

**CAMPBELL COUNTY & MUNICIPAL BOARD OF ADJUSTMENT
MINUTES OF THE MARCH 20, 2012 MEETING**

MEMBERS PRESENT:

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

MEMBERS ABSENT:

Ms. Connie Schweitzer

STAFF PRESENT:

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

Mr. Verst called the meeting to order at 7:00 PM. Mr. Klear advised the Board that prior to the meeting tonight there were two new appointees who were sworn in. They are eligible to participate in the meeting tonight. Mr. Verst thanked Mr. Klear for that information and asked for a roll call. Following roll call, a quorum was found to be present. Mr. Verst asked if everyone had read the January 17, 2012 meeting minutes and if there were any questions or corrections. Mr. Bachmann identified an error on page 9, line 32 of the minutes. Following the phrase "but rather recess the..." the words should read "public hearing" not "public hear". Mr. Verst asked if there were any further corrections. There being none, Mr. Verst called for a motion. Mr. Mason made a motion to approve the minutes as corrected. Mr. Schaber seconded the motion. A roll call vote found Mr. Bachmann, Mr. Mason and Mr. Schaber in favor. Mr. J. Williams, Mr. M. Williams and Mr. Verst abstained. Motion passed.

Mr. Verst stated that a request had been received to resume discussion on case #BA-09-11, by the applicant SRS Petroleum Inc., who is asking for an appeal to the decision of the zoning administrator to deny a sign that is larger than permitted and includes an LED display. Mr. Schaber made a motion to bring case #BA-09-11 off the table and resume discussion. Mr. Mason seconded the motion. A roll call vote found Mr. Bachmann, Mr. Mason and Mr. Schaber in favor. Mr. J. Williams, Mr. M. Williams and Mr. Verst abstained. Motion passed.

Mr. Verst asked Mr. Hutchinson to present any new information the staff might have gathered. Mr. Hutchinson presented the following summary of new information:

CASE:	BA-09-11
APPLICANT:	SRS Petroleum Inc.
LOCATION:	971 Kenton Station Road, Unincorporated Campbell County.
REQUEST:	The original request was to appeal the decision of the zoning administrator to deny a sign that is larger than permitted and includes an LED display. The case was tabled at the January 17, 2012 meeting until further information about the sign could be provided.

Staff has received additional information per your request at the January 17, 2012 Campbell County Municipal Board of Adjustment meeting.

The additional information:

1. A picture of a sign with a scale of $3/8'' = 6'$. Per this picture, the sign area is $12' \times 6' = 72$ sq. ft.
2. A drawing of the sign with measurements to be a two part sign: BP gas sign that is $6'1\frac{1}{2}''$ tall x $6'1\frac{1}{2}''$ tall (37.82 sq.ft.). The lower sign includes a message board and three gas price signs is $6'1\frac{1}{2}''$ tall x $6'1\frac{1}{2}''$ tall (37.82 sq.ft.). The total sign size as shown is 75.65 sq. ft.

Copies of the picture and drawing of the sign are included as attachments.

Site visit:

Staff received a complaint about additional signs at this location. Staff made a field visit and followed up with two violation letters for two separate sign issues.

1. Staff observed six corrugated plastic signs located on posts fronting the building. The signs are advertising food and beverages inside the store. There is not an approved sign permit on file for these signs.
2. Staff observed a pole sign located on Kenton Station Road. It has three signs: a $5' \times 8'$ Noble Roman's Pizza sign, a $5' \times 8'$ Chester Fried Chicken sign and a $4' \times 8'$ manual reader board. The total square footage for this pole sign is 112 sq ft. There is not an approved sign permit on file for these signs.

The applicant has been instructed to remove these signs.

Mr. Hutchinson advised the Board that the applicant came into the office today to apply for a building permit for the sign listed in item #2 above. Mr. Hutchinson asked the Board if they had any questions he could answer for them. Mr. Verst asked Mr. Hutchinson to give a quick rehash of the discussion of January 17th. Mr. Hutchinson summarized the previous discussion as follows: Mr. Patel is the new owner of the gas station. There was a sign originally out by the main road which had been taken down by the state for their relocation of the right of way and the new road going in. The photograph and the scale of that sign is what they submitted to you tonight. Basically, the zone that they are in is an A-1 Agricultural One Zone which is primarily an agricultural zone. This business is a pre-existing, non-conforming use. A sign for this business is only allowed to be twelve square feet. Originally, they came in proposing around a 100 square foot sign. By the time of submission, the sign was 69.55 square feet. It is considerably larger than what is allowed. They want a digital reader board which isn't allowed period. Staff recommended to deny the 69.55 square foot sign in an agriculture zone and then to also deny the installation of a digital LED reader board. At that time, there was an interest in knowing what was really there previously. Instead of having the Board deny their request, the applicant requested we table the case until there was documented proof of the larger pre-existing sign and compare it to their request. Their request is for a 69.55 square foot sign and you can see the original sign was alleged to be a 75.65 square foot sign.

