The Owensboro Metropolitan Board of Adjustment
met in regular session at 5:30 p.m. on Thursday, 
August 2, 2011, at City Hall, Commission Chambers, 
Owensboro, Kentucky, and the proceedings were as 
follows:

MEMBERS PRESENT: C.A. Pantle, Chairman
   Ward Pedley, Vice Chairman
   Gary Noffsinger, Director
   Madison Silvert, Attorney
   Fred Reeves
   Marty Warren

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

With that I want to welcome you at this time.

Good to see you. Some of you last time said you
couldn't hear. If you can't hear, motion or tell us
something so you can hear everything we have to say.

We start our evening each evening with a
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.)

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

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

MR. PEDLEY: Motion for approval.

MR. WARREN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

CONDITIONAL USE PERMIT

ITEM 2

1512 Frederica Street, zoned R-4DT
Consider a request for a Conditional Use Permit in order to operate an activity day center for persons with intellectual disabilities.

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

MR. SILVERT: Could you state your name, please?
MS. EVANS: Melissa Evans.
(MELISSA EVANS SWORN BY ATTORNEY.)
MS. EVANS: First of all, I would like to remind everyone that approval of items here tonight does not allow the applicant or owner to construct, alter, modify any building on the subject property. It is still necessary for the owner to obtain all necessary building occupancies and inspections and permits from the building office before any work has started.

ZONING HISTORY
The subject property is currently zoned R-4DT. OMPC records indicate there have been no Zoning Map Amendments for the subject property.
There was a Conditional Use Permit approved for the subject property in 1994 for an indoor recreational facility.
The applicant is proposing to operate an activity day center for not more than 30 persons with intellectual disabilities ages 8 and up, Monday through Friday 7:00 a.m. to 5:30 p.m., and one
Saturday a month from 10:00 a.m. to 3:00 p.m.

LAND USES IN SURROUNDING AREA

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

ZONING ORDINANCE REQUIREMENTS

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

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

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

CHAIRMAN: Thank you.

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

MR. NOFFSINGER: No, sir.

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

MS. HEMPEL: Yes.

CHAIRMAN: Come forward and state your name, please.

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

(KATHY HEMPEL SWORN BY ATTORNEY.)

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

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

(NO RESPONSE)

CHAIRMAN: Staff have any comments or questions?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

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

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

CHAIRMAN: Is there a second?

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MR. REEVES: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Do you have anything else you would like to add?

MS. HEMPEL: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item.

MS. HEMPEL: Thank you.

CHAIRMAN: Before we go to the next item, I'm going to change the agenda and 3, 4 and 4A we'll put last and we'll go on down to Number 5 and 6 and get those out of the way, and then get the other two, the ones that look like they'll be long this evening.

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VARIANCE

ITEM 5

2400 Cravens Avenue, zoned R-4DT

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

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

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

Applicant: City of Owensboro Community Development; City of Owensboro

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

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

Staff recommends approval with one condition.

1. Obtain necessary building, electrical and Ohio Valley Reporting
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mechanical permits, inspections and certificates of occupancy and compliance.

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

CHAIRMAN: Thank you.
Has there been any comments in the office?
MR. NOFFSINGER: No, sir.
CHAIRMAN: Is the applicant here?
APPLICANT REP: Yes.
CHAIRMAN: Anyone wanting to speak in opposition of this item?
(NO RESPONSE)
CHAIRMAN: Any board member have any questions of the applicant at this time?
(NO RESPONSE)
CHAIRMAN: Staff have anything else?
MR. NOFFSINGER: No, sir.
CHAIRMAN: Do you have anything else you would like to add at this time?
APPLICANT REP: No, Mr. Chairman.
CHAIRMAN: Hearing none I'll entertain a motion to dispose of the item.
MR. PEDLEY: Motion for approval based on findings it will not adversely affect the public health, safety or welfare because the applicant will
be constructing a new home on a vacant lot enhancing the area. It will not alter the essential character of the general vicinity because the area was developed before the establishment of the Zoning Ordinance and there appears to be other encroachments into the required building setback lines. It will not cause a hazard or a nuisance to the public because this will be a new home as part of the City of Owensboro Community Development redevelopment project and will create affordable housing for the community enhancing the area. It will not allow an unreasonable circumvention of the requirements of the zoning regulations because there appear to be other encroachments into the building setback lines in the area.

CHAIRMAN: Is there a second on the motion?
MR. REEVES: Second.
CHAIRMAN: A motion has been made and a second. Is there any other comments or questions from the board?
(NO RESPONSE)
CHAIRMAN: Staff have anything else to add?
MR. NOFFSINGER: No, sir.
CHAIRMAN: Hearing none all in favor raise your right hand.

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ITEM 6
1328 West 3rd Street, zoned R-4DT
Consider a request for a Variance in order to increase the height of a fence in the side street yard from 4 feet tall to 6 feet tall.
Reference: Zoning Ordinance, Article 3, Section 3-7(g)(3)
Applicant: St. Joseph's Peace Mission for Children

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

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

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

The City Engineer's office has been asked to review the applicant's site plan to ensure conformance 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.
necessary to protect the safety of vehicle traffic traveling in the area. The applicant is in agreement to conform with the requirements of the site triangle. This neighborhood is in an area developed before the establishment of the Zoning Ordinance where it appears other fences along Frayser Avenue are 6 feet high or taller.

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

Planning Staff recommends approval with the following condition:

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

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

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CHAIRMAN: Thank you.
We had any comments in the office?
MR. NOFFSINGER: No, sir.
CHAIRMAN: Is there anyone wishing to speak in
opposition to this item?
(NO RESPONSE)
CHAIRMAN: Does the applicant have anything
else you would like to add at this time?
APPLICANT REP: No, sir.
CHAIRMAN: Hearing none the board members have
any other comments?
(NO RESPONSE)
CHAIRMAN: Hearing none I'll entertain a
motion to dispose of the item, please.
MR. WARREN: Motion to approve the Variance
based on the findings that it will not affect the
public health, safety or welfare because the fence is
not located in the site triangle; it will not alter
the essential character of the general vicinity
because there are other 6 foot high fences in the area
along Frayser Avenue; it will not cause a hazard or a
nuisance to the public because it will ensure the
privacy of the residents as well as screen the
activity on the lot from adjoining properties; and it
will not allow an unreasonable circumvention of the
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requirement of the zoning regulations because there
appears to be other encroachments in the area. I will
also add the condition that they must abide by the
site distance triangle requirements that's marked by
the City Engineer's office.

MR. PEDLEY: Second.

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

(NO RESPONSE)

CHAIRMAN: Anything else from the Staff?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

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

ITEM 3

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

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

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

Applicant: Robert J. Wimsatt

ZONING HISTORY

The subject property is currently zoned A-U

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

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

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

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

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LAND USES IN SURROUNDING AREA

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

ZONING ORDINANCE REQUIREMENTS

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

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

SPECIAL CONDITIONS

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

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

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

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

CHAIRMAN: Thank you.

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Does the applicant have any comments at this time?

MR. WIMSATT: Yes.

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

MR. WIMSATT: Robert Wimsatt.

(ROBERT WIMSATT SWORN BY ATTORNEY.)

