

**CAMPBELL COUNTY & MUNICIPAL BOARD OF ADJUSTMENT
MINUTES OF THE MARCH 19, 2013 MEETING**

MEMBERS PRESENT:

Mr. Scott Bachmann
Mr. Roger Mason, TPO
Mr. Dave Schaber, Vice Chair
Mr. Justin Verst, Chair

MEMBERS ABSENT:

Ms. Connie Schweitzer
Mr. Joseph Williams

STAFF PRESENT:

Mr. Peter Klear, AICP, Director
Mr. Michael Duncan, Legal Counsel
Ms. Stephanie Turner, Recording Secretary

Mr. Verst called the meeting to order at 7:06 PM and asked for a roll call. Following roll call, a quorum was found to be present. Mr. Verst asked if everyone had read the June 19, 2012 meeting minutes and if there were any questions or corrections. There being none, Mr. Verst called for a motion. Mr. Schaber made a motion to approve the minutes as submitted. Mr. Bachmann seconded the motion. A roll call vote found Mr. Bachmann, Mr. Mason, and Mr. Schaber in favor. Mr. Verst abstained. Motion passed.

Mr. Verst introduced case #BA-01-13, by applicant Robert L. Bell, at the location of 3881 Dead Timber Road with a request for a thirty foot front yard variance to add twenty feet to an existing garage. Mr. Klear presented the staff report as follows:

CASE:	BA-01-13
APPLICANT:	Robert L. Bell
LOCATION:	3881 Dead Timber Road, Unincorporated Campbell County.
REQUEST:	Requesting a 30' front yard variance to add 20' to an existing garage.

Staff has reviewed the request and finds as follows:

DESCRIPTION OF REQUEST:

The applicant is asking for a thirty foot front yard variance for a twenty foot garage addition. Specifically adding a 20' x 24' will encroach thirty feet into the fifty foot front yard setback.

CONSIDERATIONS:

1. This site and surrounding land is occupied by single-family residential and vacant land.
2. The Recommended Land Use Map of the 2008 Campbell County Comprehensive Plan identifies the site and surrounding areas for agricultural.
3. The property is currently zoned Agricultural One (A-1). The minimum front yard setback for the A-1 Zone is fifty feet.
4. A review of the public records indicates there was one previous BOA case (BA-05-11) for this property. The request was to replace an existing deck and addition to the deck within the minimum front yard setback. The board approved the 31.21' variance request with two conditions: 1. Applicant complies with the Campbell County Zoning Ordinance and building

codes. 2. Applicant receives approval from the Campbell County building department for the replacement/addition. The applicant has complied with these conditions.

5. The submitted drawings indicate the following:
 - a. The site plan shows the existing house sits 15.16' from the edge of right-of-way (ROW). The house is encroaching 34.84' into the front yard setback.
 - b. The existing garage sits 22' from the edge of ROW.
 - c. The applicant is proposing to add 20' x 24' to the garage.
 - d. The proposed garage will sit 20' from edge of ROW and encroach 30' into the front yard setback.

ALL REQUESTS:

1. The applicant shall submit and/or present factual evidence demonstrating:
 - a. That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well being of the neighborhood or the community.

"The garage addition as shown will enable the owner to park his truck inside the new garage addition, in lieu of on the street side, where it is a potential hazard to passing vehicles on the narrow, 18 foot wide road."
 - b. That such use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.

"Parking his truck in the new garage will make Mr. Stark's life safer, as well as his neighbors, who use Dead Timber Road. Basically, a potential roadway hazard will be removed."
 - c. That such use will comply with any regulations and conditions in this ordinance for such use.

"The new garage will be solely used for vehicle and property storage, and will be constructed per code, so as not to be detrimental to the health, safety or general welfare of anyone using the garage."
2. Per Section 18.6 Variances: Change from one nonconforming use to another, conditions governing applications: procedures.

DIMENSIONAL VARIANCES: Before any dimensional variance is granted, the Board of Adjustment must find all of the following, which shall be recorded along with any imposed conditions or restrictions in its minutes and records and issued in written form to the applicant to constitute proof of the dimensional variance. Such dimensional variance shall not be granted by the Board of Adjustment unless and until:

 - a. That the requested variance arises from special circumstances exist which do not generally apply to land in the general vicinity, or in the same zone.

The applicant stated "The existing house and garage were built in 1989, prior to the current zoning requirements, which require a 50 foot setback from the existing right of way line. They are as close a 15' 6" with their current residence. The new garage

extension would be 20 feet as is the existing garage. The narrow lot and steep site dictated setting the house at its current location."

- b. That the manner in which the strict application of the provisions of this Ordinance would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant.

The applicant stated "By imposing the required 50-foot setback, the new garage would be require to be set back completely behind the existing garage structure and down over the hill. Doing this would then create a rear yard violation."

- c. That the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The applicant states "The original residence and garage were constructed in 1989, and the additions were permitted in 1992 for a previous owner. All of the above violate the current required zoning setbacks from the road right of way."

- d. Reasons that the variance will not allow unreasonable circumstance of the requirements of the zoning regulations and will not alter the essential character of the neighborhood.

The applicant states "The granting of this variance will enable Mr. Starks to simply enlarge his existing garage in the most aesthetically pleasing manner possible. By incorporating a hip roof design connection to the existing roof with matching shingles and using similar siding, when completed, it will appear to be part of the original building."

- e. That granting the variance requested will not confer on the applicant any special privilege that is not conferred by this ordinance to other lands, structures or buildings in the same zone. No nonconforming use of neighboring lands and structures in the same zone shall be considered grounds for the issuance of a variance.

The applicant states "By granting this variance to Mr. Starks you will enable him to post proficiently enlarge his existing garage space. All of his neighbors who sit in violation of the setback variance have the same right to an appeal. Most neighbors could enlarge their garages with no appeal required."

- f. That the variance requested will not adversely affect the public health, safety, or welfare, will not adversely alter the essential character of the general vicinity, and will not cause a hazard or nuisance to the public.

The applicant states "The new structure would be built to the code requirements at minimum, and in no way would affect the health, safety or welfare of anyone."

- g. That the variance will be in harmony with the general purpose and intent of the Zoning Ordinance as well as the Adopted Comprehensive Plan for the County.

The applicant states "By permitting the 20 foot wide expansion of Mr. Stark's garage as shows, this will create the most useful, the safest, and most aesthetically pleasing solution to the problem of his lack of off street vehicle parking. The end product will create a safer environment for Mr. and Mrs. Starks to reside in, as well as the neighbors who use Dead Timber Road."

3. Per Section 18.6, A., 2., Notice: Notice of public hearing was given in accordance with Section 18.2 of the Campbell County Zoning Ordinance.
4. According to Section 18.6, A., 4., the Board of Adjustment must find that the granting of the variance will be in harmony with the general purpose and intent of the Ordinance as well as the adopted Comprehensive Plan, and will not be injurious to the neighborhood, or otherwise, detrimental to the public welfare.

STAFF RECOMMENDATIONS:

To deny the requested variance allowing the garage addition to encroach 30' into the front yard setback and 20' from the edge of ROW.

To approve a modification of the request subject to the following conditions:

1. That the applicant be permitted to expand the existing garage no further into the front yard setback than 22' from the edge of ROW. Also, the addition should encroach no further into the front yard setback than the existing garage.
2. That the applicant complies with the Campbell County Zoning Ordinance and building codes.
3. That the applicant submits a building plan to the Campbell County Building Department for review and approval.

BASES FOR STAFF RECOMMENDATION:

1. That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general wellbeing of the neighborhood or the community.
The expansion of the garage will enhance the value of the home and the neighborhood.
2. That such use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.
3. That such use will comply with any regulations and conditions in this Ordinance for such use.

Mr. Klear asked if there were any questions he could answer for the Board. Mr. Verst asked Mr. Klear to explain why the modified request recommended twenty-two feet. How did staff arrive at that number? Mr. Klear asked the Board to take a look at the existing house and the proposed addition. The proposed addition is shown as the cross-hatched marks. The applicant has shown that the mid-point of the proposed addition has a setback of almost twenty-two feet. If you take that and go to the east, you are basically going to hit onto the western most corner of that structure which is the existing garage. That is approximately twenty-two feet. We did not get it down to the half-inch, but it is an approximation. What is there is fine, but you should match what is there. You should not go any closer than what is there. That is how staff arrived at the twenty-two feet.

Mr. Verst asked legal counsel about the recommendation of the staff report. The first indication is to deny the applicant's request. Secondly, there is a proposal to approve a modified request. What would be the technical way to do this? Do we have to specifically deny the original request or just approve the modified request? Mr. Duncan stated that you could do it either way lawfully. Practically speaking, you would hear from the applicant to see if they are willing to modify the request and if so then just approve the modified request.

Mr. Verst asked if there were any additional questions for staff. Mr. Bachmann asked if you do that and you approve the twenty-two feet across, do you have any idea what the size of the addition would be. Mr. Klear replied stated that he did not because it is possible to maintain the twenty-two feet and retain the

original size of the proposed addition. That is going to be subject to design consideration. Staff believes that the applicant can still obtain the size desired while meeting the twenty-two feet.

Mr. Verst asked if there were any additional questions for staff. There being none, Mr. Verst asked the applicant to come forward and state his name and address for the record. Mr. Robert L. Bell of 486 Sutton Avenue, Cincinnati, OH came forward as the representative for the owner, Greg Starks. Mr. Bell stated that they are willing to accept the modified recommendation made by staff of twenty-two feet instead of the twenty feet he submitted. The reason the twenty foot dimension is up there is because there was a twenty-one point nine feet on the original survey we got on our original application. So we just extended that to the twenty-one point nine four feet is where the surveyor had put the corner of that building. When I submitted this, it becomes obvious that this looks like the lot is getting a little bit slimmer as it goes. I was requested to say what exactly I thought that dimension would be. We're not sure exactly until we have a surveyor lay it all out and guarantee that is the actual dimension. The road is fairly straight out through there and we are just trying to extend the garage and the existing envelope – the existing space beyond the same dimension of what the garage is that is there now. If we need to guarantee that we will be no closer than twenty-two feet, this can be tilted a little bit and it is just a matter of shifting a few forms and setting it at the dimensions we are required to meet and just doing it. Mr. Bell asked if the Board had any questions he could answer for them.

Mr. Verst asked if there were any questions for the applicant. There being none, Mr. Verst asked if anyone in the audience wished to speak either for or against the request. There being no one who wished to address the Board regarding this issue, Mr. Verst closed the public comment portion of the hearing. Mr. Verst opened the floor for discussion among the Board.