Mr. Bachmann asked if the submitted information changes staff's recommendation. Mr. Hutchinson replied it does not change staff's recommendation. The requested sign is still significantly larger than the twelve square foot sign allowed in the A-1 Zone. At that point, the Board wanted additional information and that is what staff is presenting to you today. Mr. Bachmann asked why the original sign wouldn't be grandfathered in. Mr. Hutchinson stated it would have been, but once they removed it, they would be forced to comply with current regulations. Mr. Mason stated he recalled from the previous discussions that the applicant didn't remove the sign. Mr. Hutchinson stated that the applicant wasn't the owner at the time so he was not the one who took the sign down. Mr. Mason asked who specifically took it down. Mr. Klear stated that the assumption is that the State took the sign down for the road project, but we really don't know. Mr. Mason asked if the old location was in the right of way. Mr. Hutchinson stated staff

assumes it was in the right of way, but can't really confirm because the applicant has not submitted a site plan. Mr. Hutchinson has been told the sign was in a "staging area" that could go back to the applicant when the road project is completed at some time in the future.

Mr. Verst asked if the item before the Board for approval is strictly the size of the sign. The location of the sign still has not been indicated or approved. Mr. Hutchinson stated that if the sign is approved then one of the conditions should be that a site plan be submitted to staff for review and approval. Staff could handle that administratively. Mr. Schaber asked if a part of the request was for a LED sign. Mr. Hutchinson stated it was. Mr. Schaber asked if that would have to be a second condition of the motion. Mr. Hutchinson replied it would. Mr. Verst asked what the current stance our Zoning Ordinance had on LED signs. Mr. Klear replied that currently our Zoning Ordinance does not permit LED signs. Mr. Bachmann asked about the status of the additional signs that were located on the site. Mr. Hutchinson stated that the corrugated plastic signs mentioned in item #1 were removed. The applicant came in today and applied for a sign permit for the signs reflected in item #2. Staff gave the applicant 30 days to remove the sign in our letter. It is similar to the process that he is going through right now. Mr. Verst stated that those signs do not pertain to this case, but it is good that the applicant is working with staff to resolve those issues.

Mr. Verst asked if there were any other questions of staff. There being none, Mr. Verst asked the applicant to come forward and state his name for the record. Mr. Lance Wolf of Duncan Oil Co. came forward to speak on behalf of the applicant. Mr. Wolf stated that as they had explained previously it is very important for the marketing of gas prices to be able to have a sign. They are not asking to have anything that wasn't there before and this sign is actually smaller than what was previously present. As for the other sign issues, those are a separate issue. They were there, but Mr. Wolf is not up to speed to be able to discuss those issues. Mr. Wolf stated the site plan is ready to submit to staff for review and approval. Mr. Verst asked if the sign size was the same as what was submitted or if it had been reduced any further. Mr. Wolf stated the sign was 69.55 square feet at 20 foot height.

Mr. Verst stated that someone took the BP sign down; we don't know who and just assume it was the State. The new owners want to install a sign. If the old sign had not been removed, they could have just fixed the old sign. Mr. Verst asked if there were any questions for the applicant. There being none, Mr. Verst opened the floor for discussion among the Board.