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

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

Once I submitted the application, the paper called a couple of times and asked to get little...
additional information on what I was proposing. I told the paper that I was modeling this proposed facility after what the City had done at Ben Hawes Park and after what the state and federal government had done at Turkey Bay at Land Between the Lakes.

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

Then the Staff sort of down the line asked, well, what about these other activities? I said, once again, I don't have a crystal ball. I can't tell you all the things that might come up in the future. I understood that the Staff needed a little additional information. I understand that this board needed additional information. So once again I said, the things that I could foresee and the things that I would ask for at this time are things like sale service, rentals. The Staff asked about possibility of camping. I answered the Staff that Turkey Bay does offer primitive camping for people who want to stay.
the night. I felt like that would be an
acceptable use as well. Activity for an OHV park just
as the state and federal government does.
So I tried to answer as best I could to not
the only Staff but also the paper. The questions that
they had.
Again, hopefully everybody has the Turkey Bay
proposed regulations.
One of the things that I really like about
Turkey Bay, and you see it on the literature that I
gave you. They've got a basic principle they call
Rides 4 Keeps.
Keep It Safe
* Wear proper safety gear.
* Maintain a safe speed.
* Stay alert. Expect the unexpected.
* No passengers on single-rider vehicles.
Keep It Legal
* Stay on assigned trails. Keep a
current map.
* Know required equipment for your
vehicle.
* Verify what trails are open and closed.
* Don't mix drug and/or alcohol with
riding.

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Keep On Trails
* Travel only on designated routes.
* Maps are available for your use.
* Resist the urge - mud bogging and the creation of new trails is prohibited.
* Obey signs and temporary postings.

Keep The Privilege
* Respect the environment - Tread lightly!

Most of us have seen that logo.
* Be courteous to all other trail users.
* Join a club and support Turkey Bay.

Of course, in this case it would be Bon Harbor Hills OHV.
* Encourage others to "Ride 4 Keeps."

I thought those were pretty basic fundamentals that I could live with and hopefully the community as a whole could support.

I told the paper, I said, I want to provide a riding opportunity for individuals of all ages and skill levels. Families in this community need someplace where they could do something like this. This could be a facility where we could do beginner classes and safety classes. Have youth trails, just like they have at Turkey Bay, but you also could have.
some intermediate or some more advance stuff for those
who choose to do that.

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

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

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

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

When I left that meeting, everyone except for
one person said they were okay with what I was
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proposing to do. The chairman of the Neighborhood Alliance said he didn't have any problem with it at all. He supported it. When I spoke to him the other night to see if there might be a possibility that he might come tonight, he said he wouldn't be able to. He said, Bob, I don't understand it. Everything on the north side of the road, everything is buffers out there. Don't understand it. He's not here tonight to speak for himself.

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

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

About a week or so ago one of my kids told me, said, Dad, you ought to look at maybe doing a Facebook page. My wife and my kids have Facebook. Never had done a Facebook page. Don't really care much for it, but I understand it's an opportunity to kind of get the word out. So a buddy of mine help me do a Facebook page. In a little over a week, I've got over 200 people that said they like this idea and think
it's a good idea for the community. There was one
negative comment. It turned out to be the same person
who was negative at the Neighborhood Alliance.

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

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

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

   MR. SILVERT: Would you state your name,
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MR. OSBORNE: My name is Joel Osborne.

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

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

CHAIRMAN: Any other comments for?

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

MR. KING: Justin King.

MR. KING: As far as the off-road park being proposed, I'm here representing King Cycle, a local motorcycle shop. I had one of these petitions in the shop recently. I've had over 30 people in the last week sign it. Name, phone number and everything that
wants to support this. Most of the people were actually out of town. Grandview area. Even some from Evansville. The closest place to go ride, like he said, is Turkey Bay, which is two hours away. Having this park here will help jobs as far as motorcycle shop and everything. There's nothing but two or three locals ones around now.

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

CHAIRMAN: Thank you.

Any other comments supporting at this time?

(NO RESPONSE)

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

MR. REEVES: I do, Mr. Chairman.

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

One is: How do you intend to ensure, other than your rules here, which I understand those, that your participants will stay on your property and not
wonder off onto other properties? Do you have any fencing? How are going to notify folks when they are leaving your property?

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

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

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

MR. REEVES: Sure. Absolutely.

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MR. WIMSATT: Thanks.

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

(NO RESPONSE)

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

State your name, ma'am.

MS. HELMS: Vickie Helms.

(VICKIE HELMS SWORN BY ATTORNEY.)

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

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

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

The other thing is he's not familiar with Facebook so I'll tell him a little bit about that. There's no place to unlike on Facebook. So someone pushes "Like" they may say they like what
someone says or they like the person who said it. It doesn't mean that they are in full support of whatever was said. There's no place to click and say, I don't like what you're saying. So that's something to consider when he was bringing that up.

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

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

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

Now, this area out at Ben Hawes is very
diverse as the person from the Zoning Commission talked about. This particular project does not integrate into this area. You'll hear more about that.

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

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

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

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

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

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

Also the park has paved trails, paved cart trails that goes all through the golf course. They're the width of a cart and a half and they look really
exciting for ATV's. That's the park. That's the park property on the golf course. They have issues with people trespassing on the park all the time. It's a problem. These golf trails look like they would really be fun for ATV's. Also the Soap Box Derby track that was built, if you all have seen where that is. That's also a paved piece of property. Anybody who is exploring with an ATV, I think that would look very, very exciting also.

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

I also have -- he spoke about petitions. We spent about seven days getting petitions. We have almost 300 signatures here. These are all people that live in this neighborhood that have an interest in the property that surrounds this area. These are not people from out of town. These are people who will deal with this every day. I don't know who you want me to give those to somebody or what. There's close to 300 names. This is just a week's worth. Every
body that worked on this so it's not a lot of time involved. I'm sure we could get thousands if we need them.

Thank you very much for your time.

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

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

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

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

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

MS. HIGDON: My name is Rachel McNulty Higdon.

(RACHEL MCNULTY HIGDON SWORN BY ATTORNEY.)

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

I object to this proposed site of an Ohio Valley Reporting

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off-highway vehicle park at 3401 Medley Road because the health and safe of my family is very important to me and the noise these OHV's will not integrate into our neighborhood, the plant life or the resident life, and the trespassers on our land.

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

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

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

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

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of any rule or regulation adopted by the cabinet."

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

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

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

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

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

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

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

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

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

I do have a map for you guys, for the board if anyone would like one. According to the Messenger-Inquirer Bob Wimsatt is right. Bon Harbor Hills has some of the highest hills in the county.
making it even more likely that the roar of the OHV's
will be traveling the two miles and beyond and
especially up and down the Ohio River during the
winter when the trees are in their dormant state.

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

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

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

My name is Rachel McNulty Higdon and after
gathering this above information and statistics I
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respectfully ask the board to deny the request of this
proposed OHV Park at 3401 Medley Road because the
noise from these OHV's will not integrate into our
neighborhood, the plant life or resident wildlife, and
most of all the health and safety of my family is
important to me.

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

(NO RESPONSE)

CHAIRMAN: Thank you.

Come forward at this time.

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

MR. McNULTY: My name is John McNulty.

(JOHN McNULTY SWORN BY ATTORNEY.)