Mr. Schaber asked staff to confirm that he understood the request correctly. What staff is recommending is that the new structure will not encroach any further than twenty-two feet from the edge of the right of way – is that correct? Mr. Klear replied it was correct. Mr. Mason asked for clarity on the variance amount requested. The request was for thirty feet. Mr. Verst stated that if staff was reducing the twenty-two foot request down to twenty feet then the variance amount would go from thirty feet to twenty-eight feet. Mr. Mason stated that was what he thought, but he just wanted to confirm the math. Mr. Schaber agreed. Mr. Klear replied their math was correct.

Mr. Verst asked if there was any further discussion. There being none, Mr. Verst asked for a motion. Mr. Schaber made a motion on case #BA-01-13, by applicant Robert L. Bell, to deny the requested variance allowing the garage addition to encroach 30' into the front yard setback and 20' from the edge of Right-of-Way (ROW). Instead, Mr. Schaber's motion was to approve a modification of the requested front yard variance subject to the following conditions:

1. That the applicant be permitted to expand the existing garage no further into the front yard setback than 22' from the edge of ROW. Also, the addition should encroach no further into the front yard setback than the existing garage.
2. That the applicant complies with the Campbell County Zoning Ordinance and building codes.
3. That the applicant submits a building plan to the Campbell County Building Department for review and approval.

The basis for Mr. Schaber's motion was that the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general wellbeing of the neighborhood or the community. *The expansion of the garage will enhance the value of the home and the neighborhood.*; that such use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity; and that such use will comply with any regulations and conditions in this Ordinance for such use. Mr. Verst asked if there were any questions on the motion. There being none, Mr. Verst called for a second. Mr. Mason

seconded the amended motion. Mr. Verst called for a roll call vote. A roll call vote found Mr. Bachmann, Mr. Mason, and Mr. Schaber in favor. Mr. Verst abstained. Motion passed.

Mr. Verst introduced case #BA-05-12, by applicant Carlisle & Bray Enterprises, at the location of 25 Harrison Court in Melbourne, Kentucky, with a request for a conditional use to operate a dockage facility within a River Recreation/Conservation zone. Mr. Klear presented the staff report as follows:

CASE: BA-05-12
APPLICANT: Carlisle & Bray Enterprises
LOCATION: 25 Harrison Ct, Melbourne Kentucky.
REQUEST: Requesting a conditional use to operate a dockage facility within a River Recreation / Conservation zone.

Staff has reviewed the request and finds as follows:

DESCRIPTION OF REQUEST:

Requesting a conditional use to operate a dockage facility within a River Recreation / Conservation zone.

CONSIDERATIONS:

1. This site is occupied as a dockage facility operated by Carlisle & Bray Enterprises. The land uses surrounding the property to the east, west and south is residential and vacant land.
2. The site is located within the City of Melbourne.
3. The Recommended Land Use Map of the 2008 Campbell County Comprehensive Plan identifies the site and surrounding areas for Village Mixed Use.
4. The property is currently zoned River Recreation / Conservation (R/CO). Conditionally permitted uses include: Dockage facilities. The minimum area and height regulations include:
 - Minimum lot size 1 ac
 - Minimum lot width 150 ft.
 - Minimum front yard 50 feet
 - Minimum side yard 25 ft.
 - Minimum rear yard 50 ft.
 - Minimum building height 25 ft.
5. After receiving several complaints about the facility, staff began an investigation of the property. A review of the public records indicates there were previous case files on the property. There is an unfinished Board of Adjustments case file (BA-10-88) for the site. The applicant was Ms. Celeste Harrison. The request was stated as "need to have a conditional use permit for continuation of a business, refer to letter of 5/31/88 from Terry Vance for further explanation." There is no record of this letter from Mr. Vance. There is a hand written note from Ms. Harrison dated 6/24/88 which describes that she has contacted Mr. Ron Dill to prepare a site plan for presentation to the BOA. She requested a continuance to allow for more time to prepare the plan. There is a hand written note from Terry Vance dated 6/27/88 stating that he tried to contact Ms. Harrison but was unable to reach her because she was on vacation. Mr. Vance further indicated that he would contact her on her return to discuss the case. There is no further information about this case.

Next there was a building permit application for repair of a marina – restaurant at this location. The applicant was Ron Harrison. Staff approved a zoning permit (#3116, case #112-93) for this property on 8-17-93. There is also an approved building permit from the state issued on May 17, 1994.

On August 15, 2012 staff sent a letter to Robert & Julia Harrison (current owners of record with PVA) about a series of complaints received regarding the possible expansion of a non-conforming use at 25 Harrison Court. Staff learned that the Harrisons were not the owners / operators of the facility. Staff learned that the current owner / operator is Carlisle & Bray Enterprises. Staff contacted Carlisle & Bray Enterprises and informed them of the issues. Since that time, the applicant has been working with staff to submit for a conditional use permit.

6. The submitted drawings indicate the following:
 - a. The site plan shows the property is made up of four lots.
 - b. The site plan shows the existing docking facility located on two separate lots.
 - c. The site plan shows a concrete paving area for boat launching and existing metal gate.
 - d. The site plan shows a future training center that currently exists as a single family house.
 - e. The site plan shows an existing trailer and bilge tank. This is a treatment plant for the bilge water on the barges.
 - f. The site plan shows a portion of Harrison Court being a public road and the other portion is private drive within a 20' access easement.
 - g. The site plan shows several existing storage trailers and salt bays on the south side of Harrison Court.
 - h. The applicant stated that Bluegrass Landscaping and the City of Melbourne use the salt bays on the southern portion of the site plan to store salt.
 - i. There is also a workshop and storage building on this side of the road. This building supports the dock and fleet.
 - j. The parking requirements for industrial facilities require two spaces for each three employees and one space for each company vehicle operating from the premises. The applicant stated there are ten employees and four company vehicles on the largest shift. This requires seven parking spaces on the property.
 - k. The applicant stated they have thirty unpaved parking spaces at 10' x 20' feet per space. This must be shown on the site plan.
 - l. The site plan does not show a loading and unloading space.
 - m. The site plan does not show any exterior lighting.
 - n. The site plan does not show any signage.
 - o. The site plan does not show the deed book and page of any of the lots.
 - p. The applicant provided an approval letter from the US Coast Guard. This letter states that they are compliant with a security plan.
 - q. The site plan has a notation that the property is located within the 100 year floodplain.
 - r. The site plan shows several poles and a set of pumps near the first gravel drive.

ALL REQUESTS:

1. The applicant shall submit and/or present factual evidence demonstrating:
 - a. That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well being of the neighborhood or the community.

“The proposed use of the location is a boat dockage and transfer of goods facility. This would include fueling, service and repair, sale of boat supplies and grocery supplies. This

facility helps assist in the transportation of goods for other businesses located in the area including Lafarge and ADM. As this facility grows in will provide jobs for the area which will benefit the community as a whole."

- b. That such use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.

"The activities at this facility will not affect the health, safety or general welfare of people in the vicinity of the property or the community as a whole. Carlisle & Bray enterprises is committed to providing the safest working conditions possible while making its facilities something that it's employees as well as the communities it works in can be proud of. We have spent time and money to make our property in Melbourne look like a first rate operation. We also have a working relationship with the Coast Guard to ensure that we meet the highest standards of the industries we serve."

- c. That such use will comply with any regulations and conditions in this ordinance for such use.

"We have been and continue to work with Planning & Zoning, the Coast Guard, the Army Core of Engineers, the EPA, local and state governments to make sure our facilities adhere to all rules and regulations."

2. Per Section 18.6, A., 2., Notice: Notice of public hearing was given in accordance with Section 18.2 of the City of Melbourne Zoning Ordinance.

STAFF RECOMMENDATIONS:

To approve the conditional use permit for the operation of a docking facility subject to the following conditions:

1. That any outside lighting be reviewed and approved by staff.
2. That any signage be reviewed and approved by staff.
3. That the four lots be combined into one tract.
4. That a revised site plan be submitted showing the parking spaces at 10' x 20' feet.
5. That the revised plan shows a loading and unloading area.
6. That the applicants provide approval from the Division of Water and Army Corps of Engineers confirming that they are permitted to operate this type of facility in this location.
7. That the applicant provides more information about the poles and pumps located near the first gravel drive.
8. That the site plan shows exactly where Harrison Court becomes private.
9. That the site plan be revised to include the deed book and page of all lots included in this plan.

In addition, staff is recommending that the applicant be granted a waiver from the requirement that the parking spaces and loading/unloading zone be paved with asphalt or concrete. Instead, the applicant shall be permitted to use compacted gravel for the parking spaces and loading/unloading zone.

BASES FOR STAFF RECOMMENDATION:

1. Based on the information above, staff finds that the proposed use will contribute to the general well being of the neighborhood and community. Further, staff finds that the proposed use will not be detrimental to the health, safety, or general welfare of the persons residing or working in the vicinity, or injurious to the property or improvements in the vicinity. Last, the applicant has

indicated that they will comply with the regulations of the Melbourne Zoning Ordinance and other regulatory agencies moving forward.

2. Melbourne Zoning Ordinance Section 14.1.B. General rules, regulations and limitations: No sign shall be erected, maintained or continued unless it is in full compliance with the regulations for the zone in which it is located...
3. Section 10.1.F.3. Other development controls: 3. No lighting shall be permitted which would glare from this zone onto any street, road, highway, deeded right-of-way or into any adjacent property.
4. Section 11.1, EE. Specific off street parking requirements: Industrial facilities require 2 spaces for each three employees and 1 space for each company vehicle operating from the premises.
5. Section 12.1. Off street loading & unloading use and bulk regulations: Off-street loading and/or unloading facilities shall be provided in accordance with the following regulations.

A. Spaces Required: Every building, structure, or part thereof, erected and occupied for manufacturing, storage, warehousing, department stores, wholesale stores, retail stores, market, hotel, hospital, laundry, dry cleaning, dairy, mortuary and other uses similarly involving the receipt or distribution of vehicles, materials, or merchandise and having up to 5,000 square feet of gross floor area shall be provided with at least one loading and/or unloading space. One additional loading and/or unloading space shall be provided for every additional 10,000 square feet, or fraction thereof, of gross floor area in the building. If sufficient proof can be shown that less than these requirements (only that part which has to do with over five thousand (5,000) square feet) will be satisfactory for the operation in question, if approved by the Planning and Zoning Commission.

