The Owensboro Metropolitan Board of Adjustment
met in regular session at 5:30 p.m. on Thursday, March 2, 2017, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  Judy Dixon, Chairman
                   Ruth Ann Mason, Secretary
                   Brian Howard, Director
                   Terra Knight, Attorney
                   Jerry Yeiser
                   Fred Reeves
                   Bill Glenn
                   Lewis Jean

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CHAIRMAN:  Call to order the Board of Adjustment meeting of March 2, 2017. We will begin our meeting with a prayer and pledge to the flag.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  First item is to consider the minutes of the February 2, 2017 meeting. All members have been mailed a copy and have had time to look them over. At this time I need to see if anyone has any additions or correction?

(NO RESPONSE)

CHAIRMAN:  Hearing none I will entertain a motion to approve.

MR. JEAN:  Motion to approve.
MS. MASON: Second.

CHAIRMAN: A second by Ms. Mason. All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Item 2, Mr. Howard.

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CONDITIONAL USE PERMITS

ITEM 2

4812 Highway 144, zoned A-U
Consider a request for a Conditional Use Permit for agritourism activities, specifically receptions and events, as a part of an existing agricultural operation on a property greater than ten acres.

References: Zoning Ordinance, Article 8, Section 8.2H9

Applicant: Valerie Reid Reel & William H. Reid

MS. KNIGHT: Please state your name for the record.

MR. HILL: Mike Hill.

(MIKE HILL SWORN BY ATTORNEY.)

MR. HILL: This request is on a property portion of which is known as Reid's Orchard.

The applicants request a conditional use permit for what the zoning ordinance refers to as agritourism. Specifically they are requesting to be able to host various events, receptions, weddings, things of that nature, outdoors on the property, as
well as inside an existing structure.

The site plan you have on the screen, there you can see kind of the layout of the center of the property which shows the building that they're using, proposed parking area, some walkways or driveways between the parking area and the buildings.

If any of the interior changes, if the applicant wishes to make any interior changes of the building, they'll have to go through the construction plan review process through the OMPC building staff to determine compliance with any applicable building code requirements prior to any building permits being issued or certificates of occupancy being issued.

Our zoning ordinance defines agritourism as "Activities conducted on a working farm, orchard, winery, greenhouse, hunting preserve, livestock show, etcetera, and offered to the public or to invited groups for the recreation, education or active involvement in the agricultural operation. Such activities include tours, hayrides, corn mazes, classes and picnic facilities and may include limited retail sale of merchandise and food."

Agritourism is required to obtain a Conditional Use Permit in the agricultural zoning district, which this property is zoned agriculturally.
The applicant has also provided a letter which is in your packet, a letter of support from the Kentucky Department of Agriculture. The letter does confirm that in their minds this particular use meets the State's requirements to be considered an agritourism activity. For this type of Conditional Use Permit request for agritourism, it's our policy to request, actually require that the applicant provide the letter from the State when they apply locally for a Conditional Use Permit.

Related to parking requirements: Zoning Ordinance requires one parking space per five building occupants. Based on the floor plan that applicants provided to the Staff, this equates to 48 spaces at a minimum being required. On their site plan they've shown 48 spaces. The zoning ordinance also requires that the spaces be located on a hard surface such as gravel, asphalt or concrete. The applicant is requesting that their parking area spaces be located on a grassy area with a gravel drive lanes leading to them. I'm sure they will talk about this, but they're going to ask you to allow their operation to have their parking on a grass area rather than gravel or pavement. They have two ADA spaces shown on the site plan. We've been working with them on that up until
today to get those spaces located in the closest place possible to the proposed building or the building where they propose activity will take place. So they have actually relocated those to where they're shown on the screen, which is a different location than the site plan that's included in your packet. Regardless of where they're shown now and if approved, they'll have to submit a site plan to our office to ensure there's compliance with parking and landscaping and the other applicable zoning ordinance requirements if approved.

**Landscaping:** Actually there are not any specific perimeter landscape requirements or interior parking lot screening type requirements based on where the site is situated. Not adjacent to any residential or public rights-of-way right where this activity is proposed to occur.

Staff does suggest two conditions if the Board would be inclined to approve the request.

1. Approval of site plan would be necessary.
2. Obtain all necessary building, electrical and HVAC permits and inspections and certificates of occupancy and compliance.