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

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

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

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

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

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

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history that we want to repeat?
The only way that I can see this project would be accepted would be that:
1. The dangerously loud obnoxious and property evaluated high decibel noises from the motorcycle be mitigated.
2. An engineer designed and professional install storm water pollution prevention system must be constructed with a KPS permit that must be complied with at all times including monthly point source discharge collections by a professional environmental firm and the samples analyzed in a certified laboratory. Cash bond shall be posted to guarantee that the construction is done properly as completed and that there is full compliance of the KPS permit.
3. An engineer design professionally installed dust suppression system that must be installed. A cash bond shall be posted to guarantee the construction is done properly, is completed and an engineer prescribed air monitoring and maintenance program be followed.
4. A professionally installed 12 foot chain-link fence be designed and must be installed around the entire perimeter of the property. A full cash bond should be posted until the fence is
completed to engineer its specifications.

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

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

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

(NO RESPONSE)

CHAIRMAN: Anyone else want to speak at this time?
Come forward, please.

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

MS. ELLIS: Vickie Ellis.

(VICKI ELLIS SWORN BY ATTORNEY.)

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

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

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

MR. WIMSATT: The surveyor did this for me.

This is what we turned in?

MS. ELLIS: On what date?

MR. WIMSATT: Let me see.

CHAIRMAN: Let's don't argue across.

MR. WIMSATT: Vickie, the only thing that -- I want to answer your questions. Okay?
Is that okay, Mr. Chairman?

CHAIRMAN: Go ahead, sir.

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

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

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

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

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

MS. ELLIS: Okay.

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

CHAIRMAN: Go ahead with your presentation, please.

MS. ELLIS: It's very frequent that I would look out my back window or leave my driveway across my yard there's a photograph there. My backyard butts up to the property in question. It's very frequent that I would see deer out there. I will see wild turkeys out there. It is wide open. There is no buffer between my property and the proposed property, as you
I'm a layperson. I work, but I'm not in Planning & Zoning and I don't understand all the guidelines. I am an average person. Okay. So with that said I started out doing a little bit of research and I wanted to know what would be important? So I did find some things that were objectives that were set forth by Planning & Zoning so I'll make my arguments and my points quickly.

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

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

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

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

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

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

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

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

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congestion or blight of land.

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

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

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

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

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

CHAIRMAN: Thank you.

Board members have any questions of her at
this time?

(NO RESPONSE)

CHAIRMAN: Anyone else wishing to speak at
this time?

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

MR. TINNELL: My name is Nick Tinnell.

(NICK TINNELL SWORN BY ATTORNEY.)

MR. TINNELL: I live at 5410 Medley Road.

I've just been listening to this. I've lived there
for 14 years. I know that when I first moved in, the
area around me before the state and city got it was
privately owned. There was a lot of four-wheelers
back there. They cut a lot of trails back there,
which the city used for these new trails that it got.
I know that the nature kind of disappeared when that
was going on. Now that that's over with and you've
just got bicyclers back there, the nature is back.

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

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

CHAIRMAN: Next gentleman.

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

MR. PAYNE: Bill Payne.

(BILL PAYNE SWORN BY ATTORNEY.)

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

In addition to our home on 16 acres, we also own approximately 75 acres in the Bon Harbor Hills area, which is mostly wooded, nature, wildlife, this, that and the other. Okay. North of our home. We have lived here over 25 years and have had many encounters with cycle riders both two-wheel dirt bikes.
and four-wheelers. They don't seem to understand the
meaning of no trespassing posted or keep out. I have
had them ride through my yard. When you say
something, it is, who are you, or I didn't know this
was private property. No matter what you do, gates,
cables, fence, signs, they still seem to trespass.

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

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

Turkey Bay, which he keeps referring to, is a
U.S. government park. I assume U.S. government still
has deep pockets to develop something like this. I
don't think he can compete with the government. They
have over 100 miles, not 100 acres, in a very remote
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area with thousands of acres of uninhabited land with
no residents, neighbors, businesses to disturb.

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

CHAIRMAN: Anyone else have any opposition?
MR. SILVERT: State your name, please.
MR. THACKER: John Thacker.
MR. SILVERT: You're sworn as an attorney.
MR. THACKER: I represent Guadalupe Ellis and
William Yunker who are adjoining property owners out
there and live there. I had submitted a letter on
behalf of my clients to Planning & Zoning. Is that
made a part of the record?
MS. EVANS: It will be right now.
MR. THACKER: So I won't restate all the
contents of that letter. It will be part of the
record, but I do want to hit on a few point.

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

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

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

MR. THACKER: Yes. I have a disc.

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

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

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

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

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

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

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

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

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Is it going to work?

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

MR. THACKER: It lasts less than a minute.

(UTUBE VIDEO SHOWING ON TELEVISION.)

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

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

This property is totally inadequate to take care of this use. It has been mentioned the federal government monitors that. They have a full-time staff down there monitoring it. I don't think that our community is really equipped to monitor. The fact is it can't be monitored because the noise level is going to be too high. These people won't be able to live right next to it. It'd be like a racetrack all the
time with 8 or 10 or 15 or 20 group comes out there.

The noise is going to be phenomenal.

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

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

CHAIRMAN: Thank you.

Any other comments at this time?

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

MR. RINEY: Ed Riney.

(ED RINEY SWORN BY ATTORNEY.)

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

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

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

"ORA purchased the land from Mr. Wimsatt primarily to contain erosion that was causing drainage and environmental problems for ORA and other companies in the area. When Mr. Wimsatt began clearing the land, he did not obtain the necessary government
permits. Erosion became so severe that drainage
ditches that traverse ORA property became clogged
requiring an excavator on Easter Sunday morning to
prevent the overflow water from potentially washing
out the CSX main railroad line causing tremendous
damage. ORA is still waiting for Mr. Wimsatt to pay
the emergency cost of cleaning the ditches.

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

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

"ORA is an intermodal facility with heavy
equipment operating at multiple locations within the
300 acres. Safety policies and procedures are
strictly enforced. An ATV park on adjoining land
would increase the risk that adults and children would
knowingly or unknowingly trespass on ORA property.
Therefore, ORA opposes the development of an ATV park
in such close proximity. However, if the Conditional
Use Permit for the ATV park is granted, ORA's Board of
Director request that Mr. Wimsatt install at his
expense an approved 8-foot fence around the 13.5 acres
purchased by ORA to limit trespassing.

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

"Sincerely, Owensboro Riverport Authority
Board of Directors."

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

CHAIRMAN: Thank you.
MR. RINEY: May I leave a copy of the letter
with you?

CHAIRMAN: Please.

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

MS. COOK: Stacy Cook.

(STACY COOK SWORN BY ATTORNEY.)

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

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

I think simply put, the primary reason we're all here tonight is because that it's unarguable that ATV's or off-road vehicles are very well-known to cause significant and long-lasting ecological environment damage, wherever they are used. There are countless, countless points of reference that
scientifically, not personally, but scientifically
support this. In addition to that, there are
countless studies that really show the negative social
impact of these vehicles in areas of their immediate
use.

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

The most compelling points of evidence
actually come from within surveys that are done within
off-road enthusiast groups themselves. A Utah survey
of off-road vehicle users reveal that 49.4 percent of
off-road vehicle enthusiasts prefer to ride off of
established trails. The 39 percent of that were
surveyed had done so on their most recent excursion.
Dirt bike rider, 38 percent prefer to ride off
established trails and 50 percent of them had done so
on their most recent excursion.