6. Section 11.0 M Paving of Off-Street Parking and Section 12.1. Off street loading & unloading regulations: Require that parking spaces and off-street loading/unloading facilities shall be paved with asphalt or concrete. Use of compacted gravel in lieu of asphalt or concrete is appropriate for this location because the site is located in the floodplain. The use of gravel for the parking spaces and loading/unloading zone is consistent with the requirement of Section 10.0 E.1. Other Development Controls stating that construction shall not cause flood hazards, soil erosion, adverse changes in the natural drainage courses, etc.

Before concluding the staff report, Mr. Klear referenced condition #6 which reads “That the applicants provide approval from the Division of Water and Army Corps of Engineers confirming that they are permitted to operate this type of facility in this location.” Mr. Klear did some follow up and research on those particular points. First, he did speak to the Army Corp of Engineers. In this location, the jurisdiction that handles our area is based out of Louisville, Kentucky. Mr. Klear spoke to the division head who stated that Carlisle & Bray are operating under the previous permit for the Harrisons. That permit is in compliance and there are no outstanding issues as far as the Army Corps is concerned. Mr. Klear stated that he was further informed that Carlisle & Bray have submitted an application for the current facility. Public notice of that particular process should be in the paper in the next week or so. Typically, that is a thirty day process. Right now, the Army Corps does not anticipate any problems. Second, the Division of Water is the state level. Mr. Klear checked with the local office in Florence. They said there are no outstanding complaints or issues from their vantage point. There are no conditions that would require a permit from the Division of Water. However, this is something that they are keeping an eye on and monitoring to determine if the facility would require a permit for the discharge of water. Water withdrawal permits are for taking water out of the Ohio River. Of course, if you build within the floodplain, you need a specialized permit for construction in the floodplain. Currently, they are not

proposing any new construction so that last one does not apply. The Division of Water says based on the activities that are going on the site there is not a current need for either a discharge permit or a water withdrawal permit. Under the name of Celeste Harrison, there is a license for drinking water treatment system. Under the name of Robert Harrison, there is a license for a waste water system. It is for basic operations for the existing facility. Those licenses are current. That is additional information. Mr. Klear stated he wouldn't change the condition as listed in the staff report for two reasons. First, for the Army Corps, that is current, but that is about to change. You want to make sure that with that change, the applicant maintains that appropriate approval from the Army Corps of Engineers. Also, with the Division of Water, if things should change or if the facility should expand, they would potentially need new permits or licenses. We want to make sure that we have the ability to require those and/or enforce those. We will work with agencies to enforce those. Although we have information that addresses that condition, we still want to make sure that condition remains. With that, Mr. Klear offered to answer any questions the Board may have.

Mr. Verst thanked Mr. Klear for his report and asked the Board if they had any questions for staff. Mr. Bachmann stated that in the staff report there was mention of a possibility of an expansion of a non-conforming use, but the case before us is strictly for a conditional use permit. There is no non-conforming use to be considered. Correct? Mr. Klear replied that was correct. Mr. Bachmann stated that also under conditional uses under Section 10.0, C., 2 it mentions that these uses requires permits and it mentions the Corps of Engineers, Department of the Army and the Division of Water, Kentucky Department for Natural Resources and Environmental Protection. You mentioned the Corps of Engineers and the Division of Water, but what about the Department of Army and the Natural Resources and Environmental Protection. Are they not involved in this too? Mr. Klear thanked Mr. Bachmann for raising this question and providing him with an opportunity to clarify a misconception. Mr. Klear skipped down to the section Mr. Bachmann was questioning and read the section Mr. Bachmann was questioning. The paragraph states: "...providing that the development of all permitted facilities adjacent to navigable waters shall be approved by the Corps of Engineers, Department of the Army, and the Division of Water, Kentucky Department for Natural Resources and Environmental Protection..." Mr. Klear stated that it was suggested by one of the residents that this constitutes four different agencies. It is not. It is actually only two agencies. Mr. Klear re-read the agencies. The first one is the Corps of Engineers, Department of the Army. It is not written very well, but we are talking about the federal government. They are not known for their brevity of words or for their clarity. The Corps of Engineers, Department of the Army is also known as the US Army Corps of Engineers. It is cumbersome, but that is one group. Continuing, it reads "The Division of Water, Kentucky Department for Natural Resources and Environmental Protection". This also sounds like two different agencies, but it is actually just one. The Division of Water is a division that falls under the general umbrella of the Kentucky Department for Natural Resources and Environmental Protection. Like the federal government, the state is not known for its' brevity or clarity. It looks like you have a bunch going on, but it is just two different agency approvals needed. We have the US Army Corps of Engineers from the federal level and the Division of Water at the state level. Mr. Klear again thanked Mr. Bachmann for asking that question.

Mr. Verst asked if the previous case #BA-10-88 would be considered closed at this point or is it considered unfinished business. Mr. Klear stated that he believes, by sheer virtue of its age, it would need to be considered dead. Mr. Verst stated that he agreed and the Board would consider that previous case to be dead. Mr. Verst looked at the sign in sheet for the audience members that wished to speak tonight and asked Mr. Klear to point out where Burns Avenue would be in relation to the applicant. Mr. Klear pointed out Anderson Avenue and noted that Burns Avenue comes off Anderson and goes to the east. Mr. Verst asked if Anderson Avenue was a public street. Mr. Klear confirmed that it was public. Mr. Verst stated that Harrison was also public to a certain point. Mr. Klear stated that was correct. Mr. Verst asked if Burns Avenue was a public street. Mr. Klear stated there was a complicated issue as he believes our legal counsel may have represented some parties. Mr. Duncan stated that was Ohio Avenue. Mr. Verst asked if Anderson was an asphalt street. Mr. Klear confirmed it was. Mr. Verst asked if the public

portion of Harrison is an asphalt street. Mr. Klear confirmed it was. Mr. Verst stated there is central sewage system. He also noted that in the report it was mentioned that they had a waste water treatment license so that is for the on-site treatment of waste. The public began to make comments. Mr. Verst advised them that he would take comments from the public shortly. Mr. Verst continued to ask about the previous permit for the restaurant/marina. Was that operated out of the house that was shown? Or out of the facility? Mr. Klear stated the best he could tell it was operated out of the facility. It was not at the house. Mr. Mason asked if the previous permit that was issued was complete and satisfactory. Mr. Klear stated that all we issued was a zoning permit. The building permit was handled by the state. Mr. Verst added if there was any mention of the conditional use for a marina or restaurant being there and that activity ceased to exist for a period of time then the conditional use permit would be null and void.

Mr. Mason asked about the ownership of this property. Staff assumed the Harrison's owned it, but they didn't. When did this transfer of title occur? Mr. Klear stated that when staff was first made aware of this issue, the Harrisons' were the owner of record. Mr. Mason asked when that was in 2012? Mr. Klear replied it was around June 2012. At some time in August or September, ownership was transferred from the Harrisons to Carlisle & Bray, but Mr. Klear did not have that specific date.

Mr. Verst asked if there were any other questions for staff. Mr. Bachmann asked about the permits remaining in the Harrison's name. Is there any plan or need for that to be updated to the current owners? Mr. Klear stated that, while they are currently operating under the old permits, C & B is currently in the process of migrating those permits from the Harrisons to themselves. If you have a current permit, you can maintain it in the prior applicant's name. Typically, when dealing with the federal or state government, it is easier to do that. Then, when it comes time for renewal, you change it over to the new owners. Mr. Klear stated that he could not specifically address the permits for the water supply or the waste water. He would direct those questions to the applicant for clarification.

Mr. Verst asked if there were any other questions for staff. There being none, Mr. Verst advised the room that he would first call the applicant to come forward. After the applicant has spoken, Mr. Verst would call the names of the audience members that wished to speak. Mr. Verst stated he asks that the speakers should try to stick to five minutes if they could. He also stated he would prefer that they keep their comments concise. If someone before you has made a statement that you agree with, Mr. Verst would prefer if you just say that you agree with them versus just repeating everything again. With that said, Mr. Verst asked the applicant to come forward and state his name for the record.

Mr. Bob Weis of 123 Seiko in Union came forward to represent C & B Marine. Mr. Verst asked Mr. Weis if he had any additional comments to make. Mr. Weis said not really, but he did want to express that they are also regulated by the Coast Guard. There are a total of three regulatory branches. Mr. Weis stated that C & B Marine has been working on cleaning up their area to make it a little neater and a little more versatile for them. A lot of the stuff seen in the photos has been cleaned up or removed. The green trailer is gone. There were some floats that sold and they told the guy to come get them or they were going to scrap them. Basically, that one fenced in yard has two emergency trailers that will stay. The red trailer has about 3,000 feet of river boom in it for containment in case there is a spill. The white trailer has about \$50,000 worth of skimmers in it. It is all just emergency response equipment. Almost everything else in the yard will be gone with the exception of the salt.

Mr. Verst asked if Mr. Weis could provide a little bit of history of the site. How long it has been operating for barges? Mr. Verst asked Mr. Weis to express whatever his knowledge was...just general information. Mr. Weis stated that it has been in operation for approximately twenty years. They have aerial views showing the tugboat has been sitting there, Mr. Weis believes, since 1980 or 1982. He stated that Mr. Harrison can't remember when he brought them in. It was the restaurant shed which was sitting on the barge and is still sitting there. It's just the restaurant is not on the barge any more. That sleeve facility is the same as it has been for a long time.

Mr. Verst stated that the request is for a conditional use permit for a dockage facility. He asked Mr. Weis to provide a general description of what operations go on for a dockage facility. Mr. Weis stated that we have boats to go up and down the river from Paducah to West Virginia. We also have boats that run in regular shifts that go from Mt. Olive to Hilltop Concrete and then all the power plants that we push coal and gravel for. All that it is going to be used for is for changing crews. They were talking about all the cars. They have four crew members per car and those people would come in, get on the boats and be gone for a week. Some repairs occur. There is fuel and supplies for those boats mentioned which we do out of the silver building that was shown. That is basically all that is going to happen down there. There is one boat that goes out every morning. It takes five employees down to ADM where we have a fleet. There is a cleaning system down there that is in operation. Those guys work there all day and then come back. That is all that is going to be happening there.

Mr. Verst asked if there were any cargo that goes on or off at that location. Mr. Weis stated not at that location. Cargo goes straight through the fleet. Mr. Verst confirmed there was no cargo being trucked in or out. Mr. Weis stated there was not. It is just supplies for the boats. Mr. Weis stated their main facility is down in Hebron and that is where they do most of their repairs. They have dry docks down there and most repairs occur there. This location is mostly a rest area. It is just convenient because most of the boats turn around here and then the cargo they picked up is picked up by another boat in the fleet down at Lafarge and it is just kind of a transfer point.

