

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT
2 AUGUST 2, 2011

3 The Owensboro Metropolitan Board of Adjustment
4 met in regular session at 5:30 p.m. on Thursday,
5 August 2, 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 Gary Noffsinger, Director
11 Madison Silvert, Attorney
12 Fred Reeves
13 Marty Warren

14 * * * * *

15 CHAIRMAN: Let me call the Owensboro
16 Metropolitan Board of Adjustment to order. Apologize
17 for us being late. One of our members had some
18 problems. Couldn't get here as early as we had hoped.
19 Now we're ready to go and proceed.

20 With that I want to welcome you at this time.
21 Good to see you. Some of you last time said you
22 couldn't hear. If you can't hear, motion or tell us
23 something so you can hear everything we have to say.

24 We start our evening each evening with a
25 prayer and pledge of allegiance. We invite you all to
join with us. Fred will have our prayer this evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

1 CHAIRMAN: Again, I want to welcome you to our
 2 meeting this evening. If you have any comments that
 3 you wish to speak on, please come to one of the
 4 podiums and state your name so we'll have record of
 5 it. We ask you please after whatever you've got
 6 that's worthwhile or information that is beneficial,
 7 we want to hear that, but if we start listening over
 8 and over to the same thing, we'll call you out of
 9 order. We appreciate if you cooperate with us.

10 With that the first item is to consider the
 11 minutes of the July 5th meeting. They're on record in
 12 the office. We have no problems with them. Entertain
 13 a motion to dispose of the item.

14 MR. PEDLEY: Motion for approval.

15 MR. WARREN: Second.

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

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries.

20 Next item, please.

21 -----

22 CONDITIONAL USE PERMIT

23 ITEM 2

24 1512 Frederica Street, zoned R-4DT

Consider a request for a Conditional Use Permit in
 25 order to operate an activity day center for persons
 with intellectual disabilities.

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1 Reference: Zoning Ordinance, Article 8, Section 8.2B3
Applicant: Puzzle Pieces, Inc.; Methodist Homes of KY

2

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

5 MS. EVANS: Melissa Evans.

6 (MELISSA EVANS SWORN BY ATTORNEY.)

7 MS. EVANS: First of all, I would like to
8 remind everyone that approval of items here tonight
9 does not allow the applicant or owner to construct,
10 alter, modify any building on the subject property.
11 It is still necessary for the owner to obtain all
12 necessary building occupancies and inspections and
13 permits from the building office before any work has
14 started.

15 ZONING HISTORY

16 The subject property is currently zoned R-4DT.
17 OMPC records indicate there have been no Zoning Map
18 Amendments for the subject property.

19 There was a Conditional Use Permit approved
20 for the subject property in 1994 for an indoor
21 recreational facility.

22 The applicant is proposing to operate an
23 activity day center for not more than 30 persons with
24 intellectual disabilities ages 8 and up, Monday
25 through Friday 7:00 a.m. to 5:30 p.m., and one

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1 Saturday a month from 10:00 a.m. to 3:00 p.m.

2 LAND USES IN SURROUNDING AREA

3 The properties to the north are zoned R-4DT
4 Inner City Residential and P-1 Professional Service.
5 The properties to the south and east are zoned P-1
6 Professional Service. The properties to the west are
7 zoned R-4DT Inner City Residential.

8 ZONING ORDINANCE REQUIREMENTS

9 1. Parking - 2 plus 1 for every 10 persons
10 under care. The applicant is providing 14 parking
11 spaces, as shown on the site plan submitted.

12 2. Landscaping - No vehicular use area
13 screening is required because the parking is located
14 behind the building.

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

17 CHAIRMAN: Thank you.

18 Have we had any comments in the office on that
19 either for or against?

20 MR. NOFFSINGER: No, sir.

21 CHAIRMAN: Is the applicant here this evening
22 and do you have any comments you would like to make?

23 MS. HEMPEL: Yes.

24 CHAIRMAN: Come forward and state your name,
25 please.

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1 MS. HEMPEL: My name is Kathy Hempel and I'm
2 the president and business manager of Puzzle Pieces,
3 Inc.

4 (KATHY HEMPEL SWORN BY ATTORNEY.)

5 MS. HEMPEL: We are set to open September 4th
6 with your approval. We are very excited. We have
7 families that are depending on us to open and we
8 appreciate your consideration.

9 CHAIRMAN: Does any board member have any
10 questions of the applicant at this time?

11 (NO RESPONSE)

12 CHAIRMAN: Staff have any comments or
13 questions?

14 MR. NOFFSINGER: No, sir.

15 CHAIRMAN: Anyone in the audience have any
16 comments for or against?

17 (NO RESPONSE)

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

20 MR. WARREN: Motion to grant the Conditional
21 Use Permit based on the findings that there's been no
22 opposition, no issues filed in the office, and that
23 there was a previously permitted conditional use on
24 the facility.

25 CHAIRMAN: Is there a second?

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1 MR. REEVES: Second.

2 CHAIRMAN: A motion has been made and a

3 second. Is there any other comments or questions from

4 the board?

5 (NO RESPONSE)

6 CHAIRMAN: Staff have anything else?

7 MR. NOFFSINGER: No, sir.

8 CHAIRMAN: Do you have anything else you would

9 like to add?

10 MS. HEMPEL: No, sir.

11 CHAIRMAN: Hearing none all in favor raise

12 your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries.

15 Next item.

16 MS. HEMPEL: Thank you.

17 CHAIRMAN: Before we go to the next item, I'm

18 going to change the agenda and 3, 4 and 4A we'll put

19 last and we'll go on down to Number 5 and 6 and get

20 those out of the way, and then get the other two, the

21 ones that look like they'll be long this evening.

22 -----

23 VARIANCE

24 ITEM 5

25 2400 Cravens Avenue, zoned R-4DT

Consider a request for a Variance in order to reduce

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1 the side street yard building setback line from 25
feet to 10 feet.

2 Reference: Zoning Ordinance, Article 8,
Section 8.5.11(c)

3 Applicant: City of Owensboro Community Development;
City of Owensboro

4

5 MS. EVANS: The subject property is part of
6 the Mechanicsville redevelopment project by the City
7 of Owensboro. The neighborhood is an area developed
8 before the establishment of the Zoning Ordinance where
9 it appears other principal structures also encroach
10 into the building setback lines. The applicant has
11 provided examples of 30 existing properties that
12 encroach into the building setback lines in the
13 Mechanicsville neighborhood.

14 Granting this Variance will not alter the
15 essential character of the general vicinity because
16 there appear to be other encroachments into the
17 building setback lines within the Mechanicsville
18 neighborhood. It will not adversely affect the public
19 health, safety or welfare because this is a new home
20 as part of a new subdivision that will create
21 affordable housing for the community and will enhance
22 the health, safety and welfare of the public in this
23 area.

24 Staff recommends approval with one condition.

25 1. Obtain necessary building, electrical and

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1 mechanical permits, inspections and certificates of
2 occupancy and compliance.

3 We would like to enter the Staff Report into
4 the record as Exhibit B.

5 CHAIRMAN: Thank you.

6 Has there been any comments in the office?

7 MR. NOFFSINGER: No, sir.

8 CHAIRMAN: Is the applicant here?

9 APPLICANT REP: Yes.

10 CHAIRMAN: Anyone wanting to speak in
11 opposition of this item?

12 (NO RESPONSE)

13 CHAIRMAN: Any board member have any questions
14 of the applicant at this time?

15 (NO RESPONSE)

16 CHAIRMAN: Staff have anything else?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: Do you have anything else you would
19 like to add at this time?

20 APPLICANT REP: No, Mr. Chairman.

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

23 MR. PEDLEY: Motion for approval based on
24 findings it will not adversely affect the public
25 health, safety or welfare because the applicant will

1 be constructing a new home on a vacant lot enhancing
2 the area. It will not alter the essential character
3 of the general vicinity because the area was developed
4 before the establishment of the Zoning Ordinance and
5 there appears to be other encroachments into the
6 required building setback lines. It will not cause a
7 hazard or a nuisance to the public because this will
8 be a new home as part of the City of Owensboro
9 Community Development redevelopment project and will
10 create affordable housing for the community enhancing
11 the area. It will not allow an unreasonable
12 circumvention of the requirements of the zoning
13 regulations because there appear to be other
14 encroachments into the building setback lines in the
15 area.

16 CHAIRMAN: Is there a second on the motion?

17 MR. REEVES: Second.

18 CHAIRMAN: A motion has been made and a
19 second. Is there any other comments or questions from
20 the board?

21 (NO RESPONSE)

22 CHAIRMAN: Staff have anything else to add?

23 MR. NOFFSINGER: No, sir.

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

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries.

3 Next item, please.

4 ITEM 6

5 1328 West 3rd Street, zoned R-4DT

6 Consider a request for a Variance in order to increase
7 the height of a fence in the side street yard from 4
8 feet tall to 6 feet tall.

9 Reference: Zoning Ordinance, Article 3,
10 Section 3-7(g)(3)

11 Applicant: St. Joseph's Peace Mission for Children

12 MS. EVANS: The subject property currently
13 operating under a Conditional Use Permit to operate a
14 shelter for up to 10 children ages 0 to 18 years which
15 was approved in 1997.

16 In 2010 a Conditional Use Permit was approved
17 to continue to operate the shelter and to construct a
18 detached residential garage on the property.

19 The applicant is proposing to construct a 6
20 foot high vinyl privacy fence to enclose the yard of
21 the property. The variance pertains to the side yard
22 along Frayser Avenue.

23 The City Engineer's office has been asked to
24 review the applicant's site plan to ensure conformance
25 with the site distance triangle requirements. Since
the 6 foot tall fence will be at the corner of Frayser
Avenue and a public alley providing the proper
distance and angle for the site triangle will be

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1 necessary to protect the safety of vehicle traffic
2 traveling in the area. The applicant is in agreement
3 to conform with the requirements of the site triangle.

4 This neighborhood is in an area developed
5 before the establishment of the Zoning Ordinance where
6 it appears other fences along Frayser Avenue are 6
7 feet high or taller.

8 Granting this variance will not adversely
9 affect the public health, safety or welfare because
10 the fence will not be located in the site triangle;
11 making it safer for vehicle traffic in the area. It
12 will not be a hazard or nuisance to the public because
13 the taller fence will provide screening for the
14 neighboring properties from the outdoor activities on
15 the subject property while maintaining privacy of the
16 residents as required by the facility. Granting this
17 variance will not alter the essential character of the
18 general vicinity because other fences along Frayser
19 Avenue also appear to be at least 6 feet tall.

20 Planning Staff recommends approval with the
21 following condition:

22 1. Abide by the site distance triangle
23 requirements as marked by the City Engineer's office.

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

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1 CHAIRMAN: Thank you.
2 We had any comments in the office?
3 MR. NOFFSINGER: No, sir.
4 CHAIRMAN: Is there anyone wishing to speak in
5 opposition to this item?
6 (NO RESPONSE)
7 CHAIRMAN: Does the applicant have anything
8 else you would like to add at this time?
9 APPLICANT REP: No, sir.
10 CHAIRMAN: Hearing none the board members have
11 any other comments?
12 (NO RESPONSE)
13 CHAIRMAN: Hearing none I'll entertain a
14 motion to dispose of the item, please.
15 MR. WARREN: Motion to approve the Variance
16 based on the findings that it will not affect the
17 public health, safety or welfare because the fence is
18 not located in the site triangle; it will not alter
19 the essential character of the general vicinity
20 because there are other 6 foot high fences in the area
21 along Frayser Avenue; it will not cause a hazard or a
22 nuisance to the public because it will ensure the
23 privacy of the residents as well as screen the
24 activity on the lot from adjoining properties; and it
25 will not allow an unreasonable circumvention of the

1 requirement of the zoning regulations because there
2 appears to be other encroachments in the area. I will
3 also add the condition that they must abide by the
4 site distance triangle requirements that's marked by
5 the City Engineer's office.

6 MR. PEDLEY: Second.

7 CHAIRMAN: A motion has been made and a
8 second. Is there any other comments or questions from
9 the board?

10 (NO RESPONSE)

11 CHAIRMAN: Anything else from the Staff?

12 MR. NOFFSINGER: No, sir.

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

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries.

17 Next item, please. We'll go back to Number 3.

18 ITEM 3

19 3401 Medley Road, zoned A-U (Postponed from the July
5, 2012 meeting)

20 Consider a request for a Conditional Use Permit in
order to operate an outdoor recreational facility for
21 off highway vehicle riding and activities

Reference: Zoning Ordinance, Article 8,
22 Section 8.2K7/42

Applicant: Robert J. Wimsatt

23

24 ZONING HISTORY

25 The subject property is currently zoned A-U

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1 Urban Agriculture. OMPC records indicate there have
2 been no Zoning Map Amendments for the subject
3 property.

4 The applicant is proposing to establish an
5 off-highway vehicle recreational facility with riding
6 opportunities on the site. The applicant is also
7 proposing an area on the site plan for future
8 construction of support activities including sales,
9 service, rentals and concessions; however, the
10 applicant is unsure of the size, configuration or
11 number of possible buildings that may be needed.
12 Therefore, the applicant will need to apply for a
13 Conditional Use Permit at a later date to be reviewed
14 by this board once future plans have been solidified.

15 A copy of the site plan has been provided to
16 the Kentucky Transportation Cabinet for review of the
17 access. The KYTC will require an encroachment permit
18 for the access point and will require the access point
19 to be 36 feet wide with a 20 foot radius to support
20 vehicles pulling trailers entering the property.

21 It should be noted that vehicle racetracks are
22 prohibited in A-U zones per Article 8, Section
23 8.2F3/23 of the Zoning Ordinance. Therefore, related
24 activities mentioned in the application may not
25 include a racetrack for off-highway vehicles.

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1 LAND USES IN SURROUNDING AREA

2 The properties to the north and west are zoned
3 A-U Urban Agriculture. The properties to the south
4 and east are zoned I-1 Light Industrial and I-2 Heavy
5 Industrial.

6 ZONING ORDINANCE REQUIREMENTS

7 1. Parking - 1 space for each employee on the
8 maximum shift, plus 1 space for every 3 participants,
9 plus 1 space for every 3 spectator seats.

10 2. Landscaping - Vehicular Use Area screening
11 consisting of a 3 foot high continuous element with 1
12 tree every 40 feet of the vehicular use area between
13 the right-of-way and the vehicular use area.

14 SPECIAL CONDITIONS

15 1. The number of participants shall be
16 limited to the number specified on the site plan
17 submitted.

18 2. Construction of additional buildings or
19 related facilities will require additional Conditional
20 Use Permits.

21 3. A review of the site and use shall be
22 performed every six months to ensure compliance.

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

25 CHAIRMAN: Thank you.

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1 Does the applicant have any comments at this
2 time?

3 MR. WIMSATT: Yes.

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

6 MR. WIMSATT: Robert Wimsatt.

7 (ROBERT WIMSATT SWORN BY ATTORNEY.)

8 MR. WIMSATT: I know everybody would like to
9 see. I don't have anything to hide, but I've got to
10 try to figure out where the board members can see too
11 here.

12 Mr. Chairman, hopefully yourself and the board
13 members have a complete copy of the application. What
14 you should have in your application is the site plan.
15 You should have an aerial map showing about where the
16 riding trails would be or the main trail, and some
17 additional information that the Staff asked us to
18 supply on the map. What I also provided the Staff
19 with was a list of similar rules and regulations that
20 I intend to enact at this facility. These rules and
21 regulations were adopted by the state and federal
22 government for Turkey Bay at Land Between the Lakes.
23 I think they serve this community real well.

24 Once I submitted the application, the paper
25 called a couple of times and asked to get little

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1 additional information on what I was proposing. I
2 told the paper that I was modeling this proposed
3 facility after what the City had done at Ben Hawes
4 Park and after what the state and federal government
5 had done at Turkey Bay at Land Between the Lakes.

6 The Staff came back and asked that we show
7 parking, which we did. I asked the Staff, I said, I
8 don't know how many people are going to show up. So I
9 went out to Ben Hawes Park and looked at how many
10 parking spaces they had. They had about 20 parking
11 space. I put 20 parking space on mine, about 10 for
12 single, and about 10 for double in case somebody was
13 pulling a trailer.

14 Then the Staff sort of down the line asked,
15 well, what about these other activities? I said, once
16 again, I don't have a crystal ball. I can't tell you
17 all the things that might come up in the future. I
18 understood that the Staff needed a little additional
19 information. I understand that this board needed
20 additional information. So once again I said, the
21 things that I could foresee and the things that I
22 would ask for at this time are things like sale
23 service, rentals. The Staff asked about possibility
24 of camping. I answered the Staff that Turkey Bay does
25 offer primitive camping for people who want to stay

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1 the night. I felt like that that would be an
2 acceptable use as well. Activity for an OHV park just
3 as the state and federal government does.

4 So I tried to answer as best I could to not
5 the only Staff but also the paper. The questions that
6 they had.

7 Again, hopefully everybody has the Turkey Bay
8 proposed regulations.

9 One of the things that I really like about
10 Turkey Bay, and you see it on the literature that I
11 gave you. They've got a basic principle they call
12 Rides 4 Keeps.

13 Keep It Safe

- 14 * Wear proper safety gear.
- 15 * Maintain a safe speed.
- 16 * Stay alert. Expect the unexpected.
- 17 * No passengers on single-rider vehicles.

18 Keep It Legal

- 19 * Stay on assigned trails. Keep a
20 current map.
- 21 * Know required equipment for your
22 vehicle.
- 23 * Verify what trails are open and closed.
- 24 * Don't mix drug and/or alcohol with
25 riding.

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1 Keep On Trails
2 * Travel only on designated routes.
3 * Maps are available for your use.
4 * Resist the urge - mud bogging and the
5 creation of new trails is prohibited.
6 * Obey signs and temporary postings.
7 Keep The Privilege
8 * Respect the environment - Tread
9 lightly!
10 Most of us have seen that logo.
11 * Be courteous to all other trail users.
12 * Join a club and support Turkey Bay.
13 Of course, in this case it would be Bon Harbor
14 Hills OHV.
15 * Encourage others to "Ride 4 Keeps."
16 I thought those were pretty basic fundamentals
17 that I could live with and hopefully the community as
18 a whole could support.
19 I told the paper, I said, I want to provide a
20 riding opportunity for individuals of all ages and
21 skill levels. Families in this community need
22 someplace where they could do something like this.
23 This could be a facility where we could do beginner
24 classes and safety classes. Have youth trails, just
25 like they have at Turkey Bay, but you also could have

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1 some intermediate or some more advance stuff for those
2 who choose to do that.

3 The way Turkey Bay does that is they put a lot
4 of restrictions on their unloading and loading area.
5 They put a lot of restrictions on their youth area.
6 Speed restrictions and things of that nature. I told
7 the paper, my number one goal is that this be a family
8 focus riding opportunity for all.

9 On July 9th, I just happen to look on the
10 computer that day I saw that the Audubon Bon Harbor
11 Area Neighborhood Alliance was having their meeting.
12 I've been to some of those meetings over the years.
13 They've called and ask me to come answer questions,
14 tells them about different projects. In this case
15 nobody called me.

16 I went myself to the meeting just to see if
17 anybody would show up and ask any questions about the
18 OHV Park that come out in the paper.

19 There was about a dozen people there. They
20 were representing different subdivisions. Audubon
21 Acres, Garden Green, Doe Ridge, Turtle Creek and
22 others. Several people there asked questions and I
23 answered every one of their questions.

24 When I left that meeting, everyone except for
25 one person said they were okay with what I was

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1 proposing to do. The chairman of the Neighborhood
2 Alliance said he didn't have any problem with it at
3 all. He supported it. When I spoke to him the other
4 night to see if there might be a possibility that he
5 might come tonight, he said he wouldn't be able to.
6 He said, Bob, I don't understand it. Everything on
7 the north side of the road, everything is buffers out
8 there. Don't understand it. He's not here tonight to
9 speak for himself.

10 There was a representative from the City of
11 Owensboro. There's other people that will attest to
12 what I'm saying tonight is accurate.

13 On July 15th the Messenger-Inquirer Editorial
14 Board came out with an article in the paper that I
15 didn't know was going to come out. They say that they
16 support the local OHV Park. That it would benefit the
17 area.