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

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

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

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

CHAIRMAN: Thank you.

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

MR. HAUSNER: Against.

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

MR. HAUSNER: I believe so.
CHAIRMAN: Go ahead.

MR. HAUSNER: My name is Jeff Hausner.

(JEFF HAUSNER SWORN BY ATTORNEY.)

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

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

You can see next slide. You can see work ships through our plant from all over the country.

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

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

The photo I showed before that shows off-shore oil rig barrels. Because they're in salt water they cannot have any pin holes in the chrome. Dirt and contaminates in our process cause pin holes. That
work is shipping here. It's the biggest work we do. Ships here from Houston, Texas for the off-shore oil rigs. We're one of the only players in the country that can really process these parts with zero porosity.

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

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

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

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

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

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

MR. NOFFSINGER: Thank you, Mr. Chairman.

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

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

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

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

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

This plan does not address the concern these
Now, at this point in the hearing I think we know what the issues are. My question is: Does the applicant or do the homeowners for those that live out there have specific information that can be submitted into the record that will provide evidence as to what's being said here tonight?

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

Now, the Planning Staff does not make a recommendation on a Conditional Use Permit. So this board is on its own to come up with findings of fact to determine whether or not this park can be integrated into the neighborhood. They have to do that based upon the evidence that's presented here tonight. So they've got a real tough job as to whether they vote to approve this facility or whether they vote to deny it.
The burden of proof is on the applicant. He needs to prove that case. If folks have new testimony to present here tonight that we haven't already heard or evidence that backs up what we've already heard, I think it's critical for this board to receive that so that they can make a decision.

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

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

MR. STEIN: Kevin Stein.

(KEVIN STEIN SWORN BY ATTORNEY.)

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

CHAIRMAN: Appreciate that.

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

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

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

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

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

Research indicates that individuals with psychotic disorders are more sensitive to noises, can be more agitated and stressful environments that provide too much stimulus. The sounds of motorcycles, off-road vehicles, the buzzing, humming sound is considered an environmental stimulus for those with psychotic conditions. Loud noises can trigger, can be triggers for extreme behaviors and individuals diagnosed with mental illness. Depending on how things are at our hospital or our adult program,
you're talking about up to 120 people that can be
affected by noise and other stimuli in the
environment. These are people who have intellectual
developmental disabilities and are there for that
reason.

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

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

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

CHAIRMAN: Appreciate it, sir.

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

MR. WIMSATT: I do, Mr. Chairman. Believe me,
I know none of us want to stay here longer than what
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we have to, but I've got a lot of information I need to give you.

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

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

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

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

First thing I passed around, I gave to Mr. Reeves there, is some pictures that myself and some Ohio Valley Reporting

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

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

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

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

You talk about protecting your environment, your serenity and all of that stuff. What you have to
look at out your back door, if it goes industrial, I
know which way I would prefer and obviously I can only
speak for myself.

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

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

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

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

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

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

This is something I printout on the internet. I spoke to a bunch of people that know a lot about four-wheelers and ATV's and things of that nature. I talked to Dustin Roberts the other day who runs the Motorcross tracks that they have out at the fair grounds, one of the most respected people in this community, regarding four-wheelers and motorcycles. And I've talked to these manufacturers. These people here that sell and deal with it every day. They've been doing it for years. What I've commonly heard is that four-wheelers and ATV's typically run around 80
or 90 decibels.

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

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

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

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

In order to -- when you look at decibel levels
you take -- in order to go up 10 dB's, that's going to
to basically double the sound. You have to go up 10 dB's
to double the sound. So you go from 85 to 95 it's
going to sound twice as loud. Again, everything right
there right next to each other.

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

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

Hair dryer, 95 decibel. Your mower, tractors,
a walkman. A walkman halfway up is about the same
levels as the maximum that's coming out of the factory
now at 94 decibels. Most people are running with a
walkman about 105 dB. Your leaf blower that you might
use in your front yard is 115 decibels. Common
everyday activities that everybody does every day.

Diesel trucks running up and down the road, diesel
trucks run in here at 90 decibels. Riverport has got,
they have many thousands run up and down the road
every day. Diesel trucks run up and down the road are
no different than somebody on the high end of an ATV
running up and down the road.

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

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

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

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

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

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

Mr. Chairman, just to summarize that. If I'm running let's say 85, in that 80 to 90 range, if I'm running 85 decibels, it would take ten ATV's right Ohio Valley Reporting (270) 683-7383
next to me. Not in a line or out running in the
woods, on a ridge or trees or any of that stuff. It
would take 10 to go up to 95. Then you multiply it by
another 10 to get up to 105. So you could add 100
ATV's running at 80 to 90 decibel. That would equal
the same as 105 dB for a walkman or a tractor. A
farmer out in the field on a tractor.

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

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

Are you going to allow only ATV's or only
motor vehicles, whatever you call them, whatever you
want to call them, that have a non-modified exhaust?
What are we talking about? Because we don't know. Is
the door wide open? How are you going to monitor
that? Those are the questions and information they
need they're not getting.
MR. WIMSATT: That's a good question.

Part of what I gave the board was a copy of the restrictions for Turkey Bay. Everybody is saying, why do you compare to Turkey Bay? The reason I say Turkey Bay primarily is because I like their restrictions. It's not the fact that it's 2500 acres.

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

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

MR. NOFFSINGER: The rules that you submitted to them, when you submitted this to us you put "similar rules and regulations." Are you saying to Ohio Valley Reporting
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this Board and the folks here tonight that the rules
you have submitted here tonight are going to be
exactly the rules that you follow?
    MR. WIMSATT: There is one area that I blocked
out there, Mr. Noffsinger.
    MR. NOFFSINGER: Right.
    MR. WIMSATT: Which had the lake or things of
that nature. The fees, it says camping fees on there,
Mr. Noffsinger. You know, certainly I may change some
of those. I still haven't decided officially on a fee
structure.
    MR. NOFFSINGER: We're not talking about a
campground.
    MR. WIMSATT: But everything else I'm fine
with.
    MR. NOFFSINGER: Now, are we just talking
about the ATV park and the trails? Because if you're
to have a campground, you're going to have to come
back to this board.
    MR. WIMSATT: Mr. Noffsinger, the Staff did
ask me did I intend to allow what they call primitive
camping. I did tell the Staff that I felt like that
would be appropriate, just as it was appropriate here.
    MR. NOFFSINGER: But you did not make that a
part of this application. What I'm trying to say to
you, and what the Staff has said, you are bound by
what you put in this application. That's all this
Board can consider tonight.

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

    MR. NOFFSINGER: Okay.

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

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

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

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

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

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

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

Bon Harbor Hills was originally created in the 1800's by a man named Robert Triplet, about 5,000 acres. Went all the went to the edge of the river. He had about 500 acres that he called hills. He knew
it had good harbor. He went to the French to try to
get investors. That's why he called it Bon Harbor,
because Bon means French. Anyway, he took coal out of
the hills. Took it over here to the good harbor where
the Riverport is now and took it down the river to New
Orleans. Okay. So that's Bon Harbor Hills.