Mr. Verst thanked Mr. Weis for the information and asked if the Board had any questions for the applicant. Mr. Duncan stated that Mr. Weis mentioned the number of years this business has been in operation. Mr. Duncan asked Mr. Weis if he operated the business for Mr. Harrison. Mr. Weis stated that he operated it for the Harrisons for twelve to fourteen years under the name of Greater Cincinnati Marine. Mr. Harrison bought another place in Bel Air, Ohio and decided that it was too much to have two locations so that was when they started talking about buying him out. Mr. Duncan started to ask about the company that was operating it for Mr. Harrison was operating it now. Mr. Weis stated that in January 2011, the Greater Cincinnati Marine, which was owned by the Carlisle family, and Bray Marine, which was owned by the Bray family, merged. It is now called the C & B Marine. Mr. Duncan replied that the point he was getting at is that the company who operates this facility now has operated it all those years. Is that correct? Mr. Weis stated that was correct. They just weren't operating it under that name.

Mr. Verst asked if there were any further questions for the applicant. There being none, Mr. Verst announced that he would go through the list of the members of the audience that wished to speak tonight. Mr. Verst stated he was not going to go straight down the list in the order they signed in, but was going to try to group the parties together by family name and/or location. While Mr. Verst was speaking, a gentleman approached the podium and asked to be recognized. Mr. Verst asked him to state his name and address for the record.

Mr. Bob Bathalter introduced himself as the attorney retained by Mr. Steve Burns on behalf of the residents living in the immediate area of the location in question. Mr. Bathalter stated that he has prepared a summary of the different issues and points of view of the residents. He proposed that the Board allow him to present that summary to the Board and then the Board could call the residents to provide the details. Mr. Verst agreed with Mr. Bathalter. A copy of the summary prepared by Mr. Bathalter was distributed to each Board member, to staff for the public record, and to Mr. Weis.

Mr. Bathalter stated that the property is currently zoned River Recreational Conservation. The conditional uses for that zone are boat harbor with a marina, boat fueling, grocery store and docking. It is their understanding that for many years George Harrison owned this property and had obtained a permit to operate a marina for fisherman and that kind of boating activity...not barges. After he died, his family continued to operate it that way for a while and then it was eventually closed. Mr. Bathalter's information

is that one of the sons, Bob Harrison, started working with the Carlisle Company around 2000, but all he ever did was park his tow boat there. This activity did not bother the residents very much because he wasn't bringing in the barges, wasn't repairing them or anything. He was just parking his tug boat there. Here recently, very recently, the Carlisle Bray company started doing heavy commercial activity at the site including some of the things that the residents are complaining about such as parking barges at this place (not occasionally, but all the time) and parking them in front of the neighbors. Not just on their property, but on the neighbors' property as well. They are cleaning the barges there. The neighbors have photos showing them cleaning the barges out, spraying coal dust into the air because they are cleaning them with compressed air. The barges are moving too close to the bank. We understand they are supposed to be out in the channel, but they are so close to the bank that they are eroding the bank. They are moving heavy equipment into the area including things that separate oil and water. They work at night with very bright lights which disturb the neighbors. There are very loud noises coming from the site. They bring in tractor trailers which are too large for the streets and then they have to back up to manipulate the area. They bring in employees who are always speeding and driving recklessly. The residents even had to go to the City of Melbourne to get speeding signs.

Mr. Bathalter stated that there ought to be a continuance of this hearing so that they have time to marshal their witnesses and their evidence. It appears that Carlisle Bray filed their application in November 2012. The neighbors didn't even find out about it until a week ago when they read about it in the Campbell County Recorder. When they called to inquire, they were advised by Mr. Klear's office that only a few people got notices, but it wasn't communicated to anyone else. One notice went to someone's house who didn't live there. They need time to make a decent presentation, but they are prepared tonight to address some of the issues. We looked through the application and through the rules and regulations.

Mr. Bathalter stated that one of their objections is that on the application in paragraph 4 Carlisle Bray states that purpose of their application is to bring the zoning of the property in line with the property use over the last thirty years. This is a false statement. That has not been the use of the property for the last thirty years and not even for the last fourteen years. The last fourteen years they have parked a tug boat there occasionally, but not this heavy barge activity and not twenty-four years. We understand that when the neighbors complained to the Army Corps of Engineers, the Engineers actually shut them down temporarily because they didn't have the right permit. The previous permit was for a marina. They keep trying to say they are doing the same old thing that used to happen there and that is not true. What used to happen there is fishermen and boats and recreation and the restaurant. It is now heavily commercial activity and not private boats and a restaurant.

Mr. Bathalter said on page 3, question 2 that they are supposed to show evidence that the proposed use at this particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood and the community. This facility does nothing for the well-being of the neighborhood. It might create a few jobs for these guys who are speeding in and the tractor trailer drivers, but it doesn't do anything for the neighbors. Mr. Bathalter does not believe that the neighbors work there. The repair, cleaning and transport of heavy barges at all hours of the night won't contribute to the general well-being of the neighborhood. They are also supposed to prove that their activity would not be detrimental to the health, safety or general welfare of the persons residing in the vicinity of the location. The residents think they are polluting – seriously polluting – the area.

Mr. Bathalter continued that the applicant has to show that the variance will not adversely alter the essential character of the general vicinity. Looking at the pictures it shows that it is not a residential activity. The variance has to be in harmony with the general purpose and intent of the zoning ordinance. The zone is recreational and that activity is definitely not recreational. The applicant has to show that the non-conforming use will generate less traffic than the prior non-conforming use. They have ten employees coming in and out. The applicant must show that the non-conforming use is of a nature that it will emit less noise and air pollution than the prior non-conforming use. Mr. Bathalter stated he believes

the evidence will clearly show that this is not true. The applicant has to show that the non-conforming use will be more in character with the existing neighborhood than the prior non-conforming use. This is certainly not true.

Mr. Bathalter stated that, if you read the description of what they want to do, you would think that they just want to carry on with the marina business which is completely misrepresenting what is going to happen. We also note that they were supposed to get permits from the Corp of Engineers and from Kentucky. It seems to me that they should first get their permits to see if they can work before they start doing everything and then getting the permits. It seems they have the cart before the horse. The applicant has not received their approvals from these two agencies and any conditional use permit should be withheld until such time as the permits are issued. This is a short summary of what the neighbors will say and ask that the Board not make a decision tonight. They ought to have a decent amount of time to create a better presentation and get more organized and additional facts and figures so that they can make their argument.

Mr. Duncan stated he had a question with regards to points four through eight of the summary provided to the Board. There is information concerning variances and non-conforming uses and asked where Mr. Bathalter was getting this information. Was it in the staff report? Mr. Bathalter replied that he took the points from...and began looking through his paperwork to locate the source. Mr. Duncan stated he was just curious because he was under the idea that the Board was only considering a conditional use permit and not any variances or changes in non-conforming uses. Mr. Klear confirmed that we were only considering a conditional use permit. Mr. Bathalter stated he took the information from the actual Board of Adjustment application on pages three through four. There are different points that the applicant was supposed to comply with. Mr. Bathalter asked if the non-conforming use does not apply. Mr. Duncan stated that the attachments to the application apply to all the possible jurisdictional issues that the Board could have come before them. Mr. Klear confirmed that was correct. Mr. Duncan stated that you have to take out the requirements for this particular application in front of us. Mr. Bathalter asked if since this was a request for a conditional use that none of the other items apply. Mr. Klear stated that what Mr. Bathalter was referencing was our general application form. Our general application form deals with all the different issues that the Board faces. In this case, the applicant is going for a conditional use permit and not for a variance or a non-conforming use. Mr. Bathalter stated he heard Mr. Klear speak of the general welfare of the community. Surely, that would apply. Mr. Klear replied that it does. Mr. Bathalter stated he just wanted to address all the different items that apply to this situation and that the residents would insist that the applicant has violated the terms of the conditional use.

Mr. Bathalter sat down. Mr. Mason asked if he could ask Mr. Bathalter a question. Mr. Verst agreed he could. Mr. Mason stated that Mr. Bathalter referenced a lot of complaints and issues and asked if he had any photos, recordings or anything else that could be called evidence. Mr. Bathalter stated that the residents do have a ton of photos. Mr. Mason stated that as some point he would love to see those. Mr. Mason continued to ask if there have been complaints made to the Army Corps of Engineers, Coast Guard, or EPA. Mr. Bathalter stated that the residents have. Mr. Mason stated that Mr. Bathalter referenced that the Army Corps of Engineers has at some point shut the applicant down temporarily. Mr. Bathalter stated that it was his understanding that they did. Mr. Mason asked if he had any paperwork for any of this. Mr. Bathalter stated he did not, but Mr. Steve Burns may have that paperwork.

Mr. Klear asked to be recognized. Mr. Verst did so. Mr. Klear explained that staff did follow the statutory requirements which state we have to post notice of this hearing not less than seven days and not more than twenty-one days prior to the meeting and we must notify adjacent property owners. Mr. Klear states that he understands what Mr. Bathalter stated about some of the other people who have an interest in this issue were not directly notified, but we are not obligated to cast that broad of a blanket of public notice. We did follow the statutory requirements for notifying adjoining property owners and putting this in the public paper of record. Mr. Verst thanked Mr. Klear for his statement.

Mr. Verst continued that the Board was interested to hear tonight what the people have to say especially if they made the effort to be here tonight. Mr. Verst again explained that he is going to recognize people not by the way there are signed in tonight, but rather try to group them by family and/or location. Mr. Bathalter had stated that Mr. Steve Burns was the one to contact him, so Mr. Verst called on Mr. Steve Burns first and asked him to step forward and state his name and residence for the record. Mr. Steve Burns of 711 Burns Avenue came forward. Mr. S. Burns stated that his father did contact the Army Corps of Engineers to report a complaint. On August 27th, 2012, they sent out two inspectors to investigate. Mr. S. Burns was notified on August 28th that they had given Carlisle Bray seven days to remove everything that was down there except a broken down tug boat. Carlisle Bray did eventually get everything out of there, but it just kept coming back over time. Whenever they needed to do some work, they would bring these cranes in and other equipment. They would complete these jobs. Mr. S. Burns stated that they would complain again and then Carlisle Bray would take them back out.