18 About a week or so ago one of my kids told me,
19 said, Dad, you ought to look at maybe doing a Facebook
20 page. My wife and my kids have Facebook. Never had
21 done a Facebook page. Don't really care much for it,
22 but I understand it's an opportunity to kind of get
23 the word out. So a buddy of mine help me do a
24 Facebook page. In a little over a week, I've got over
25 200 people that said they like this idea and think

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1 it's a good idea for the community. There was one
2 negative comment. It turned out to be the same person
3 who was negative at the Neighborhood Alliance.

4 My son gave you a copy of the front page. I
5 can give you all the comments. Again, you can check
6 it yourself. I'm not going to tell you anything
7 that's not true. I've already been sworn in. I'm not
8 going to tell you anything here tonight that I can't
9 support.

10 Mr. Chairman, there's a lot of support for
11 this project and this idea here in this community.
12 There's a lot of need for it in the community. I do
13 intend to do it right. I understand that there's
14 probably nothing I can say here tonight that might
15 satisfy some people. I understand that. A good
16 friend of mine once told me, said, even Jesus Christ
17 can't please everybody. I'll just do the best I can
18 here tonight. We'll allow the people in the community
19 to get up and express their concern with your
20 blessing, Mr. Chairman. I'll try to address their
21 concerns as best I can. I just hope I get the
22 judgment that I feel like it deserves.

23 CHAIRMAN: Does anyone else have any support
24 comments at this time that would like to come forward.

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

2 MR. OSBORNE: My name is Joel Osborne.

3 (JOEL OSBORNE SWORN BY ATTORNEY.)

4 MR. OSBORNE: I just want to point out that it
5 wasn't very long ago in this community we had three
6 major dealerships that sold off-highway vehicles. The
7 last one I think was the Boatman and they closed last
8 fall.

9 I think what he's proposing would probably
10 bring back some of those jobs and some of that
11 business. I also think that if this is a Conditional
12 Use Permit it's going to be reviewed every six months,
13 you know, what would it hurt to give it a try. If
14 everyone follows the rules and the laws, I think it
15 would be good for everybody. That's all that I have.

16 CHAIRMAN: Any other comments for?

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

19 MR. KING: Justin King.

20 (JUSTIN KING SWORN BY ATTORNEY.)

21 MR. KING: As far as the off-road park being
22 proposed, I'm here representing King Cycle, a local
23 motorcycle shop. I had one of these petitions in the
24 shop recently. I've had over 30 people in the last
25 week sign it. Name, phone number and everything that

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1 wants to support this. Most of the people were
2 actually out of town. Grandview area. Even some from
3 Evansville. The closest place to go ride, like he
4 said, is Turkey Bay, which is two hours away. Having
5 this park here will help jobs as far as motorcycle
6 shop and everything. There's nothing but two or three
7 locals ones around now.

8 Some of the concerns, as far as the noise
9 issue, everything now from the EPA exhaust-wise is
10 basically regulated. They cannot manufacture anything
11 that's under or around 94, 96 decibels. So everything
12 would be roughly around that sound level. Most of
13 your ATV's and stuff are even quieter than that. Just
14 one issue I wanted to address that. Thank you.

15 CHAIRMAN: Thank you.

16 Any other comments supporting at this time?

17 (NO RESPONSE)

18 CHAIRMAN: Before we go to the opposition, any
19 board members have any questions of the applicant?

20 MR. REEVES: I do, Mr. Chairman.

21 I would like to ask you a couple of questions,
22 please.

23 One is: How do you intend to ensure, other
24 than your rules here, which I understand those, that
25 your participants will stay on your property and not

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1 wonder off onto other properties? Do you have any
2 fencing? How are going to notify folks when they are
3 leaving your property?

4 MR. WIMSATT: Mr. Reeves, I have a current
5 survey of my entire property. Obviously I had to have
6 a current survey to be able to submit it to Planning
7 and Zoning.

8 Along with just the boundary survey, the pins
9 and things of that nature, I have had all of the
10 boundaries marked and staked. I mean I've got long
11 distances on some of these boundaries. We spent
12 several days walking through the woods setting stakes,
13 you know, within site distance. Probably about 50
14 foot apart. I can't tell you the exact number. We
15 walked as we went. Said, okay, we can see this one.
16 Now let's see the next one. That was a long distance,
17 a lot of walking I can assure you, but we did that.

18 Mr. Reeves, I do have several things that I
19 think will address that. Believe me, I want to answer
20 your question fully. I think maybe it might be better
21 just to see what the other concerns are and I'll try
22 to address that after we hear. I think I know what
23 most of those concerns are going to be. Is that okay
24 with you?

25 MR. REEVES: Sure. Absolutely.

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1 MR. WIMSATT: Thanks.

2 CHAIRMAN: Any other questions of the
3 applicant at this time?

4 (NO RESPONSE)

5 CHAIRMAN: Whoever is going to speak in
6 opposition come forward.

7 State your name, ma'am.

8 MS. HELMS: Vickie Helms.

9 (VICKIE HELMS SWORN BY ATTORNEY.)

10 MS. HELMS: First of all, out of respect for
11 the board, there is great opposition to this and we
12 have organized it somewhat to try to keep from
13 repeating things, from that happening.

14 A couple of things that I didn't think I was
15 going to say, but I want to address too what Mr.
16 Wimsatt said.

17 First of all, when he talks about Turkey Bay,
18 it's 2500 acres and totally surrounded by water. This
19 is 100 acres surrounded by private property. So I
20 don't think it's a very good comparison to talk about
21 those.

22 The other thing is he's not familiar with
23 Facebook so I'll tell him a little bit about that.

24 There's no place to unlike on Facebook. So
25 someone pushes "Like" they may say they like what

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1 someone says or they like the person who said it. It
2 doesn't mean that they are in full support of whatever
3 was said. There's no place to click and say, I don't
4 like what you're saying. So that's something to
5 consider when he was bringing that up.

6 The other issue he spoke about parking at Ben
7 Hawes State Park. I don't know where he got the 20
8 parking spots. There's five parking lots that Ben
9 Hawes State Park has. There are many more than 20
10 parking spaces. I could count them easily if I would
11 have known I needed that information.

12 Mr. Wimsatt's proposal I think everyone in the
13 community is for development and for things that are
14 fun for people. The people that are here that I'm
15 introducing do not feel like that this use integrates
16 well into the neighborhood. So when he talks about
17 how he's going to do the park, that's not really our
18 issue. That would be a business decision. What we're
19 interested in is that we have interest in what's going
20 on around what he's going to do.

21 Those things include noise, economic impact,
22 dust pollution, safety issues, wildlife and hunting
23 issues, trespassing on private property as well as the
24 city park, and the impact on property values.

25 Now, this area out at Ben Hawes is very

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1 diverse as the person from the Zoning Commission
2 talked about. This particular project does not
3 integrate into this area. You'll hear more about
4 that.

5 The part that I want to talk about is I have
6 lived in the Ben Hawes area for almost 25 years. I'm
7 at the western most point of Medley Road. The road
8 dead ends at my house. My property extends into the
9 wooded area there and borders what is now the city
10 park where the bike trails are. They have worked
11 really hard on that area. Medley Road at one time
12 went all the way through and met on Highway 60. So
13 when the road ends, where the pavement ends at my
14 driveway, it looks very inviting. It looks like a
15 road. It's dirt and the city does use it is as a
16 maintenance road.

17 The 25 years I've been up there there's been a
18 lot of evolution. When we first moved up there, lots
19 of problems with people coming back in that area for
20 things that weren't particularly good things. It's
21 very isolated up there. Ben Hawes and Bon Harbor area
22 has always had that reputation. That if you want to
23 park or do a drug deal or whatever, that that's a good
24 place to go because it is isolated. There's even
25 questions with our police force of whether it's city,

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1 county or state. If you call 911, you never know what
2 you're going to get because there's questions about
3 what that area has, what kind of service it has.

4 The park does not have a full-time staff for
5 security. So those of us that live up at that end of
6 Medley Road, we're pretty much on our own on taking
7 care of each other and watching what's going on.

8 With that in mind, because we do watch, we see
9 people on ATV's that come down the road, and before
10 you can get up to the top of the hill from where I
11 live they're in the woods and on they're on the trails
12 that the city owns. This happens all the time.

13 Those trails, there's 11 miles of walking and
14 biking trails. I think it's been in the paper about
15 how much money was spent. Was tens of thousands of
16 dollars and thousands of man hours. That's on 235
17 acres. Eleven miles of trails. You'll see the bikes
18 go in and within two hours those same bikes are back
19 out. So that gives you an idea on a bicycle how long
20 it takes a bicyclist to explore 11 miles of trails on
21 235 acres, 2 hours. An ATV on 100 acres, it would be
22 very short I'm sure.

23 Also the park has paved trails, paved cart
24 trails that goes all through the golf course. They're
25 the width of a cart and a half and they look really

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1 exciting for ATV's. That's the park. That's the park
2 property on the golf course. They have issues with
3 people trespassing on the park all the time. It's a
4 problem. These golf trails look like they would
5 really be fun for ATV's. Also the Soap Box Derby
6 track that was built, if you all have seen where that
7 is. That's also a paved piece of property. Anybody
8 who is exploring with an ATV, I think that would look
9 very, very exciting also.

10 All the people that are here have very
11 passionate uses about their property. This is my
12 passion at the other end. It's something that is
13 very, it's not a likely occurrence. It will happen.
14 Trespassing will occur. The liability is tremendous.
15 I assure you all that it's not a good idea. Please
16 consider this strongly.

17 I also have -- he spoke about petitions. We
18 spent about seven days getting petitions. We have
19 almost 300 signatures here. These are all people that
20 live in this neighborhood that have an interest in the
21 property that surrounds this area. These are not
22 people from out of town. These are people who will
23 deal with this every day. I don't know who you want
24 me to give those to somebody or what. There's close
25 to 300 names. This is just a week's worth. Every

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1 body that worked on this so it's not a lot of time
2 involved. I'm sure we could get thousands if we need
3 them.

4 Thank you very much for your time.

5 CHAIRMAN: Any board members have questions of
6 her before she sits down?

7 MR. SILVERT: I'll admonish the Board, as I do
8 whenever we receive a petition, at this time that
9 you're not bound by the terms of a petition. We have
10 no way of verifying the signatures. It's only as
11 persuasive authority.

12 CHAIRMAN: We'll enter it into the transcript
13 at this time.

14 Is there any other individual that has some
15 comments at this time?

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

18 MS. HIGDON: My name is Rachel McNulty Higdon.
19 (RACHEL McNULTY HIGDON SWORN BY ATTORNEY.)

20 MS. HIGDON: My name is Rachel McNulty Higdon.
21 My husband Lee on and I own our home down on Medley
22 Road close to Vickie Helms. Many of my other family
23 members also own land in the heart of Bon Harbor Hills
24 and have owned it for generations.

25 I object to this proposed site of an
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1 off-highway vehicle park at 3401 Medley Road because
2 the health and safe of my family is very important to
3 me and the noise these OHV's will not integrate into
4 our neighborhood, the plant life or the resident life,
5 and the trespassers on our land.

6 Just for clarification of what an off-highway
7 vehicle can be. From the American National Standards
8 Institution can be a dirt bike, motorcycle, a
9 four-wheeler, an all-terrain vehicle, a dune buggy, a
10 truck, a jeep, or a quad.

11 I'm going to talk a few minute about according
12 to the Kentucky Revised Statutes, Title 18 Public
13 Health, Chapter 224 Environmental Protection,
14 SubChapter 30, Noise Control.

15 According to the Kentucky Revised Statutes
16 224.30-105, the definition of "Noise means the
17 intensity, frequency, duration and character of sounds
18 from a source or number of sources. Noise includes
19 vibrations and subaudible frequency."

20 According to KRS 224.30-050 Noise Emission
21 Prohibitions. This one is extremely important. "No
22 person shall emit beyond the boundaries of his
23 property or from any moving vehicle any noise that
24 unreasonably interferes with the enjoyment of life or
25 with any lawful business or activity in contravention

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1 of any rule or regulation adopted by the cabinet."

2 Another KRS 224.30-100, "Excessive noise is a
3 serious hazard to the public health and welfare and
4 the quality of life. Each person has a right to an
5 environment free from noise that jeopardizes his
6 health and welfare or degrades the quality of life or
7 lowers the property value. It is the policy of the
8 state to promote an environment for all people free
9 from noise that jeopardizes their health or welfare or
10 degrades the quality of life."

11 Again, according to the 224.30-110, "State
12 agency shall to the fullest extent consistent with
13 their authorities under state laws administered by
14 them carry out the programs within their control in
15 such a manner as to further the policies stated in KRS
16 224.30-100."

17 I read these so that we all know that these
18 are laws and regulations in the State of Kentucky.

19 Talk a little bit about the noise on public
20 health according to the National Sierra Club and World
21 Health Organization. Extensive scientific research in
22 humans show that noise can increase heart rate, blood
23 pressure, blood cholesterol, can cause hearing damage
24 and other related health problems. The elderly, the
25 young and individuals with existing health problems

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1 are at the greatest risk.

2 The National Sierra Club says that OHV's
3 routinely produce between 81 and 111 decibels. U. S.
4 Department of Transportation says that acceptable
5 ceiling for traffic noise is 55 decibels, but the
6 legal ceiling for an OHV is 96 decibels.

7 So this also doubles the traffic noise of
8 decibel amount of traffic noise. The OHV's will.

9 US Department of Transportation advises that
10 property value drops .4 percent for every decibel
11 above 55 decibels that your home is exposed to.

12 I did a quick calculation. So an average of a
13 \$200,000 home, that would be approximately \$3,600
14 times 200 homes in the neighborhood. That's \$720,000
15 in property value loss. That's just in the homes.
16 That's not the commercial or industrial property.

17 The National Sierra Club says in a quiet
18 forest or countryside the noise from an average
19 motorcycle can be heard from up to 7,000 feet away.
20 The louder engines can be heard from over 11,500,
21 which is a distance of over two miles.

22 I do have a map for you guys, for the board if
23 anyone would like one. According to the
24 Messenger-Inquirer Bob Wimsatt is right. Bon Harbor
25 Hills has some of the highest hills in the county

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1 making it even more likely that the roar of the OHV's
2 will be traveling the two miles and beyond and
3 especially up and down the Ohio River during the
4 winter when the trees are in their dormant state.

5 Some of the public sites located within this
6 two miles fringe and fringe area is the Owensboro
7 Convention Center, Ben Hawes Golf Course, Ben Hawes
8 Park, the River Park Center, Smothers Park, English
9 Park, Jack C. Fisher Park, Joe Ford Nature Park, the
10 Botanical Garden and Mitch McConnell Plaza. What
11 about the baseball and softball and soccer tournaments
12 and their tourism dollars?

13 There is a reason Ben Hawes Golf Course
14 provides electric are carts, and that's to keep the
15 sound down so the golfers and park visitors can enjoy
16 nature. Not noise.

17 I'm not only speaking for my family and myself
18 tonight, and with some of these neighbors permission
19 I'm also speaking for some of our homeowners and some
20 business owners on this subject of noise. I have
21 statistics from the Department of Transportation, the
22 National Sierra Club, and most of all the Kentucky
23 Revised Statutes on public health.

24 My name is Rachel McNulty Higdon and after
25 gathering this above information and statistics I

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1 respectfully ask the board to deny the request of this
2 proposed OHV Park at 3401 Medley Road because the
3 noise from these OHV's will not integrate into our
4 neighborhood, the plant life or resident wildlife, and
5 most of all the health and safety of my family is
6 important to me.

7 CHAIRMAN: Any board members have any comments
8 or questions for her at this time?

9 (NO RESPONSE)

10 CHAIRMAN: Thank you.

11 Come forward at this time.

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

14 MR. McNULTY: My name is John McNulty.

15 (JOHN McNULTY SWORN BY ATTORNEY.)

16 MR. McNULTY: My name is John McNulty. I'm
17 just one representative of the 140 immediate family
18 heirs to the 141 year old McNulty Family Farm in Bon
19 Harbor Hills.

20 Collectively our family owns 381 acres of
21 approximately 1753 acres that make up Bon Harbor. The
22 McNulty family is the longest continuous landowner of
23 Bon Harbor Hills. Our other great families of Bon
24 Harbor include the Ellises, Booths and Medleys.

25 I'm here along with numerous other people and
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1 businesses in an effort to preserve our current
2 financial and historic interest in Bon Harbor Hills.

3 Historically the McNulty family farm, which is
4 listed in the Kentucky Heritage Council as a historic
5 centennial farm. My great-great-grandparents Mathew
6 and Ellen were Irish immigrants in the 1860's and he
7 was a union soldier in the Civil War. In 1871 they
8 purchased our original home place in Bon Harbor. This
9 year we celebrated 141 years in Bon Harbor Hills. We
10 have lived on, harvested from, protected our land in
11 Bon Harbor for over half the time that Kentucky has
12 been a state. I and the 140 immediate members of our
13 family are forever dedicated, accept the charge and
14 cherish the privilege of maintaining the integrity
15 inherited to Bon Harbor Hills.

16 Sir Edward Burk said, "Those who don't know
17 history are destined to repeat it."

18 As noble as this project is, and I love to
19 ride four-wheelers, with all due respect to Mr.
20 Wimsatt, unfortunately the history behind several of
21 his projects have involved, that he's been involved in
22 forced us to look at the controversial project at hand
23 and seriously consider if his history of noncompliance
24 with ordinances, development plans, bonds being called
25 tax liens, etcetera, will be repeated. Is this a

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1 history that we want to repeat?

2 The only way that I can see this project would
3 be accepted would be that:

4 1. The dangerously loud obnoxious and
5 property evaluated high decibel noises from the
6 motorcycle be mitigated.

7 2. An engineer designed and professional
8 install storm water pollution prevention system must
9 be constructed with a KPS permit that must be complied
10 with at all times including monthly point source
11 discharge collections by a professional environmental
12 firm and the samples analyzed in a certified
13 laboratory. Cash bond shall be posted to guarantee
14 that the construction is done properly as completed
15 and that there is full compliance of the KPS permit.

16 3. An engineer design professionally
17 installed dust suppression system that must be
18 installed. A cash bond shall be posted to guarantee
19 the construction is done properly, is completed and an
20 engineer prescribed air monitoring and maintenance
21 program be followed.

22 4. A professionally installed 12 foot
23 chain-link fence be designed and must be installed
24 around the entire perimeter of the property. A full
25 cash bond should be posted until the fence is

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1 completed to engineer its specifications.

2 The last thing I have is a business question.
3 If this project, this business, is to be constructed
4 properly, obviously at the expense in order to protect
5 all the immediately adjacent property owner businesses
6 in the area neighboring properties from these known
7 detrimental affects, is there a sound business model
8 or plan that's been presented to the board? Does this
9 plan present financial justifiable proof or personal
10 financial strength that such a business can
11 financially support the required expense of
12 construction, long-term maintenance and environmental
13 compliance?

14 I assure you that the Bon Harbor Hills
15 community, neighbors, city and county tax payers are
16 not interested in seeing history repeat itself here.
17 Again, having to pick up the tab for uncompleted or
18 noncompliant projects. We believe that the proposed
19 use of the property is ill-conceived and we therefore
20 urge you to deny this request. Thank you.

21 CHAIRMAN: Any board members have any
22 questions of this gentleman?

23 (NO RESPONSE)

24 CHAIRMAN: Anyone else want to speak at this
25 time?

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1 Come forward, please.

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

4 MS. ELLIS: Vickie Ellis.

5 (VICKI ELLIS SWORN BY ATTORNEY.)

6 MS. ELLIS: As I said, I am Vickie Ellis. My
7 property is at 3545 Medley Road. It's very
8 uncomfortable for me because I know Bob. We just
9 bought ten acres from him that will border his
10 project. I'm really opposed. I'm definitely opposed.

11 I have three children; 6, 7, and 17. As I
12 left my house this morning, I looked across my
13 backyard and I was very concerned at what I might see
14 down the road when I look past my children's
15 playhouse.

16 I like to ask Bob if the map that he shows is
17 current? When the map was drawn up, the one you have
18 on the large poster board, is it current?

19 MR. WIMSATT: The surveyor did this for me.
20 This is what we turned in?

21 MS. ELLIS: On what date?

22 MR. WIMSATT: Let me see.

23 CHAIRMAN: Let's don't argue across.

24 MR. WIMSATT: Vickie, the only thing that -- I
25 want to answer your questions. Okay?

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1 Is that okay, Mr. Chairman?

2 CHAIRMAN: Go ahead, sir.

3 MR. WIMSATT: Vickie, correct me if I'm wrong,
4 but I think the only thing that's changed is this 13
5 acres that I sold to Riverport. Is that correct?