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

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

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

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

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

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

I'm going to color something else in. All this area here, all this area here, all this area across here, even the Ellis Estate -- let me finish my statement. Even this right here. Even the property that's being proposed, all of this in the last 10 or 20 years was zoned coal mining. This particular map, and I don't have a date on it, but I just happen to have this stuck in one of my files somewhere and I pulled it out. It clearly shows the Ellis Estate where Lou Peay Ellis currently lives, and it clearly shows the 300 foot boundary, which is standard in our community for zoning around coal mining, around somebody's residence. It clearly shows the McNulty home place. Mark McNulty right here. 300 foot, coal mine up to 300 foot of their house. Dust. Destroy wildlife. The serenity. I'm telling you.
Bill and Rosemary Payne, remember their personal residence is over here. You can mine coal around 300 foot of their residence. All this ground back here that they own is still zoned for coal mining.

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

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

So, Mr. Chairman, I have a very difficult time accepting all of these serenity issues and our heritage and protecting the wildlife and not
disturbing our ground, and I'm much more than 300 foot
away than any house, existing house, than what they
were with the coal mines.

CHAIRMAN: We'll grant that.

MR. WIMSATT: We'll move forward.

CHAIRMAN: Give me an answer on one question.

MR. WIMSATT: Sure.

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

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

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

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

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

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

All I can do is be responsible and put up what is reasonable. I've tried to make a point to the people too that -- people say, well, a four-wheeler will go anywhere. The reality is if I'm riding a mountain bicycle over on Ben Hawes Park, I can get off.
that bike. If I'm out there walking in the woods, and I can walk through two big trees. I can't push them over with a four-wheeler. I can go places on foot that I can't get to with a four-wheeler. If I choose to, if I choose to, and we have to hope that people will be responsible and do the right thing. All I can do is mark the boundaries.

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

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

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

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

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

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

According to the rules and the regs.

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

CHAIRMAN: I'd appreciate it.

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

Does that sound accurate, Mr. Noffsinger? I don't think anybody is questioning whether or not it's appropriate in an agricultural zone?
MR. NOFFSINGER: I have not heard that question. So long as you obtain a Conditional Use Permit and you are specific in terms of what you're going asking for, and this Board will approve exactly what you've asked for this in this application. If they choose to approve it, then they may set conditions that are applicable to the proposal in the area.

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

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

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

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

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

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

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

This application, Mr. Wimsatt, is for an OHV park where a trail system that you have shown here. That's the only thing the Board can grant you permission to do, as well as the gatehouse. This Board cannot grant you permission to work on ATV's, to
sell ATV's, to do any of that, because those are uses
that are not allowed in this zone. You have to have a
light industrial zone for motorcycles --

MR. WIMSATT: Mr. Noffsinger --

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

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

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

MR. WIMSATT: Mr. Noffsinger, I did submit
this to the Staff. I asked for feedback, and they
rightfully did ask, give us as much as you can tell
us. So I tried to do that. As far as I knew, and I
asked this question, I asked this question to Staff. I said, is there anything else? As far as I knew I was order, as far as what I submitted. It was my understanding that you have a primary use. If that primary use is accepted, then there's certain things that can be allowed as accessory uses.

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

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

MR. WIMSATT: Which ones --

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

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

CHAIRMAN: We're back on the record.

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

Land Use Plan, Development Pattern Criteria. Land-Use Intensity, Clusters, Buffers. I've got "Buffer-Uses" circled there. "Specific criteria recommend that particular land uses are appropriate as
'buffer-uses.' This means that these moderate-intensity uses are considered appropriate when located where they will buffer higher-intensity land uses from lower-intensity land uses."

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

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

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

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

This is in the Comprehensive Plan.

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

Then the high profile one out on the east end,
one of the big changes, it went from 300 foot to 500 foot buffer.

The board can also choose to waive typical requirements, which is what this board did just a couple of months ago. Whenever Dixieland Properties, a gentleman you folks know very well, Mr. Drew Kirkland, came to me and asked me would I be opposed to doing away with the standard required buffer, 100 foot buffer, and do away with the standard required screening element and landscape element. I said, Mr. Kirkland, I understand you guys have a right to use your property. I want to be a good neighbor. I'm okay with that. As far as I was concerned, there was plenty of screening here and I wasn't concerned about the standard requirements that Planning & Zoning would require of him. I still believe that there's plenty of buffer there. It's not uncommon at all for developers in this -- at that same meeting, Mr. Pedley, I think I've got it noted right here, because you're familiar with this. There was a landscape requirement that had been required I think of Mark Bosley. You took the trees off or something to that affect, but it's in here too. I don't have it 100 percent memorized. Okay. You understand as well as I do that trees are common requirements for buffers.
Along with distance. In most extreme cases, distance 300 to 500 foot. Trees are also a common buffer between inappropriate uses. It's used quite common in subdivisions and developments. It was used out at Lake Forest where you've got not a few hundred, but 20 or 30,000 cars and trucks a day running up and down Highway 54 and you've got a subdivision right next to you. We have to look at what are standards for this community and what is typically required of people in this community.

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

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

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

I want to tell you a story first, if I can. I've heard so many things about people. It's a whole lot easier to get people to show up if they're against Ohio Valley Reporting (270) 683-7383
something. You guys probably know that as well as anybody. That's just what it is. I wasn't looking forward coming down here because I expected that's what it was going to be. So here we are. But I believe in what I'm trying to do.

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

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

Very fine people. Her oldest son is a special needs kid. He probably functions about half capacity or whatever, but fine young man. One of the things he really loves to do is ride his four-wheeler. He said, right now I can't ride my four-wheeler because the farmers have crops in the field behind me. She said,
my kids are tickled to death. I called her the other
day and I said, would you be willing to come tonight
and tell your story? I couldn't believe, I just
really felt bad because she explained to me that her
husband now has got cancer and in pretty bad shape. I
didn't have a clue that was going on.

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

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

Mr. Dustin Roberts, two days ago. "To whom it
may concern. Recently Mr. Wimsatt approached me to
get some input on an off-road vehicle park in Bon
Harbor. Being an avid off-roader since age of 3, I
was very pleased with the idea. I know as the
Motorcross chairman at the Daviess County Lions Club
that off-roading is a family activity that supports
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the community. While speaking with him about his plans, he expressed the need for rider safety and public comfort. His approach on safety gear and preventing drug and alcohol will create a safe family atmosphere and the use of low speed limits outside of trails and use of spark arresters will limit the amount of dust and noise from the park. Being a rider, I have rode at off-road parks and race tracks all over the Midwest. In saying this, I think it can also have a significant positive impact in the economy of Daviess County. Riders will come from miles around spending their money at hotels, restaurants and convenient stores before and after riding. I wish Mr. Wimsatt the best of luck in his endeavor and proudly support this cause. Sincerely, Dustin Roberts."

As additional conditions, Mr. Chairman --

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

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

CHAIRMAN: You going to water yours every day?

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

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

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

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

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

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

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

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

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

MR. REEVES: Okay.

MR. WIMSATT: I don't think most people --

understand sometimes --

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

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

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

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

You can put additional conditions on there including limitations on times, operating hours, things of that nature. Turkey Bay, one of their rules talks about no riding at night, which I like that idea.
too. So I just simply say, I identify it.