Staff would like to enter the report into the record as Exhibit A.
We have a couple of aerial photos and a couple of different layouts or shots of their site plan on our slides if you would like to see them during the discussion. Thank you.

CHAIRMAN: Thank you Mr. Hill.

Is there anyone here wishing to speak on behalf of the applicant?

MS. KNIGHT: Please state your full name for the record.

MS. REEL: Valerie Reel.

(VALENIE REEL SWORN BY ATTORNEY.)

CHAIRMAN: Do you have anything you want to add that's not included in the Staff Report?

MS. REEL: Just the parking. We've been doing weddings out there and stuff. A lot of people like to come and stay with the farm feel. So we were really hoping to keep the grass. They like to come out there and have the grassy area. Not feel like they're going into a big area with big parking and all of that.

Sometimes, you know, there's other events like Apple Fest and stuff that if there were gravel parking, that could kind of interfere with some of the other things that we do out there.

CHAIRMAN: Thank you.

Any Staff members have any questions?
MR. REID: William Reid.

(WILLIAM REID SWORN BY ATTORNEY.)

MR. REID: We do have a lot of blacktop. We try to keep the whole farm as a farm atmosphere, orchard atmosphere. We have the gravel driveway that we use to park cars off of, but we're trying to keep, we want to try to keep everything green. It's a new logo. Everybody is trying to promote. Less carbon print. We're just asking to use our gravel roads, use our blacktop to let the cars come in, and park them, because we park a little different sometimes. It depends on what the lady who is getting married where she want the cars at. So there's always three people there parking. We have security there all the time. We're just asking to use the natural landscape of Reid's Orchard to park cars on. Thank you.

CHAIRMAN: Does anyone have any questions of Ms. Reel or Mr. Reid?

(NO RESPONSE)

CHAIRMAN: Anyone here wishing to speak in opposition to this?

(NO RESPONSE)

CHAIRMAN: Any commission members have questions or comments?
CHAIRMAN: If not, I'll entertain a motion.

MR. GLENN: I'll make a motion to approve the request based on the Staff Report and the special conditions which were the approval of the site plan and, of course, obtain all the necessary building, electrical, HVAC permits, inspections and certificate of occupancy.

CHAIRMAN: We have a motion to approve by Mr. Glenn. Do I have a second?

MR. HOWARD: We really need findings of fact to go along with that, the reason why you feel it's compatible and that type of thing.

MR. GLENN: Add findings of fact to that.

MR. HOWARD: Yes. You can add things it's an existing orchard and agriculturally-related operation and that this will be in compliance or conformance with whatever is already taking place.

MR. GLENN: I see what you're saying. The findings of fact would be that it actually kind of conformed to what is already out there now, as far as agricultural farmland and greenery and green space.

CHAIRMAN: Thank you. We have a motion by Mr. Glenn. Is there a second?

MS. MASON: Second.
CHAIRMAN: Second by Ms. Mason. Any questions on the motion?

(NO RESPONSE)

CHAIRMAN: Any comments on the motion?

MR. HOWARD: No. That's fine.

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

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VARIANCE

ITEM 3

570 Highway 140 West, zoned A-U (Postponed from the February 2, 2017 meeting)
Consider a request for a Variance in order to reduce the front yard building setback line from 60 feet from the centerline of the road to 41 feet from the centerline of the road.
Reference: Zoning Ordinance, Article 8, Section 8.5.2(c)
Applicant: Joseph & Susan Shultz

CHAIRMAN: Do we have anything that Staff needs to read in before we start?

MR. HOWARD: We presented the Staff Report last month and then Mr. Reeves made a motion to postpone to just allow everybody an additional opportunity to go out and look at the site. Our Staff Report hasn't changed since last month.
CHAIRMAN: I'm assuming because of the familiar face that I see that we have someone that wishes to address this issue.

MS. KNIGHT: Ms. Chairman, before we begin I believe Board Member Yeiser has something to say.

MR. YEISER: Yes. I have to ask to be excused be I wasn't here for the first meeting. So I'll have to ask to abstain.

CHAIRMAN: Thank you.

MS. KNIGHT: Mr. Kamuf, you are sworn as an attorney.

MR. KAMUF: Charles Kamuf. You know, every case has a name and this case is the $100,000 mistake. I represent Joseph and Susan Shultz. He's a chief engineer for CSX Railroad, and he pilots the train. Ms. Shultz owns and operates Deloris Restaurant there on Triplett Street.