6 MS. ELLIS: I don't see the ten acre --

7 MR. WIMSATT: Your ten acres is right here,
8 what I sold you. That's accurate, isn't it, Vickie?

9 MS. ELLIS: My map just looks a little
10 different from yours and I printed it today from
11 Planning & Zoning. It's included in my stuff.

12 MR. WIMSATT: Well, I'd have to see yours, but
13 I'm pretty sure this is correct.

14 MS. ELLIS: Okay.

15 MR. WIMSATT: Like I said, other than the 13
16 acres that's to Riverport.

17 CHAIRMAN: Go ahead with your presentation,
18 please.

19 MS. ELLIS: It's very frequent that I would
20 look out my back window or leave my driveway across my
21 yard there's a photograph there. My backyard butts up
22 to the property in question. It's very frequent that
23 I would see deer out there. I will see wild turkeys
24 out there. It is wide open. There is no buffer
25 between my property and the proposed property, as you

1 can see in the picture.

2 I'm a layperson. I work, but I'm not in
3 Planning & Zoning and I don't understand all the
4 guidelines. I am an average person. Okay.

5 So with that said I started out doing a little
6 bit of research and I wanted to know what would be
7 important? So I did find some things that were
8 objectives that were set forth by Planning & Zoning so
9 I'll make my arguments and my points quickly.

10 I believe that the proposed Conditional Land
11 Use Permit for recreational vehicle park is
12 non-compatible to a neighboring residential area,
13 particularly my home at 3545 Medley Road, and the 10
14 plus adjacent acres to the property mentioned.

15 A) It will not preserve or protect the stated
16 land and field. In fact, repeated use of the land by
17 all-terrain vehicles will result in erosion and runoff
18 which is already a concern for many Bon Harbor
19 residents. Water runoff from the hills has already
20 resulted in flooding of Bon Harbor Estates on more
21 than one occasion. They're currently in a project
22 right now to redo the Persimmon Ditch that runs along
23 Industrial Drive because of erosion and water runoff
24 from the Bon Harbor Hills. The wildlife residing in
25 the area will flee from the area with this type of use

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1 as well.

2 B) Affects the character of property value as
3 surrounding neighborhoods. When we purchase this
4 property from Mr. Wimsatt, he was well aware of our
5 concern regarding preserving our property value and
6 our privacy.

7 He's currently marketing two adjacent
8 residential lots all the while planning to develop
9 this park. On Tuesday, July 31st, a perspective buyer
10 visited our home to see the lay of the land and where
11 his lot would lay against ours and what it would look
12 like. What value will this bring to our home and this
13 person's new construction?

14 C) This does not promote public health or
15 safety through reduction of noise pollution, air
16 pollution or visual pollution. I ask what can be done
17 to buffer noise and environmental impact of several
18 ATV's?

19 Now, some of the testimony we've heard was in
20 regard to decibels of one ATV. We're talking
21 multiples. So if we can hear Friday After Five from
22 our backyard, which we can, that's something that
23 occurs once a week in the summer, what would several
24 ATV's sound like with no trees or anything separating
25 my property from his? I don't think that it would be

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1 promoting my health or my children's health or my
2 husband's health.

3 D) It does not integrate well with the
4 existing industry. You will hear examples from
5 Hauser-Hard Chrome. There's also a conservation
6 easement Mr. Steele has that is directly across the
7 street from this mentioned property. There is
8 transportation facilities at risk. As I understand,
9 Owensboro Riverport Authority has already had issues
10 with washout and danger to the CSX Railroad which is
11 instrumental to their function. You also have River
12 Valley Hospital which is right across the street. So
13 I don't want to feel like it's me, me, me, I, I, I, my
14 children, my family. It's more than me. It's greater
15 than that.

16 E) It will not prevent overcrowding,
17 congestion of people or blight of land. Now, I was
18 raised on three-wheelers, four-wheelers and
19 motorcycles. I've been to enduros. I've been to Hair
20 Scrambles. My father put on several Hair Scrambles.
21 I've worked them. If you've ever seen property after
22 an event is complete, there's no topsoil. There's
23 rutting. The vegetation is gone. All of these
24 contribute to an already existing problem of runoff
25 and erosion. So it will not prevent overcrowding and

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1 congestion or blight of land.

2 Quite to the contrary of the zoning objectives
3 proposed by this buyer, the proposed Conditional Land
4 Use Permit would in fact present many factors
5 detrimental to the land, the natural wildlife, the
6 neighboring community, and would be tenfold for me.

7 For these reasons and many more personal
8 reasons, just as endangering my family physical and
9 emotional health, particularly my children who already
10 suffer from environmental allergies, risk of property
11 loss, trespass liability, danger to my children, pool
12 maintenance for pollution and dust and general loss of
13 privacy in use of my own property, this simply does
14 not integrate well with the Bon Harbor community. Not
15 for anyone involved and definitely not for my family.

16 Another issue I have is the language in the
17 application that states other recreational activities.
18 Now, I wrote this before we heard him speak earlier.
19 I still see nothing in concrete about what those
20 "other" activities might be. That's very vague and
21 broad in my opinion.

22 As I stated before, I am opposed. My
23 immediate family is opposed. The heirs to the J.C.
24 Ellis Estate are opposed. My neighbors are opposed.
25 Industry is opposed. The Owensboro Riverport is

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1 opposed. River Valley Hospital is opposed. Three
2 hundred people are opposed and signed petitions
3 stating so. And for these reasons I respectfully
4 request that the Conditional Land Use Permit be denied
5 indefinitely for this purpose. Thank you.

6 CHAIRMAN: Thank you.
7 Board members have any questions of her at
8 this time?

9 (NO RESPONSE)

10 CHAIRMAN: Anyone else wishing to speak at
11 this time?

12 MR. SILVERT: Could you stated your name,
13 please?

14 MR. TINNELL: My name is Nick Tinnell.

15 (NICK TINNELL SWORN BY ATTORNEY.)

16 MR. TINNELL: I live at 5410 Medley Road.
17 I've just been listening to this. I've lived there
18 for 14 years. I know that when I first moved in, the
19 area around me before the state and city got it was
20 privately owned. There was a lot of four-wheelers
21 back there. They cut a lot of trails back there,
22 which the city used for these new trails that it got.
23 I know that the nature kind of disappeared when that
24 was going on. Now that that's over with and you've
25 just got bicyclers back there, the nature is back.

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1 The turkeys are there. I had never been seen them
2 before.

3 There's no doubt in my mind that Bon Harbor
4 Hills a treasure for the neighborhood and the citizens
5 of Owensboro. If this happens, you know, nature is
6 going to go away. They're not going to stay where
7 these motorcycles and these ATV's are going to be
8 running. They're going to disappear. That's going to
9 be a tragedy. I'm asking you to don't approve this.
10 This is not good. Thank you.

11 CHAIRMAN: Next gentleman.

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

14 MR. PAYNE: Bill Payne.

15 (BILL PAYNE SWORN BY ATTORNEY.)

16 MR. PAYNE: My name Bill Payne. My wife
17 Rosemary and I live at 4041 Medley Road, which is less
18 than one mile, it's actually is eight-tenths of a mile
19 from the entrance of this to my driveway.

20 In addition to our home on 16 acres, we also
21 own approximately 75 acres in the Bon Harbor Hills
22 area, which is mostly wooded, nature, wildlife, this,
23 that and the other. Okay. North of our home. We
24 have lived here over 25 years and have had many
25 encounters with cycle riders both two-wheel dirt bikes

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1 and four-wheelers. They don't seem to understand the
2 meaning of no trespassing posted or keep out. I have
3 had them ride through my yard. When you say
4 something, it is, who are you, or I didn't know this
5 was private property. No matter what you do, gates,
6 cables, fence, signs, they still seem to trespass.

7 Mr. Wimsatt thinks that boundary signs will
8 keep them inside his park. He is wrong. Fences won't
9 keep them in. Sure, he thinks it will be safe inside
10 his park. It is anything but when they get over on
11 other property. This property has mostly all been
12 underground mine, as well as surface mine. There are
13 open holes, buffs, etcetera. In addition, there is an
14 underground gas storage field right adjoining me
15 operating gas wells in less than one mile above, and
16 other issues that was brought out from this meeting.
17 Makes to a bad and unacceptable location.

18 We're not against the park per se. We're
19 saying it's a bad location. It should not be there in
20 this congested of an area.

21 Turkey Bay, which he keeps referring to, is a
22 U.S. government park. I assume U.S. government still
23 has deep pockets to develop something like this. I
24 don't think he can compete with the government. They
25 have over 100 miles, not 100 acres, in a very remote

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1 area with thousands of acres of uninhabited land with
2 no residents, neighbors, businesses to disturb.

3 For these reasons and many others I ask that
4 this permit be denied. Thank you.

5 CHAIRMAN: Anyone else have any opposition?

6 MR. SILVERT: State your name, please.

7 MR. THACKER: John Thacker.

8 MR. SILVERT: You're sworn as an attorney.

9 MR. THACKER: I represent Guadalupe Ellis and
10 William Yunker who are adjoining property owners out
11 there and live there. I had submitted a letter on
12 behalf of my clients to Planning & Zoning. Is that
13 made a part of the record?

14 MS. EVANS: It will be right now.

15 MR. THACKER: So I won't restate all the
16 contents of that letter. It will be part of the
17 record, but I do want to hit on a few point.

18 The primary point being is that this type of
19 activity that we're looking at is necessarily going to
20 create a tremendous amount of dust and noise and will
21 interfere with the homeowner's right of quiet
22 enjoyment of their home. This has already been
23 mentioned. The property values are going to be
24 diminished definitely and substantially.

25 This area is a very quiet peaceful, beautiful

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1 area, which is precisely the reason why my clients
2 built their homes and why they live out there.
3 Because it's such a beautiful area. This is all going
4 to be adversely impacted because of this. I had
5 given -- do we have that video of Turkey Bay?

6 MR. SILVERT: We needed a copy of that we
7 could submit to the record.

8 MR. THACKER: Yes. I have a disc.

9 We talked about Turkey Bay. This is just off
10 of Utube just showing a couple of four-wheelers there
11 with the noise that's there. I know it's already been
12 mentioned. While they're loading I'll make a couple
13 of comments.

14 I've learned a little bit about these ATV's
15 and they are tremendous machines. Some of these
16 machines as they come out of the factory will go close
17 to 80 miles an hour. Then the people that are into
18 this hobby, they modify those. They take the mufflers
19 off. They put different mufflers on and they're much
20 noisier than they are straight from the factory.

21 I've talked with people who have been to
22 Turkey Bay. They tell me that it sounds like a
23 tractor pull, that it has that noise level, while
24 they're running over there. I've talked with an
25 individual who was at one time in charge of overseeing

1 the Turkey Bay riding area. He said on a dry day
2 there would be a dust cloud over the top of it.
3 That's what this neighborhood is looking at. They're
4 high performance vehicles. They're not looking for
5 places to go put-put around. They're looking for
6 places to play through, to pull, to accelerate.
7 They're looking for obstacles.

8 Quickly looking through the internet you can
9 see what they're designed to do and how they modify
10 that and work on that.

11 I've got a handout also of Turkey Bay. This
12 is off a website. Called explorekentuckylake.com.
13 Hand this out.

14 The bottom part that has that map will show
15 that the outline of the Turkey Bay recreational area
16 for this, which is all within the Land Between the
17 Lakes, which has been stated as 2500 acres. There are
18 no permanent homes around there. So it's a perfect
19 place for that.

20 I've spoken to people who have camped on the
21 other side of the lake from Turkey Bay. They tell me
22 that when they're running over there it is easy to
23 hear them all the way across the lake, which you can
24 see a little marker down there, which is nearly one
25 and a half miles across the lake.

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1 Is it going to work?

2 MS. EVANS: They're on here and over there and
3 all the board members screens are one. The one in the
4 middle is not on, but the board members can all see.

5 MR. THACKER: It lasts less than a minute.

6 (UTUBE VIDEO SHOWING ON TELEVISION.)

7 MR. THACKER: You can see the dust being
8 generated. That's a great place for it. But Bon
9 Harbor Hills is not Turkey Bay. It doesn't come
10 close.

11 Then the pictures at the top show what they
12 promote and what they're looking for with those
13 off-road vehicles. They're up in the air. They're
14 going fast. These are the high performance ATV's.
15 You can see even with miles and miles of trail, you
16 can see how those trails are rutted out down there at
17 Turkey Bay.

18 This property is totally inadequate to take
19 care of this use. It has been mentioned the federal
20 government monitors that. They have a full-time staff
21 down there monitoring it. I don't think that our
22 community is really equipped to monitor. The fact is
23 it can't be monitored because the noise level is going
24 to be too high. These people won't be able to live
25 right next to it. It'd be like a racetrack all the

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1 time with 8 or 10 or 15 or 20 group comes out there.
2 The noise is going to be phenomenal.

3 You've got kids and they are not going to be
4 able to keep them off the other folks property. My
5 client's family owns the farm right there. They're
6 concerned about liability issues with that. There's
7 the Atmos gas storage fields are right out there
8 partially on my client's property. That's a huge risk
9 of not only to the landowners in the area, but those
10 utilizing the property for ATV riding.

11 I would just state again that the granting of
12 this permit would result in immediate negative impact
13 of all residents in the area, to my clients, to their
14 property value, and they would request that the
15 application be denied.

16 CHAIRMAN: Thank you.

17 Any other comments at this time?

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

20 MR. RINEY: Ed Riney.

21 (ED RINEY SWORN BY ATTORNEY.)

22 MR. RINEY: I'm an employee of the Owensboro
23 Riverport. What I'd like to do this evening is read a
24 letter that was written by the Owensboro Riverport
25 Authority Board of Directors and then close with a

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1 comment of my own.

2 "The Owensboro Riverport Authority (ORA)
3 opposes Mr. Wimsatt's request for a Conditional Use
4 Permit for property at 3401 Medley Road. An ATV park
5 is not the best use of the land and is inconsistent
6 with the residential, commercial and industrial use of
7 property in the vicinity. Furthermore, Mr. Wimsatt
8 has a history of disregarding regulatory requirements
9 for property development, including the management of
10 storm water runoff and controlling drainage and
11 siltation in adjoining streams and ditches.

12 "In 2011, ORA purchased a parcel of 13.5 acres
13 from a tract of land where the proposed ATV park is to
14 be located. The parcel purchased is directly across
15 from entrance of ORA at the intersection of Harbor and
16 River Roads. ORA purchased the land at \$10,000 per
17 acre and has spent an additional 50,000 improving part
18 of the land, bringing the total investment to 185,000.
19 The land has been rezoned from Agricultural to I-1
20 Heavy Industrial for future development.

21 "ORA purchased the land from Mr. Wimsatt
22 primarily to contain erosion that was causing drainage
23 and environmental problems for ORA and other companies
24 in the area. When Mr. Wimsatt began clearing the
25 land, he did not obtain the necessary government

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1 permits. Erosion became so severe that drainage
2 ditches that traverse ORA property became clogged
3 requiring an excavator on Easter Sunday morning to
4 prevent the overflow water from potentially washing
5 out the CSX main railroad line causing tremendous
6 damage. ORA is still waiting for Mr. Wimsatt to pay
7 the emergency cost of cleaning the ditches.

8 "Purchasing the land was ORA's last resort to
9 resolve issues which Mr. Wimsatt was unwilling to
10 address with the Port or with the Kentucky Department
11 of Environmental Protection. The Board strongly
12 believes a similar situation will result if Mr.
13 Wimsatt is allowed to develop an ATV park. As an
14 adjoining landowner, ORA has a strong interest in
15 preventing such an occurrence.

16 "The ORA Board of Directors does not believe
17 the proposed ATV park is the land's best use. It does
18 not integrate well into the industrial, professional
19 and residential area. Also, tractor-trailer trucks
20 traveling to and from the Riverport will pass the
21 entrance to the ATV park approximately 62,000 times
22 annually or approximately 170 times daily.

23 "ORA is an intermodal facility with heavy
24 equipment operating at multiple locations within the
25 300 acres. Safety policies and procedures are

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1 strictly enforced. An ATV park on adjoining land
2 would increase the risk that adults and children would
3 knowingly or unknowingly trespass on ORA property.
4 Therefore, ORA opposes the development of an ATV park
5 in such close proximity. However, if the Conditional
6 Use Permit for the ATV park is granted, ORA's Board of
7 Director request that Mr. Wimsatt install at his
8 expense an approved 8-foot fence around the 13.5 acres
9 purchased by ORA to limit trespassing.

10 "The ORA Board of Directors request that the
11 Conditional Use Permit be denied for the reasons
12 stated above. Additionally, the ORA Board of
13 Directors suggest that the Board of Adjustments review
14 the land developer's past record for adherence to
15 rules, regulation and performance associated with land
16 development in Daviess County.

17 "Sincerely, Owensboro Riverport Authority
18 Board of Directors."

19 The Riverport does not oppose an ATV park.
20 They are successful in other areas, in rural areas.
21 What we oppose is the location of this ATV park where
22 it is proposed for the reasons stated in the letter.
23 Thank you.

24 CHAIRMAN: Thank you.

25 MR. RINEY: May I leave a copy of the letter

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1 with you?

2 CHAIRMAN: Please.

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

5 MS. COOK: Stacy Cook.

6 (STACY COOK SWORN BY ATTORNEY.)

7 MS. COOK: I am relatively new resident of
8 Owensboro. I've only lived here about a year. In
9 addition to the comment I want to make, one of the
10 most important points I want to make is the primary
11 reason I purchased the home that I did on Fern Hill
12 Drive was because of the serene quality of the
13 neighborhood, the proximate to the park, the way the
14 park is managed, and the way the city had planned to
15 use the park going forward.

16 So when I learned of this, I was very
17 concerned about it and wanted to have an opportunity
18 to have my voice heard. So thank you very much for
19 allowing me that.

20 I think simply put, the primary reason we're
21 all here tonight is because that it's unarguable that
22 ATV's or off-road vehicles are very well-known to
23 cause significant and long-lasting ecological
24 environment damage, wherever they are used. There are
25 countless, countless points of reference that

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1 scientifically, not personally, but scientifically
2 support this. In addition to that, there are
3 countless studies that really show the negative social
4 impact of these vehicles in areas of their immediate
5 use.

6 Now, I won't spend any more time tonight
7 discussing that. I think that's been discussed, but
8 one thing I really want to focus on again is just the
9 limited access of only having 100 acres for this
10 proposed park. I think the most important piece of
11 that is the concern around trespassing because we
12 can't necessarily predict individual's behaviors, but
13 we can certainly look at statistics that can prevent
14 that, and I do have some additional statistics to give
15 you tonight.

16 The most compelling points of evidence
17 actually come from within surveys that are done within
18 off-road enthusiast groups themselves. A Utah survey
19 of off-road vehicle users reveal that 49.4 percent of
20 off-road vehicle enthusiasts prefer to ride off of
21 established trails. The 39 percent of that were
22 surveyed had done so on their most recent excursion.

23 Dirt bike rider, 38 percent prefer to ride off
24 established trails and 50 percent of them had done so
25 on their most recent excursion.

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1 Another study. The Montana Fish Wildlife &
2 Parks surveyed 446 OVR riders. Twenty-three percent
3 of them, 23 percent said that they always or most
4 always ride off trail or cross-country as they define
5 it.

6 A Colorado study found that as many as
7 two-thirds of adult users ride off trail on every
8 trip.

9 So I think that these statistics certainly
10 give us some trend toward the behavior of these
11 riders. That they are enthusiasts and they are
12 looking for an experience that takes them beyond
13 putting around was described earlier.

14 So with that I would very much strongly urge
15 the Board to decline this request and to hear the
16 overwhelming majority of residents of Owensboro that
17 have expressed their concerns for this park. Thank
18 you.

19 CHAIRMAN: Thank you.

20 Does anybody or is your presentation with new
21 knowledge and support for or against at this time?

22 MR. HAUSNER: Against.

23 CHAIRMAN: But have you got something new that
24 we haven't heard?

25 MR. HAUSNER: I believe so.

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1 CHAIRMAN: Go ahead.

2 MR. HAUSNER: My name is Jeff Hausner.

3 (JEFF HAUSNER SWORN BY ATTORNEY.)

4 MR. HAUSNER: We are located at 3094 Medley
5 Road across the street from the proposed OHV site. We
6 employ 98 full-time employees.

7 The biggest concern for us would be dust and
8 dirt. We have fume eliminating scrubbers that use a
9 mesh packing. Wood dust, any kind of dirt is really
10 catastrophic for our plant. I have a power point that
11 you might be able to see.