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

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

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

Someone mentioned earlier I do have two lots that I'm selling. I have reached an agreement to sell Ohio Valley Reporting

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

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

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

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

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

On the west adjoining property line with J.C. Ellis, IV, Mr. Vickie and Jimbo, on this line where that buffer, 20 foot landscape buffer does not exist, I will construct a 6 foot fence and establish say at least a 10 foot landscape buffer, which is normally the most you require. That that shall create what Ms. Stone told me yesterday, what they look for is an 80
percent opacity level. So you can't see through it. Eighty percent of it you can't see through. Again, this is standard requirements of subdivisions all the time. Landscape buffers. So that's what I'm proposing all the way down through here with Mr. Jimbo and Vickie Ellis. Trying to be considerate of the neighbors. On the west adjoining property lines with the J.C. Ellis Estate, III, which is going to be this area back here, and on the east adjoining property line with the Owensboro Riverport, this has been cleared. Actually this is clear too, but there's still a heavy tree line. You can see how thick this tree line is through here. So I'm saying that I will also construct a 6 foot fence on any of these areas that do not have at least an existing 20 foot landscape buffer. That puts a fence in this open area for the Riverport. I'm not too concerned about the opacity, the 80 percent requirement, because, you know, I don't figure the Riverport, as long as they've got their safety and they've got their fence up, they don't care who they see on the other side. I don't care about who I see over there. I understand the Ellises might want something a little bit different. I don't have any problem with that.
Just so it's not unsaid, Item Number 3, "Wimsatt shall not conduct any activities that have not been specifically approved in the Conditional Use Permit or construct buildings in the Activities Support Area unless they have been reviewed and approved by the local Zoning Administrator."

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

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

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

Mr. Noffsinger, I understand I will only get approval for what is specifically listed, and I've tried to clarify that. I understand that.
I'm willing to accept any other conditions or consider any other conditions this board might ask. I'm not trying to be inconsiderate of the neighbors.

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

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

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

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

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

MR. NOFFSINGER: Thank you.
MR. WIMSATT: It's custom and common out in that area.

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

MR. PEDLEY: I have a few comments.

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

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

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

MR. WIMSATT: I understand that.

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

MR. WIMSATT: I understand that.

MR. PEDLEY: There are a few other things that I have concern with and that is safety, and then your erosion control plan. I haven't heard you say you've been to the city or county engineer on your erosion control plan. I serve on the Public Improvement Specifications, the Clean Water Act. You've got major things here coming your way that you must do out there.
One of the things on safety, accidents, I'm going to give you some personal experiences that I've had back in my younger days when I wasn't too smart. I road a motorcycle. 350 Kawasaki. Some friends and I, there was about eight of us. Tom Hagan, Jack Clark who owned Kawasaki shop. Roy Yewell. I don't know. There was about eight of us. We went down to Bon Harbor. We rode back off Willett Road in behind Hawes Park.

MR. WIMSATT: Pretty familiar with it.

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

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

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

At that time I decided I just didn't need to be riding motorcycles. I did make one more run. What we call Hair Hound. You go cross country through fields, and woods, and creeks and whatever. I ran that run. It was freezing rain. Drizzle, freezing rain, sleet. I was out in Oklahoma. Hit a bridge with ice on it. I went down. Went down hard. I slid
about 200 feet down that road. Tore my jacket, my
Broke the clutch on my motorcycle. I got back on that
motorcycle and I said a little prayer. I said, Lord,
if you'll get me back home, I'll never get on this
thing again, and I didn't.

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

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

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

Three or four years ago I had a good friend,
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Willard Bowman, he used to own City Transfer. He retired. He was riding his ATV climbing a hill. It was out in the country somewhere. It came back on him. Flipped upside down on him. He laid in the hospital nearly two months and nearly died. He was paralyzed from here down. Two years later he died. Just like Turkey Bay says, it is very, very, very dangerous activity.

MR. WIMSATT: Mr. Chairman - -

MR. PEDLEY: Very dangerous.

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

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

What you haven't addressed is the Public Improvement Specification, Chapter 14, of storm water quality management and erosion control. The city and the county is getting ready to adopt this ordinance. It's one thing I can guarantee you. You're going to do it. You're going to do every bit of this. You're
never going to open that if you don't do this.

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

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

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

MR. WIMSATT: I have no problem with that.

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

MR. WIMSATT: Mr. Pedley, I understand.

MR. PEDLEY: You understand that?

MR. WIMSATT: Mr. Pedley, I understand.

MR. PEDLEY: Again, I'm not saying we're approving this. If we do approve this, that's what's Ohio Valley Reporting
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going to happen.

MR. WIMSATT: I understand.

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

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

CHAIRMAN: You understand that?

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

MR. NOFFSINGER: What are the other things?

MR. WIMSATT: Maybe I should -- you asked me about the Turkey Bay regulations and requirements.
You specifically asked me about that. Was I willing to -- were those the activities I was asking for?

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

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

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

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

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

MR. WIMSATT: I understand.

CHAIRMAN: You have something else to add?

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

MS. HIGDON: Rachel McNulty Higdon.

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

Who is going to -- the Turkey Bay down in Land Between the Lakes is government mandated. Who mandates what Mr. Wimsatt is going to do? Who will be there to say he can only, who is going to be at the gate that says, there's already 57 people in here. You can't come in. Who is going to be there to do that? Does anybody have any answers to those? Who is going to mandate? You know, Turkey Bay is government
owned. That is private property. How are we as
homeowners and other business owners assured that he
will have to abide by the rules of this? Does that
make sense?

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

Any other comments or questions?

MS. HIGDON: The no trespassing. He said that
he was just -- the people are not going to come over
into our land. That he was going to mark the
boundaries, as I quote him to say. Well, if all we
ever had to do was put a no trespassing sign in the
front lobby down here, all we'd have to put is a no
trespassing zone, we would not need the locks on all
of these doors and all of the alarms on the government
buildings and lands that we have. We wouldn't need
all of that. All we would need is a no trespassing
sign. Again, I have property down in Bon Harbor
Hills. I've had it for many years. I know my son
just last year was going over on his land with a
four-wheeler and came upon two guys laying down in the
grass with guns hunting deer on our property. They
were trespassing. Mr. Pedley is right. When you have
one, two, three-wheelers they tell others, they tell
others, and before you know it we've got 100, three,
four-wheelers, who knows what else. I know what he
was talking about, Mr. Pedley. Used to be called
Honda Hill. It is now family owned.

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

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

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

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

MS. HIGDON: I'm sorry.

CHAIRMAN: I'll get your answer to the time
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and who is going to enforce the regulations.

MS. HIGDON: Okay. Thank you.

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

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

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

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

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

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

MR. WIMSATT: Mr. Chairman, you're saying all the time. Turkey Bay doesn't do that either.
CHAIRMAN: Somebody paying for --

MR. WIMSATT: Someone will be there. Someone will be there to police it.

CHAIRMAN: Thank you.

MS. HIGDON: All the 100 acres or just the front, up front? What about bathroom facilities?

MR. WIMSATT: Porta-potties are not uncommon.

MS. HIGDON: Thank you.

CHAIRMAN: Appreciate.

Now, the Board members go ahead and ask your questions.

MR. REEVES: Well, it's more of a comment, Mr. Panel.