Both of them love horses. The reason that they bought this farm is so on the weekends that they could use it, use the old barn that they had and ride horses.

Now, in 2002 they bought the farm. As you know, 2016 they built this building. It's not completely constructed, but it's a building as you can see on the plat up there. It's a 150 by 50. So it's
approximately 7500 square feet.

The question is: Why did we build the barn where we built it? The Shultz did not want to build the barn along the highway. They wanted to build the barn behind them. We have some exhibits here to show you, as usual.

There are four exhibits that I show you. We'll talk about them one at a time, if we can.

As you can see this first exhibit that we have, I have it numbered 1, 2, 3. Number 1 is to show you exactly where they tried to build the barn to start out with. It's an old riding stable to the rear. The reason that they couldn't is because it required 8 fill of dirt. You'll hear from the builder who started to build there and then they decided not to build there.

The next one you see will be Number 2. They tried to build along the side of the house. The reason they couldn't there is because it's too steep.

So they built along the highway. Even along the highway, if you see from Exhibit Number 2 that I have, and that's this one here that you see. You can see none of the property is exactly level. Even along the highway area you can see it required several feet of fill along that area.
The cost of the building would be over $100,000. They obtained a loan from South Central Bank and mortgaged the building for over $40,000. South Central Bank did not require any permit. If they have to tear down the building, they will still be required to pay the mortgage.

Why did they not get a permit? This will be a key question.

There was confusion about the permit. Along Highway 144, and I'm not telling you that all of these buildings have been built or any of them are grandfathered in except a couple of them, but all along that highway, if you had a neighbor, and the neighbors will testify to this. That all along that highway there's houses, there's barns, very near this roadway.

Most are grandfathered in. I'm not trying to mislead the Board. There's one or two that we might talk about in just a few minutes that it looks like to me that have been built recently.

The second one that you see is the barn that we'll talk about, and that is this one right here. This building, I went out there a second time. This building is -- you can see it. It may be a mile and a half, a mile from the subject property. It's right in
a curve. If you look at that building, I think
Mr. Glenn, you had some question maybe the last time
about the newness of the building. I didn't check,
but it looks like it's a new building. You have it in
front of you. You can make your own decisions. Most
people think that a 10 acre tract zoned agricultural
in the farming area is not only exempt, but it exempt
from all planning and zoning regulations. I might
tell you that I've checked with at least ten people
and the only people that I have found that knew that
you had a setback on a 10 acre tract were
professionals such as an engineer or a surveyor. I've
check with many of these people that are sitting back
here. They had no idea. One of the people that we'll
put on the stand will be Gerald Price.

Fred, he used to work for RWRA when you were
out there.

He was an inspector. He's done all kind of
easements. I prepare all the easements for RWRA.
He's been involved for 20 or 30 years and he lives
across the street. He has no objection. And he'll
tell you that he had no idea that there was a
requirement by planning or zoning for a 60-foot
setback line. It's there, we're not saying it's not
there, but we're saying that if you checked around and
you checked around with people that were not in that area, such as engineers, I checked with the county engineer and he knew. I checked with a couple of ex-city engineers and they knew, but I haven't found anybody else that did know.

Now, they have acted in good faith. If you look at my last exhibit that I have, it's a permit from the highway department. If we were going to make some type of willful act, we wouldn't go to the highway department and get a culvert permit. This is where it was approved for that location.

At the time that we went to the highway department to get the permit, there was never any explanation or anything that said we had to get a setback, that there was a setback. Kenergy went out and looked at the property in this particular area that you see here. There's a power line that goes through here. Kenergy was on the property and they were there looking at this power line and they never mentioned anything about a setback line.

So all I'm trying to show you of that is that we acted in good faith. The violation was brought to our attention, I think according to the transcript that I read, because Kenergy said you needed an electrical permit and they went to Planning and Zoning
and checked and had to get an electrical permit.

Now, here is the code that's involved. I've read this code ten times and my client has looked at it and he said, I still don't see where I'm in violation of the code.

The code reads this way, and I'll read it a couple of times because if you read this code, and I think it's on the internet, you would think that you didn't have to do anything else.

It says this, Section R1012 of the current Kentucky Residential Code as amended states "Building and electrical inspections are not required for farm dwellings and other buildings and structures located on farms which are incidental to the operation of the farm and located outside of the boundary of a municipality." Let me read you that one more time.