The Board remembered much of the discussion from the previous meeting. The general discussion was that the Board would need to attach the appropriate conditions regarding the language of "no flashing" of the LED. Mr. Mason stated that our concern was if the sign previously existed in a state that exceeded the Zoning Ordinance then it should be grandfathered in. Mr. Verst stated it was not an issue of if they were grandfathered it, but if we should grant the variance on the size and the LED. Mr. Duncan corrected the Board at this point. This is not a variance request. This is an appeal of a denial of their request for a sign. The only way you can override the staff and find in favor of this request is that you must find that the previous sign was as large as or larger than the sign they are applying for and that it was taken down against the landowner's intent. The Board received a lot of testimony, but Mr. Duncan was uncertain if that testimony directly stated that the State took the sign down against the intentions of the previous land owner. Mr. Duncan stated Mr. Patel addressed that issue, but did not directly testify to that. If you do find that, you could allow the non-conforming use (sign) to go back up and continue. The law does not like non-conforming uses to continue past their useful life. Mr. Bachmann asked if the fact that the sign would be in a different location changed anything. Mr. Duncan stated it would not since the State was the one who in effect altered the location of the sign. Mr. Verst advised that the Board that they would have to determine if the evidence is convincing to them that the sign was taken down against the intent of the landowner. Mr. Mason stated that what he remembers from testimony it was removed by the State for this highway project against the intent of the property owner. Mr. Bachmann stated he recalled that the poles were placed in storage. Mr. Hutchinson stated that the poles were stored on site at the station. Mr.

Bachmann asked if the sign came down before the BP station closed or if the station closed and then the sign came down.

Mr. Mitesh Patel, the applicant and owner of SRS Petroleum, came forward to answer the questions. Mr. Patel stated that the state took the sign down and the owner told them to put the sign back. The guy said take the sign out because the trucks have to go over where the sign is. Mr. Verst asked if the sign was still up when construction started. Mr. Patel stated that it was. Mr. Verst asked if staff had any information contrary to that. Mr. Klear stated that Mr. Patel was not the owner when construction began. The sign was taken down. The sign was still BP when it was taken down. We do not know who took it down; we assume it was the state, but we don't really know. Mr. Verst asked if the gas station was still in business when the sign was taken down. Mr. Klear stated it was still in operation by the previous owner when the sign came down. It was still in operation during construction of the highway project as well. Mr. Verst stated we do not have hard physical evidence of who took the sign down, but there is no evidence that the gas station took it down and there is no reason to believe the gas station took their own sign down.

Mr. Verst asked if anyone had any feelings on how convincing the information looked to them and whether or not it was taken down against the intent of the property owner. Mr. Verst stated he has worked with the state before and if your sign is in their way, they will tell you your sign is in our way, take it down or we'll take it down. You get a choice, but if it isn't taken down when they need it down, they take it down for you. Mr. Mason stated, as a business owner, he just can't believe an owner is going to stand by and say yes to someone just taking down their sign while they are still in operation and not have an intention to put that sign back up.

Mr. Verst stated that from the discussion that he has heard, if someone were to make a motion to approve the appeal of the decision of the zoning administrator, with the two items of replace the sign to the size of the sign submitted and including the LED, they would have to make a finding based on the evidence presented that the size of the sign is not more non-conforming than the sign that was there before and that there was sufficient evidence presented that the sign was removed against the intent of the property owner. Mr. Duncan stated that was a good way to state it. It has be substantial evidence whatever that means. Mr. Klear stated he wanted to offer a clarification. The sign was removed, but when the state goes in they don't just remove a sign unless they are acquiring additional right of way and that property becomes state property or they have need to use that land for construction. You can't say it was the intent of the prior property owner to have the sign removed, but Mr. Klear didn't think you could justify that. Mr. Klear continued to state he thought you can justify your position saying it was the intent of the prior property owner to have the sign re-installed at some later date. If the prior property owner didn't want the sign moved in the first place, he could have fought it if it was still on his property. Mr. Verst stated he could have fought it, but the State has the authority and could still take the property if they wanted it. Mr. Klear clarified that you trying to establish intent and you can't establish intent of that item. Mr. Klear stated the goal is to establish intent of what was the expectation of the property owner when everything is said and done. Mr. Duncan added that the standard is the intent to abandon the use of the sign. Mr. Klear agreed. Mr. Duncan stated Mr. Klear is trying to offer another avenue in which to make a finding for your motion. Mr. Klear agreed. Mr. Verst clarified that they could use a finding of the sign was removed without the property owner's intent to abandon the use of the non-conforming sign. Mr. Schaber agreed. Mr. Mason asked Mr. Verst to repeat the statement which he did. Mr. Verst stated that going back to the minutes there was a comment from Mr. Schaber that the LED was newer technology not in violation with the intent of the Zoning Ordinance which was to prevent intrusive, bright lights. Mr. Mason asked where this was located. Mr. Verst stated the discussion started on page 8, line 37 of the minutes.

Mr. Schaber asked legal counsel if a condition of the approval should be the removal of all placard signs listed in item #1 of the additional information supplied by staff. Mr. Duncan replied it should not. You

could have it, but you really need to focus on the information and the sign before you. Mr. Duncan stated it was nothing against staff, but it was just easier to isolate each situation.