12 You can see next slide. You can see work
13 shops through our plant from all over the country.

14 In that photo right there, there's a metal pan
15 on the floor. Any parts that are pulled from the
16 process are rinsed on there and that liquid that's
17 rinsed has some acid residue, is re-brought back into
18 the tank. It's a closed loop. So it's not waist.

19 We work critically to keep any dust or dirt
20 out of that because it's organic and it would really
21 be catastrophic to our process.

22 The photo I showed before that shows off-shore
23 oil rig barrels. Because they're in salt water they
24 cannot have any pin holes in the chrome. Dirt and
25 contaminates in our process cause pin holes. That

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1 work is shipping here. It's the biggest work we do.
2 Ships here from Houston, Texas for the off-shore oil
3 rigs. We're one of the only players in the country
4 that can really process these parts with zero
5 porosity.

6 I just have real concerns about our fume
7 scrubbers, as well as our plating tanks exposed to any
8 kind of dust or dirt that would be blowing through our
9 facility.

10 There are several points I was going to make,
11 but they've already been made so I'll just kind of
12 their this: We chose Owensboro to build our corporate
13 offices rather than our plant in Chicago because we
14 have O'Hara Airport noise and we have railroads
15 nearby. This was a lot quieter facility.

16 Right now we're evaluating where to
17 consolidate our customer service for the company. We
18 have people in Chicago, in Owensboro, scattered around
19 the country that quote our jobs and deal with a lot of
20 what we do. That's not that efficient so we're
21 considering to have one centralized customer service
22 location. To this point that was going to be
23 Owensboro, but we're continuing our investigation, but
24 we're not going to make a decision until we see what
25 happens here. Because we're on the phone with

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1 customers. The Owensboro plant has 41 phone
2 extensions. Our employees in the plant use cell
3 phones to talk to sales, customers and vendors. We
4 use two-way communication throughout the plant to
5 coordinate what we're doing. We don't have an
6 air-conditioned plant so all the doors are open. So
7 that concept of loud ATV's across the street, it just
8 has us on hold right now as to whether we move forward
9 with centralizing customer service here, which to me
10 that's additional jobs for the area. The other
11 alternative we have is to go north back to our Chicago
12 plant for those jobs.

13 We're not opposed to an OHV park. I love to
14 see additional options on employment, but I think in
15 this vicinity across the street from us on a hill, I
16 just can't imagine the dust for our equipment or the
17 noise that could go through our facility disrupting
18 communication. Thank you.

19 CHAIRMAN: Before we go any further, I want to
20 hear comments from the Staff at this time.

21 MR. NOFFSINGER: Thank you, Mr. Chairman.

22 At this point in the hearing, we have heard
23 folks talk about several issues. These issues that
24 have been brought up are issues that my Staff has also
25 raised with the applicant.

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1 These issues are related to air, pollution,
2 dust, erosion control, noise pollution, the wildlife.
3 Someone even mentioned a business plan.

4 Many of you here tonight, I believe what I'm
5 hearing you say is, you're not opposed to an
6 off-highway vehicle park, but you are concerned if you
7 live, if you own property, or if you own or run a
8 business in this area as to how you're going to be
9 affected.

10 I can tell you when this application was
11 submitted we received a survey of the property. It's
12 very hard to evaluate an application based upon just a
13 property survey, and a one paragraph explanation of
14 what is intended to be done.

15 My Staff spent quite a bit of time with the
16 applicant trying to get additional information on what
17 was proposed. The best we could come up with was a
18 survey drawing with the primary trail shown, parking
19 area, and then an area that is scribbled on and goes
20 out into the right-of-way saying, we're going to youth
21 trails, area beginners and safety class. Then another
22 area that's scribbled on in pen out front saying
23 "support activities for future construction for sales,
24 service, rentals, concessions."

25 This plan does not address the concern these

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1 folks have here tonight.

2 Now, at this point in the hearing I think we
3 know what the issues are. My question is: Does the
4 applicant or do the homeowners for those that live out
5 there have specific information that can be submitted
6 into the record that will provide evidence as to
7 what's being said here tonight?

8 You know, many times when you consider
9 something like this, you don't know what you don't
10 know. I think that's the fear that many folks have.
11 I think that the folks in this area, as well as this
12 board, deserve specific plans as to how this park is
13 going to develop. They deserve specific answers as to
14 how folks are going to be affected by noise levels in
15 the area, how they're going to be affected by dust,
16 and certainly erosion control.

17 Now, the Planning Staff does not make a
18 recommendation on a Conditional Use Permit. So this
19 board is on its own to come up with findings of fact
20 to determine whether or not this park can be
21 integrated into the neighborhood. They have to do
22 that based upon the evidence that's presented here
23 tonight. So they've got a real tough job as to
24 whether they vote to approve this facility or whether
25 they vote to deny it.

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1 The burden of proof is on the applicant. He
2 needs to prove that case. If folks have new testimony
3 to present here tonight that we haven't already heard
4 or evidence that backs up what we've already heard, I
5 think it's critical for this board to receive that so
6 that they can make a decision.

7 CHAIRMAN: Information that will help us,
8 please, sir.

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

11 MR. STEIN: Kevin Stein.

12 (KEVIN STEIN SWORN BY ATTORNEY.)

13 MR. STEIN: Mr. Chairman, I believe the
14 information I'm going to present will help you make a
15 decision.

16 CHAIRMAN: Appreciate that.

17 MR. STEIN: As I said, my name is Kevin Stein.
18 I'm the vice president and chief operating officer of
19 River Valley Behavioral Health.

20 One of our facilities is located at Industrial
21 Drive and Medley Road. We own 40 acres of land. On
22 that land, we have a children's psychiatric hospital
23 for kids ages 6 to 18. There are 80 beds in this
24 hospital. Also one-half mile west on Medley Road we
25 operate an adult treatment facility for 30 clients

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1 with developmental and intellectual disabilities.

2 River Valley is not opposed to an OHV park in
3 Daviess County. We are opposed to the location.
4 River Valley does not believe that this type of park
5 is appropriate as it does not integrate well with the
6 neighborhood. I believe or I hope I believe that the
7 panel's decision can be based upon integration into
8 the neighborhood.

9 I think you've heard a lot of people say that
10 they do not believe that it integrates well. Nobody
11 in this group has said it's not a good idea, but in
12 that neighborhood it doesn't fit well.

13 Primary concerns of River Valley are the
14 amount of noise that will be created across the street
15 from our psychiatric hospital.

16 Research indicates that individuals with
17 psychotic disorders are more sensitive to noises, can
18 be more agitated and stressful environments that
19 provide too much stimulus. The sounds of motorcycles,
20 off-road vehicles, the buzzing, humming sound is
21 considered an environmental stimulus for those with
22 psychotic conditions. Loud noises can trigger, can be
23 triggers for extreme behaviors and individuals
24 diagnosed with mental illness. Depending on how
25 things are at our hospital or our adult program,

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1 you're talking about up to 120 people that can be
2 affected by noise and other stimuli in the
3 environment. These are people who have intellectual
4 developmental disabilities and are there for that
5 reason.

6 Noise pollution. Be a community noise also
7 causes annoyances and disturbance among those with
8 depression and anxiety. We have a lot of depressed
9 and anxious people that River Valley treats. It
10 typically contributes to their conditions worsening.

11 To summarize. River Valley and others here
12 tonight are not opposed to the park. We're opposed to
13 the location. The noise created by the OHV's will
14 impact the quality of treatment available to the
15 children and adults that River Valley treats who have
16 mental illnesses when they are the most vulnerable,
17 and that's when they're institutionalized.

18 We urge you to consider the quality of life
19 and treatment of individuals in deciding if this park
20 integrates into the neighborhood. Thank you.

21 CHAIRMAN: Appreciate it, sir.

22 Does the applicant have some information at
23 this time stating --

24 MR. WIMSATT: I do, Mr. Chairman. Believe me,
25 I know none of us want to stay here longer than what

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1 we have to, but I've got a lot of information I need
2 to give you.

3 My helper had to leave. Let me pass these
4 around here.

5 Let me first say, Mr. Chairman, I think a lot
6 of the concerns have been expressed here tonight,
7 there's a lot of people in this community that
8 probably wouldn't be able to conduct business at all.
9 We've got contractors. We've got -- the City of
10 Owensboro wouldn't be able to do what they did
11 downtown because people were concerned about dust and
12 noise and all of these same issues. Traffic, all
13 these same things. I understand that people have --
14 farmers wouldn't be able to crop their fields.
15 Truckers wouldn't be able to run up and down the road.
16 Riverport talked about how many thousands of vehicles
17 run up and down Riverport every day. I understand
18 that people have concerns.

19 The question is: Are they at a level that
20 would justify not allowing someone else to conduct
21 business that they should also have the right to do?

22 I'm going to give you some information. This
23 is real information.

24 First thing I passed around, I gave to Mr.
25 Reeves there, is some pictures that myself and some

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1 other people have taken just in the past week or so of
2 some of the activities that are going on at the
3 Riverport.

4 Mr. Riney, you and I, we conducted business.
5 No hard feelings here tonight.

6 The Riverport, I understand that they may not,
7 one of their oppositions is they may not think that's
8 the best use of that land. Well, the obvious question
9 is then: What do you think the best use of the land
10 is? My suspicion is, it would probably be heavy
11 industrial just like the 13 acres that they bought
12 from me. As soon as they bought it, they rezoned it
13 heavy industrial. That would be in keeping with the
14 land use plan map.

15 If someone was to buy that property or even I
16 myself wanted to rezone the rest of that ground to
17 industrial, including the ground behind Vickie and
18 Jimbo Ellis, if I wanted to rezone that industrial I
19 could do that and be in perfect keeping with the land
20 use plan. You go in there and clear the trees, take
21 dirt out. Level it out. Do exactly what I started
22 doing and then the Riverport finished up on the 13
23 acres that they bought from me.

24 You talk about protecting your environment,
25 your serenity and all of that stuff. What you have to

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1 look at out your back door, if it goes industrial, I
2 know which way I would prefer and obviously I can only
3 speak for myself.

4 What I'm passing around there are some
5 pictures of some activities that's been going on at
6 the Riverport. It's pretty heavily here the last few
7 week.

8 Ed, for you information, it's just where
9 you're moving the dirt hill.

10 A lot of dust and stuff that's being created
11 out there. I know the Riverport has on occasion done
12 some watering. That can be an affective use for
13 keeping dust control down. The vast majority of the
14 time people can drive by it. They haven't been able
15 to, at least in the recent weeks. Maybe the Riverport
16 did a better job of watering. There's plenty of
17 pictures there. My wife came through there the other
18 day and couldn't go down the road. She had to
19 basically stop because of the big cloud of dust that
20 came across the road. I'm not trying to slam them.
21 They're over there trying to conduct business too.

22 Dust, a certain amount of sound noise levels
23 and certain things are going to exist in all of our
24 community and they exist out there now. That's a
25 reality.

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1 I just say too that certainly I noted that the
2 Riverport didn't necessarily oppose the noise and dust
3 and things of that nature because it's already out
4 there. Especially right now on the Riverport
5 property. Maybe Ed can correct that. It does happen.
6 That was not the list of items that the Riverport
7 opposed to in their letter that I heard.

8 Again, noise is probably a relative term.
9 Some people are sensitive to a crying baby. Some
10 people are sensitive to whatever. Noise is probably
11 relative. The only thing that you can say measuring
12 any kind of an accurate measurement at all is decibel
13 levels, sound levels. I'm going to put this in
14 perspective.

15 This is something I printout on the internet.
16 I spoke to a bunch of people that know a lot about
17 four-wheelers and ATV's and things of that nature. I
18 talked to Dustin Roberts the other day who runs the
19 Motorcross tracks that they have out at the fair
20 grounds, one of the most respected people in this
21 community, regarding four-wheelers and motorcycles.
22 And I've talked to these manufacturers. These people
23 here that sell and deal with it every day. They've
24 been doing it for years. What I've commonly heard is
25 that four-wheelers and ATV's typically run around 80

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1 or 90 decibels.

2 I'm going to just kind of circle here this 85
3 decibel. Let me say this too. This is setting right
4 next to them. So you can put everything relative to
5 each other. You don't take into account buffers, and
6 hills, and ridges, and trees, and all the other stuff
7 that might be in-between. So you have to put
8 everything on a level playing field. Apples to
9 apples. Oranges to oranges.

10 Most four-wheelers and ATV's run around 80 to
11 90 decibels. So they're setting in here right around
12 where it says, "busy city traffic" would be.
13 Something we all live with every day. Downtown or
14 wherever.

15 Vickie mentioned, Ms. Ellis mentioned 82 to
16 111 or something like that decibels or somebody
17 mentioned. I don't remember which one. Somebody said
18 decibels for ATV's and four-wheelers are 82 to 111.
19 The manufacturers tell me the decibel levels right now
20 are restricted by the government right at 94 dB's.

21 So unless they're modified, the federal
22 government that's as high as they come out at. Most
23 of them are around 80 or 90. That's common. I've
24 heard that quite a bit.

25 In order to -- when you look at decibel levels

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1 you take -- in order to go up 10 dB's, that's going to
2 basically double the sound. You have to go up 10 dB's
3 to double the sound. So you go from 85 to 95 it's
4 going to sound twice as loud. Again, everything right
5 there right next to each other.

6 Here's an example they have. You have to have
7 60 violins to go from 85 to 95 and then you have to
8 have 600 violins to go from 95 to 105.

9 Let me give you an example of some of the
10 other things that we see in our community every day
11 and their decibel levels.

12 Hair dryer, 95 decibel. Your mower, tractors,
13 a walkman. A walkman halfway up is about the same
14 levels as the maximum that's coming out of the factory
15 now at 94 decibels. Most people are running with a
16 walkman about 105 dB. Your leaf blower that you might
17 use in your front yard is 115 decibels. Common
18 everyday activities that everybody does every day.
19 Diesel trucks running up and down the road, diesel
20 trucks run in here at 90 decibels. Riverport has got,
21 they have many thousands run up and down the road
22 every day. Diesel trucks run up and down the road are
23 no different than somebody on the high end of an ATV
24 running up and down the road.

25 That's with them standing right in front of
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1 each other, out in front of River Valley. You've got
2 to make sure we're comparing apples to apples.

3 Musical instruments fall in the range of 80 to
4 100. A violin, 82 to 92 decibels. A cello 85 to 111.
5 Flute 92 to 103 decibels. Power tools contractors use
6 every day. Fall in here at about 110 decibels.

7 CHAIRMAN: You're stating all of this at
8 federal regulation and state knows. What about my ATV
9 that I've kept for two years and never put a muffler
10 back on it, what are you going to do about that? Is
11 the government going to enforce you to put one on it?

12 MR. WIMSATT: The government is not going to
13 enforce you, but you won't ride on my facility if you
14 do not --

15 CHAIRMAN: What point are you reaching right
16 here? Let's get to it. We're seeing the same thing
17 over and over.

18 MR. WIMSATT: Around 80 or 90, Mr. Chairman.
19 80 or 90. 94 is the maximum. That's at full throttle
20 that a factory is putting out nowadays. This is the
21 same level as a truck running up and down the road.
22 Same level as a lot of musical instruments.

23 Mr. Chairman, just to summarize that. If I'm
24 running let's say 85, in that 80 to 90 range, if I'm
25 running 85 decibels, it would take ten ATV's right

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1 next to me. Not in a line or out running in the
2 woods, on a ridge or trees or any of that stuff. It
3 would take 10 to go up to 95. Then you multiply it by
4 another 10 to get up to 105. So you could add 100
5 ATV's running at 80 to 90 decibel. That would equal
6 the same as 105 dB for a walkman or a tractor. A
7 farmer out in the field on a tractor.

8 Now, I know these are real numbers. You can
9 look on any, there's all kinds of sources. I've
10 printed out several of those and I saw the same
11 numbers over and over again. A lot of people think
12 that -- well, all I know is the numbers are what they
13 are. Regardless of what people perception is, the
14 numbers are what they are.

15 MR. NOFFSINGER: Mr. Wimsatt, if I may
16 understand what you're proposing. Again, I think this
17 Board needs to know what you're proposing at this
18 location.

19 Are you going to allow only ATV's or only
20 motor vehicles, whatever you call them, whatever you
21 want to call them, that have a non-modified exhaust?
22 What are we talking about? Because we don't know. Is
23 the door wide open? How are you going to monitor
24 that? Those are the questions and information they
25 need they're not getting.

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1 MR. WIMSATT: That's a good question.
2 Part of what I gave the board was a copy of
3 the restrictions for Turkey Bay. Everybody is saying,
4 why do you compare to Turkey Bay? The reason I say
5 Turkey Bay primarily is because I like their
6 restrictions. It's not the fact that it's 2500 acres.

7 If somebody questioned me at the neighborhood
8 meeting, Bob, most of these facilities are 2000 acres,
9 whatever, big facility. I say, well, what do you want
10 me to do? You want me make it larger? You know, I've
11 got several hundred acres out there. I could make it
12 larger if the board, if it please the board. Just
13 because that's what people want, you know. I felt
14 like with 100 acres that it would be large enough to
15 be able to offer a little bit of something for
16 everybody.

17 Mr. Noffsinger, part of what I submitted to
18 the board was a copy of the regulations, rules and
19 regulations for Turkey Bay. One of those regulations
20 does say spark arresters and mufflers. That's answer
21 your questions on the noise. I hope that answers your
22 question.

23 MR. NOFFSINGER: The rules that you submitted
24 to them, when you submitted this to us you put
25 "similar rules and regulations." Are you saying to

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1 this Board and the folks here tonight that the rules
2 you have submitted here tonight are going to be
3 exactly the rules that you follow?

4 MR. WIMSATT: There is one area that I blocked
5 out there, Mr. Noffsinger.

6 MR. NOFFSINGER: Right.

7 MR. WIMSATT: Which had the lake or things of
8 that nature. The fees, it says camping fees on there,
9 Mr. Noffsinger. You know, certainly I may change some
10 of those. I still haven't decided officially on a fee
11 structure.

12 MR. NOFFSINGER: We're not talking about a
13 campground.

14 MR. WIMSATT: But everything else I'm fine
15 with.

16 MR. NOFFSINGER: Now, are we just talking
17 about the ATV park and the trails? Because if you're
18 to have a campground, you're going to have to come
19 back to this board.

20 MR. WIMSATT: Mr. Noffsinger, the Staff did
21 ask me did I intend to allow what they call primitive
22 camping. I did tell the Staff that I felt like that
23 would be appropriate, just as it was appropriate here.

24 MR. NOFFSINGER: But you did not make that a
25 part of this application. What I'm trying to say to

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1 you, and what the Staff has said, you are bound by
2 what you put in this application. That's all this
3 Board can consider tonight.

4 MR. WIMSATT: Mr. Noffsinger, I have no
5 problems with these rules. You can accept these rules
6 as part of the application, except for the fee
7 structure. Everything else I'm fine with.

8 MR. NOFFSINGER: Okay.

9 MR. WIMSATT: We can go through these
10 specifically if you'd like. I submitted this to the
11 board for a reason. I'm not trying to hide anything.

12 As far as using Turkey Bay as an example, it
13 wasn't because it was 2500 acres. It was because I
14 like their rules. I like their regulations. I think
15 it's good for the environment. It's good for me and
16 the other people that live out there, my kid and my
17 grandkids that live out there as well.

18 Let me mention just a couple of other things.
19 I want to try to put this in a little bit of
20 perspective. I've already been advised that I've got
21 to get my information on the record. So hopefully you
22 guys will respect that and allow me to get my
23 information on the record.

24 I'm going to try to put this in a little bit
25 of perspective.

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1 This is what I call the Bon Harbor Hills area.
2 The edge of it, over here where the property is, is
3 100 acres that I propose. It goes all the way over to
4 the Rudy Mines area and where the state has done their
5 recent mountain bike trails and all of that. You can
6 kind of see the trees and the topography and all of
7 that stuff. That's what they kind of generally refer
8 to as the Bon Harbor Hills area.

9 I'm sitting over here on the edge of Bon
10 Harbor Hills. I want to put this in perspective for
11 some of these people who have shown up and opposed it.
12 I understand that there are adjoining neighbors, and
13 those neighbors have shown up to address their
14 concerns. There's also people this way that are way
15 down the road that I could never convince them that it
16 wouldn't affect them, but I'm just trying to put it in
17 perspective. I want to show another map.