"Building and electrical inspections are not required for farmed dwellings or other buildings or structures located on farms which are incidental to the operation of the far ands located out of the boundary line."

I'm just telling you that most people think that any time you have a 10 acre tract on a farm that you're exempt, not only from building setback, but a lot of people, and Gerald will testify here and also
the builders, that they didn't understand that there
was a setback.

Now, the purpose of this law, it's
understandable. Why do you have a 60-foot setback?
It's because of visibility. Because you don't want
anybody to get hurt. Because you don't want to have
any traffic problem.

The next exhibit that I'll show you, and I
think this is probably the gist of the case.

Now, the purpose of this exhibit is to show
several really things. If you look at this exhibit
that you see, and the dimensions are on the exhibit
that I showed you. From this point to this point,
there's 908 feet. So the visibility along this road
here is pretty clear.

You come up this line here, and I'll show you
another picture in just a second. That's the whole
idea of that. We're not blocking anybody's view in
this area. We feel that in this, that even though
we're in violation of the strict interpretation of the
law, we feel like that we can come within the spirit
of the law.

Now, the purpose of the law is like we said,
is to be sure that a driver does not lose visibility
along the line.
Now, I will try to show you -- and when Mr. Shultz filled his application out he didn't state all the reasons as to why, maybe under KRS 100, that this should be approved. Let me try.

There are special circumstances which generally do not apply to the land in the general vicinity. That's what we're saying by the first map that I showed you. Because of the topography of the land it's impossible for the contractor really to build anyplace on the property that is completely level.

There would be no adverse affect on the visibility that we have, and it will not alter the essential character of the neighborhood.

Now, this big blowup that we have here is that we have all of the neighbors that are here tonight. Mr. Coakley, he's here. And this is where Gerald Price lives, over here. He doesn't live there. That's his dad's place, but he's been there all of his life. He will be here to testify, and also the builder. They will tell you that in their opinion they drive this road every day, every day, and that what we're doing has no danger to the public.

As you see this little area right here, this barn is built approximately 20 foot from the
right-of-way. So not only is it not -- it is close. We're in violation. I'm not trying to say that. As far as the visibility, it does not affect the visibility and block the view of anybody.

The next issue is the hardship issue. The issue on the application states, "strict application of the zoning regulation would deprive the applicant of a reasonable use of the land and create an unnecessary hardship."

The builder will testify: 1) there's no way to move this barn. The building is impossible to move. If it was located on the property in a different way, where you could move it this way, you could cut off part of the property, the barn and be okay, but the barn is there. There's nothing you can do. As a matter of fact, the only thing you can salvage out of the barn is the roof and the sides. The posts are in concrete.

Mr. Jean, you're familiar with accountability. It would be very difficult to salvage that.

They would have to tear it down. Not only that. There's a mortgage on the property and we would have to pay off the mortgage and not have any security.

Now, let's go over as to whether the actions
were willful. We would not have got a culvert permit, we would not have talked to Kenergy if we were willful violation of the statute.

Granting the variance, the public and general welfare will not be affected by leaving the structure. We showed you on the other exhibit 908 is the distance that you can see forward. I think those two exhibits show that pretty well.

If you look at the other barn, that other exhibit, one of the first ones, there's a barn down the road, which you can see it. I can stand where the barn is and look and I can see this property.

It would not allow for unreasonable circumvention of the requirements of the zoning regulations. As you saw the first exhibit I showed you, we tried to put it in two different places on the farm and we couldn't. Even the last one had some issues.

So we think and we hope that we can show you that we have followed all the regulations and all the special conditions of KRS 100.

The purpose of the Board of Adjustment and the purpose of the statute is to allow the spirit and broad use of the law to be applied and yet provide hardship. If this is not a hardship case, I don't
know that we've ever had one before the Board. We'll try to answer with these members and also with my testimony why we should have the variance approved.

We will show I think that we acted in good faith. We will show that it will not have an adverse affect on the community. The neighbors are all here to testify. We will show that a strict interpretation of the statute will prevent great hardship because of the mortgage, if not nothing else. And that the essential character of the neighborhood will not be changed.

As I explained early on, all along this highway, and I think some of you according to the transcript said you were going to go out there. In this particular area that you see here, it is straight. Most people would think, if they didn't do planning and zoning, that when you have these buildings along here that it would be okay to build without a permit. A lot of people would not -- when I explained to some of them that came in the office, a lot of them didn't understand what grandfathered means. That if it's grandfathered, and I'm saying nearly all of them are grandfathered except the one that I looked at.