Mr. S. Burns stated he had some photos present tonight to show the work that was being done. He presented the photos to the Board to review. Mr. S. Burns stated that Mr. Bathalter did mention a lot of the items that he was concerned about so he would try to skip around in his notes in the interest of saving the Board some time. Mr. Verst asked at this point if the photos provided to the Board would become a part of the public record. Mr. Klear stated that it was up to Mr. S. Burns. If he wished to submit the photos to staff, they would become part of the public record. Mr. S. Burns stated that all the photos he had would be submitted to staff to become part of the public record. Mr. Klear offered to assist Mr. S. Burns with his presentation by holding up the photos so Mr. S. Burns could discuss them.

Mr. S. Burns stated that Carlisle Bray was given seven days to remove the items like he said previously. That was back in August of 2012. These pictures were taken in February of 2013. All the while, they were bringing equipment back in there to do repair jobs and they were cleaning barges. Mr. S. Burns showed the pictures that he stated reflected the applicant cleaning the barges and blowing coal dust into the Ohio River and the breeze was blowing it up into their houses. Mr. S. Burns stated there were numerous occasions where they did this. After their complaints, Carlisle Bray would move the stuff out and then just bring it back again the next time they needed to do the work. Basically, they were just ignoring the Army Corps of Engineers is what happened. They were not doing what they were supposed to be doing. Mr. Verst asked Mr. S. Burns to confirm that he did not want the photos back and they could be kept for our file. Mr. S. Burns told him to keep them.

Mr. S. Burns continued that his understanding for years was that Harrison operated this marina with a restaurant and it was for the public for recreational boating. They had a boat ramp there and you could put your boat in and store your trailer there and get some ice and gas and go out boating for the day and then come back. As far as they knew, this is all that was permitted down there. After the restaurant was gone and the marina was gone, shouldn't that permit be null and void that you said they are now operating under. Mr. S. Burns stated he did not know who to address this question to, but it was brought up that they're operating under the permit that the Harrisons had and their permit was for a marina with a restaurant. It wasn't for the operation for a commercial, industrial business moving barges. Mr. Verst stated that they had a zoning permit for the marina. If they would have had a conditional use permit for the marina (which we do not have a record of), and that marina ceases to operate for a certain amount of time, then that conditional use permit would no longer exist. They would have to re-apply which is what they are doing. Mr. S. Burns stated that the marina is gone and the restaurant has been sold. What is there now is not what was there in the 1990's that they had a permit for. Mr. Verst stated that was correct and this is why the applicant is here tonight. Mr. Verst stated that the applicant may be operating as far as the Army Corps of Engineers is concerned under those permits obtained by the Harrison's but as far as this Board they are not operating under any previous permit issued.

Mr. S. Burns stated that, after they did close the marina down and the restaurant was gone, Bob Harrison began to work for the Carlises. For a number of years, he ran their business. He may be in with the applicants, but we didn't have these kinds of problems. It has only been since the C & B Marine name appeared that we started seeing these types of operations down there and that is why the residents had to file these complaints. Mr. S. Burns continued that one thing that was mentioned was that the Board asked if they brought barges in and out and they said no. Well, that's not true either. Mr. S. Burns presented additional photos which he identified as his property. They are not supposed to be traveling along the bank because it erodes it. It is called "wheel-hopping". The EPA and Division of Water do not allow it. They are supposed to operate out in the marked channel because they don't want the bank to erode away from this type of operation.

Mr. S. Burns continued that the applicant mentioned in their permit something about expanding. He don't know where they are going to expand to because they can't stay on their own property right now. As far as this site plan goes (Mr. Klear showed the slide of the site plan submitted), Mr. S. Burns approached the screen and pointed out where Anderson Lane was. If you go straight down Anderson Lane, Burns Avenue is to the left. Mr. S. Burns lives at the fifth and sixth house down Burns Avenue. These pictures are of them working on barges that they have parked in front of my property. They are also going down in the opposite direction. They are blocking Mr. Burn's view of the river. They are working with heavy equipment, offloading salvage and cleaning the barges of coal which comes straight up into their yards. They do the same thing at night. They bring in these big barges at night that vibrates the houses and wakes you up. They're out there banging on stuff. The lights - he knows everyone's got pictures of this and some may have better photos than he has. The lights on the dock are as bright as the lights shining on this podium. People have had to rearrange their furniture because the lights come in through the windows and create a glare on their TVs. What they claim that they are going to do there is not what they have been doing there. As Mr. Bathalter brought up, the information on this application is so general that they would be able to keep doing what you see here in the pictures. They say service and repair in their application, but service and repair of what - of their tugboats? Or service and repair of the barges which is what has been causing the problems?

Mr. S. Burns stated that, as far as the increase in traffic from the speeders coming in and out, the residents had to go to the City of Melbourne to request they post speed limit signs on their own road. The speed limit is only fifteen mile per hour and he understands it is hard to go fifteen, but they fly through there like they are going to miss the boat. The City was supposed to put up stop signs when the railroad put up the crossings, but they didn't. We used that as a tool to get them put stop signs in on both sides of the railroad crossing because they come up through there like they are hill hopping. Mr. S. Burns stated he does not look for trains anymore. He just looks for the hill hoppers because they are more dangerous. Every resident signed a petition that was presented to the City to get the police to run radar on their own streets to try to get them to slow down. There are a couple of other people that need to come up that have pictures of things like the big trucks that come down there. Who is going to pay for the up-keep of the road when they bring this heavy equipment in and out? They say they aren't going to do this anymore, but so far they have shown us that they are going to play by the rules at all. They didn't when the Corp told them to stop. They didn't when the EPA told them they couldn't wheel-hop any more. Mr. S. Burns sat down.

Mr. Verst asked either Tony or AJ Burns to come to the podium to address the Board. Mr. Tony Burns of 4253 Parkview Court, Batavia, Ohio came forward. Mr. T. Burns began by stating that, while he lives in Batavia, his brother Steve Burns lives today in the house that they grew up in. His parents purchased the property in 1970. His son lives across the street and his father lives next to him. He still has familial ties to the area surrounding the location in the request before the Board. As a frequent visitor to the area in question, Mr. T. Burns stated that the applicant claimed the business has been active in that location for twenty years, but he can confirm that the activity that is going on at that location today has dramatically changed from activity that occurred previously. Mr. T. Burns stated for this Board to grant a conditional

use permit to this company, and they may be a great company, but the Army Corps of Engineers got involved after receiving complaints from the residents that are present tonight. The Corps immediately shut them down. They didn't have permits for what they were doing and they didn't file for permits. They said in their application that it is to the general welfare of the community and they are not a detriment to the community. This is totally not true. They said their goal was to be compliant, but they have done anything in compliance yet. Mr. T. Burns stated he thought they would need a zone change, but he hopes that never happens. But to give them a conditional use permit, after they have been going out of control over the past twelve months, would be a mistake in his opinion.

Mr. Verst called for AJ Burns. Mr. AJ Burns announced he has resided at 606 Burns Avenue for the past two years. Mr. A. Burns stated he wanted to reiterate the points that have been stated regarding the spot lights. The 180 degree face of his house (facing toward the river) is the direction his bedroom faces. At night when they turn on the spot lights, they shine directly into his bedroom. You might as well park a diesel engine in your front yard, turn the lights on bright, and then rev the engine all night. There is so much noise and light coming into the house from their activities. Mr. A. Burns stated that they had so many children and grandchildren in his immediate vicinity that play down in the street day after day. With the speeding drivers coming through there, it is not a safe place to be anymore. Mr. A. Burns stated that he has lived there his whole life and it is so sad to see the changes that have occurred.

Mr. Verst called Frank Kammerer. Mr. Kammerer resides at 601 Burns Avenue. He has photos showing the cleaning operation that they have there. You can see the barges coming up with the coal, transferring coal from one barge to another, barges lined up. This isn't good. We witnessed coal dust going all over the place especially when it is windy out. Mr. Kammerer stated that he had called the EPA and when they came down to check it out, of course, they weren't doing anything at that time. Mr. Kammerer stated he and his wife called the Army Corps of Engineers about this in August 2012 and February 2013. They said they were going to come up and check it out which they did. In February, they made them shut down again. The lights that they see at night – they have to shut their shades because the lights shine so bright. Mr. Kammerer had photos of this as well that he submitted for the record. In the evenings, when the tows come up to park their barges, you can see the lights from that as well. Public access: they have been living there about three and a half years and he knows that a lot of the neighbors would bring their boats out there and would bring their docks up. The public did use this area for docking. Traffic: the traffic has increased and he has pictures of semis. The trailers are fifty-three feet long...just standard trailers. The streets are too narrow for that. Mr. Kammerer submitted photos of the trailers in the area. They have to back up and then turn a little, back up and then turn a little, trying to negotiate the turn into that property. One truck had to back all the way out Anderson Lane and over the tracks which is pretty dangerous.

Mr. Kammerer stated he has seen several workers down there disregard the crossing gate. They just get off work and are in a hurry to go home so they ignore the railroad crossing and just drive around them and then just go through them. Someone's going to get killed down there. When we moved there, it seemed all that Harrison was doing was running ash from Beckjord down to LaFarge. You could see him go out at 7:00 at night and get the ash from the power plant and then bring it back to LaFarge. Mr. Kammerer stated his house was on stilts. It used to be that when you sat out at night you could enjoy it. Now, you can't. The lights are so bright and it is noisy. It was 11:30 at night and they were down there banging with the sparks flying. He believes that if they get this conditional use, it will bring his property's value way down and that is not benefitting the community.

Mr. Verst called Paul Barton. Mr. Paul Barton lives at 603 Burns Avenue. He submitted photos where the barges have been parked up in front of his house. They have been up there quite a few times. Mr. Verst asked if they could keep the photos to which Mr. Barton replied that he could. Mr. Barton replied what was going on down there was getting ridiculous. They are welding on barges down there and they have kids running around down there. A flash burn can hurt and he would hate to see any of his grandkids get hurt. They couldn't use their deck last summer. When you sit on their deck, you have to

look up because you can't look down due to the bright lights shining directly in their faces. This property has been in their family since the 1950's. Mr. Verst asked if the photos were taken from their back yard on the deck. Mr. Barton stated they were taken from the backyard deck. They used to jokingly call it their front yard because it had such a wonderful view. Mr. Barton submitted to Mr. Verst a copy of zoning regulations for the RCO zone. Mr. Verst asked Mr. Klear to confirm if the pages were from the City of Melbourne Zoning Ordinance. Mr. Klear compared the pages and stated the pages were not. Mr. Verst asked Mr. Klear to look up the River Recreational Conservation Zone under Article 10 of the Melbourne Zoning Ordinance. Mr. Verst wanted to know specifically about the conditional uses where there were seven uses. Mr. Klear stated his version only list six uses. Mr. Verst confirmed for Mr. Barton that he had the Unincorporated Campbell County Zoning Ordinance. Mr. Verst asked Mr. Klear to allow him to use his book. Mr. Verst read for the audience the section that Mr. Barton pointed out to him. Under Article 10.0, E., 6., it states: *"No use producing objectionable odors, noise, or dust, shall be permitted within five hundred (500) feet from the boundary of any residential zone."* Mr. Barton confirmed that was the point he wanted to make. He stated in the summertime you couldn't keep the windows open because they are making noise and blowing fumes all over the place. When the wind blows, it goes right into the houses and the fumes and dust are horrible. It doesn't occur every day, but often enough. It's like everyone else was saying they just keep coming up further and further.