18 Mr. Chairman, again, this is my property, the
19 100 acres. I keep hearing all this stuff about the
20 serenity. Protect the wildlife. Our family farm.
21 Our heritage.

22 Bon Harbor Hills was originally created in the
23 1800's by a man named Robert Triplet, about 5,000
24 acres. Went all the way to the edge of the river.
25 He had about 500 acres that he called hills. He knew

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1 it had good harbor. He went to the French to try to
2 get investors. That's why he called it Bon Harbor,
3 because Bon means French. Anyway, he took coal out of
4 the hills. Took it over here to the good harbor where
5 the Riverport is now and took it down the river to New
6 Orleans. Okay. So that's Bon Harbor Hills.

7 All these people talk about, we don't want
8 nobody to ever disturb our serenity, don't disturb our
9 environment, our wildlife. Don't do nothing to hurt
10 any of our heritage. I think, you know, most people
11 would agree in this community, and even the Planning &
12 Zoning rules, and I'll show you that in a minute, show
13 that coal mining is the worst thing that you can do.
14 The most intense use that our Planning & Zoning has in
15 any of the regulations.

16 So that zoning map shows the Board members
17 what the current zoning is. You can see, I tried to
18 highlight it in here. This black is property that
19 Steele zoned coal mining out in Bon Harbor Hills.

20 This little square right here, that's where
21 Bill and Rosemary Payne live. Fine people.
22 Personally I don't have any problem with them. It's
23 still zoned coal mine all around them.

24 Now, in the '80s and '90s they took a lot of
25 coal out of Bon Harbor Hills. So this shows the land

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1 that was still zoned, still is currently zoned coal
2 mine. They go in there tomorrow and start digging
3 coal if they want to.

4 Where Bill and Rosemary Payne's house is,
5 sitting right here, they can dig coal within 300 foot
6 of their house. Some of that ground that they own is
7 also zoned coal mining. This is absolutely in the
8 Planning & Zoning regs as the worst highest intense
9 use that we have in our zoning regs.

10 I'm going to color something else in. All
11 this area here, all this area here, all this area
12 across here, even the Ellis Estate -- let me finish my
13 statement. Even this right here. Even the property
14 that's being proposed, all of this in the last 10 or
15 20 years was zoned coal mining. This particular map,
16 and I don't have a date on it, but I just happen to
17 have this stuck in one of my files somewhere and I
18 pulled it out. It clearly shows the Ellis Estate
19 where Lou Peay Ellis currently lives, and it clearly
20 shows the 300 foot boundary, which is standard in our
21 community for zoning around coal mining, around
22 somebody's residence. It clearly shows the McNulty
23 home place. Mark McNulty right here. 300 foot, coal
24 mine up to 300 foot of their house. Dust. Destroy
25 wildlife. The serenity. I'm telling you.

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1 Bill and Rosemary Payne, remember their
2 personal residence is over here. You can mine coal
3 around 300 foot of their residence. All this ground
4 back here that they own is still zoned for coal
5 mining.

6 I hear all this stuff about protecting the
7 environment and hear all this stuff about serenity.
8 Don't knock our trees down and don't stir up any dust.
9 Don't disturb our environment, and it's there. It is
10 there now. The reason I know about all of this,
11 except for this one block where the Ellis Estate is,
12 because I rezoned it. I took it from coal mining to
13 agricultural. That's why I knew about it. I rezoned
14 this to agricultural. I rezoned this to agricultural
15 from coal mining. I rezoned this. I even rezoned
16 this.

17 I understand that people have concerns. The
18 realty is that other people have property rights as
19 well and there are standards and there's buffers that
20 are applied on a regular basis. In coal mining, it's
21 typically 300 foot within a residence, and that's
22 exactly what happened in all of these cases.

23 So, Mr. Chairman, I have a very difficult time
24 accepting all of these serenity issues and our
25 heritage and protecting the wildlife and not

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1 disturbing our ground, and I'm much more than 300 foot
2 away than any house, existing house, than what they
3 were with the coal mines.

4 CHAIRMAN: We'll grant that.

5 MR. WIMSATT: We'll move forward.

6 CHAIRMAN: Give me an answer on one question.

7 MR. WIMSATT: Sure.

8 CHAIRMAN: What are you going to do on that
9 property, it's not in your application. You're saying
10 there's posts every so far apart to keep them from
11 getting off. What are you going to do to keep people
12 on your property and not go on other property of the
13 neighbors and keep them off? What can you guarantee
14 to keep them on?

15 MR. WIMSATT: Mr. Chairman, I'm going to give
16 you the most honest answer I can give you. I already
17 swore right at the beginning. The best example I can
18 give you of that is that there's this little park.
19 It's a little skinny park that runs all the way around
20 Owensboro. It's a trail. It's called Greenbelt
21 Trail. We've invited people to run up around that
22 trail all the way around Owensboro and nobody has put
23 restrictions on --

24 CHAIRMAN: We're talking about this piece and
25 not that piece. Let's stick to this, Bob.

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1 MR. WIMSATT: Mr. Chairman, I'm asking for
2 some consistency in what the Board does.

3 All I can do is try to keep as many buffers as
4 I possibly can between me and the adjoining property
5 owners. You know, I hear this stuff about, well, you
6 can get a four-wheeler and you take the four-wheeler
7 anywhere. The NRA law and stuff, you know, you can
8 argue about that all day long. You know, is it the
9 guy that holds the gun or the gun? Isn't an
10 irresponsible gun holder.

11 If people want to break the law, and I've
12 heard all kinds of examples about people trespassing.
13 I remember that story at Ben Hawes Park a few years
14 ago. They went in there and they tore up the golf
15 course. I cannot guarantee anybody that people will
16 not trespass and that people will not get on anybody
17 else's property. There is no way I can guarantee you
18 that, but I will tell you this: If they say it's
19 because they didn't have somewhere to ride, they won't
20 be able to say that no more.

21 All I can do is be responsible and put up what
22 is reasonable. I've tried to make a point to the
23 people too that -- people say, well, a four-wheeler
24 will go anywhere. The reality is if I'm riding a
25 mountain bicycle over on Ben Hawes Park, I can get off

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1 that bike. If I'm out there walking in the woods, and
2 I can walk through two big trees. I can't push them
3 over with a four-wheeler. I can go places on foot
4 that I can't get to with a four-wheeler. If I choose
5 to, if I choose to, and we have to hope that people
6 will be responsible and do the right thing. All I can
7 do is mark the boundaries.

8 Mr. Chairman, I spoke with -- let me finish.
9 Okay.

10 As far as the dust. I spoke with Claud
11 Porter, county attorney, about all the issues I was
12 hearing. Noise, dust, trespassing, all that stuff.
13 Claud Porter very quickly pointed out to me that
14 there's rules and regulations for all of this stuff in
15 our community. There's a division of Air Quality,
16 EPA. If somebody feels like they're creating too much
17 dust, there's rules and regulations for all of that.

18 As far as noise, I have a copy of the same
19 statute that I think somebody on the other side has
20 already read.

21 I'm not proposing that anybody be given any
22 authority to break any laws that exist. Those laws
23 are in place and Claud Porter assured me that he would
24 do everything he can to enforce those laws.

25 As far as me as a property owner, I will do

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1 everything I can to help ensure that that doesn't
2 happen. One of the ways is by making sure that you
3 make everybody know that these are the rules. When
4 they sign a waiver to come into that park, they will
5 agree to those rules or they won't get to ride. If
6 they do not abide by those rules, they'll be kicked
7 out. I live out there too. We hear all this stuff
8 about people living down the road and how close they
9 are. I live right here. My son lives right here. So
10 I'm not going to do anything out there that I think
11 would hurt myself or my kids. There's no amount of
12 money cause me to hurt my kids and grandkids and most
13 of you people will understand this.

14 According to the rules and the regs.

15 I'm going to answer your question, I promise,
16 Mr. Chairman.

17 CHAIRMAN: I'd appreciate it.

18 MR. WIMSATT: I've got a copy of Article 8 of
19 the Zoning Ordinance. I don't think anyone is
20 challenging the Zoning Ordinance and the fact that
21 outdoor recreational park is okay in an A-U zone. So
22 I'm just going to set that aside.

23 Does that sound accurate, Mr. Noffsinger? I
24 don't think anybody is questioning whether or not it's
25 appropriate in an agricultural zone?

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1 MR. NOFFSINGER: I have not heard that
2 question. So long as you obtain a Conditional Use
3 Permit and you are specific in terms of what you're
4 going asking for, and this Board will approve exactly
5 what you've asked for this in this application. If
6 they choose to approve it, then they may set
7 conditions that are applicable to the proposal in the
8 area.

9 MR. WIMSATT: I understand all of that. So
10 I'm going to set the Zoning Ordinance aside because I
11 don't think that's an issue.

12 The next thing I gave the board is just a copy
13 of the Board of Adjustment, the Rules and Regs. You
14 all probably have this memorized, but I gave it to you
15 anyway. One thing I keep hearing about -- of course,
16 it does say Conditional Use Permits, allow proper
17 integration into planning areas. Where it's really
18 open for interpretation is for the Board to decide
19 what kind of conditions they choose to put on that to
20 make sure that it does properly integrate into the
21 neighborhood.

22 Also says, the second page there, 7.322, "The
23 granting of a Conditional Use Permit does not exempt
24 the applicant from complying with all the requirements
25 of building, housing, and other regulations."

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1 I fully understand that. I still have to
2 abide by all the rules of laws that anybody else in
3 this community has to abide by.

4 Section 7.324, "The Zoning Administrator shall
5 review all Conditional Use Permits, except for those
6 for which all conditions have been permanently
7 satisfied, at least once annually and shall have the
8 power to inspect the land or structure where the
9 conditional use is located in order to ascertain that
10 the landowner is complying."

11 So specifically the uses that I have asked
12 for, Mr. Noffsinger, is accessory activities, and you
13 asked me to be specific. I said, sales and service
14 and rental, and I would ask with permission of this
15 Board for primitive camping. Not a developed camping,
16 but just primitive camping where if somebody comes in
17 from out of town and they want to spend the night.
18 That is also a feature that is offered at Turkey Bay.
19 That's why -- just so we're clear.

20 MR. NOFFSINGER: Mr. Chairman, if I may.

21 This application, Mr. Wimsatt, is for an OHV
22 park where a trail system that you have shown here.
23 That's the only thing the Board can grant you
24 permission to do, as well as the gatehouse. This
25 Board cannot grant you permission to work on ATV's, to

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1 sell ATV's, to do any of that, because those are uses
2 that are not allowed in this zone. You have to have a
3 light industrial zone for motorcycles --

4 MR. WIMSATT: Mr. Noffsinger --

5 MR. NOFFSINGER: -- or B-4 for sales. Just
6 because you write it on here doesn't give the Board
7 the right to approve.

8 MR. WIMSATT: Mr. Noffsinger, I understand
9 that. The Board has the authority to approve what
10 they want to and what not to approve on this
11 application.

12 MR. NOFFSINGER: No, sir. No, sir, they do
13 not. This Board has the authority to approve what the
14 Zoning Ordinance tells them they can approve in terms
15 of a use. They're bound by that. This Board can set
16 conditions. They can limit the scope of activity.
17 They can limit hours of operation. There's a lot of
18 things the Board can do, but what they can't do is
19 grant you the opportunity to have uses on the property
20 that are not allowed by the Zoning Ordinance in this
21 zone.

22 MR. WIMSATT: Mr. Noffsinger, I did submit
23 this to the Staff. I asked for feedback, and they
24 rightfully did ask, give us as much as you can tell
25 us. So I tried to do that. As far as I knew, and I

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1 asked this question, I asked this question to Staff.
2 I said, is there anything else? As far as I knew I
3 was order, as far as what I submitted. It was my
4 understanding that you have a primary use. If that
5 primary use is accepted, then there's certain things
6 that can be allowed as accessory uses.

7 Now, if you're telling me that those things
8 cannot be allowed, strike them from my request. I'm
9 giving you authority to strike them from my request.
10 If you say they're not allowed, then strike them from
11 that request.

12 MR. NOFFSINGER: That's exactly what I'm
13 telling you.

14 MR. WIMSATT: Which ones --

15 CHAIRMAN: Let me interrupt. We need a ten
16 minute break.

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

18 CHAIRMAN: We're back on the record.

19 MR. WIMSATT: Something else for the record
20 that you guys are pretty familiar with, the
21 Comprehensive Plan.

22 Land Use Plan, Development Pattern Criteria.
23 Land-Use Intensity, Clusters, Buffers. I've got
24 "Buffer-Uses" circled there. "Specific criteria
25 recommend that particular land uses are appropriate as

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1 'buffer-uses.' This means that these
2 moderate-intensity uses are considered appropriate
3 when located where they will buffer higher-intensity
4 land uses from lower-intensity land uses."

5 The next page. It says what the high
6 intensity uses are. The most extreme is coal mining.
7 Highest intensity use in the zoning ordinance.

8 Then it says, "Landscape Buffers." What's
9 generally acceptable? Large areas of open space,
10 topographical ridge lines, landscape screening.

11 In coal mining what's generally accepted is
12 large area of space and 300 foot radius around
13 existing house. That's what's generally accepted,
14 commonly accepted in this community.

15 I know there's been a big debate about that
16 recently. The Planning & Zoning Commission increased
17 that from 300 foot to 500 foot. The standard is
18 usually 300 foot and that's what on the zoning, out in
19 Bon Harbor in recent years and what still exist out
20 there.

21 This is in the Comprehensive Plan.

22 Obviously the Zoning Board can make exceptions
23 to that. I guess this Board could too or whatever
24 conditions they choose to put on different uses.

25 Then the high profile one out on the east end,

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1 one of the big changes, it went from 300 foot to 500
2 foot buffer.

3 The board can also choose to waive typical
4 requirements, which is what this board did just a
5 couple of months ago. Whenever Dixieland Properties,
6 a gentleman you folks know very, Mr. Drew Kirkland,
7 came to me and asked me would I be opposed to doing
8 away with the standard required buffer, 100 foot
9 buffer, and do away with the standard required
10 screening element and landscape element. I said, Mr.
11 Kirkland, I understand you guys have a right to use
12 your property. I want to be a good neighbor. I'm
13 okay with that. As far as I was concerned, there was
14 plenty of screening here and I wasn't concerned about
15 the standard requirements that Planning & Zoning would
16 require of him. I still believe that there's plenty
17 of buffer there. It's not uncommon at all for
18 developers in this -- at that same meeting, Mr.
19 Pedley, I think I've got it noted right here, because
20 you're familiar with this. There was a landscape
21 requirement that had been required I think of Mark
22 Bosley. You took the trees off or something to that
23 affect, but it's in here too. I don't have it 100
24 percent memorized. Okay. You understand as well as I
25 do that trees are common requirements for buffers.

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1 Along with distance. In most extreme cases, distance
2 300 to 500 foot. Trees are also a common buffer
3 between inappropriate uses. It's used quite common in
4 subdivisions and developments. It was used out at
5 Lake Forest where you've got not a few hundred, but 20
6 or 30,000 cars and trucks a day running up and down
7 Highway 54 and you've got a subdivision right next to
8 you. We have to look at what are standards for this
9 community and what is typically required of people in
10 this community.

11 That's all I ask. Is that I be treated with
12 that same consideration and have the right to be able
13 to do things that I'm allowed to do within certain
14 uses as well. If it required a rezoning, of course,
15 then I'd go through the rezoning as well, but it
16 didn't.

17 The board has standards. It also has
18 occasions where it makes variances. Some perfect
19 examples right out here just in the recent months.

20 One more letter and then I'm going to propose
21 a few more conditions to this board to try to wrap
22 this up.

23 I want to tell you a story first, if I can.
24 I've heard so many things about people. It's a whole
25 lot easier to get people to show up if they're against

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1 something. You guys probably know that as well as
2 anybody. That's just what it is. I wasn't looking
3 forward coming down here because I expected that's
4 what it was going to be. So here we are. But I
5 believe in what I'm trying to do.

6 I had a lady at church -- just because I
7 understand these people, and I understand in their
8 mind they may be sincere, but they don't want that.
9 There are also people in this community that do want
10 it. I was at church last weekend and a lady who lives
11 in Harbor Hills Subdivision approached me. She said,
12 Bob, a neighbor came and knocked on my door and said
13 they want me to sign this petition. She said, are you
14 kidding? I've got kids that live out here and they'd
15 love to have some place like that. Her oldest son is
16 a special needs kid.

17 Mr. Ward, I think you probably know them.
18 It's Eric and Lisa Fulkerson. You went to school with
19 Eric, I believe.

20 Very fine people. Her oldest son is a special
21 needs kid. He probably functions about half capacity
22 or whatever, but fine young man. One of the things he
23 really loves to do is ride his four-wheeler. He said,
24 right now I can't ride my four-wheeler because the
25 farmers have crops in the field behind me. She said,

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1 my kids are tickled to death. I called her the other
2 day and I said, would you be willing to come tonight
3 and tell your story? I couldn't believe, I just
4 really felt bad because she explained to me that her
5 husband now has got cancer and in pretty bad shape. I
6 didn't have a clue that was going on.

7 There are stories on both sides of the fence
8 here. It's a whole lot easier for the people that
9 oppose something to get up and show up in masses.
10 That's just the way it is. The way it is.

11 One last letter. Dustin Roberts, Mr. Panel,
12 you know this gentleman pretty well, I think. I've
13 heard for a long time that he's highly respected in
14 this community and knows as much or more about anybody
15 in this community about four-wheelers and dirt bikes,
16 things of that nature. The Daviess County Fairgrounds
17 themselves, the trustee that run their site out there
18 at the Daviess County Lions Club Fair.

19 Mr. Dustin Roberts, two days ago. "To whom it
20 may concern. Recently Mr. Wimsatt approached me to
21 get some input on an off-road vehicle park in Bon
22 Harbor. Being an avid off-roader since age of 3, I
23 was very pleased with the idea. I know as the
24 Motorcross chairman at the Daviess County Lions Club
25 that off-roading is a family activity that supports

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1 the community. While speaking with him about his
2 plans, he expressed the need for rider safety and
3 public comfort. His approach on safety gear and
4 preventing drug and alcohol will create a safe family
5 atmosphere and the use of low speed limits outside of
6 trails and use of spark arresters will limit the
7 amount of dust and noise from the park. Being a
8 rider, I have rode at off-road parks and race tracks
9 all over the Midwest. In saying this, I think it can
10 also have a significant positive impact in the economy
11 of Daviess County. Riders will come from miles around
12 spending their money at hotels, restaurants and
13 convenient stores before and after riding. I wish Mr.
14 Wimsatt the best of luck in his endeavor and proudly
15 support this cause. Sincerely, Dustin Roberts."

16 As additional conditions, Mr. Chairman --

17 CHAIRMAN: Before you go forward there. On
18 the Daviess County Lions Club, I am a member. The
19 tracks out there are watered. There is no dust on
20 them. The closest to any house behind that is about,
21 600 feet is the closest to any house where they're
22 running.

23 MR. WIMSATT: Mr. Chairman, I have the same
24 distance. About 600 foot.

25 CHAIRMAN: You going to water yours every day?

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1 MR. WIMSATT: If I need to, Mr. Chairman, I
2 will.

3 MR. REEVES: Mr. Wimsatt, I was looking at
4 this. I assume Mr. Roberts if an avid off-roader. He
5 makes a comment in here which bothers me. Is typical,
6 and this is what he said. "The use of low speed
7 limits outside of trails." So is he making the
8 assumption he's going to ride other than on the trails
9 as a routine matter?

10 MR. WIMSATT: No. What he's talking about is
11 the loading and unloading area. The Turkey Bay
12 regulations say the same thing.

13 You have an area on the front that is
14 designated as loading/unloading. Those are typically
15 the low speed areas that are basically what I would
16 say, idle only. It's kind of like a boat with a no
17 wave zone. So you have idle only and low speed in
18 those loading and unloading parking areas, things of
19 that nature.

20 Most of this, as you can see, is hilly, rain,
21 woods. It's not out like riding out in the middle of
22 a field on a Motorcross track. It's not the same
23 comparison either.

24 MR. REEVES: I'm not sure I agree that's what
25 he said. I'll accept that. Okay? He says, "outside

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1 trails."

