would
8 want to sit down with and go over the plan, there's --
9 I'll say this: There is information that's been
10 brought to my attention in this packet of information
11 that I think is helpful.

12 However, I think we know the representative of
13 the client that I have here tonight does not have
14 decision making or binding authority to tell me. The
15 decision that this business is having to make is, do
16 we look at this and look at the viability of what's
17 been proposed and recommended by the Staff and say,
18 you know what, the cost of doing it that way versus
19 the cost of continuing with challenging and getting
20 the whole, which is the best business decision. The
21 two that employ me to continue that process, if the
22 board granted the denial, the total denial, versus
23 working a little longer to see if this is viable, I
24 would not be able to make that decision in 15 minutes,
25 sir, just to be quite candid.

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1 MR. DYSINGER: Mr. Chairman, I'm of the
2 opinion that the applicant's counsel makes a valid
3 point about the amount of information he was given.
4 However, I will say had they met with Staff, as it was
5 our, I think the board's intention last time, I think
6 we would have reached this point sooner.

7 That said I am sensitive to the idea that they
8 should review this now that they've seen the kind of
9 compromise that might be achievable and balance that
10 against further actions.

11 With that I will make a motion to delay until
12 the next regularly scheduled meeting.

13 CHAIRMAN: There has been a motion. Is there
14 a second?

15 MS. MASON: I'll second it.

16 CHAIRMAN: A motion has been made and second.
17 Any other comments or questions from Staff or Board?

18 MR. NOFFSINGER: Yes, I do have a comment.

19 I would like to say that Staff worked hard on
20 this. The applicant's folks that he needs to talk to
21 weren't here at the first meeting in October. They're
22 not at this meeting. They did not attend the meeting
23 with the Staff. It's been very important to us and
24 we've worked hard on it.

25 What I don't want to do is get into a

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1 situation where we're asked between now and the next
2 meeting or at the next meeting to recommend the
3 compromise off the compromise. Because I think Staff
4 has worked hard on it and I think they've been very
5 fair.

6 Staff would like to have a vote on this
7 tonight, but I certainly understand and respect your
8 position. Will continue to work diligently and hard.
9 I would certainly hope we're not in a position what
10 we're compromising on the compromise because Staff
11 would not do that.

12 CHAIRMAN: We have a motion and a second.

13 Before we vote I want to congratulate and
14 thank the Staff for what they've tried to work up with
15 something that was feasible.

16 I hope the applicant would look at it and take
17 it in a favorable way. If some questions come up
18 between now and the next board meeting, make an effort
19 to meet with the Staff and try to work things out,
20 compromise and look at it. If you don't understand
21 everything, they'll be glad to help you out.

22 With that we have a motion and a second.

23 MR. HOLTREY: Mr. Chairman, can I ask a
24 question real quick?

25 CHAIRMAN: Sure.

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1 MR. HOLTREY: Is there a primary person that
2 if there's a question as to interpretation of the
3 proposal that we should direct that to, that's been
4 the primary person working this up, so that if it's
5 just a matter of explanation, who we should direct
6 that to to expedite any communication with the Staff?

7 MR. NOFFSINGER: Becky Stone.

8 MR. HOLTREY: Okay.

9 CHAIRMAN: Any other questions or comments?

10 (NO RESPONSE)

11 CHAIRMAN: With that all in favor of the vote
12 to postpone it until the next meeting raise your right
13 hand.

14 (ALL BOARD MEMBERS PRESENT - WITH THE
15 DISQUALIFICATION OF WARD PEDLEY- RESPONDED AYE.)

16 CHAIRMAN: Motion carries.

17 Next motion is adjourn.

18 MR. DYSINGER: Move to adjourn.

19 MS. MASON: Second.

20 CHAIRMAN: All in favor raise your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: We are adjourned.

23 -----

24

25

1 STATE OF KENTUCKY)

)SS: REPORTER'S CERTIFICATE

2 COUNTY OF DAVIESS)

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and
4 for the State of Kentucky at Large, do hereby certify
5 that the foregoing Owensboro Metropolitan Board of
6 Adjustment meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 47 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 15th day of November, 2011.

18

19

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

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23 COMMISSION EXPIRES: DECEMBER 16, 2014

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

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