Mr. Verst asked for a clarification from Mr. Klear. Mr. Klear re-read Article 10.0, E., 6. Mr. Verst stated that was his question. It stated 500 feet from the boundary of any residential zone. Do they count as a residential zone? Or are they considered within the R/CO zone? Mr. Klear stated that anything north of railroad tracks was in the R/CO zone. Mr. Verst stated then the residents were in a residential area, but not a residential zone so this would not apply. Mr. Klear confirmed.

Mr. Verst called Howard Barber. Mr. Howard Barber of 605 Burns Avenue asked Mr. Bachmann if he had ever been to this location. Mr. Bachmann replied he had not. Mr. Barber asked Mr. Schaber the same question. Mr. Schaber stated he had been at the site approximately twenty years ago. Mr. Barber stated that the Board could literally change the complexity of this whole area tonight and this was very scary. Is it for you? Mr. Barber asked the Board if they were aware that they did not have to accept staff's recommendation. He asked the Board if they understood this. The Board indicated that they fully understood that. Mr. Barber stated he had no idea why staff recommended this to be approved. Under the notes on the last page of the application, Mr. Barber read *"The Board of Adjustment is not permitted by law to allow the enlargement or extension of a nonconforming use beyond the scope and area of its operation at which time its use became nonconforming."* Mr. Barber stated it is written in black and white as clear as anything...as clear as the morning sun. The Board of Adjustment is not permitted by the law. Mr. Verst stated he believes there are some technicalities in the language there as far as non-conforming use versus a conditional use permit. Mr. Barber stated "No, once you have established a non-conforming use, which was done fifteen years ago, it was expanded. That's what you cannot do. A non-conforming use cannot expand."

Mr. Duncan stated that he thinks, for the record, that there may have been a non-conforming use established at some point in time...the records are pretty sketchy about that. But that is not what this Board is being asked to do. They are not being asked to allow for an expansion for a non-conforming use. Mr. Barber interrupted that this is exactly what they are asking. They are expanding. Mr. Duncan stated that was not correct. If a conditional use permit is issued, then it is a whole new ballgame because a conditional use, such as this, is permitted only under those circumstances if the evidence is here. Mr. Duncan stated he was not arguing with Mr. Barber. He is just stating that these are two different motion and legal issues here. Mr. Barber stated he understood. Mr. Duncan continued that they would be leaving the non-conforming use behind and asking for a conditional use. This is a different legal animal.

Mr. Barber stated that the only reason he can think Mr. Klear was considering this is because under Article 10 (Mr. Barber asked the Board to please follow along with him.) Mr. Klear glanced over the

permitted uses – he didn't say a thing about the permitted uses- he just went straight into accessory uses. Mr. Barber stated that Mr. Klear stated that dockage facilities are available under accessory uses. Mr. Barber read that conditional uses are a boat harbor and a marina. [Article 10, Section 10.0, C., 2., a.] Directly under that item, it reads "The following uses shall be permitted as accessory uses in connection with any boat harbor or marina and primarily intended to serve only persons using the boat harbor or marina:".. This is the way it was operated in the past. Mr. Barber stated it was recreational – put your boat in. Now, after serving these people, you are allowed to fuel their boat, sell boat supplies, grocery store, restaurant, clubhouse and lockers and single family dwellings including cabins. Then it goes to b. which is public boat landings and launching facilities. Obviously, you have to have those in a marina. The next one says dockage facilities. Mr. Barber stated that Mr. Klear made a broad jump when he says it means dockage facilities for private commercial operations. Those dockage facilities contextually mean for the people using the harbor not for commercial dockage operation. Mr. Barber stated that was all he had to say and asked if there were any questions.

Mr. Klear asked to be recognized for a point of clarification. Mr. Verst asked if there were any questions for Mr. Barber. There being none, Mr. Verst recognized Mr. Klear. Mr. Klear stated that he never said these were accessory uses. This is a proposed conditional use so Mr. Barber is wrong on this issue. Mr. Klear continued that Mr. Barber is also wrong on the interpretation. (Article 10, Section 10.0, C., 2. has been copied into the minutes for the sake of clarifying Mr. Barber's error.) If you look at item 2. a., this item is listed as "Boat harbors and marines;" Items one through four are subcomponents to item C. 2. a. only. Item 2. b., 2. c. and 2. d. are not subcomponents of "Boat harbors and marines;". They are separate elements.

City of Melbourne Zoning Ordinance [Article 10, Section 10.0, C., 2.]:

2. The following uses are permitted in connection with streams, rivers, lakes, or other bodies of water, providing that the development of all permitted facilities adjacent to navigable waters shall be approved by the Corps of Engineers, Department of the Army, and the Division of Water, Kentucky Department for Natural Resources and Environmental Protection, and such statements of approval or denial shall be submitted to the Board of Adjustment at the time of submittal for a conditional zoning certificate:

- a. Boat harbors and marines;

The following uses shall be permitted as accessory uses in connection with any boat harbor or marina and primarily intended to serve only persons using the boat harbor or marina:

- (1) Boat fueling, service and repairs.
- (2) Sale of boat supplies.
- (3) Grocery store.
- (4) Restaurant.
- (5) Club house and lockers, if afloat.
- (6) Single-Family dwelling units including cabins.

- b. Public boat landing and launching facilities.
- c. Dockage facilities.
- d. Off-street parking facilities and temporary parking of boat trailers including spaces large enough to accommodate automobiles pulling boats.

Mr. Barber stated Mr. Klear thinks his interpretation is that, but Mr. Barber thinks Mr. Klear is exactly wrong. Mr. Verst asked Mr. Klear if the Board could look at this text again. Mr. Klear presented the

Board with the official City of Melbourne Zoning Ordinance. The Board took a few moments to review the text.

Mr. Verst called Joe Berkley. Mr. Joe Berkley stated he feels most of what he wanted to talk about has already been mentioned. But he wanted to add another comment. Mr. Verst stated that was fine, but if he wanted to add any comments, he had to approach the podium and state his name and address for the record. Mr. Joe Berkley approached the podium and introduced himself as the resident of 600 Burns Avenue. Mr. Berkley reiterated that most of what he had wanted to say has already been mentioned. They do have a lot of odors that smell down there because those tows sit down there for hours on end and just run their engines. There are a lot of fumes off them. They do have a machine that comes down there often and must suck out the bottom of the barges – the bilges of the tow not the barges. It runs, sometimes, all day long. It will drive you nuts. Other than that there is the traffic, and sometimes they run off the side of the road. They run through the yard when they fall off the side of the road. The semi's tear up the yard and have taken off the branches on some of the trees in his yard because he lives on the corner of Anderson and Burns. There is another neighbor across the street and they run in his yard as they are trying to make the bend. That is all he has to say other than something has to be done.

Mr. Verst called Connie Berkley. Ms. Connie Berkley introduced herself as a resident of 600 Burns Avenue. The only thing she wanted to add is that they moved there twenty years ago with the intention of retirement and recreation and this has completely changed the view of where they are living. In addition to that, she feels confident that her property value will definitely be affected. Ms. Berkley stated she was aware some of the Board members had been down there and could see that the purpose of this area was recreation. Mr. & Mrs. Berkley had a boat down at Harrison's harbor about thirty something years ago. It has always been a boat dock.

Mr. Verst called Tony Bardo. Mr. Bardo stated he has nothing to add and he does agree with everything the residents have said.

Mr. Verst called Jim Newman. Mr. Jim Newman identified himself as the resident of 61 Harrison Avenue. He lives at the very end of the road on the river side at the "poor end of the road". Mr. Newman stated he just wanted to say that he knows Mr. Bob Weis, who is here tonight, and he knows Mr. Bob Carlisle. They are both nice guys, hard workers and they're doing a good job, but everything these people say is the truth. It has really changed down there. There is a lot of noise while they are cleaning barges and it is a mess. Mr. Newman stated he lived at the very end of the road and the barges have come past his place several times. He has an old camp with an old deck and an old dog. He gets up in the morning and you see a barge out in front of your place instead of the Ohio River and it's a bad deal all the way around. These Carlises are nice guys and they are just trying to make a living. He doesn't have a problem much with the speeding drivers. Pulling tugboats in there is one thing, but pulling in those barges is another. They make a big mess and then they get them lined up past your property line and you are hearing it from the other end of the road now. Mr. Verst asked Mr. Newman to clarify if he was saying when they lined the barges up past his property line if he was saying it was because they were so close to shore. Mr. Newman stated that was correct and they were definitely too close to shore and when they clean them it is noisy and loud. It's not every day and, here lately, you aren't hearing them at all. If it was just the tugboats that you heard going in and out and if they would just stay on their own property, it would be fine. But that is not really the case. If this permit goes through, then what's to say that next week there isn't going to be a barge in back of his place? Mr. Newman stated again that they were nice guys and they were just trying to make a buck, but it was hurting the people that live down there and it is a nice place down there.

Mr. Verst stated that was all the people who had signed in and asked if there were any other audience members that wanted to speak. Mr. Steve Burns asked to be recognized. There being no other audience members wanting to speak, Mr. Verst recognized Mr. S. Burns. Mr. S. Burns stated that he just wanted to

agree with what Mr. Newman has stated. They are nice gentlemen and they have put a fresh coat of paint on everything. There are no barges and no equipment right now, but it is probably just a coincidence that everything is nice and neat right now. However, Mr. S. Burns offered to take the Board members through the neighborhood so that they could see everything and their facility before they made a decision that could change their lives, their children's lives and their grandchildren's because hopefully if everything worked out their children would want to live there some day. It is a beautiful place to live, but not if you have to wear face mask and ear plugs when you are trying to swim in your own pool.