Mr. Mason made a motion to approve the appeal of the zoning administrator's decision to allow a sign not to exceed 70 square feet. The sign is non-conforming as was the previous sign which was removed against previous owner's wishes. The applicant must submit a site plan to staff for review and approval prior to the installation of the sign. The LED reader is allowed, but it can not be flashing in any manner. Mr. Verst asked if there was any discussion on the motion. There were no other comments. Mr. Verst asked Mr. Mason if he would be willing to amend his motion to expound upon his explanation of the findings to include the statement: "The previous owner's intent was not to abandon the non-conforming use." Mr. Mason agreed and included that statement in his motion. Mr. Klear clarified that the site plan is to make certain that the sign meets all appropriate zoning regulations. There is no amendment needed to the motion, but Mr. Klear wanted to make certain the Board understood what they were approving in that condition. Mr. Verst called for a second to the motion if there was no further discussion. Mr. Bachmann seconded the motion. Prior to the roll call vote, Mr. Klear asked legal counsel if the new members should vote on this issue since they were not present for all testimony. Mr. Duncan replied that if they feel the evidence they have heard tonight provides them with enough information to make a determination then they are entitled to vote on this case; however, if they feel they are insufficiently advised, they can abstain from voting. Mr. Verst called for the roll call vote. A roll call vote found Mr. Bachmann, Mr. Mason and Mr. Schaber in favor. Mr. J. Williams, Mr. M. Williams and Mr. Verst abstained. Motion passed. Mr. Verst thanked the applicant for their patience and encouraged him to continue working with staff to resolve his remaining sign issues.

Mr. Verst introduced the next case #BA-01-12, by applicant Evergreen Cemetery Company, with a request for an expansion of a conditional use to allow for the construction of an additional mausoleum building. Mr. Hutchinson presented the staff report as follows:

CASE:	BA-01-12
APPLICANT:	Evergreen Cemetery Company
LOCATION:	25 Alexandria Pike, Southgate Kentucky.
REQUEST:	An expansion of a conditional use to allow for the construction of an additional mausoleum building.

Staff has reviewed the request and finds as follows:

DESCRIPTION OF REQUEST:

The applicant is asking to expand a conditional use within the R-1E Zone. Specifically the applicant requests to construct a 600 sq. ft. free standing mausoleum.

CONSIDERATIONS:

1. This site is occupied by Evergreen Cemetery. The property fronts Alexandria Pike to the east, to the north and south is residential. The property to the west is park and residential.
2. The Recommended Land Use Map of the 2008 Campbell County Comprehensive Plan identifies the site and surrounding areas for higher density single family residential and multifamily residential.
3. The property is currently zoned Residential 1E (R-1E). The minimum area and height regulations for conditionally permitted uses are:
 - Minimum lot size 22,500 sq. ft.

- Minimum lot width 150 ft.
 - Minimum front yard 50 feet
 - Minimum side yard 50 ft.
 - Minimum rear yard 50 ft.
 - Minimum building height 35 ft.
4. A review of the public records indicates there have been no previous conditional use or variances granted by the Board of Adjustment for this site.
 5. The submitted drawings indicate the following:
 - a. The site plan shows the proposed mausoleum to be 23' 3 1/2" feet x 25' 4 1/2" feet. The building height is shown to be 17' feet.
 - b. The site plan shows the closest property line is 773' feet.
 - c. The site plan does not show any lighting.
 - d. The site plan does not show any signage.

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 evergreen cemetery has been in existence at the present site since 1850 and is the site for many civil war heroes... The cemetery is proposing to construct an approximate 600 sq. ft. free standing mausoleum. This expansion is necessary to serve the needs of the community as it continues to grow and age."
 - 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.

"This new mausoleum would be positioned between two existing 1,800 sq ft. mausoleums and west of a 3,200 sq ft. mausoleum. The cemetery exists within a residential zone. There is a natural buffer of trees and other vegetation around most of the perimeter of the site. The nearest property line to the proposed mausoleum is 773' ft."
 - c. That such use will comply with any regulations and conditions in this ordinance for such use.

"Based on the information above we believe that the expansion 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. This expansion will comply with the regulations of the Southgate Zoning Ordinance."
2. Per Section 18.6, A., 2., Notice: Notice of public hearing was given in accordance with Section 18.2 of the City of Southgate Zoning Ordinance.