What we're asking you to do, you know, this is
our last resort. You understand? We don't have any
other place to go. We can't go to Fiscal Court. This
is the only place we go. I kind of look at it each
case -- and I looked in the transcript and some of you
might be concerned about bad precedence. This is the
type of case, every case you have is on its own
merits. None of these cases that you hear are
identical, but this is not a case where I think you
would set a bad precedence. It's sort of like this,
that it's no harm, no foul is the way I see this
particular case. In other words, if I came up here
and told you it wasn't a willful violation, etcetera,
and there is harm, it might be a difficult case for
you to understand. But I figured it this way: No
harm, no foul. Some of the witnesses will be here.
Mr. and Mrs. Shultz will testify, and also we have the
builder, and we have two neighbors that will testify.

If I can answer any questions now before they
testify like to, I would like to.

CHAIRMAN: Before Mr. Kamuf sits down, does
anyone have a question of him?

(NO RESPONSE)

MR. KAMUF: Mr. Shultz.

MS. KNIGHT: Sir, could you state your name,
please?
MR. SHULTZ: Joseph Shultz.

(JOSEPH SHULTZ SWORN BY ATTORNEY.)

MR. SHULTZ: I stated before or last month the reason built it was basically to ride horses. More like a safety place for my wife. We didn't go out of our way to do it on purpose. Like he said, up here on the side of the house, first, and I mentioned this to him before. I wanted to build one here, smaller. But if you were out there you could see it. It grades down to the pond. Over here, from here down, it slopes down, back up, and back down to the side. That right there was going to cost about $8,000 worth of ground work. So I told Mr. Butler, go down here behind the barn. If you look there's a barn behind the house. I've added two lanes and another 30 foot on it. It cracked on me about how I built because it's not square. I did -- the back field, if you look at it at the top, the hill looks level, but it's not. That's when Rod called me and had me come down and look. One of his guys with a rod, it was about 6 foot long, above his head where I guess a transit laser. Wouldn't even hit it from where they were standing. We tried to find a level spot. So that's why we couldn't build it down at the bottom. That's why we went to the top.
That's when I made my wife mad because she
didn't want to build it up there. That's the only
place I could build it. We walked around probably an
hour to find a good spot. We talked about the
right-of-way, Kenergy's right-of-way because I talked
to Kenergy. Kenergy told me it's got to be 25-foot
off the line. I didn't want the line there in the
first place, but they come in and moved it from the
back to the front. Used to be a big spruce tree
beside the house and they killed it by cutting it.
I wanted to build it the first time and they
wanted 4,000 to move the pole. I told them -- we
didn't build it there. That's why we ended up front.
I really didn't want to build it. My wife
likes the front of the house, the view. We're going
to live with it until otherwise. That's where we're
at.
When I went up there to talk to the guys up
there at Planning and Zoning, I thought they were
pretty fair guys until I got that letter said
"recommended denial," and I really didn't read it. My
wife told me about it on the way here last month.
When I looked at the paperwork, it looked like the
same paperwork I filled out. One of the letters was
from the attorney that I had to do the deed research.
That's when I seen. So I put it over to the side. That's what we need to take with us when we go up there. Then she read it and then she told me what was going on. I said, well, see what we got. We come up here and then I realized I was over my head. I'm glad you guys rolled it over. I went to Mr. Kamuf to get some help. I don't know. I feel like it's us against them. It shouldn't be, but it is. I don't want it to be.

CHAIRMAN: Thank you, Mr. Shultz.

Anybody have questions of Mr. Shultz?

(NO RESPONSE)

CHAIRMAN: No questions. Okay. Thank you.

MR. BUTLER: Rod Butler.

(ROD BUTLER SWORN BY ATTORNEY.)

MR. BUTLER: What Joe was telling you about, the location where we looked to build it, I think there was four different locations that Joe wanted to look at about building the barn. I have in the past done some work on the other old barn he referred to. I built him a lean-to shed on it, a porch around the front of it, and just general labor work around there on the barns. It was down in the back of the farm there. We didn't apply for a permit for that work. Considering it was so many acres and everything, it
never really occurred to us that we needed a permit.