Mr. Verst asked again if there were any audience members that wanted to speak. There being none, Mr. Verst asked the applicant to approach the podium to answer some questions. Mr. Bob Weis did approach the podium. Mr. Verst explained that one of the photos submitted was of a flatbed semi-trailer trying to turn around. Mr. Verst asked Mr. Weis to explain typically what kind of vehicle was going in and out of the site. Mr. Weis stated that they had a bunch of junk in there when they bought the place, but they have it all cleaned out now. They now have a place for the semis to come in and turn around. Mr. Verst asked what the semis were doing. Mr. Weis stated they were bringing in supplies. Mr. Verst asked if the semis could now make that turn from Anderson Lane onto Harrison without incident. Mr. Weis stated that has been one of his questions. They have begun placed their orders by UPS and Fed Ex so that the supplies will be brought in on smaller trucks. He's not there all the time. When he's there, he knows it is not going on, but he believes these people because they are there all the time. If he were on duty all the time, it wouldn't be going on.

Mr. Weis stated as far as the barge cleaning that they were doing was for four weeks because they had to replace all the dead-men and all the wires at the location where the cleaning normally occurs so they had to bring them to this location. He doesn't think they have been back in the past three to four months had they? Mr. Newman replied that it wasn't going on now, but it has been more recent than three to four months. Someone in the audience asked if they could move the rest of the facility to the other location if it was so close. Mr. Weis stated that they could not.

Mr. Verst asked that the audience and the applicant not have conversations back and forth. Mr. Verst asked Mr. Weis what kind of operations you anticipate having at night. Mr. Weis replied that the only thing they have going on at night is that the crew leaves with the boat about 6:00 PM. They go back to the fleet because they have to be in the fleet twenty-four hours a day and they change crews at 6:00 AM and 6:00 PM. There will be cars coming in about that time to drop-off/pick-up the crews unless they are talking about the line boats coming out of the fleet and going up river, but they are not ours. They are the mainline boats they come into that fleet and pick up or drop off barges as they go up and down the river. He also knows that the Coast Guard has just come down and moved the buoys from Beckjord down to the sandbar. The last three line boats have got caught on it and the Coast Guards came and moved the buoys closers down to us. Mr. Weis believed that is the lights the people are complaining about – the lights from the mainline boats turning on their service lights to look for the buoys that have been moved. The audience disagreed and someone stated that the lights were on the dock and shining into their houses. Mr. Verst asked the public to hold all comments. Mr. Verst explained there were some photos of lights on the main dock. Mr. Weis stated he did not know what they were talking about and, if there were pictures, he wanted to see them. Mr. Verst stated the photos were in the possession of staff so that they could be included in the case file.

Mr. Verst clarified that Mr. Weis has stated that there were several tows that had their lights on looking for buoys. Mr. Weis stated they were not their tows – they belong to the Coast Guard. Mr. Verst asked about the lights upon the docks. Mr. Verst stated that because of time code, there shouldn't be any activity there after the crew change. After 6:00 PM, should there be any barges or tows coming in through the night? Mr. Weis stated there shouldn't be any barges there. It should be just like it is right now. The barges should be down at the fleet. Mr. Verst repeated that there shouldn't be any barges coming in and out at night. Mr. Weis stated that was correct and that was why they didn't even put

barges on the new permit. Mr. Verst asked if they tried to do the barges for a while then the Corps came in and said that is not on your permit and you couldn't do that. Mr. Weis stated he didn't want to answer that until after he had seen the photos.

Mr. Verst asked if anyone else had questions for the applicant. Mr. Mason stated that the audience referenced two different periods, August 2012 and February 2013, in which the company had been shut down by the Corps of Engineers. Mr. Weis stated that they were never shut down by the Army Corps of Engineers. Mr. Weis stated that Mr. Klear confirmed that. Mr. Klear clarified that he had asked the Army Corps of Engineers if they were current. He did not ask if they had ever been shut down so he could not speak in reference to that issue. Mr. Weis stated they had a stay for one day. They did have a bunch of boats at the docks at that location that day. They were busy trying to move all the boats down to Hebron. It's been busy there since they bought it. There have been cranes where they are moving stuff out and now they are getting it pretty much cleaned out to where it is going to stay. There should not be any barges in there at night. The barges coming out of the fleet stay close to the bank. Mr. Verst asked Mr. Weis to explain what he meant when he said "coming out of the fleet." Mr. Weis stated that the fleet is down in Silver Grove behind ADM. Mr. Verst asked for confirmation that the fleet was a separate facility. Mr. Weis stated it was. There is LaFarge's fleet and they run it. Then there is the ADM fleet and they run it. They are both about a mile downstream from this facility. So that is where our barges are. Mr. Verst asked Mr. Weis to confirm that their tugboats are leaving their dock, running down there, picking those barges up and then running them up or down river. Mr. Weis stated that they were and also the mainline fleets had boats that come in to pick them up and run them up or down river all night long. By the time they get going, and get moving back up river in the channel, they were running pretty close to the bank. They don't have any control over them. They are following Coast Guard regulations. Mr. Verst clarified that while they are merging onto the river, until they are up to speed, they are pretty close to the bank. Mr. Weis stated that was correct. He added that if the river was high they would run close to shore on either the Kentucky side or the Ohio side wherever the current was not as strong and usually it was the Kentucky side. They stay out of the current so that they could run a little faster. With the sandbar building up, it is building up right in front of us so they will have to get out a little faster now because the sandbar is starting to extend right out into the river.

Mr. Verst asked if there were any other questions for the applicant. Mr. Mason asked if they ever dock their barges in front of other properties down there. Mr. Weis stated that they did a couple of times. Mr. Mason asked if that was allowed by the Corps. Mr. Weis stated it was as long as they could tie them off on their dead-man. Mr. Mason asked if there was a public hearing scheduled with the Corp for their license or anything. Mr. Weis replied that the public notice was to be issued next week. Mr. Mason stated then they would be able to speak then as well. Mr. Weis stated there would be several public hearings.

Mr. Verst stated that Mr. Weis indicated that at some time there had been barges there, but it was not their intention to do so anymore. Mr. Weis stated not they were not. He stated that they will bring a barge up and do some welding on it, but that is a repair. Mr. Verst asked Mr. Weis to confirm that they intend to do repairs on barges. Mr. Weis stated that they shouldn't be welding after 6:00 PM because he could not afford them.

Mr. Verst asked if there were any additional questions of the applicant. There being none, Mr. Verst closed the public comment portion of the meeting and opened the floor for discussion among the Board. Mr. Verst asked what the Board's general take was on the conditional use allowed within this zone and if this proposal conforms to this. He asked what are the Board's general thought on this use in this location based on the testimony heard tonight. Mr. Bachmann stated that he does not feel that this operation falls within this zone. The R/CO zone, by definition, is River Recreational Conservational. The zoning ordinance never specifically mentions barges - only boats - and that would be an industrial commercial use with a zone such as I-4. Mr. Bachmann doesn't know if Melbourne would be the same, but whatever

their comparable zone is to the I-4 in Campbell County would be more appropriate. Mr. Bachmann stated that he doesn't think dockage facility refers to barges. He thinks that it is a general boat and marina. Mr. Verst asked if he was saying that this proposed use is not what is intended in the zoning ordinance. Mr. Bachmann replied that was correct. It is specifically mentioned in I-4, yet is omitted in the R/CO. Mr. Mason stated that he very much agreed with Mr. Bachmann. He thinks their proposal is really, really pushing it. Mr. Bachmann stated it specifically says "Barge, shipping and docking facility". He feels if they intended that for the R/CO zone that they would have spelled it out in the same manner. Mr. Verst asked what the opinion is about the testimony heard regarding the activity that may or may not have been occurring there and may or may not have been appropriate to be happening here over the past six months. The applicant is stating that the intent is not to clean out barges here, but the intent is to have boats come in and out for shift change. Mr. Mason stated that the reality is - how would the Board police that? How do we know that there isn't going to be a barge parked in front of someone else's property in a month?

Mr. Verst replied we have the ability to approve this, deny this or approve it with conditions such as there should not be any barges parked in front of the neighbors or we revoke the conditional use. He is trying to feel out as to what is acceptable. Mr. Schaber stated that there appears to be some history with this site. The neighbors do not appear to have a problem with the previous uses of this property. It appears that there is no objection to the use of the site for the shift changes at 6:00. But, any use above and beyond this, makes him uncomfortable. Docking a barge isn't on there. Cleaning barges is not on there. If it were to be approved, Mr. Schaber thinks conditions should be attached that only tows can go in and out. Maybe maintenance of one unit or section of a barge can occur there at any one time and if there were complaints, because this would be complaint driven, this Board should review the event and if it is determined that the condition was violated then the conditional use would be revoked. It is too close to a residential zone so he thinks if they are going to do heavier type of business - a tug going in and out of there is not so bad - but anything heavier would have a direct impact on the residents in this area.

Mr. Verst asked what the Board thought of Mr. Schaber's comments. Mr. Bachmann asked if Mr. Schaber was stating that a tugboat was covered by this zoning. Mr. Schaber replied that "docking facility" is very loose, but the Melbourne Zoning Ordinance would allow for some traffic to go in and out of there. Going in and out to drop off people could be covered by this, but the welding, cleaning of the barges and maintenance type operations would not be acceptable. If they are going to do that type of business, he doesn't feel that would be allowed. Again, Mr. Schaber stated, if it were approved, a condition would have to be associated with it. If they are sitting there for hours running diesel engines or shining bright lights, then that would be in violation of the condition and should not be allowed. The business should be in somewhat harmony with the rest of the area.

Mr. Bachmann stated he just doesn't see it. Mr. Schaber stated he understood and he doesn't want to see a lot of barges docked there. Mr. Bachmann stated that just in general he does not feel that tugboats and barges fit in the recreation or conservation area. This is for river recreation like privately owned boats. He strongly feels that this is a very commercial business and should be placed in a commercial or industrial zone. Mr. Schaber stated that at one time they had tugboats coming in and out of there with no complaints from the residents which are what is prompting him to say it would be possible to approve with the appropriate conditions. Mr. Bachmann replied that would be different if they had a conditional use permit to run the original business, but they didn't have that. They were operating in violation of the regulations. Mr. Bachmann stated this has been going on for approximately thirteen years with the conditional use permit. He doesn't understand why, but it occurred. Mr. Mason stated again that he has to agree with Mr. Bachmann and he does not think there is any way he could approve this request based on the testimony that he has heard. He just doesn't believe this operation, with what they have been doing, should occur in a river recreational area as a dockage facility. Mr. Verst confirmed that the Board recognized that the applicant has generated a history over the past six months. Obviously, what they have done over the past six months has been detrimental to the residential area. Mr. Mason stated that was correct. Mr. Verst continued that the residents recognize there have been tugs in and out of there before

that did not create problems historically. Mr. Verst asked, if they continue to go in and out on the tugboat for the shift change and they do not tug barges, does this still concern you or is that acceptable? Mr. Mason stated that he would want the Army Corps of Engineers to come in and advise the Board as to their thoughts on this. What are they going to issue permits or licenses for? Mr. Verst stated that the Corps could grant or deny a permit and we could make our approval conditional upon obtaining the necessary Corps permits and if they fall through then our conditional use could be revoked.