STAFF RECOMMENDATIONS:

To approve the conditional use permit for the construction of a (23' 3 1/2" feet x 25' 4 1/2" feet) 600 sq. ft. mausoleum 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 a building permit needs to be submitted and approved by staff prior to construction.

BASES FOR STAFF RECOMMENDATION:

1. Based on the information above, staff finds that the proposed expansion will contribute to the general well being of the neighborhood and community. Further, staff finds that the proposed expansion will not be a 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 Southgate Zoning Ordinance.
2. City of Southgate 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.

Mr. Hutchinson asked if there were any questions he could answer for the Board. Mr. Mason asked when the other mausoleums were built. Mr. Hutchinson replied he did not know. Staff has not always performed services for the City of Southgate, but we have no record for any activities at the cemetery. Mr. Mason asked how long have services been provided to Southgate. Mr. Klear replied we have not been doing Southgate's Board of Adjustments very long. Mr. Verst asked if there were any other questions for staff.

There being none, Mr. Verst asked the applicant to come forward and identify themselves for the record. Mr. Joe Kramer, Cardinal Engineer, 1 Mook Road, Wilder, KY came forward as the representative for the applicant. Mr. Kramer stated that the main 3200 square foot mausoleum was built about 1980 and the two wings were built about 1993. In regards to staff's recommendations and conditions, the applicant concurs with all three conditions. There is no proposed outside lighting at this time. No proposed signage at this time. A building permit will be applied for shortly. Mr. Kramer asked if there were any questions he could answer for the Board. Mr. Verst asked if there were any questions for the applicant.

There being none, Mr. Verst asked the applicant to be seated and opened the floor for discussion among the Board. Mr. Verst stated just for general information for new members, the staff report will show on page 2 the three questions that the applicant must answer. This information can be used in your findings of fact if you were to make a motion to agree with the applicant's request.

Mr. Schaber made a motion to approve #BA-01-12, by applicant Evergreen Cemetery Company, with a request for an expansion of a conditional use to allow for the construction of an additional mausoleum building with 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 a building permit needs to be submitted and approved by staff prior to construction.

He cited as his findings of fact that the expansion will contribute to the general welfare of the neighborhood, not be detrimental to health, safety or welfare and that the applicant has agreed to comply

with Southgate Zoning Ordinances. Also, should any outside lighting exist; it will not glare on neighboring property. Should any signage be applied for, it will be reviewed and approved by staff. Mr. Verst asked if there was any discussion on the motion. There being none, Mr. Verst called for a second on the motion. Mr. Mason seconded the motion. A roll call vote found Mr. Bachmann, Mr. M. Williams, Mr. Mason and Mr. Schaber in favor. Mr. J. Williams and Mr. Verst abstained. Motion passed.

There being no other items of action before the Board, Mr. Verst recognized Mr. Klear to present the Director's Report.

DIRECTOR'S REPORT

Mr. Klear introduced the two new members. Mr. Klear asked Mr. M. Williams if he wanted to say any words of introduction. He did not. Mr. Klear asked Mr. J. Williams if he wanted to say anything as a means of introduction. Mr. J. Williams stated he just wanted to let the Board know he was excited to serve and take part in the process. Mr. Verst asked if both were representing Unincorporated Campbell County. Mr. Klear replied they were not. Our Board is comprised of representatives from our member cities and from the Unincorporated Campbell County. Mr. Joe Williams will be representing the Unincorporated Campbell County from the vacancy left by Ms. Fran Reitman. He was appointed by the Fiscal Court. Mr. Mike Williams is serving on this Board as a representative for the City of Melbourne. The City of Melbourne was unable to locate a citizen to serve as their representative. When situations such as this occur, the Planning Commission has the authority to appoint a representative for them. Mr. Mason asked if Ms. Schweitzer was still a member. Mr. Klear replied she was.

Mr. Verst asked Mr. Klear for an update on the digital sign changes voted on by the Planning & Zoning Commission. Mr. Klear stated that the Commission took action at their February meeting which would allow for class 7 signs in the A-1 and R-RE Zones which would basically allow for electronic signs. The Commission recommended approval to the Fiscal Court. The Fiscal Court is having a first reading on this issue tomorrow night. Whenever you are changing zoning ordinances, you are changing rules. You have to change them with an ordinance and ordinances take two readings. The first reading is tomorrow and the second reading is anticipated on April 4th. Mr. Verst thanked Mr. Klear for the update.

