

**CAMPBELL COUNTY & MUNICIPAL BOARD OF ADJUSTMENT
MINUTES OF THE JUNE 19, 2012 MEETING**

MEMBERS PRESENT:

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

MEMBERS ABSENT:

Ms. Connie Schweitzer
Mr. Justin Verst, Chair

STAFF PRESENT:

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

Mr. Schaber called the meeting to order at 7:00 PM and asked for a roll call. Following roll call, a quorum was found to be present. Mr. Schaber asked if everyone had read the April 17, 2012 meeting minutes and if there were any questions or corrections. There being none, Mr. Schaber called for a motion. Mr. Mason made a motion to approve the minutes as submitted. Mr. Williams seconded the motion. A roll call vote found Mr. Bachmann, Mr. J. Williams, Mr. M. Williams, and Mr. Mason in favor. Mr. Schaber abstained. Motion passed.

Mr. Schaber introduced case #BA-03-12, by applicant Theresa R. Lucas, with a request for a conditional use to allow for the construction of an approximate 15,900 SQ. FT. free standing building for church. Mr. Hutchinson presented the staff report as follows:

CASE:	BA-03-12
APPLICANT:	Theresa R. Lucas
LOCATION:	4906 Mary Ingles Highway, Unincorporated Campbell County Kentucky.
REQUEST:	A conditional use to allow for the construction of an approximate 15,900 SQ. FT. free standing building for church.

Staff has reviewed the request and finds as follows:

DESCRIPTION OF REQUEST:

The applicant is asking for a conditional use to allow for the construction of an approximate 15,900 SQ. FT. free standing building for a church. The church facility includes an approximate 10,000 SQ.FT. building and 5,000 SQ.FT. garden area.

CONSIDERATIONS:

1. This site is occupied by a single family house and several outbuildings. The land uses surrounding the property to the east, west and south is residential and vacant land. The land use to the north includes recreational, retail and vacant land.
2. The site is located in Unincorporated Campbell County.

3. The Recommended Land Use Map of the 2008 Campbell County Comprehensive Plan identifies the site and surrounding areas for Lower Density Single Family Residential.
4. The property is currently zoned Rural Residential Estate (R-RE). This zone conditionally permits churches providing they are located adjacent to an arterial or collector or local street.
5. 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.
6. The property is located in the 100 year floodplain. The property are also located in the floodway.
7. This property does not have the required road frontage. The property appears to be part of a subdivision that was not reviewed or approved by Campbell County and Municipal Planning and Zoning Commission.

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 King David’s Garden of Blessings is dedicated to securing god’s people an environment where they are free to assemble, worship and praise. A ministry and garden that will grow abundant blessings of Christian faith and beautiful flowers. This will contribute to the growth of faith and ecumenical cohesion needed to foster a sense of well being and cooperation in the community.”
 - 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 proposed use of King David’s Garden of Blessings will not be detrimental to the health, safety, or general welfare of the neighbors or any persons working in the community. There will be an infusion of faith, hope and love among the locals and a site that will include eyes, nose, ears and other senses to provide an environment of peace and tranquility. The church site will be built according to site plans and reputable engineers.”
 - c. That such use will comply with any regulations and conditions in this ordinance for such use.

“The proposed use of King David’s Garden of Blessings will be built to comply by the use of Site Plans, Applications, County Regulations, Ordinances, set regulations that apply to 501c3 nonprofit organizations. The most prominent compliance will be the standards of god, the commandments and the salvation of people through Jesus Christ.”
2. 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.

STAFF RECOMMENDATIONS:

To deny the conditional use request to build a church.