I'm very familiar with Turkey Bay. I hope to be there tomorrow in that general area. That is a huge, huge facility. My concern when you use that as a comparison, I'm not sure you can scale down. I'm not sure scaling in somewhat of an urban environment. I respect Mr. Wimsatt's good intentions on doing this, but my concern is is it even doable whenever you have these kinds of safety concerns, these kind of environmental concerns? Is scaling even appropriate when you have -- Turkey Bay, your nearest house is across Kentucky Lake at least. That's the closest. Most of them are 15, 20 miles away. I have great Ohio Valley Reporting

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

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

CHAIRMAN: Any other comments?

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

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

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

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

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

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

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

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

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

MR. WIMSATT: Oh, I believe that.

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

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

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

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

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

MR. WARREN: Is that Monday through Friday?

MR. WIMSATT: No.

MR. WARREN: Seven days a week?

MR. WIMSATT: Yes. It has to be.

CHAIRMAN: State your name.

MR. THACKER: John Thacker again on behalf of Guadalupe Ellis and William Yunker, and also on behalf of Ohio Valley Reporting.

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of the Ellis Estate.

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

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

CHAIRMAN: Any other board member have any comments?

(NO RESPONSE)

CHAIRMAN: Does staff have anything else?

MR. NOFFSINGER: No, sir.

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

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

You haven't met with either the county Ohio Valley Reporting

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

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

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

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

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

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

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

CHAIRMAN: Is there a second?

(No response)

CHAIRMAN: Hearing none the motion dies for

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the lack of a second.

Any other motion or comments from anybody?

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

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

MS. ELLIS: Vickie Ellis.

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

CHAIRMAN: Yes.

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

MR. WIMSATT: Help yourself.

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

MR. NOFFSINGER: Excuse me, Ms. Ellis. I do
believe that the yellow line is the property boundary.
I believe that based upon the survey that was prepared
by Joe Simmons that's a registered land surveyor here
in Owensboro, Kentucky.
MS. ELLIS: He prepared a survey for us as well.

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

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

There's already a lot of existing woods through here. I would say there's much more than 20 feet. The 20 feet seems to be the barrier that we continue to discuss. I would say they're much steeper than that. I routinely have people coming through here, coming through there, hunting on this property. They don't have permission to hunt on this property, but they're there with guns and they're shooting. This is a topographical map. It doesn't show elevations. It does, but I can't very well explain to you what's high and what's low, but what's to say someone is over here hunting on my farm. They're up
in their tree stand. We have people riding over here. Somebody gets shot. It's a very possible scenario. I just would like to point that out.

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

CHAIRMAN: State your name.

MR. McNULTY: John McNulty.

It's obvious for Mr. Wimsatt's two time insult to my family's heritage that I struck a cord when I mentioned his historical and continuous violations. I don't have the data of that information. It probably
comes from Planning & Zoning, engineering. I don't
know where that information would come from. I know
that the people here would like a full list of what
those are, whether it's ordinance violations, OSHA
violations. I don't even know the proper terms for
them. I hear continually Harper Trace not completed.
Challenges, problems, those types of things, of the
other neighborhoods. I know as the public, that's
public knowledge, public information. I just don't
know how to get ahold of it. How do we get ahold of
that?

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

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

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

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contain, I can't speak for that, but that's certainly information that you can obtain from those agencies. If you wish to submit it into evidence, you can. Now, it depends on how this meeting goes. Certainly you can't submit it into evidence here tonight. You don't have it. If they were to postpone and not take new evidence, then no, this board would not consider that. It's kind of tough to answer that question, but if you had it with you tonight certainly you could submit it. The Board could choose to do with it what they wish.

MR. McNULTY: Thank you.

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

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

MR. SILVERT: State your name again.

MR. PAYNE: My name is Bill Payne again. I live right in the middle of all that coal I'm told. There's no coal there any more. That was years ago. I guess it hasn't been changed back to agricultural. Anyway, I wasn't aware of that.

One of the things that bothers me, we haven't addressed Mr. Hausner, or the psychiatric hospital, we
havent addressed their issues much at all. I mean
about the dust and the dirt and the noise and the
psychiatric hospital with the noise. They talk about
these 96 decibels being the limit on a motorcycle.

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

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

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

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

CHAIRMAN: State your name.
MS. HELMS: My name is Vickie Helms. How is he going to police that? How is he going to know that someone hasn't modified something?

CHAIRMAN: That's a good question.

MS. HELMS: There's a lot of unanswered question. As a -- Bob started talking about his mother being a nurse. I'm a nurse practitioner that's practiced here for a long time. I've been in the ER in several different areas. I beg you all to consider cost versus gain on this. If we have someone to be hurt, as Mr. Pedley was talking about, and they use our hospital facilities and our services, that's a cost to our community. Not only with our reputation but also with harm to people that are in this community. Not to mention the extra burden that's going to be put on police forces, either the county police or the state police or the city police, to come out and address the issues when people do leave the property. Ms. Cook presented statistics. You asked for concrete information. She gave very good statics about percentages of people that ride off trail. Mr. Pedley mentioned that. Bob even mentioned that his friend that has the child that's disabled rides on someone else's farm. So people do not stay on property that's their own or that they're paid to ride.
on. I think we all know that. Statistics have been presented for you all to consider. We've all had experience with that. I beg you to consider the cost to our community with health services and police services.

CHAIRMAN: Thank you.

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

CHAIRMAN: Good deal.

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

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

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

Thirdly, we have a psychiatric hospital that the additional noise beyond what is currently present there could have a very negative impact on the 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 your right hand.
9    (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
10  CHAIRMAN:  Motion denied.
11    Next item, please.
12
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
26  operate an individual storage facility on the subject
27  property.  The applicant is proposing to use some of
28  the existing buildings on the property, converting

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them to storage units and office space, and construct
6 new buildings while demolishing the garage type
buildings to the rear of the property.

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

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

LAND USES IN SURROUNDING AREA

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

ZONING ORDINANCE REQUIREMENTS

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

SPECIAL CONDITIONS

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

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

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

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

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

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

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

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

CHAIRMAN: Thank you.

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

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

CHAIRMAN: We are back on record.

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

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

CHAIRMAN: Is the applicant here?

MR. STEWART: Yes, sir.

CHAIRMAN: You want to present anything to start with?
MR. STEWART: Seth Stewart.

(SETH STEWART SWORN BY ATTORNEY.)

MR. STEWART: A quick summary.

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

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

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Anyone ready to speak for the applicant?

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

MR. MASON: James Mason.

(JAMES MASON SWORN BY ATTORNEY.)
MR. MASON: I'm the commercial real estate broker with L. Steve Castlen Realtors that represents the current owner of the property, Gilliland Group Partnership. They're based out of Amarilla, Texas. They had property leased to Atmos Energy until about three years ago when Atmos moved out on Highway 54.

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

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

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

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

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

MR. MASON: I have not seen the plans.

CHAIRMAN: Come forward and look at this, please.

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

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

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

MR. NOFFSINGER: Thank you.

CHAIRMAN: Thank you.

Appreciate it, sir.

Any other questions from the Staff or the board?
MR. PEDLEY: I would like to ask adjoining property owners if they have any questions.

CHAIRMAN: Anyone else speaking for the applicant?

(NO RESPONSE)

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

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

MR. RODNEY: Dean Rodney.

(DEAN RODNEY SWORN BY ATTORNEY.)