Mr. Verst asked Mr. Duncan for clarification about non-conforming uses and the continuation of non-conforming uses. After the last Planning Commission meeting, Mr. Verst had a discussion with legal counsel regarding non-conforming uses and continuation of non-conforming uses when there has been abandonment or a violation of setback. Mr. Verst explained his understanding is that the rule we have always had here is that if we have a house that is damaged more than 50% of the value of the home and it is too close to the property line, then it loses its' grandfather status. Mr. Verst stated he had a conversation with legal counsel because Mr. Verst is concerned that the Board will be seeing claims from people whose homes were damaged in the tornados earlier this month. Legal counsel had the KRS and they were discussing whether or not the homeowners intended to abandon that non-conforming use and what our Zoning Ordinance said about 50% or more damage might be in conflict. Mr. Duncan stated he had received notification from legal counsel of that conversation. Mr. Duncan did research on the topic and spoke with Mr. Klear earlier in the day.

The same law Mr. Duncan quoted earlier tonight would apply to the situation Mr. Verst is describing. If the house is too big, too close or the lot is too small, there may be circumstances where there is a pre-existing non-conforming use on a lot. It will continue until the use withers away under the interpretation of the law that the courts have given. In 1985, in a case out of Covington, KY called Martin vs. Beehan relating to a hotel built as a hotel and at some point, it was converted to residential use and became non-conforming. The hotel became run down and was then used as a boarding house. The property owner put it up for sale for 30 years and continued to try to lease it out as a hotel. Eventually, they found a buyer who wanted to convert the building to a professional office building. The issue for the court was: was

there intent by the owner to abandon that non-conforming use? If not, there was an opportunity for them to present that to the Board of Adjustment as a change from one non-conforming use to another. In that case, the court determined there was not sufficient evidence to not abandon the non-conforming use or whether the intent was to abandon the non-conforming use because they just went out of business. The court actually addressed some ordinances the City of Covington had that said if you discontinue a non-conforming use for twelve months or for twenty-four months over a four year period you have evidence demonstrated of intent to abandon that non-conforming use. The court said that a non-conforming use is a protected constitutional property right of a property owner and there must be evidence of the abandonment of the non-conforming use. Mr. Duncan stated that must be found evidence of abandonment even if there is property damage of 50% or more of the value of the home. There is no exception. Mr. Duncan stated you can place conditions upon the nature of the replacement such as it can be no larger than what was previously on site, the setback variance can be no larger than was previously allowed, etc. but you must allow what was previously in existence. Mr. Duncan ended by saying he would say for the most part that these claimants would say they did not intend to abandon the non-conforming use of their property if it were truly damaged by the tornados. He knows of no reported appellate decision in Kentucky that addresses this particular issue as it is a natural disaster, but his opinion would be that courts would allow the home to be returned to previous condition of being too close to the property line, too big, or whatever. Mr. Verst stated they could go back to what they had. Mr. Duncan stated that was correct. Mr. Duncan stated it would be through conditions that you would restrict the applicant to not be able to go bigger, but they can have what was once there. Mr. Verst asked if the Board could approve something with a condition that if it were damaged beyond 50% of the value of the home then they would have to bring the new replacement home into compliance with the Ordinance. Mr. Duncan stated that could be a condition added when you allow them to replace what was on site. Mr. Klear stated that the way the Ordinance reads is that if damage is beyond 50% then the replacement has to meet current regulations. Mr. Verst asked where that was located in the Ordinance. Mr. Klear stated it was in Article IX. Mr. Duncan stated it was a common provision. Mr. Klear stated it was not as big an issue because the common request staff receives is from the lender asking if the structure were to be rebuilt in the current location would it meet current zoning regulations and we can tell them honestly that it does not. The issue becomes when the applicant is unable to meet setbacks in any situation. Mr. Verst thanked Mr. Duncan and Mr. Klear for the discussion.

Mr. Klear asked Mr. Verst to share his news. Mr. Verst has been appointed the Kentucky Society of Professional Engineers 2012 Engineer of the Year. All the Board members extended Mr. Verst well wishes on this accomplishment and honor. Mr. Verst asked if the Board had any other matters to discuss. There being none, Mr. Verst called for a motion to adjourn. Mr. Schaber made a motion to adjourn the meeting. Mr. Bachman seconded the motion. An oral vote found all in favor and none opposed. Motion passed. Meeting adjourned at 8:10 PM.

Prepared by:

Approved:

Peter J. Klear, AICP
Director

Justin Verst
Chair