Like he said, there was one side of the house there he wanted to build it, and the hill drops off so suddenly that it would cost him a lot of money to do the grade work there. Cut down trees and other things.

When that didn't pan out, we looked to the other side of the building or the other side of the property and there was another area over there where he had cut down some old hickory trees, there's an oak tree and stuff that he had done, several thousand dollars worth of dirt work over there also.

Then we went to the back of the property. Down below the barn, the horse barn that's there now, and just right in behind it. What he was talking about, we were down there shooting grade and everything. He was wanting to build 150-feet long and each end of it was probably 6 or 8 foot drop at each end of the 150-foot, and in the middle you could get within grade. That's what he was referring to where we were holding the grade stick up so high that you could just walk under it almost to shoot the grade.

We starting setting up down there for that location. It was just going to be so bad. I called him. He come looked at it. Says, let's go up here
and look at the front. He was talking about Susan, she didn't really want to build it in the front of the property because it block the view of the road and block the view of their house, but it was the best place on the whole farm to build. It's where their old tobacco patch was from the previous owners. They had a tobacco base there.

You know, he picked the location where he wanted it, to put it and I agreed. So we set up a string and everything. To the best of our knowledge we didn't know that we were within the setback, you know. We didn't do it intentionally. It would have been to our benefit to move back away from the setback, as far as being able to get between the fence and the building with equipment and stuff like that. If we would have known, we would have moved it back. It would have cost him some more work on excavation and that type thing, fill work. The way it turned out at the end, this end down here, we were like, I don't know. The elevation is that much higher up there I would say. I dropped the thing, the elevation down a little bit when we set it up where I had to dig out some dirt back at this point. That's what it was really all about. Was trying to get the thing in a spot where we could get by with minimum dirt work.
Also, that location was going to work out for him too because he was closer to the road. He applied for a culvert, to put a culvert in so he could get in and out of there with his horse trailer. He parks the horse trailer in the barn and that type of stuff. Down here is where they park it now. They would really like to get it out from in front of their house. The whole purpose of the barn was for the horses and for the horse trailer and storage and a place to ride the horses; 50 by 50 of it is to park the horse trailer in. The rest of it was for riding. They're going to have a riding arena inside of there.

That's all I can say.

CHAIRMAN: Anybody have any questions of Mr. Butler?

(NO RESPONSE)

MR. PRICE: Gerald Price. I live next-door.

(GERALD PRICE SWORN BY ATTORNEY.)

MR. PRICE: We have owned property since '65. I've mowed this property several time. Testify, if it's already been stated, that it's a pretty steep except the location where he put the barn. That's the only place he could have put the barn on this property. There's no site problem with the stretch of road. There's culverts on the driveway. There's no
problem by the barn. The other way east, she comes out of her driveway there's no problem. Of course, we're across the road.

Like I said, we've owned the property since '65. We built a shop, a pole barn to feed cattle in and a couple of sheds. We weren't aware and didn't get a permit. The property valuation guy shows up and we helped him measure and he put it on the property and we pay taxes on it. We didn't get a permit, a building permit.

I worked for the City of Owensboro, Regional Water, for about 41 years. I dealt with right-of-ways and easements and setback lines every day. I wasn't aware of the fact that the setback, in the rural section of the county, preliminary plat or something like that, I didn't realize a setback line. So we weren't aware of that either.

CHAIRMAN: Thank you.

Anyone have any questions of Mr. Price?

(NO RESPONSE)

CHAIRMAN: Thank you.

MS. FOSTER: I'm Ms. Foster. Mr. Coakley and I live in the house next-door. I'm Janice Foster.

(JANICE FOSTER SWORN BY ATTORNEY.)

MS. FOSTER: Again, the thing that I said from
the last time, you know, consider it to be a danger, and I don't see that causes any danger at all. I'm more concerned about the other side of the road. When we come up that hill there and you cannot see out that driveway. It is literally very dangerous coming out there. That's the bigger danger. The barn causes no problems to us. We can see down the road. We walk down the road. There are numerous buildings. I know some are grandfathered in. I can't tell you which ones have been there how long. I see a lot of buildings a lot closer than that. That's really about all that I know.

CHAIRMAN: Thank you.

Anyone have any questions of her?

(NO RESPONSE)

MR. KAMUF: Mr. Chairman, that's pretty well our case. If you have any questions, I'll try to answer them for you.