2 MR. WIMSATT: The trails are the main body.
3 The loading/unloading area is at the front. So when
4 he says "outside of trails" --

5 MR. REEVES: You don't think he's talking
6 about getting off the trails?

7 MR. WIMSATT: Absolutely not. Mr. Reeves,
8 absolutely not.

9 MR. REEVES: Okay.

10 MR. WIMSATT: I don't think most people --
11 understand sometimes --

12 MR. REEVES: I don't know the sport well
13 enough to know the language.

14 MR. WIMSATT: He's a highly respected member
15 of the community.

16 Proposed Conditions. Give you something to
17 put your teeth into in addition with some of the
18 others, Mr. Noffsinger, that you were asking for.

19 Not that I don't have -- I don't want anybody
20 to think that I don't have any concerns for neighbors
21 or any respect (sic) for their concerns.

22 You can put additional conditions on there
23 including limitations on times, operating hours,
24 things of that nature. Turkey Bay, one of their rules
25 talks about no riding at night, which I like that idea

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1 too. So I just simply say, I identify it.

2 "Time Restrictions: No night riding (same as
3 Turkey Bay)." Same as most parks. They close their
4 facilities down at dusk. Bike trails, you know, do
5 the same thing. Ben Hawes it will work.

6 "Buffering." What I'm proposing is the
7 standard, in a worse classification we have in this
8 community, coal mining, 300 foot buffer. I will
9 extend that to 500 foot. That buffer be along Medley
10 Road and that it be restricted to idle speed. The
11 same thing they did at Turkey Bay. Ten miles an hour.
12 No speed. It's for the loading/unloading, youth,
13 beginner trails, all that stuff is.

14 "No trails." I'm going to say this is riding
15 trails. It's not going to include unloading areas,
16 stuff like that, Mr. Reeves. No riding trails or what
17 they call challenge areas. You know, any time you've
18 got contours like that you're going to have what they
19 call challenge areas is what they call it. No trails
20 or challenge areas. Again, I put 300 foot because
21 that's the standard requirement with coal mines. No
22 closer than 500 foot of any existing residence,
23 Hausner-Hard Chrome or River Valley Behavioral Health.

24 Someone mentioned earlier I do have two lots
25 that I'm selling. I have reached an agreement to sell

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1 this lot to an individual who is going to put a nice
2 home there. He has agreed to support the OHV park and
3 is not opposed to any of the rules and regs.

4 Then I say, "Wimsatt shall retain a minimum of
5 a 20 foot landscape buffer on the South, East and West
6 adjoining property."

7 I own the property to the north. So I'm not
8 too worried about me. I'll maintain a minimum of a 20
9 foot landscape buffer around all of this perimeter.
10 You can see much of it is already there. Fifty,
11 hundred foot maybe. Twenty foot is more than twice
12 the standard requirement for landscape. According to
13 Ms. Becky Stone yesterday when I spoke to her, the
14 typical landscape requirements are 3 to 10 foot.

15 CHAIRMAN: Mr. Wimsatt, board knows these.
16 You don't have to go over this for us.

17 MR. WIMSATT: I'm proposing twice the minimum
18 of standard requirement.

19 On the west adjoining property line with J.C.
20 Ellis, IV, Mr. Vickie and Jimbo, on this line where
21 that buffer, 20 foot landscape buffer does not exist,
22 I will construct a 6 foot fence and establish say at
23 least a 10 foot landscape buffer, which is normally
24 the most you require. That that shall create what Ms.
25 Stone told me yesterday, what they look for is an 80

1 percent opacity level. So you can't see through it.
2 Eighty percent of it you can't see through. Again,
3 this is standard requirements of subdivisions all the
4 time. Landscape buffers.

5 So that's what I'm proposing all the way down
6 through here with Mr. Jimbo and Vickie Ellis. Trying
7 to be considerate of the neighbors.

8 On the west adjoining property lines with the
9 J.C. Ellis Estate, III, which is going to be this area
10 back here, and on the east adjoining property line
11 with the Owensboro Riverport, this has been cleared.
12 Actually this is clear too, but there's still a heavy
13 tree line. You can see how thick this tree line is
14 through here. So I'm saying that I will also
15 construct a 6 foot fence on any of these areas that do
16 not have at least an existing 20 foot landscape
17 buffer. That puts a fence in this open area for the
18 Riverport. I'm not too concerned about the opacity,
19 the 80 percent requirement, because, you know, I don't
20 figure the Riverport, as long as they've got their
21 safety and they've got their fence up, they don't care
22 who they see on the other side. I don't care about
23 who I see over there. I understand the Ellises might
24 want something a little bit different. I don't have
25 any problem with that.

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1 Just so it's not unsaid, Item Number 3,
2 "Wimsatt shall not conduct any activities that have
3 not been specifically approved in the Conditional Use
4 Permit or construct buildings in the Activities
5 Support Area unless they have been reviewed and
6 approved by the local Zoning Administrator."

7 And that's already a requirement. We all read
8 that earlier. Staff already read that. It's going to
9 be reviewed every six months. I can't build any
10 buildings or do anything else unless I make sure I
11 satisfy park requirements and all that stuff. It will
12 all be dealt with, if we decide to build a building.
13 All we propose right now is the gatehouse, you know.
14 You've got to start somewhere. I'm going to put the
15 longest distance, as far as I'm aware, that the Board
16 of Adjustment or Planning & Zoning has ever put on
17 anybody, that 500 foot distance.

18 The worse case use in our Zoning Ordinance,
19 and I'm committing to the same thing.

20 I don't know what else I can give this board
21 or this commission. I've tried to be as detailed as I
22 can.

23 Mr. Noffsinger, I understand I will only get
24 approval for what is specifically listed, and I've
25 tried to clarify that. I understand that.

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1 I'm willing to accept any other conditions or
2 consider any other conditions this board might ask.
3 I'm not trying to be inconsiderate of the neighbors.

4 MR. NOFFSINGER: Mr. Chairman, for
5 clarification on the fence that Mr. Wimsatt is
6 proposing along the J.C. Ellis property, when he talks
7 about opacity.

8 I'm curious about the fence material you're
9 proposing to meet that opacity requirement.

10 MR. WIMSATT: As I understood it from Becky
11 Stone yesterday, when I talked to her about typical
12 landscape requirements, she was the one that educated
13 me on that 80 percent opacity. She said that is
14 typically made up of either a combination of trees and
15 --

16 MR. NOFFSINGER: Again, just the fence, if you
17 would. What's the fence material you're proposing
18 because we have to be clear? Trees are not considered
19 fencing by the ordinance. Is it going to be vinyl,
20 wood, chain-link with a screening fabric? What is the
21 fence material you're proposing?

22 MR. WIMSATT: I would expect it to be
23 chain-link just like other people have used out there.
24 Chain-link with some kind of screening material.

25 MR. NOFFSINGER: Thank you.

1 MR. WIMSATT: It's custom and common out in
2 that area.

3 CHAIRMAN: Any board member have any questions
4 of the applicant at this time?

5 MR. PEDLEY: I have a few comments.

6 You know, you understand that everything
7 you're proposing to do, you don't do it, this board
8 has the authority to revoke your permit.

9 MR. WIMSATT: Mr. Pedley, I 100 percent fully
10 understand that.

11 MR. PEDLEY: Don't do you any good to go to
12 Fiscal Court. Won't do you any good to go to the City
13 of Owensboro. They cannot overrule us.

14 MR. WIMSATT: I understand that.

15 MR. PEDLEY: You can file suit at circuit
16 court. That's all you can do.

17 MR. WIMSATT: I understand that.

18 MR. PEDLEY: There are a few other things that
19 I have concern with and that is safety, and then your
20 erosion control plan. I haven't heard you say you've
21 been to the city or county engineer on your erosion
22 control plan. I serve on the Public Improvement
23 Specifications, the Clean Water Act. You've got major
24 things here coming your way that you must do out
25 there.

1 One of the things on safety, accidents, I'm
2 going to give you some personal experiences that I've
3 had back in my younger days when I wasn't too smart.
4 I road a motorcycle. 350 Kawasaki. Some friends and
5 I, there was about eight of us. Tom Hagan, Jack Clark
6 who owned Kawasaki shop. Roy Yewell. I don't know.
7 There was about eight of us. We went down to Bon
8 Harbor. We rode back off Willett Road in behind Hawes
9 Park.

10 MR. WIMSATT: Pretty familiar with it.

11 MR. PEDLEY: There was about eight of us. We
12 had a trail down there that we had permission to ride
13 on. We were very careful with other people's
14 property. Stayed off of other people's property.
15 Guess what happens? In about three or four months
16 there was about 50 showing up down there on Willett
17 Road. Drag racing up and down Willett Road. Riding
18 all over Bon Harbor Hills. Even into the park. Off
19 the trails that we didn't have permission to ride on.
20 Created a little track down there where the oil well
21 used to be. Dry ground. They was racing around it.
22 Stockey Hamberg, well-known stock car driver here, he
23 raced with Darrell Waltrip back in the days. There
24 was a very serious accident down there. He had a bag
25 leg injury. Bone was sticking plumb out of his leg.

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1 Spent several week in the hospital. Nearly lost that
2 leg.

3 So the eight us that had been riding being
4 responsible people we decided we needed to move out of
5 the area. We didn't need to be there. So we went out
6 to Bells Run by Tom Hagan. He had a 200 acre farm out
7 there. Went out there and started riding his trails.
8 First thing you know they're all coming. Had major
9 accidents out there. One guy, a tree limb went plumb
10 through his leg. So we kind of broke that up. Moved
11 away.

12 Good friend of mine, one of the riders who
13 rode with us, his son-in-law was riding out there one
14 day. His cousin went out on the highway running up
15 and down drag racing going at a high speed. Those
16 motorcycles weren't prepared for running on asphalt.
17 One of the guys made a U-turn in front of him. Ran
18 into him and killed him.

19 At that time I decided I just didn't need to
20 be riding motorcycles. I did make one more run. What
21 we call Hair Hound. You go cross country through
22 fields, and woods, and creeks and whatever. I ran
23 that run. It was freezing rain. Drizzle, freezing
24 rain, sleet. I was out in Oklahoma. Hit a bridge
25 with ice on it. I went down. Went down hard. I slid

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1 about 200 feet down that road. Tore my jacket, my
2 helmet. Broke that finger. It's still crooked.
3 Broke the clutch on my motorcycle. I got back on that
4 motorcycle and I said a little prayer. I said, Lord,
5 if you'll get me back home, I'll never get on this
6 thing again, and I didn't.

7 Just in that little bit of experience that I
8 had how out of control that things get.

9 My question to you is: Are you going to have
10 control of these riders coming and going? I know off
11 your property you can't, but what's going to happen
12 down there? The same thing happened down there when
13 we were riding. First thing you know there wasn't
14 eight of us. It was 50. They were riding through Ben
15 Hawes Park. They were riding everywhere. The same
16 thing can happen. That's a major concern with me is
17 safety. You have a safety issue and you have
18 liability. That's your problem if it's on your
19 property. That's your problem.

20 Outside of that, if they get off your property
21 or when they're going through your property or they're
22 out there riding on the road, there is no control.
23 It's like we had no control of all the riders down
24 there and those people getting hurt.

25 Three or four years ago I had a good friend,

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1 Willard Bowman, he used to own City Transfer. He
2 retired. He was riding his ATV climbing a hill. It
3 was out in the country somewhere. It came back on
4 him. Flipped upside down on him. He laid in the
5 hospital nearly two months and nearly died. He was
6 paralyzed from here down. Two years later he died.
7 Just like Turkey Bay says, it is very, very, very
8 dangerous activity.

9 MR. WIMSATT: Mr. Chairman - -

10 MR. PEDLEY: Very dangerous.

11 MR. WIMSATT: Mr. Pedley, my mother was a
12 nurse. She used to --

13 MR. PEDLEY: You're proposing control on that
14 and you're proposing to run your activity like Turkey
15 Bay. That's what you've handed out here. It's got
16 all kinds of regulations and restrictions and things
17 like that. Also you just handed out what you're going
18 to do to protect the property owners, your fencing and
19 your trees and all of that.

20 What you haven't addressed is the Public
21 Improvement Specification, Chapter 14, of storm water
22 quality management and erosion control. The city and
23 the county is getting ready to adopt this ordinance.
24 It's one thing I can guarantee you. You're going to
25 do it. You're going to do every bit of this. You're

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1 never going to open that if you don't do this.

2 Because we had a meeting yesterday, the city
3 engineer, the county engineer, and here is what it
4 was. Chapter 14, there's 14 pages. I'm telling you
5 all this, I don't know if we're going to approve this
6 or not, but if we do, there's one thing I can
7 guarantee you. You're going to do exactly what you
8 say. You're going to do exactly what this says or
9 we're going to pull your permit.

10 MR. WIMSATT: I have no problem with that, Mr.
11 Pedley. No problem.

12 MR. PEDLEY: Also, the zoning administrator is
13 going to be pulling periodic inspections on you and
14 you are not going to know when he's there.

15 MR. WIMSATT: I have no problem with that.

16 MR. PEDLEY: You are going to come back before
17 this board, if we approve this, every six months.
18 We're going to take a look. Are you doing everything
19 that you've handed out here and propose to do. If you
20 don't, we shut you down.

21 MR. WIMSATT: Mr. Pedley, I understand.

22 MR. PEDLEY: You understand that?

23 MR. WIMSATT: Mr. Pedley, I understand.

24 MR. PEDLEY: Again, I'm not saying we're
25 approving this. If we do approve this, that's what's

1 going to happen.

2 MR. WIMSATT: I understand.

3 MR. NOFFSINGER: Mr. Chairman, I would like to
4 be clear on the application, and I would like to state
5 what this application is for so we know what we're
6 considering.

7 This is an OHV park showing a primary trail
8 system with a gatehouse with youth trails and area for
9 beginners and safety class. It's for 57 participants.
10 Not 58. Not 60. It's for 57 participants, and it's
11 limited to 57 participants because that's the size of
12 the parking area he's proposed. If there are any
13 changes to the number of participants, the maximum
14 number or the parking area is enlarged or there are
15 additional buildings, any other activities other than
16 this trail system, he would have to come back before
17 this board for a new Conditional Use Permit. I just
18 want to make sure we're clear as to what's being
19 considered in this application.

20 CHAIRMAN: You understand that?

21 MR. WIMSATT: Yes. Along with the other
22 things that were submitted as well, Mr. Noffsinger?

23 MR. NOFFSINGER: What are the other things?

24 MR. WIMSATT: Maybe I should -- you asked me
25 about the Turkey Bay regulations and requirements.

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1 You specifically asked me about that. Was I willing
2 to -- were those the activities I was asking for?

3 MR. NOFFSINGER: No. The rules and
4 regulations. The activities such as camping, that's
5 not being requested in this application. My Staff
6 asked you what activities you were proposing. That is
7 not included in the application. Your application was
8 mailed to each board member and it's very specific
9 written by you as what you propose to do. It does not
10 include camping. It only includes those activities
11 that I specifically mentioned.

12 MR. WIMSATT: Just so I'm clear, Mr.
13 Noffsinger, sales, services and rental, is that what
14 it is?

15 MR. NOFFSINGER: Those are uses that are not
16 allowed in this zone. If you are going to ATV sales,
17 motorcycle sales, you need to have a different zoning
18 classification. If you're going to service these
19 types of activities, you need to have a different
20 zoning classification. Those activities are not
21 allowed in an A-U Urban Agricultural zone.

22 MR. WIMSATT: Mr. Noffsinger, I understand you
23 guys have the authority to put whatever restrictions
24 you want on it.

25 MR. NOFFSINGER: Again, those activities are
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1 not restriction activities. The activities are
2 limited by what you included in your application and
3 what the zoning ordinance allows in the A-U Urban
4 Agricultural zone.

5 MR. WIMSATT: I understand.

6 CHAIRMAN: You have something else to add?

7 MR. SILVERT: You're sworn. Could you state
8 your name again for the record.

9 MS. HIGDON: Rachel McNulty Higdon.

10 Just a few questions about some of this. Who
11 is going police -- first I want to say Mr. Wimsatt
12 said something about me not having my paperwork and
13 things. So here is all the information, if you would
14 pass this around, about the decibels and the U.S.
15 Department of Transportation, about the value and
16 property of the land. It's all in there. All of it
17 is.

18 Who is going to -- the Turkey Bay down in Land
19 Between the Lakes is government mandated. Who
20 mandates what Mr. Wimsatt is going to do? Who will be
21 there to say he can only, who is going to be at the
22 gate that says, there's already 57 people in here.
23 You can't come in. Who is going to be there to do
24 that? Does anybody have any answers to those? Who is
25 going to mandate? You know, Turkey Bay is government

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1 owned. That is private property. How are we as
2 homeowners and other business owners assured that he
3 will have to abide by the rules of this? Does that
4 make sense?

5 CHAIRMAN: I'll ask that question in just a
6 minute.

7 Any other comments or questions?

8 MS. HIGDON: The no trespassing. He said that
9 he was just -- the people are not going to come over
10 into our land. That he was going to mark the
11 boundaries, as I quote him to say. Well, if all we
12 ever had to do was put a no trespassing sign in the
13 front lobby down here, all we'd have to put is a no
14 trespassing zone, we would not need the locks on all
15 of these doors and all of the alarms on the government
16 buildings and lands that we have. We wouldn't need
17 all of that. All we would need is a no trespassing
18 sign. Again, I have property down in Bon Harbor
19 Hills. I've had it for many years. I know my son
20 just last year was going over on his land with a
21 four-wheeler and came upon two guys laying down in the
22 grass with guns hunting deer on our property. They
23 were trespassing. Mr. Pedley is right. When you have
24 one, two, three-wheelers they tell others, they tell
25 others, and before you know it we've got 100, three,

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1 four-wheelers, who knows what else. I know what he
2 was talking about, Mr. Pedley. Used to be called
3 Honda Hill. It is now family owned.

4 I am extremely afraid of these trespassers
5 coming in. I don't want them coming on my land. I
6 don't want them coming over with guns or their
7 four-wheelers and tearing up our property. If I'm not
8 there, that they come in and steel anything because
9 there are no boundaries around his property, other
10 than it says "no trespassing." I know from experience
11 that people do come to our property from Ben Hawes
12 State Park. They walk over. They'll come over with
13 their dogs. You say, that's my property. They'll
14 say, I'm just walking my dog. I say, this is still my
15 property. They'll say, I'm still just walking my dog.
16 I say, well, you know what. I might have -- anyway,
17 you're trespassing. Get off of my land. That is what
18 the landowners in Bon Harbor Hills have. He was right
19 again. It is the highest hills. It is in an
20 attraction. A lot of people do want to come out
21 there, but it's not their land. It's my land. It's
22 Rosemary's land. It's all some of these people's over
23 here. It's not their land. I do not want this there
24 because of the trespassing, because of the noise,
25 because of River Valley. That's terrible. All that

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1 noise. The safety of all those children. I don't
2 want to live with that thought of the safety of those
3 children. I don't want to live with the thought of
4 the safety of my grandchildren, my children and
5 grandchildren of the noise and the trespassers. I
6 don't. There's been a lot of people that have said a
7 lot of things here tonight about why we don't want it
8 here in Bon Harbor Hills.

9 One lady, I can't remember who it was, said
10 passion. You darn well better believe it. I have
11 passion about this. He almost insinuated something
12 about, Mr. Wimsatt did about the generations. Yes, we
13 have been there since 1841. 141 years. Count it.
14 I'm very proud of that. I'm very proud that we still
15 have that land. There aren't many people that will
16 fight for that. I'm here tonight and I am fighting to
17 keep that land, to keep it in the natural state. Not
18 have the dust and the noise and the trespassers and
19 all of that. Yes, I am passionate about it and I am
20 fighting about it because I don't want this to go
21 through.

22 CHAIRMAN: Thank you. We'll get your question
23 right now.

24 MS. HIGDON: I'm sorry.

25 CHAIRMAN: I'll get your answer to the time

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1 and who is going to enforce the regulations.

2 MS. HIGDON: Okay. Thank you.

3 CHAIRMAN: Who is going to do the regulations?
4 Who is going to police it?

5 MR. WIMSATT: Mr. Chairman, to a certain
6 extent, it'd kind of like when you get people hunting
7 rights, they pay for hunting rights to get on the
8 land. Most of the time if somebody is paying for
9 something it's because they want to protect their
10 right to be able to do it.

11 There's a certain amount of self-policing that
12 goes on. You can't rely on self-policing. That's for
13 sure. Somebody has to be there. All you can do is
14 police it the best you can. Be myself or someone
15 else. I live closer to this property, personally live
16 closer.