Mr. Verst stated he was trying to get the Board's general feel if this is just flat out an unacceptable use or if under certain conditions with certain requirements it could be an acceptable use that would not be detrimental to the health, safety and welfare of the public or people in the vicinity if those conditions be pertaining to lights shining, noise or whatever. Do we think the conditions could be put in place that it would not be detrimental to the health, safety and welfare of the public or would be necessary or desirable to provide a service or facility that would contribute to the general wellbeing of the neighborhood or community? Mr. Bachmann stated he could not reconcile this use with the zone. Even if it was, there is a problem with the dust. He understands the 500 feet requirement is for a residential zone, but this is a residential area and there are people there. He also felt something should be done about the storage of salt because it is not within an enclosed container. Again, that may only be in Campbell County, but I believe it is for Melbourne as well. Mr. Bachmann does not feel this use would be allowed in this zone regardless of the number of conditions we may place on it.

Mr. Verst asked legal counsel if the applicant has any inherit rights if there has been a number of tug traffic going in and out of there for "x" amount of years. Mr. Duncan stated that he thinks they could argue that they have established a non-conforming use over the years and they may have some rights in that, but they would need to argue that though. It would not be something that we would supply for them. It would be something they would present in their application. Mr. Verst stated that from the testimony given tonight that may be something they want to pursue. Mr. Duncan agreed. Mr. Bachmann stated that would pertain to an application for a change in non-conforming use though. Mr. Duncan agreed and stated we have already established this application was just for a conditional use permit.

Mr. Verst stated that the staff recommendation had been to approve the request with a series of conditions. Mr. Mason asked if he could address staff. Mr. Verst recognized him to do so. Mr. Mason stated he is assuming that Mr. Klear or Mr. Hutchinson reviewed the aspects of this case and wanted to know if any of the photos seen here tonight had been presented to staff prior to the staff report being issued. Mr. Klear replied they had not. Mr. Mason asked if staff wanted to take a second review of the application in face of the documentation that has been supplied. Mr. Verst asked if Mr. Mason was asking if staff's recommendation would change. Mr. Mason stated that was exactly what he was asking. Mr. Klear replied that, based on just the photographs alone, he is not sure. This is a public hearing process and the Board has taken testimony from both sides. When you take in the totality of the information presented from both sides, certainly, there is merit to revisit this issue.

However, Mr. Klear thinks the more important consideration is that the Board has not made a formal determination. While that determination has not been reached, the Board is leaning towards a determination that the proposed use is, in fact, not a dockage facility. This is even more important. If you make the determination that this is not a dockage facility, but instead is a (Mr. Klear stated he would use the terminology in the I-4 Industrial River zone.) a barge and/or shipping facility. Mr. Klear thinks this bears greater weight. Staff works for the Board and you are the authoritative body over this issue. If it is your determination that this is not a dockage facility under the R/CO zone, based on your interpretation of the zoning ordinance, then this operation would not be eligible for a conditional use permit and would be basis for a denial. Mr. Schaber had stepped out of the room just prior to Mr. Klear's response. Mr. Verst asked Mr. Klear to repeat what he had said for Mr. Schaber's benefit. Mr. Klear summarized that it seems that the Board's interpretation is that the proposed use is not in fact a dockage facility or what you envision a dockage facility to be in the R/CO zone. The current use is more of a barge or shipping facility

as documented in the I-4 zone. If that is the case, Mr. Klear thinks this is of greater importance, because if it isn't a dockage facility, then it is not a use allowed under the permitted or conditional uses for this zone. Based on this interpretation, staff does not even have to revisit it, because the Board could just say that they make the recommendation for a denial for the request and the finding of fact would be that the use is not a dockage facility and is not a use that is a permitted use or conditional use in the R/CO zone. Mr. Verst asked if the zoning ordinance had a definition for what constituted a dockage facility. Mr. Klear replied it did not. Mr. Verst stated he thinks maybe the dockage facility would carry a different definition in the recreational zone versus the industrial zone. Mr. Klear stated that the Board has not formalized this yet, but you have begun to develop that thought process. If you look at the other uses such as boat launch or grocery store, those are in line with a more recreational usage type of dockage facility as opposed to the industrial use. You are in fact using the interpretation of the zoning ordinance as your finding of fact and you can support that interpretation.

Mr. Verst reminded everyone that there are normally three things to consider. First, is the proposed use at the particular location necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or the community? Next, is the use detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity. Finally, will such use comply with any regulations and conditions? Mr. Verst asked what the Board felt about this situation. Mr. Mason stated we have coal dust and noise. Mr. Verst stated we have to be careful because the applicant has said that he does not intend to do what was done in the past. So if those activities did not occur, what would you determine in regard to this issue? Mr. Schaber stated that, after considering Mr. Bachmann's opinion, this is making him more convinced that this use is not river recreation, but rather more commercial. Mr. Schaber stated he has to agree with Mr. Bachmann that this use is not allowed in this zone, but rather in the industrial river zones. The river recreational leads him to believe it was intended more for the personal boaters and fishermen.

Mr. Verst asked if there were any more discussion. There being none, Mr. Verst asked if anyone wanted to make a motion. Mr. Verst asked if they felt they had enough information to make a determination tonight. Mr. Bachmann stated that there is enough information that the Board should be able to make a determination tonight. Mr. Verst asked again if anyone wanted to make a motion. Mr. Schaber asked if they choose to make a motion to deny if the finding of fact would be the three elements or would it just be that the use is noncompliant with the zone. Mr. Duncan replied there was two ways to deny the request. The first is the way previously stated by Mr. Klear that this is not a dockage facility as listed under the conditional use for this zone. There would not have to be any other pertinent finding of fact. The other way is if you want to say this facility is a dockage facility as listed for this zone, but is being denied for another reason. You would have to site what those findings would be. Mr. Schaber stated it would have to be that it was detrimental the health, safety and welfare of the public.

Mr. Verst stated that if anyone had a motion, he would entertain it. Mr. Bachmann made a motion on case #BA-05-12, C & B Marine to deny the conditional use permit request to operate a dockage facility within a River Recreation/Conservation Zone. Mr. Bachmann's basis for his motion was that the activity occurring on the site and requested for approval as a conditional use is not a "dockage facility" per the City of Melbourne Zoning Ordinance River Recreation/Conservation (R/CO) Zone. It is the Board's interpretation that the dockage facility listed in the R/CO Zone is one for recreational use, not heavy industrial use. The applicant's purposed use is a heavy industrial type of dockage facility which is not consistent with the intent of this R/CO Zone. Further, the activity does not meet any of the activities listed as permitted, accessory or conditional uses within the R/CO Zone. Mr. Verst called for a second. Mr. Mason seconded the motion. Mr. Verst called for a roll call vote. A roll call vote found Mr. Bachmann, Mr. Mason, and Mr. Schaber in favor. Mr. Verst abstained. Motion passed.

Mr. Schaber requested a five minute recess. Mr. Verst asked the Board if they objected to a short recess. There being no objection. Mr. Verst called for a five minute recess at 9:38 PM. Mr. Verst called the meeting to order at 9:42 PM

DIRECTOR'S REPORT

There being no other cases to come before the Board of Adjustment, Mr. Verst asked if there was a Director's Report this evening. Mr. Klear replied that he had one action item for the Board and one point of information.

Mr. Klear's point of information was to announce that there has been a change on the Board in regards to the representative for the City of Melbourne. Previously, the City of Melbourne had difficulty locating a representative from their city. The Planning Commission, on their behalf, appointed Mr. Michael Williams to represent the City of Melbourne. His term expired on March 1st. Staff contacted the City of Melbourne to see if they wanted to reappoint Mr. Williams or if they had located another volunteer to represent them. The City of Melbourne appointed resident Ms. Sharon Haynes to the Board of Adjustment. She has been appointed for a four year term and would be sworn in after the meeting tonight concluded. On behalf of the Board, staff conveyed to Mr. M. Williams their thanks and appreciation for his participation with the Board. He offered valuable experience and insight during his term.

The action item Mr. Klear had for the Board is the annual election of officers. As this is the first meeting of the year, the officers must be selected and appointed per our By-Laws. Mr. Klear advised the Board that, in the past, they elected to dispense with the nominating committee and proceed to the nominating and election of officers. Mr. Klear asked if that was the Board's desire tonight. Mr. Verst asked the Board their pleasure. Mr. Schaber made a motion to suspend the nominating committee. Mr. Bachmann seconded the motion. Mr. Verst called for a roll call vote. A roll call vote found Mr. Bachmann, Mr. Mason, and Mr. Schaber in favor. Mr. Verst abstained. Motion passed.

After brief discussion among the Board on who would be interested in holding a position, Mr. Schaber made a motion to re-elect the current officers if they desired to keep their positions. Mr. Verst identified that the current officers were Mr. Verst as Chair, Mr. Schaber as Vice-Chair and Mr. Mason as Temporary Presiding Officer. Mr. Verst asked the officers to confirm they would be willing to serve an additional term and accept the nomination. Mr. Verst, Mr. Schaber and Mr. Mason all said they accepted their nominations. Mr. Verst called for a second to the motion. Mr. Bachmann seconded the motion. Mr. Verst called for a roll call vote. A roll call vote found Mr. Bachmann, Mr. Mason, and Mr. Schaber in favor. Mr. Verst abstained. Motion passed.

Mr. Verst asked if the Board had any other matters to discuss. There being none, Mr. Verst called for a motion to adjourn. Mr. Mason made a motion to adjourn the meeting. Mr. Schaber seconded the motion. An oral vote found all in favor and none opposed. Motion passed. Meeting adjourned at 9:50 PM.

Prepared by:

Approved:

Stephanie Turner
Recording Secretary

Justin Verst
Chair