CHAIRMAN: Any commissioners have any questions or comments?

(NO RESPONSE)

CHAIRMAN: If not I'll entertain a motion.

Mr. Reeves.

MR. REEVES: I'm going to preference my motion with a couple of comments.
I visited site on the morning of February 6, 2017 and drove numerous times to the site for both east and west. It's important to note that to observe the property you must crest a hill from each direction. I also was careful to make note when the building first became visible from each direction as I crested the hill. I also made sure I drove the site when there was traffic coming both from the same direction as I traveling, as well as traffic coming towards me. Further, I drove east to Highway 140 and observed the location of the barn after he provided a picture of in proximity of the structure.

Having conducted an exhausted visit to the site, therefore I move to approve this variance based on the following facts with three conditions.

1. While it could adversely affect the public health, safety or welfare because this is an agriculture area where most buildings are set much further back from the road than the subject building, it's also a fact that this building sits on the top of the hill and is very isolated from adjacent properties.

2. Given that this is a very isolated area along Highway 140 West and there are no neighbors in close visual proximity, it would be difficult to find
3. While it could be a quick distraction to drivers, it becomes immediately visible to drivers once they chest the hill from either east or west and the road along the entire length of the subject property is straight.

4. While there would have been adequate space to locate the building to be compliant with the setback requirement, there seemed to been some confusion with the owner and the builder as to whether or not the property was farm exempt, and there is no evidence that the owner intended to not be in compliance.

5. Several property owners testified at the February 2017 meeting and at this meeting that they supported the application by the property owners.

Further I add these Conditions:

1. The owner will install automatic dusk to dawn lights on each corner of the building, and in addition an automatic dusk to dawn light on the upper area of the side of the building along the highway midpoint of the building. The owner will work with Planning Staff to ensure that the lights are properly directed to call attention to the building's presence,
but not in the drivers eyes or to illuminate any neighbors' property.

2. The owner will attach large illumination strips mid-level on each corner of the building fronting the road, in the event power is out and the dusk to dawn lights are not lit. These illumination strips must be approved by the OMPC Planning Staff.

4. The applicant must obtain all the permits from the OMPC necessary to bring the building into compliance.

CHAIRMAN: Mr. Shultz, can you come back up, please.

MR. SHULTZ: Yes, ma'am.

CHAIRMAN: Do you understand the motion and these conditions that Mr. Reeves has mentioned?

MR. SHULTZ: Yes. The electricity we were in the process of putting lights on the end. That was part of the bid. There's no problem with the other stuff.

MR. REEVES: You understand the lights will be on each four corners?

MR. SHULTZ: Yes, sir.

MR. REEVES: And they'll be dusk to dawn, automatic dusk to dawn lights. Okay. Then large illumination strips on each corner that fronts the
road. Okay?

MR. SHULTZ: Yes, sir.

CHAIRMAN: Thank you.

MR. KAMUF: We agree to those conditions.

CHAIRMAN: Is there a second to the motion?

MR. JEAN: Second to the motion.

CHAIRMAN: Any questions on the motion?

(NON RESPONSE)

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT - WITH JERRY YEISER BEING EXCUSED - RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously. Thank you.

I have one more motion.

MR. GLENN: Motion to adjourn.

CHAIRMAN: We have a motion to adjourn. Do I have a second?

MS. MASON: Second.

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries. We are adjourned.
STATE OF KENTUCKY )
)SS: REPORTER'S CERTIFICATE
COUNTY OF DAVIESS )

I, LYNNETTE KOLLER FUCHS, Notary Public in and
for the State of Kentucky at Large, do hereby certify
that the foregoing Owensboro Metropolitan Board of
Adjustment meeting was held at the time and place as
stated in the caption to the foregoing proceedings;
that each person commenting on issues under discussion
were duly sworn before testifying; that the Board
members present were as stated in the caption; that
said proceedings were taken by me in stenotype and
electronically recorded and was thereafter, by me,
accurately and correctly transcribed into the
foregoing 33 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the
21st day of March, 2017.

LYNNETTE KOLLER FUCHS
NOTARY ID 524564
OHIO VALLEY REPORTING SERVICES
2200 E. PARRISH AVE., SUITE 106-E
OWENSBORO, KENTUCKY  42303

COMMISSION EXPIRES:   DECEMBER 16, 2018
COUNTY OF RESIDENCE:  DAVIESS COUNTY, KY

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