17 CHAIRMAN: Are you going to be there policing
18 it or have somebody policing there all the time that
19 you're open?

20 MR. WIMSATT: Mr. Chairman, I can't say all
21 the time any more than --

22 CHAIRMAN: Is somebody that you hire going to
23 do it?

24 MR. WIMSATT: Mr. Chairman, you're saying all
25 the time. Turkey Bay doesn't do that either.

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1 CHAIRMAN: Somebody paying for --
2 MR. WIMSATT: Someone will be there. Someone
3 will be there to police it.
4 CHAIRMAN: Thank you.
5 MS. HIGDON: All the 100 acres or just the
6 front, up front? What about bathroom facilities?
7 MR. WIMSATT: Porta-potties are not uncommon.
8 MS. HIGDON: Thank you.
9 CHAIRMAN: Appreciate.
10 Now, the Board members go ahead and ask your
11 questions.
12 MR. REEVES: Well, it's more of a comment, Mr.
13 Panel.
14 I'm very familiar with Turkey Bay. I hope to
15 be there tomorrow in that general area. That is a
16 huge, huge facility. My concern when you use that as
17 a comparison, I'm not sure you can scale down. I'm
18 not sure scaling in somewhat of an urban environment.
19 I respect Mr. Wimsatt's good intentions on doing this,
20 but my concern is is it even doable whenever you have
21 these kinds of safety concerns, these kind of
22 environmental concerns? Is scaling even appropriate
23 when you have -- Turkey Bay, your nearest house is
24 across Kentucky Lake at least. That's the closest.
25 Most of them are 15, 20 miles away. I have great

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1 concern about whether or not you can scale something
2 like this down in a geographical area like this.

3 MR. NOFFSINGER: Mr. Chairman, in addition to
4 that. Turkey Bay they have LBL enforcement officers.
5 They will issue citations if you're found breaking the
6 rules. So they do have law enforcement officers that
7 are on four-wheelers, ATV's, and they will cite you if
8 you're found in violation of their laws and you're
9 subject to removal.

10 CHAIRMAN: Any other comments?

11 MR. WARREN: Mr. Wimsatt, you alluded to the
12 fact that no night riding. What are your hours going
13 to be?

14 MR. WIMSATT: Once again I keep saying Turkey
15 Bay. Okay. Just because of the rules is why I
16 compare it to Turkey Bay. Not the size. It's the
17 rules that I like and the velocity. The hours that
18 they use, they post them, as I understand it, every
19 day. It's no night riding. Someone had said, what
20 about putting a specific time on it. Certain times of
21 the year it gets dark at 4:00. So what if I said
22 10:00 or 8:00 or whatever, you know. To me that
23 seemed appropriate to go that way.

24 MR. WARREN: What about opening hours? Six
25 o'clock in the morning or 5:00 in the morning?

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1 MR. WIMSATT: They just left it up. Had
2 mountain bike trails. As far as parking, for the
3 mountain bike that was how many parking spaces they
4 had in that area. I wasn't talking about all of Ben
5 Hawes Park. They had a sign out there saying 7:00 is
6 earliest that they can run and they can ride all the
7 way up to dark.

8 MR. WARREN: Seven o'clock in the morning to
9 dusk?

10 MR. WIMSATT: Yes. That's what they do, the
11 city does.

12 MR. WARREN: How are you going to keep people
13 out after dark?

14 MR. WIMSATT: Put a gate. I guess if I can't
15 have camping, I guess I have to lock the gate.

16 MR. WARREN: I know the property pretty well,
17 and I also know how to ride a four-wheeler and a
18 three-wheeler and a motorcycle pretty well. There are
19 very few places that border your property that I
20 couldn't get across on a motorcycle.

21 MR. WIMSATT: Oh, I believe that.

22 MR. WARREN: At nighttime. That's what I'm
23 saying. I'm wanting to know how you're going to keep
24 me from getting on your property at nighttime and
25 riding through those trails?

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1 MR. WIMSATT: Mr. Warren, I can't keep you now
2 from getting on my property, other than trying to
3 police my property as best I can. I can't keep them
4 off the golf course. Somebody breaks law on my
5 property, I'm going to have them arrested if they
6 don't have authority to be there, and every other
7 property owner has that right.

8 MR. NOFFSINGER: Riding hours are from sunrise
9 to sunset. So that's how they control it. Instead of
10 using hours they say sunrise to sunset. I believe
11 that's what he was trying to do, if he's going to go
12 by these rules that.

13 MR. WARREN: My concern is, you know, the
14 sunrise is at 5:30 in the morning all summer long and
15 I'll be dang if I'd want to be woken up at 5:30 in the
16 morning by riders.

17 MR. WIMSATT: I have no problem putting the
18 hours the same that Ben Hawes does.

19 MR. WARREN: Is that Monday through Friday?

20 MR. WIMSATT: No.

21 MR. WARREN: Seven days a week?

22 MR. WIMSATT: Yes. It has to be.

23 CHAIRMAN: State your name.

24 MR. THACKER: John Thacker again on behalf of
25 Guadalupe Ellis and William Yunker, and also on behalf

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1 of the Ellis Estate.

2 I just want to make it clear that they do not
3 agree to the proposed buffer and fencing are
4 sufficient to take care of the issues. I think Jimbo
5 and Vickie also object to that. I want to put that
6 objection on the record. I don't want anybody to
7 think that they would be in agreement with that.

8 Also, just the enforcement of this has been
9 described as a nightmare logistically. I think it's
10 impossible for this really to be accomplished by
11 what's been proposed. Really nothing has been
12 proposed for enforcement. Nothing concrete. Nothing
13 that will even come close to work.

14 CHAIRMAN: Any other board member have any
15 comments?

16 (NO RESPONSE)

17 CHAIRMAN: Does staff have anything else?

18 MR. NOFFSINGER: No, sir.

19 CHAIRMAN: Anyone make a motion for or nay or
20 otherwise?

21 MR. PEDLEY: Mr. Chairman, we have a lot of
22 handouts, a lot of things to consider. I'm not
23 prepared right now to make a full decision because one
24 thing I would like to ask Mr. Wimsatt to do.

25 You haven't met with either the county

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1 engineer, city engineer on a development plan and
2 erosion control plan.

3 Without that information and with so much for
4 us to consider, to think about, I'm going to make a
5 motion that we postpone this until the next meeting.
6 There won't be any more testimony. Won't be anything
7 heard. You come back, we'll make our findings of
8 fact, and make our motion to either deny it or approve
9 it, but we will not at the next meeting hear any more
10 testimony.

11 CHAIRMAN: Is there a second? Is there a
12 second from anyone?

13 MR. REEVES: Not from me. I mean I'd be glad
14 to make a comment.

15 I think the burden for all of that information
16 fell on Mr. Wimsatt to start with. I think to ask
17 these folks to come back one more time for us to hear,
18 I mean we will invariably hear both sides again.

19 CHAIRMAN: No. There won't be no more.

20 MR. REEVES: I still think that burden was on
21 Mr. Wimsatt to bring that information, if that's an
22 integral part of our decision making process.

23 CHAIRMAN: Is there a second?

24 (NO RESPONSE)

25 CHAIRMAN: Hearing none the motion dies for
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1 the lack of a second.

2 Any other motion or comments from anybody?

3 While you all are thinking, do you all have
4 anything new to add to it briefly.

5 MR. SILVERT: Could you state your name again
6 for the record.

7 MS. ELLIS: Vickie Ellis.

8 If I may, can I point out a few things on his
9 map?

10 CHAIRMAN: Yes.

11 MR. SILVERT: Mr. Wimsatt, is that okay with
12 you, if she approaches your map?

13 MR. WIMSATT: Help yourself.

14 MS. ELLIS: I don't know if you can see it
15 from there. That is my home right there. We have an
16 outline here of where he may or may not put his OHV
17 course. What we don't have is the property line on
18 this map. Now, he has offered, which we've declined
19 would not satisfy us a barrier here, somewhere in this
20 area.

21 MR. NOFFSINGER: Excuse me, Ms. Ellis. I do
22 believe that the yellow line is the property boundary.
23 I believe that based upon the survey that was prepared
24 by Joe Simmons that's a registered land surveyor here
25 in Owensboro, Kentucky.

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1 MS. ELLIS: He prepared a survey for us as
2 well.

3 MR. NOFFSINGER: And knowing Joe, when he puts
4 his name on something that's generally the way it is.
5 So I do believe what you see in yellow there
6 represents what we have. I do believe that yellow
7 line is the property boundary.

8 MS. ELLIS: With that said, you can tell in
9 the photograph this is my backyard. There are no
10 barriers. No natural barriers whatsoever. A
11 chain-link fence does not provide opacity. It does
12 not. We would not be satisfied with that, as Mr.
13 Thacker mentioned.

14 There's already a lot of existing woods
15 through here. I would say there's much more than 20
16 feet. The 20 feet seems to be the barrier that we
17 continue to discuss. I would say they're much steeper
18 than that. I routinely have people coming through
19 here, coming through there, hunting on this property.
20 They don't have permission to hunt on this property,
21 but they're there with guns and they're shooting.
22 This is a topographical map. It doesn't show
23 elevations. It does, but I can't very well explain to
24 you what's high and what's low, but what's to say
25 someone is over here hunting on my farm. They're up

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1 in their tree stand. We have people riding over here.
2 Somebody gets shot. It's a very possible scenario. I
3 just would like to point that out.

4 I would also like to point out, and I didn't
5 think of it before. It did not occur to me before Mr.
6 Pedley mentioned Jack Clark. I too know Jack Clark.
7 Known him for a very long time because since the time
8 that I was two years old and old enough to remember,
9 Jack Clark, Mike Libbs, Darrell Howard, several
10 others, Doug Clark, formed something the Owensboro
11 Motorcycle Club. It's been around -- I'm 41 years
12 old. It's probably been around 38, 39 years. They
13 have a farm in Fordsville that is 40, 45 miles from
14 Owensboro I would guess. The only stipulation for
15 permission to ride on that property, which is not in a
16 residential area, is that you participate in the club
17 and help to preserve the land. Just would like to let
18 you all know that this is not the only other option
19 for riding in and around Owensboro and Daviess County.

20 CHAIRMAN: State your name.

21 MR. McNULTY: John McNulty.

22 It's obvious for Mr. Wimsatt's two time insult
23 to my family's heritage that I struck a cord when I
24 mentioned his historical and continuous violations. I
25 don't have the data of that information. It probably

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1 comes from Planning & Zoning, engineering. I don't
2 know where that information would come from. I know
3 that the people here would like a full list of what
4 those are, whether it's ordinance violations, OSHA
5 violations. I don't even know the proper terms for
6 them. I hear continually Harper Trace not completed.
7 Challenges, problems, those types of things, of the
8 other neighborhoods. I know as the public, that's
9 public knowledge, public information. I just don't
10 know how to get ahold of it. How do we get ahold of
11 that?

12 MR. NOFFSINGER: Mr. McNulty, I am not aware
13 of any violations that Mr. Wimsatt has with the
14 Planning Commission or through zoning enforcement.
15 However, there may be violations that exist or items
16 that are incomplete or other concerns that the city
17 Engineering Department or the Daviess County
18 engineering department might have, but I am not aware
19 of any violations with the Planning Commission.

20 MR. McNULTY: Thank you. Would that
21 additional information be of good consideration for
22 this board?

23 MR. NOFFSINGER: That may be information that
24 you obtain and present to this board. Now, how they
25 choose to view it and what that information might

1 contain, I can't speak for that, but that's certainly
2 information that you can obtain from those agencies.
3 If you wish to submit it into evidence, you can.

4 Now, it depends on how this meeting goes.
5 Certainly you can't submit it into evidence here
6 tonight. You don't have it. If they were to postpone
7 and not take new evidence, then no, this board would
8 not consider that. It's kind of tough to answer that
9 question, but if you had it with you tonight certainly
10 you could submit it. The Board could choose to do
11 with it what they wish.

12 MR. McNULTY: Thank you.

13 MR. SILVERT: Not in any to say that such
14 violations exist to this body's knowledge because that
15 hasn't been submitted here tonight.

16 MR. NOFFSINGER: I stated that, yes. I meant
17 to state that.

18 MR. SILVERT: State your name again.

19 MR. PAYNE: My name is Bill Payne again.

20 I live right in the middle of all that coal
21 I'm told. There's no coal there any more. That was
22 years ago. I guess it hasn't been changed back to
23 agricultural. Anyway, I wasn't aware of that.

24 One of the things that bothers me, we haven't
25 addressed Mr. Hausner, or the psychiatric hospital, we

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1 haven't addressed their issues much at all. I mean
2 about the dust and the dirt and the noise and the
3 psychiatric hospital with the noise. They talk about
4 these 96 decibels being the limit on a motorcycle.

5 You all have been referring to ATV's. You
6 haven't mentioned dirt bikes. A dirt bike, I'd say
7 nine out of ten of them don't even have a muffler on
8 them. If they do, all the guts are gone out of it.
9 They've been modified. I'll assure that a bunch of
10 dirt bikes can make more noise than 500 ATV's. That's
11 one of the consideration that I haven't heard much
12 about.

13 Sure, 96 decibels from the factory, but
14 there's probably not one in no telling how many that's
15 still like it was when they got it from the factory.
16 There's several other considerations here that we
17 haven't really dug into good. Thank you.

18 MR. NOFFSINGER: For the record I do believe
19 Mr. Wimsatt addressed that in terms of he would only
20 allow stock vehicles. OHV, I want to say overhead
21 valve. I'm thinking about my lawn mower engine. I
22 get messed up there.

23 For the record he did state that they would be
24 from the manufacturer and they could not be modified.

25 CHAIRMAN: State your name.

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1 MS. HELMS: My name is Vickie Helms.
2 How is he going to police that? How is he
3 going to know that someone hasn't modified something?
4 CHAIRMAN: That's a good question.
5 MS. HELMS: There's a lot of unanswered
6 question. As a -- Bob started talking about his
7 mother being a nurse. I'm a nurse practitioner that's
8 practiced here for a long time. I've been in the ER
9 in several different areas. I beg you all to consider
10 cost versus gain on this. If we have someone to be
11 hurt, as Mr. Pedley was talking about, and they use
12 our hospital facilities and our services, that's a
13 cost to our community. Not only with our reputation
14 but also with harm to people that are in this
15 community. Not to mention the extra burden that's
16 going to be put on police forces, either the county
17 police or the state police or the city police, to come
18 out and address the issues when people do leave the
19 property. Ms. Cook presented statistics. You asked
20 for concrete information. She gave very good statics
21 about percentages of people that ride off trail. Mr.
22 Pedley mentioned that. Bob even mentioned that his
23 friend that has the child that's disabled rides on
24 someone else's farm. So people do not stay on
25 property that's their own or that they're paid to ride

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1 on. I think we all know that. Statistics have been
2 presented for you all to consider. We've all had
3 experience with that. I beg you to consider the cost
4 to our community with health services and police
5 services.

6 CHAIRMAN: Thank you.

7 MR. REEVES: Mr. Chairman, I'd be prepared to
8 make a motion.

9 CHAIRMAN: Good deal.

10 MR. REEVES: I'd like to move that this
11 application be denied based on the following facts:

12 First, the applicant has not provided
13 sufficient evidence that he can control safety issues,
14 which we all know will exist there. He has not
15 indicated that he would have someone there on site at
16 all times to prevent not only safety issues, but to
17 prevent people from trespassing on other's property.

18 Further, we heard from a major industry in the
19 community that the dust particles generated would
20 likely have an impact on their production process down
21 there.

22 Thirdly, we have a psychiatric hospital that
23 the additional noise beyond what is currently present
24 there could have a very negative impact on the
25 residents in the hospital.

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1 CHAIRMAN: Is there a second?
2 MR. WARREN: I'll second that.
3 CHAIRMAN: A motion has been made and a
4 second. Is there any other comments from the board?
5 (NO RESPONSE)
6 CHAIRMAN: Staff have anything else?
7 MR. NOFFSINGER: No, sir.
8 CHAIRMAN: Hearing none all in favor raise
9 your right hand.
10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
11 CHAIRMAN: Motion denied.
12 Next item, please.
13 ITEM 4
14 3425 New Hartford Road, zoned B-4
15 Consider a request for a Conditional Use Permit in
16 order to construct and operate an individual storage
17 facility in a B-4 zone in the County.
18 Reference: Zoning Ordinance, Article 8,
19 Section 8.2L7/48
20 Applicant: Seth Stewart; Gilliland Group Partnership
21 ZONING HISTORY
22 The subject property is currently zoned B-4.
23 OMPC records indicate there have been no Zoning Map
24 Amendments for the subject property.
25 The applicant is proposing to construct and
operate an individual storage facility on the subject
property. The applicant is proposing to use some of
the existing buildings on the property, converting
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1 them to storage units and office space, and construct
2 6 new buildings while demolishing the garage type
3 buildings to the rear of the property.

4 Individual storage is Conditionally Permitted
5 in a B-4 zone in the County with the conditions,
6 unless a Variance is granted.

7 The applicant has applied for a Variance in
8 conjunction with this application regarding some of
9 those conditions.

10 LAND USES IN SURROUNDING AREA

11 The properties to the north are zoned B-4
12 General Business and A-U Urban Agriculture and both
13 are vacant. The property to the west is zoned B-4
14 General Business. The properties to the south and
15 east are zoned R-1A Single-Family Residential and A-U
16 Urban Agriculture and are single family residences.

17 ZONING ORDINANCE REQUIREMENTS

- 18 1. Parking - no parking required.
19 2. Landscaping - an 8 foot solid wall or
20 fence with 1 tree every 40 feet along any property
21 line adjoining residential property with a 10 foot
22 landscaping easement and a 3 foot continuous element
23 between the vehicular use area and the road
24 right-of-way.

25 SPECIAL CONDITIONS

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1 Individual storage is Conditionally Permitted
2 in a B-4 zone in the County with the following
3 conditions unless a Variance is granted:

4 A. Structures to be used as individual
5 storage units shall not be located closer than
6 twenty-five (25) feet to any residential zone.

7 B. An eight foot (8') high solid wall or
8 fence shall be installed and maintained on all sides
9 that adjoin any other property except those properties
10 zoned B-1, B-2, B-3, B-4, B-5, I-1 or I-2. Tree
11 plantings may also be required as per Article 17 of
12 this Zoning Ordinance.

13 C. Building height shall not exceed fifteen
14 (15) feet, measured from the finish grade at the
15 loading door(s), to the top of the roof ridge or edge.

16 D. Outdoor storage shall be prohibited on the
17 same property as the individual storage structure(s).
18 This shall include vehicles, boats, personal items,
19 etcetera.

20 E. All uses other than individual storage
21 shall be prohibited within structures while those
22 structures are being used for individual storage
23 except for one office or caretaker's residence, which,
24 if present, shall be directly related to the
25 management of the individual storage units.

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1 F. The Owner of the individual storage
2 structures shall be responsible for policing the
3 material and/or items being stored. The Owner shall
4 notify the Zoning Administrator upon discovering any
5 storage not meeting the requirements set forth,
6 herein, providing the name, address and phone number
7 of the renter whose storage is in question.

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

10 CHAIRMAN: Thank you.

11 Before we proceed let's take five minutes
12 again, please.

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

14 CHAIRMAN: We are back on record.

15 Mr. Noffsinger, have we had any problem in the
16 office on that item?

17 MR. NOFFSINGER: Well, we have had some calls
18 from concerned adjoining property owners and folks in
19 the area. I do not have anything specific to read
20 into the record. I guess some of those folks are
21 probably here tonight for questions.

22 CHAIRMAN: Is the applicant here?

23 MR. STEWART: Yes, sir.

24 CHAIRMAN: You want to present anything to
25 start with?

1 MR. STEWART: Seth Stewart.
2 (SETH STEWART SWORN BY ATTORNEY.)

3 MR. STEWART: A quick summary.
4 I started this venture about two years ago.
5 Partial partners of Stewart Industrial. We own five
6 acres up in Pleasant Valley. Since FEMA came through
7 in the last ten years and put everything in flood
8 zone, we are not able to do it there. So I've been
9 looking for a piece of property since.

10 I drive by this every day living off of East
11 Byers. It's pretty much of an eyesore right now.
12 Looks like a good piece of property. A little bit
13 more than what I wanted to spend initially for a front
14 piece of property, but I believe it will work.

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

17 (NO RESPONSE)

18 CHAIRMAN: Staff have anything else to add?

19 MR. NOFFSINGER: No, sir.

20 CHAIRMAN: Anyone ready to speak for the
21 applicant?

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

24 MR. MASON: James Mason.

25 (JAMES MASON SWORN BY ATTORNEY.)