BASES FOR STAFF RECOMMENDATION:

1. Campbell County Zoning Ordinance Section 10.2 C States: Conditional Use “Churches and other accessory buildings for the purpose of recognized religious worship providing they are located adjacent to an arterial or collector or local street.” This property is not located adjacent to an arterial, collector or local street. This property has no frontage at all and does not comply with the zoning ordinance.
2. The property appears to be part of a subdivision that was not reviewed or approved by Campbell County and Municipal Planning and Zoning Commission. The property does not have any frontage along a publically dedicated and maintained street. Given these two factors both individually and collectively, the property does not comply with the Campbell County Subdivision Regulations.
3. The property is located in the 100 year floodplain. New construction in the floodplain is permitted; but the new construction of major structures within the floodplain is discouraged. Portions of the property are also located in the floodway. Construction in the floodway is **prohibited**.
4. The existing property lot is located approximately 1,600 feet from an improved and maintained street. There is only one means of ingress/egress to the property – a private drive, located within a private easement. The elevation of the drive is at and/or below the level of the base flood elevation. The singular access point, road elevation and road conditions make for a potentially unsafe and unreliable means of access to and from the property. These conditions could make the proposed 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

Mr. Hutchinson asked if there were any questions he could answer for the Board. Mr. M. Williams asked Mr. Hutchinson to point out the creek on the slide which Mr. Hutchinson pointed out the creek as well as the bridge location on the slide. Mr. M. Williams asked if Mr. Hutchinson could clarify the path of the creek as it flowed across the applicant’s property which Mr. Hutchinson did so. Mr. M. Williams asked if the applicant’s building plans showed them building near the creek. Mr. Hutchinson replied that the building plans did not show any structures near the creek.

Mr. Bachmann asked how far back does the floodplain extend. Mr. Mason stated there was a slide showing the floodplain area. Mr. Hutchinson stated that the slide he showed was a general guideline slide from FEMA. To determine where the floodplain extends, the applicant would have to hire a surveyor to identify that area on their property. FEMA guidelines are not 100% accurate. A surveyor needs to do a flood plain certificate to determine the true flood plain area on their property.

Mr. M. Williams asked if we know who owns the easement. Mr. Hutchinson stated he knows Trans Ash owns the property, but he has no information regarding the particulars of the easement. Mr. Hutchinson advised Mr. Williams to address that question to the applicant. Mr. Schaber asked if there were any additional questions of staff. Mr. Bachmann asked about the statement “Construction in the floodway is **prohibited**.” Is that a Campbell County ordinance? Mr. Klear replied that was a federal regulation and law. Mr. J. Williams asked Mr. Hutchinson to identify what the “green” line across the property represented. Mr. Hutchinson located the line Mr. Williams was referencing. Ms. Lucas stated it was a road to their neighbor’s property.

Mr. Schaber asked if there were any other questions for staff. There being none, Mr. Schaber asked the applicant to come forward and identify themselves for the record. Ms. Theresa R. Lucas, applicant, 4906 Mary Ingles Highway, Cold Spring, came forward. Ms. Lucas had written down a few things in rebuttal to Mr. Hutchinson’s report, but she stated she first wanted to start with saying that the drive in question was called Messmer Road until about three weeks ago when it was renamed Kay Wright Lane for

whatever reason. We have lived on the road for over 100 years and have maintained the bridge and roadway for 65 years. Ms. Lucas purchased the property which was her grandparent's property. Since she has purchased the property, in reference to safety issues of the road and bridge and their maintenance thereof, there has never been a fatality. There has never been anyone that has gotten hurt. That has just not been the case. Whenever there has been a questionable area on the road or on the bridge, it has been taken care of promptly because of the safety issue. Ms. Lucas believes the bridge was built in or around 1945. The only thing, to her knowledge, concerning the safety of the bridge is about six or seven years ago Ms. Lucas had a structural engineer come out and he posted a five ton weight limit on the bridge which is very much strictly adhered to because nobody wants to get hurt. Nobody wants to go through the bridge.

It is a very beautiful, quiet, tranquil area there. Ms. Lucas stated she was given a vision by God and this is what he has asked her to do and this is why it is before the Board. Ms. Lucas stated as far as the first bases of Mr. Hutchinson's report where it states the church must be located adjacent to an arterial or collector or local street. All Ms. Lucas has to say about that is that now that there is an improved street and she believes you would call that a collector street. Ms. Lucas does not know the specifics of how far or what the intentions are of how far they intend to come back. Ms. Lucas only has to question the 200 feet already that it comes back and ends. Ms. Lucas stated so then what she does not understand is all of the subdivision at the front of the property.