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

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

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

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

Not only security, but we have some great concerns regarding access. Many self-storage units have 24 hours a day 7 days a week access to get into their storage units. Literally that could mean that people could be accessing their units to our adjoining property at 11:00 at night or 3 in the morning. So as well as security this presents a high problem, a huge problem for our privacy in single-family dwellings with our families. Obviously a six-foot chain-link fence would not suffice in creating privacy for this type of use.
I do want to point out, and I know you are looking at the plan that's been presented by the buyer. I do want to point that the plan provided to you is incorrect, at least on one form that concerns us as residential property owners.

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

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

Lighting. If the individual contractor is going to put lighting in that would add security to the property, then that could be a two-edged sword
also. Yes, that might help on security level, and then on our residential homes that back up to the lighting will have the interior of our homes illuminated all night long.

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

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

I guess my final point that I would like to make, and I know others have more, is concerning property values. Just looking at the current tax records for tax assessments on only the five residential properties that adjoin the Atmos Energy property, we're looking at a little over one and a half million dollars in tax assessments. That's not retail value. Just tax assessments.
the other properties on Copper Creek Drive, as well as Briarcliff Trace, just those properties, then you're looking at significantly more not only in tax assessments but in value.

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

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

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

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

Owensboro is known throughout the state and throughout this region for having a great quality of
life for our families and for our community.

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

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

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

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

MR. RODNEY: Understood.

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

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MR. RODNEY: Absolutely.

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

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

MR. NOFFSINGER: I did hear you say that.

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

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

MR. RODNEY: Great.

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

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

MR. NOFFSINGER: Yes. Again, it can be
policed by us, but we're not going out to each and
every storage unit, unless we get a complaint. Then
we could. It's a very good question.

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

MR. RODNEY: And I understand your position.
MR. SILVERT: Would you state your name,
please?
MR. BALL: Manuel Ball.
(MANUEL BALL SWORN BY ATTORNEY.)
MR. BALL: Just for clarification. The
definition of individual storage is a structure
consisting of more than one unit to be used only for
storage of items that are not classified as
merchandise, commodities as defined in this article,
and that are not considered hazardous in nature such
as items that are corrosive, highly toxic, oxidize,
water reactive, highly combustible, flammable,
explosive materials that consist of high power
explosion or health hazard as set forth by the
applicable section of the Kentucky Building Code
current condition.

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

(NO RESPONSE)

MR. RODNEY: May I speak further?

I appreciate you reading that. I think like any particular hazardous material issues, we're probably not looking at something unlike residential property where you might do checks of some sort.

Applications here are made, and I'm sure just a lease is signed. So it's going to be very difficult to police, I would think, these types of materials that will actually be close to our backyard and our home than it will be maybe the front office of this business. That's a great concern for us. How are you going to police that?

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

One individual I have a letter from who could not be here otherwise and I would like to submit that for the Board to look at. His property does adjoin the property in question. It's Mr. Robert Hill. I
would like to submit that for the Board to either
review or ask questions about.

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

CHAIRMAN: Proceed.

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

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

MR. REEVES: Thank you.

CHAIRMAN: State your name, please.

MS. PATEL: Darshana Patel.

(DARSHANA PATEL SWORN BY ATTORNEY.)

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

Just like Mr. Rodney, Dean, I also have concerns about value to our half a million dollar home. We also have concern about the noise, the trucks beeping whenever they come because we don't know what will be stored. I'm also concerned just
like Mr. Rodney is. There's no policing about what particular -- nobody is going to open each and every plastic bin which is stored.

Being a nurse and my husband being a doctor my biggest concern is rodents.

Our three bedrooms are right on the backside of building which will be facing this proposed building. So even though it will be geared towards their building, there will be lights coming in our backyard. We've owned this home since 2005. I have complained for last three years for whoever the current owner is and called the waste department to come and check. I paid several thousands dollars to clear up the whole side of my fence on the west side and nothing has been done for the past three years. I've call them three times this year. So my biggest concern is what the city is going to do or the county, I guess. We're city. They're county. Nothing has been done.

So how will that be managed with the trees and whatever? Right now there is all kinds of stuff coming. Matter of fact, one of my trees died because of the vines growing from their side of the property growing towards mine.

MR. NOFFSINGER: Ma'am, this property right
now is located outside of the City of Owensboro. You really do not have a property maintenance ordinance that's going to address the issues you've raised. It's an issue of private property ownership and maintenance. If the previous owners, current owner is not maintaining the property, there's not a whole lot that can be done about that unfortunately, especially to your satisfaction.

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

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

CHAIRMAN: Proceed, ma'am.

MS. PATEL: His name is Darrell Higginbothan. He said, "Had to leave. My question: Why did the developer avoid contacting the neighbors or the Association? Creates mistrust. If Board does not vote to deny request, postponement and require meeting
with members of the Association." Meaning Homeowners
Association for Copper Creek Subdivision.

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

CHAIRMAN: Thank you.

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

MR. WALLACE: My name is Mike Wallace.

(MIKE WALLACE SWORN BY ATTORNEY.)

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

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

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

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

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

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

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

CHAIRMAN: Appreciate it.

Anybody have any other questions?

MR. REEVES: I have a question, please.
Were you living there when Western Kentucky Gas was operational in that building?

MR. RODNEY: Yes, sir.

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

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

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

MR. REEVES: Thank you very much.
CHAIRMAN: Any other board members have any
other questions?
MR. PEDLEY: I don't have actually a question.
I do have a comment or two.

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

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

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

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

CHAIRMAN: Attorney.

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

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

MR. PEDLEY: Yes.

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

CHAIRMAN: Proceed.

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

CHAIRMAN: Call to order.

Mr. Attorney.

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

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

MR. NOFFSINGER: Motion to adjourn.

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

MR. RODNEY: Are you saying then that there
MR. SILVERT: It will remain on the docket.
MR. RODNEY: So we will repeat or have other residents ask questions or make comments; is that correct.
MR. SILVERT: That is correct. What is in the record is in the record. The record will be provided to the members who are not here, the members of the board who are not here this evening to review, and then further testimony could be taken.
MR. NOFFSINGER: That will be the first Thursday of September.
CHAIRMAN: Would you all please for our benefit bring new information and let's not listen to all the other.
Related Item
ITEM 4A
3425 New Hartford Road, zoned B-4
Consider a request for a Variance in order to reduce the height of the solid wall or fence along the south and east property boundaries from 8 feet tall to 6 feet tall and to increase the maximum building height of an individual storage unit in a B-4 zone in the County from 15 feet tall to 22 feet tall.
Reference: Zoning Ordinance, Article 8, Section 8.2L7/48(b) and 8.2L7/48(c)
Applicant: Seth Stewart; Gilliland Group Partnership

MR. NOFFSINGER: Mr. Chairman, since Mr. Pedley has stated that he is going to -- I'll let him
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do it. We'll need a motion to adjourn after that.

MR. PEDLEY: Mr. Chairman, I disqualify myself
on both items.

CHAIRMAN: We understand that so we lack a
number of people here for a quorum. So I can only
entertain one final motion.

MR. WARREN: Motion to adjourn.

MR. REEVES: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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STATE OF KENTUCKY )

SS: REPORTER'S CERTIFICATE

COUNTY OF DAVIESS )

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

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

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

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

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