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1 MR. MASON: I'm the commercial real estate
2 broker with L. Steve Castlen Realtors that represents
3 the current owner of the property, Gilliland Group
4 Partnership. They're based out of Amarilla, Texas.

5 They had property leased to Atmos Energy until
6 about three years ago when Atmos moved out on Highway
7 54.

8 To my knowledge the property has always been
9 used for light industrial purposes, even before
10 zoning, and it was grandfathered in when zoning went
11 into place in Owensboro and it was zoned B-4 at that
12 time. The property is only suitable in its current
13 condition, the structural buildings and everything,
14 for a light industrial use. I understand that zoning
15 takes precedence over that.

16 I think that what Mr. Stewart is proposing
17 would be less obtrusive to the neighborhood, less
18 traffic in and out of the property than what it has
19 been used in past or what it would be if it would be
20 used for a B-4 purpose.

21 CHAIRMAN: Any board members have any
22 questions of this gentleman?

23 MR. NOFFSINGER: I do have a question, Mr.
24 Chairman, on the site plan.

25 I know there are existing buildings as well as
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1 some proposed buildings. For reference where are the
2 existing buildings? Are they in the lighter pattern
3 on this plan and the new proposed buildings in a
4 darker outline?

5 MR. MASON: I have not seen the plans.

6 CHAIRMAN: Come forward and look at this,
7 please.

8 MR. MASON: This is the main structure down
9 the center. It's about 16,000 square feet in this
10 property. I think this is the current sheds across
11 the back that I think have been requested to be
12 removed.

13 MR. SILVERT: He's pointing to the buildings
14 at the top of the site plan.

15 MS. EVANS: I don't believe the sheds are
16 shown. You are correct, the lighter colored buildings
17 down through the middle of the property are the
18 building that are existing. The darker outlined
19 buildings are the new storage buildings he is
20 proposing to construct.

21 MR. NOFFSINGER: Thank you.

22 CHAIRMAN: Thank you.

23 Appreciate it, sir.

24 Any other questions from the Staff or the
25 board?

1 MR. PEDLEY: I would like to ask adjoining
2 property owners if they have any questions.

3 CHAIRMAN: Anyone else speaking for the
4 applicant?

5 (NO RESPONSE)

6 CHAIRMAN: Hearing none, those opposed start
7 with your program, please.

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

10 MR. RODNEY: Dean Rodney.

11 (DEAN RODNEY SWORN BY ATTORNEY.)

12 MR. RODNEY: Again, my name is Dean Rodney.
13 My wife Sandra and I live at 3621 Briarcliff Trace.
14 We have been there since we built our home 18 years
15 ago in 1994. We've been very pleased with our
16 neighbors, including Atmos Energy or Western Kentucky
17 Gas.

18 I acknowledge that this particular board has a
19 limited role in the decision process for the use of
20 this property that's presented to you tonight;
21 however, as a homeowner of Copper Creek neighborhood,
22 I have some very strong concerns regarding the
23 variances that they have requested.

24 My concerns include but are not limited to the
25 following:

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1 Obviously the first one is security. Looking
2 at the plan that you just asked them to show the
3 information on, it is not mentioned how many potential
4 units are going to be rented after the proposed 6
5 buildings are constructed and the main 16,000 square
6 foot unit is being constructed for storage units. So
7 I don't know whether that's 50 or 250 or more.

8 I am aware that in renting say a residential
9 piece of property that controls and criteria are
10 usually implemented into determining who rents a home.
11 This does not hold true for renting a self-storage
12 space. That could potentially present a nightmare for
13 us in security issues for homeowners that directly
14 abut up to this property.

15 Not only security, but we have some great
16 concerns regarding access. Many self-storage units
17 have 24 hours a day 7 days a week access to get into
18 their storage units. Literally that could mean that
19 people could be accessing their units to our adjoining
20 property at 11:00 at night or 3 in the morning. So as
21 well as security this presents a high problem, a huge
22 problem for our privacy in single-family dwellings
23 with our families. Obviously a six-foot chain-link
24 fence would not suffice in creating privacy for this
25 type of use.

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1 I do want to point out, and I know you are
2 looking at the plan that's been presented by the
3 buyer. I do want to point that the plan provided to
4 you is incorrect, at least on one form that concerns
5 us as residential property owners.

6 There is a dark line that runs from New
7 Hartford Road going east on the south properties that
8 are all residential there that's running according to
9 scale about 445 feet that shows an 8-foot privacy,
10 solid privacy fence by the homeowners that's there
11 now. That's an incorrect number. The actual amount
12 of fencing that the home owners have on our property
13 that's 8-feet in solid fencing is approximately 320.
14 So your plan there is incorrect by about 125 feet,
15 which includes my property that's 178.8 feet.

16 In addition to security, access, privacy, we
17 certainly would have a lot of issues with noise.
18 Traffic levels would certainly increase. The level of
19 activity would potentially increase several hundred
20 fold if there's going to be several hundred tenants or
21 renters of these spaces. So that would be daytime
22 hours, as well as nighttime hours.

23 Lighting. If the individual contractor is
24 going to put lighting in that would add security to
25 the property, then that could be a two-edged sword

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1 also. Yes, that might help on security level, and
2 then on our residential homes that back up to the
3 lighting will have the interior of our homes
4 illuminated all night long.

5 Hazardous materials. I'm curious as to how
6 the owner is going to control the use of prohibited or
7 illegal materials or items from being stored in these
8 storage units.

9 It's a known fact just by reading the paper
10 that storage units all across the country have had
11 issues with this type of problem. Materials that
12 could range from explosives, or fire guns, or meth
13 labs, or drugs, or explosives could be illegally
14 stored in these particular units, and many of these
15 are going to be circled by single-family dwellings.
16 Any one of these items on any one storage space could
17 be a significant concern for us as residents.

18 I guess my final point that I would like to
19 make, and I know others have more, is concerning
20 property values. Just looking at the current tax
21 records for tax assessments on only the five
22 residential properties that adjoin the Atmos Energy
23 property, we're looking at a little over one and a
24 half million dollars in tax assessments. That's not
25 retail value. Just tax assessments. If you include

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1 the other properties on Copper Creek Drive, as well as
2 Briarcliff Trace, just those properties, then you're
3 looking at significantly more not only in tax
4 assessments but in value.

5 Given the types of issues that we're raising
6 to this board, then the obvious situation is that our
7 property values will decline.

8 So our concerns are certainly numerous and
9 they're very strong. We have security potentially
10 24/7 access, privacy issues, especially without an
11 8-foot private fence that goes around that area that
12 adjoins single-family dwellings. Additional noise,
13 traffic, lighting. Potential for hazardous materials
14 that could not be policed, and certainly property
15 values declining.

16 Like many people in this room tonight, I'm
17 probusiness. I've spent my entire career involved
18 with businesses and being part of a business. Working
19 through the Chamber and through our community in order
20 to promote business. I'm in favor of it.

21 However, I never have been nor will I ever be
22 in favor of it at the expense of established
23 residential neighborhoods. That's not right.

24 Owensboro is known throughout the state and
25 throughout this region for having a great quality of

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1 life for our families and for our community.

2 I certainly would hope that we would not
3 tarnish that reputation by approving a situation that
4 would create some real hazardous problems for the
5 residential areas.

6 Therefore, I would respectfully ask that this
7 particular board closely consider denying all the
8 variances that are being proposed regarding height of
9 buildings, conditional use, and the lack of privacy
10 fences around our residential area. Thank you.

11 MR. NOFFSINGER: Mr. Chairman, I do have some
12 questions of Mr. Rodney.

13 Please, when I'm talking with Staff or others,
14 please know that I do not vote. I am paying attention
15 to what you're saying and I do want to hear what
16 you're saying. As you're speaking, I need to get
17 folks looking for information to answer your
18 questions.

19 MR. RODNEY: Understood.

20 MR. NOFFSINGER: First of all, the first item
21 we're considering and the one we're on now is the
22 Conditional Use Permit. He has to have approval of
23 that in order to move forward with a Variance. I just
24 want to be clear. Are you objecting to the
25 Conditional Use Permit?

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1 MR. RODNEY: Absolutely.

2 MR. NOFFSINGER: And you're objecting to the
3 Variance?

4 MR. RODNEY: Absolutely. Both. I think in my
5 last statement I said, I would hope that the Board
6 would respectfully consider opposing or denying the
7 conditional use.

8 MR. NOFFSINGER: I did hear you say that.

9 MR. RODNEY: As well as the variance regarding
10 the fencing, as well as the variance regarding the
11 height of the building that effects our residential
12 properties that surround this commercial property.

13 MR. NOFFSINGER: One question or one comment I
14 would like to be make on the lighting. I'm not sure
15 what he's proposing. Any lighting that's on that
16 property must be directed away from residential areas.
17 They will have to do that by ordinance.

18 MR. RODNEY: Great.

19 MR. NOFFSINGER: Then there are also some
20 limitations on the materials that can be stored on the
21 property. I would need Staff to read that into the
22 record in terms of what can't be stored there.

23 MR. RODNEY: I guess my question, Gary, would
24 be: Can that be policed by this owner?

25 MR. NOFFSINGER: Yes. Again, it can be

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1 policed by us, but we're not going out to each and
2 every storage unit, unless we get a complaint. Then
3 we could. It's a very good question.

4 As you know and everyone probably knows,
5 zoning enforcement generally happens when someone
6 complains. So if we don't know about it, there's
7 nothing we can do. If we find out about it, certainly
8 we can.

9 MR. RODNEY: And I understand your position.

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

12 MR. BALL: Manuel Ball.

13 (MANUEL BALL SWORN BY ATTORNEY.)

14 MR. BALL: Just for clarification. The
15 definition of individual storage is a structure
16 consisting of more than one unit to be used only for
17 storage of items that are not classified as
18 merchandise, commodities as defined in this article,
19 and that are not considered hazardous in nature such
20 as items that are corrosive, highly toxic, oxidize,
21 water reactive, highly combustible, flammable,
22 explosive materials that consist of high power
23 explosion or health hazard as set forth by the
24 applicable section of the Kentucky Building Code
25 current condition.

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1 CHAIRMAN: Any other questions from the board
2 or Staff right now?

3 (NO RESPONSE)

4 MR. RODNEY: May I speak further?

5 I appreciate you reading that. I think like
6 any particular hazardous material issues, we're
7 probably not looking at something unlike residential
8 property where you might do checks of some sort.
9 Applications here are made, and I'm sure just a lease
10 is signed. So it's going to be very difficult to
11 police, I would think, these types of materials that
12 will actually be close to our backyard and our home
13 than it will be maybe the front office of this
14 business. That's a great concern for us. How are you
15 going to police that?

16 The second thing I would love to ask or say is
17 that unfortunately since our meeting has gone longer
18 than some of our people in our subdivision were aware
19 of and therefore could not be here -- well, they have
20 been here, but they had to leave unfortunately because
21 the meeting went longer than they anticipated.

22 One individual I have a letter from who could
23 not be here otherwise and I would like to submit that
24 for the Board to look at. His property does adjoin
25 the property in question. It's Mr. Robert Hill. I

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1 would like to submit that for the Board to either
2 review or ask questions about.

3 MR. REEVES: Mr. Panel, a question of Mr.
4 Stewart.

5 CHAIRMAN: Proceed.

6 MR. REEVES: Do you operate other storage
7 facilities or what is your experience in operating
8 storage facilities?

9 MR. STEWART: No, sir. I researched it. Made
10 several visits to a friend that runs a five acre
11 storage facility in Bowling Green. Spent quite a bit
12 of time with him and got what I believe to be
13 considerable information to go out and do this.

14 MR. REEVES: Thank you.

15 CHAIRMAN: State your name, please.

16 MS. PATEL: Darshana Patel.

17 (DARSHANA PATEL SWORN BY ATTORNEY.)

18 MS. PATEL: My property I guess effects the
19 most in this proposal. I'm on the east side, 1501
20 Copper Creek Drive.

21 Just like Mr. Rodney, Dean, I also have
22 concerns about value to our half a million dollar
23 home. We also have concern about the noise, the
24 trucks beeping whenever they come because we don't
25 know what will be stored. I'm also concerned just

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1 now is located outside of the City of Owensboro. You
2 really do not have a property maintenance ordinance
3 that's going to address the issues you've raised.
4 It's an issue of private property ownership and
5 maintenance. If the previous owners, current owner is
6 not maintaining the property, there's not a whole lot
7 that can be done about that unfortunately, especially
8 to your satisfaction.

9 Now, this board in considering this
10 conditional use permit may require the applicant, if
11 it's approved, to do some cleaning and maintaining.
12 If they deny this request, then I don't know what the
13 owner is going to do. There's nothing to enforce that
14 owner to go in there and remove the dead trees and
15 grass.

16 MS. PATEL: If I have permission to discuss --
17 we had a homeowner which is effected directly by this
18 building. He had to leave early. He sent me a text
19 if I'm given permission to state that.

20 CHAIRMAN: Proceed, ma'am.

21 MS. PATEL: His name is Darrell Higginbothan.
22 He said, "Had to leave. My question: Why did the
23 developer avoid contacting the neighbors or the
24 Association? Creates mistrust. If Board does not
25 vote to deny request, postponement and require meeting

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1 with members of the Association." Meaning Homeowners
2 Association for Copper Creek Subdivision.

3 Also, "My biggest concern is the noise. We
4 have small children and those beeping truck noise
5 because we don't know what vehicle is going to be
6 coming."

7 CHAIRMAN: Thank you.

8 Have any other comments? Come and state your
9 name, sir.

10 MR. WALLACE: My name is Mike Wallace.

11 (MIKE WALLACE SWORN BY ATTORNEY.)

12 MR. WALLACE: 1511 Copper Creek. Our backyard
13 abuts up against this property.

14 I want to say that I'm probusiness. I've
15 always been probusiness. My profession is to promote
16 business.

17 I think there are appropriate places to
18 conduct certain types of business, and obviously
19 that's why you are here.

20 As much as I have enjoyed being here for the
21 last four hours, I think it's appropriate that we
22 carefully consider where certain businesses go. I
23 think the storage unit business is a fascinating
24 business. I just don't think it's a particularly good
25 place to do this in our area.

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1 Again, my concern would be the lighting,
2 which, Mr. Noffsinger, you said would be directed
3 away, but light, like water, is difficult to control
4 100 percent. Security is obviously a very big
5 concern. We do have small children in our household.
6 As you know, if this is a 24-hour facility, there will
7 be people coming in and out of there at their leisure,
8 at their own convenience. That's just not a good
9 situation for us to have. There's no way we can
10 control that as homeowners. There's no way I think
11 that the business owner can control that. We're just
12 very concerned.

13 The other thing is too, I literally did not
14 know about this situation until yesterday. I think if
15 our neighborhood, as a whole, were better informed of
16 this, we would have a much larger turn out. We
17 actually did have a much larger turn out, but some of
18 them I think passed away during the four and a half
19 hours. I think we would have more people here.

20 We would respectfully ask that we could have
21 better representation here because I think we would.
22 Thank you.

23 CHAIRMAN: Appreciate it.

24 Anybody have any other questions?

25 MR. REEVES: I have a question, please.

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1 Were you living there when Western Kentucky
2 Gas was operational in that building?

3 MR. RODNEY: Yes, sir.

4 MR. REEVES: Was it secured and gated and so
5 forth in the evenings?

6 MR. RODNEY: Yes, sir. Fred, their hours of
7 operation was slightly different than what we're
8 talking about here for this conditional use. They
9 obviously would never been there on weekends. Rarely
10 were they there through the week, other than just to
11 store some of their trucks or equipment that they had
12 for their operation. So really, I said at the
13 beginning of my comments, that even though yes, it's a
14 B-4 zone and a business unit, actually Atmos Energy
15 was fairly good neighbors for us, in my opinion. Some
16 people could say something different. They were
17 there. We've been there 18 years as I stated, and
18 they have been good neighbors in the past, as opposed
19 to what we're looking at and dealing with. Several
20 hundred neighbors that are going to turn over rather
21 quickly more than likely in our backyard. The way the
22 buildings are proposed on your plat that has been
23 given to the Board for consideration, yes, the
24 buildings will be 25 feet from our property line, but
25 the people, as I understand it, will access it on our

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1 side of the line. That's going to make it pretty
2 tough.

3 MR. REEVES: Thank you very much.

4 CHAIRMAN: Any other board members have any
5 other questions?

6 MR. PEDLEY: I don't have actually a question.
7 I do have a comment or two.

8 I have 150 storage units, mini-warehouses. We
9 have signs up everywhere. No hazardous material, but
10 we have no control. We don't know what they put in
11 those storage buildings. They're going in. We're not
12 out there monitoring it. They might go in at night,
13 but I do lock my gates at night. No access. We do
14 not know what is in those storage buildings.

15 Also, I was one of the developers of Copper
16 Creek. That fence that you have, the privacy fence,
17 those pine trees, I put them up.

18 Now, we don't have a quorum here tonight for
19 me to disqualify myself and not vote on this.

20 I think, Mr. Noffsinger, Madison, you need
21 to -- I can't honestly make a judgment call on this
22 without leaning towards the Copper Creek people. We
23 don't have a quorum. If I disqualify myself, we don't
24 a quorum.

25 CHAIRMAN: Attorney.

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1 MR. SILVERT: Just a moment please, Mr. Chair.

2 MR. WARREN: Mr. Pedley, did you say you lock
3 your gates at night?

4 MR. PEDLEY: Yes.

5 MR. NOFFSINGER: Mr. Chairman, Staff would
6 request a five minute recess.

7 CHAIRMAN: Proceed.

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

9 CHAIRMAN: Call to order.
10 Mr. Attorney.

11 MR. SILVERT: Ladies and Gentleman, I'm sorry.
12 Mr. Pedley feels like he needs to recuse himself on
13 this item. As a result, we don't have a quorum
14 because we're missing several members this evening due
15 to vacations.

16 As a result, we can't have a motion to
17 postpone, but it remains on the docket until next
18 month. This item officially we cannot take any action
19 on this item right now or it would be in violation of
20 your due process and yours. No action will be heard
21 on this item tonight.

22 MR. NOFFSINGER: Motion to adjourn.

23 MR. SILVERT: It would not be appropriate to
24 hear any more testimony this evening on it as well.

25 MR. RODNEY: Are you saying then that there
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1 will be discussion and testimony?

2 MR. SILVERT: It will remain on the docket.

3 MR. RODNEY: So we will repeat or have other
4 residents ask questions or make comments; is that
5 correct.

6 MR. SILVERT: That is correct. What is in the
7 record is in the record. The record will be provided
8 to the members who are not here, the members of the
9 board who are not here this evening to review, and
10 then further testimony could be taken.

11 MR. NOFFSINGER: That will be the first
12 Thursday of September.

13 CHAIRMAN: Would you all please for our
14 benefit bring new information and let's not listen to
15 all the other.

16 Related Item

17 ITEM 4A

18 3425 New Hartford Road, zoned B-4

19 Consider a request for a Variance in order to reduce
20 the height of the solid wall or fence along the south
21 and east property boundaries from 8 feet tall to 6
22 feet tall and to increase the maximum building height
23 of an individual storage unit in a B-4 zone in the
24 County from 15 feet tall to 22 feet tall.

25 Reference: Zoning Ordinance, Article 8,

Section 8.2L7/48(b) and 8.2L7/48(c)

Applicant: Seth Stewart; Gilliland Group Partnership

23

24 MR. NOFFSINGER: Mr. Chairman, since Mr.

25 Pedley has stated that he is going to -- I'll let him

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1 do it. We'll need a motion to adjourn after that.
2 MR. PEDLEY: Mr. Chairman, I disqualify myself
3 on both items.
4 CHAIRMAN: We understand that so we lack a
5 number of people here for a quorum. So I can only
6 entertain one final motion.
7 MR. WARREN: Motion to adjourn.
8 MR. REEVES: Second.
9 CHAIRMAN: A motion has been made and a
10 second. All in favor raise your right hand.
11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
12 CHAIRMAN: We are adjourned.

13 -----

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1 STATE OF KENTUCKY)

)SS: REPORTER'S CERTIFICATE

2 COUNTY OF DAVIESS)

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and
4 for the State of Kentucky at Large, do hereby certify
5 that the foregoing Owensboro Metropolitan Board of
6 Adjustment meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 156 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 30th day of AUGUST, 2012.

18

19

LYNNETTE KOLLER FUCHS
NOTARY ID 433397
OHIO VALLEY REPORTING SERVICES
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23 COMMISSION EXPIRES: DECEMBER 16, 2014

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25

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