Ms. Lucas continued on to state that as far as the subdivision not being reviewed or approved by Campbell County and Municipal Planning and Zoning Commission. The property has no frontage along a publicly dedicated and maintained street or road. Ms. Lucas states that the property was divided before the existence of the Planning & Zoning Commission. To her, there should be a grandfather clause for her property. Kay Wright Lane was publicly dedicated on Sunday, June 10th as you are aware. There was a party with fire trucks and people from the City.

Ms. Lucas next questioned the property being located in the 100 year floodplain. Ms. Lucas's question is the floodway and she believes the reference is to the bridge area where the creek actually is. So construction in the floodway is prohibited and she definitely understands that because the water does come up from time to time. Anyone who builds in that area would lose it immediately. As far as the 100 year floodplain, only the parking lot would be in the floodplain. The church would not be in the floodplain. The church would be willing to obtain the flood insurance that would be necessary because the parking lot is in the floodplain. Ms. Lucas and her parents have never had to get flood insurance living in that vicinity. Even during the flood of 1937, the water only came up to the gravel of the outbuildings. Ms. Lucas showed on one of the slides where the water went to. The water never reached the main residences.

Ms. Lucas asked Mr. Klear what he meant by floodway. She asked if floodplain and floodway was the same thing. Mr. Klear replied they were not. Mr. Klear stated that the federal government goes by two different definitions. Floodplain is less restrictive. Floodplain is the area that is prone to flooding depending on elevation and other factors. As we indicated in the report, you are allowed to build in the floodplain. Mr. Klear continued floodway is the most restrictive. You are not allowed to do anything in the floodway, including the placement of soils which you would have to do to establish portions of the grade. Based on FEMA maps, this property is in both the floodway and floodplain.

Ms. Lucas clarified that the bridge is not on her property. Ms. Lucas stated that the best way to explain it is that if someone were hurt on the bridge, she does not think they could come and sue her that is her belief. However, since it is herself, members of her family and other neighbors that make the repairs, she is sure they could say that she was negligent in some way in rebuilding the bridge. They have discussed all of this with her engineer as to what can be filed with the Army Corp of Engineers.

Ms. Lucas addressed the issued that the existing property lot is located approximately 1,600 feet from an improved and maintained street. Ms. Lucas stated that we are talking about a way of life for over 100 years. Prior to the 1930's, there wasn't even a bridge so they just went down through the creek bed. As it is now with the dam, and being able to release the water to relieve pressure, the bridge was installed and they can cross at will. The words of his report are "These conditions could make the proposed 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." These people have lived this way for over 100 years without any injury or harm. Ms. Lucas stated that in her mind, the City of Silver Grove has elected to take over the first part of the road and they should be held to take over the back part of the road up to the bridge. From the bridge, there is Trans Ash and another neighbor that would have legal rights to the bridge. No one has ever been harmed crossing the bridge and the weight limit has been strictly adhered to. Ms. Lucas stated this does bring up the Army Corp of Engineers. She stated they have filed something with them to determine if they could put in culverts or something so that they could cross the creek with higher weight limits. As soon as they hear back from the Army Corp of Engineers, and by the grace of God, they will be ready to move forward.

Mr. Schaber asked the Board if they had any questions for the applicant. Mr. M. Williams asked who owned the easement and if it was recorded. Ms. Lucas stated it was between herself, Mr. Harold Jackson and Trans Ash. She added there was a new easement that includes Mr. Charles Messmer and Ms. Shirley Bolton who are also residents along the road. Both easements were recorded. Mr. M. Williams asked who owned the property over which the easement runs. Ms. Lucas stated it was a collection of the people listed in the easement. Mr. M. Williams stated that Mr. Klear had located the definition of floodway as listed in our Campbell County Zoning Ordinance and asked that it be read into the record. Mr. Klear read: "FLOODWAY: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot at any point." Mr. Bachmann asked him to repeat the definition which he did so. Mr. Duncan asked Ms. Lucas how wide the easement was. Ms. Lucas stated it was thirty feet wide. Mr. Duncan asked Mr. Klear how wide it would have to be if it was a publicly dedicated road. Mr. Klear stated it depended on the number of lots served. It would be no less than forty feet, but more likely to be fifty to sixty feet wide.

Mr. Mason asked Ms. Lucas what the occupancy of the church was scheduled for. Ms. Lucas did not know. She looked to one of the gentlemen accompanying her for the answer. He stated the answer was 240 people. Mr. Klear asked Mr. Schaber to have the gentleman come forward and give his name and address for the record. Mr. Lynn Adams, Architect, 111 Belmont Road, Dayton, came forward to offer assistance. Mr. Adams restated that the occupancy for the church would be 240 people. Mr. M. Williams asked if the creek overran its banks every year. Ms. Lucas stated that it did. Mr. J. Williams asked how wide the bridge was. Was it one car width? Ms. Lucas replied it was. Mr. J. Williams asked if they planned to use the same bridge for entry on the plan. Ms. Lucas replied no, she applied to the Army Corps of Engineers for permission to make improvements to the creek for a separate crossing.

Mr. M. Williams stated that Ms. Lucas previously mentioned that they maintained the bridge, with "they" being collectively the owners living back there. When Ms. Lucas references maintaining the bridge, does she mean they hire someone to perform the work? Ms. Lucas replied no, they do it themselves. They have raised one side of the bridge before. They have someone of knowledge overlooking their work and help, but they supply their own materials and their own labor and repair and maintain the bridge and the road in this manner. Mr. M. Williams asked who oversees their work to see that their maintenance was done properly. Ms. Lucas stated it was a private road - so no one. Mr. M. Williams asked if there were 240 cars supposed to travel over that bridge for which there was no expertise on the maintenance, supervising of the maintenance, or approving the maintenance - is that essentially correct. Ms. Lucas stated she has to mention that this road in question has been - there has been Tiemeier Fishing Lake; there has been Messmer Florist; and there has been ABC Aluminum Foundry - and these have all been back

behind the bridge. This has been well traveled by numerous cars, trucks and people and there have been at times questionable weight like beer trucks and such. As a matter of fact, there have only been two times where tires have gone through the bridge and one of them was an overweight beer truck. Mr. M. Williams asked where the beer truck was going. Ms. Lucas stated it was going to Tiemeier Fishing Lake.

Mr. M. Williams asked Ms. Lucas what she thought was an average weekly number of cars going over that bridge now – just a ballpark figure. Mr. M. Williams proposed a couple dozen. Ms. Lucas stated that the people that live on that road, with the advent of the Dollar General Store there now, go in and out on that road twenty to thirty times a day. Ms. Lucas estimates there are 1,000 cars a week going across that bridge egress/ingress. Mr. M. Williams asked if Ms. Lucas knew when the bridge was built. Ms. Lucas stated she thinks it was built in or around 1945. Mr. M. Williams stated surely it was built in 1945 for a 1,000 cars a week back then. Ms. Lucas stated it was sounder then because it was not exposed to the waters coming up and to the elements of time.

Mr. Duncan asked if Ms. Lucas had garbage trucks that crossed the bridge, or schools buses. Ms. Lucas stated they did not. Mr. Duncan stated those types of trucks and emergency vehicles would be over the weight limit. Ms. Lucas stated that currently they are having a tent revival and she has port-a-lets. Right now, she brings them in her truck or in the trailer across the bridge and then when they are full she takes them back across the bridge for pickup. The weight limit is strictly adhered too. Mr. Duncan asked if she has ever had to have a fire truck come to the site. Ms. Lucas stated she did because she burned a turtle up in a haystack once. Mr. Duncan asked her to repeat herself and she did so. Mr. Duncan asked her how she intended to get the construction vehicles to the site. Ms. Lucas stated that, as she previously stated, she has applied to the Army Corps of Engineers for a culvert to be built so they can cross the creek. Mr. Duncan asked if this was so they could temporarily cross the creek for construction. Ms. Lucas replied no, it was to be a permanent culvert. Mr. Mason asked if Ms. Lucas was thinking this would be her permanent access and then they would eliminate the bridge. Ms. Lucas replied that was correct.

Mr. M. Williams asked if the decking of the bridge was steel or wood. Ms. Lucas stated it was wood and it had just been replaced. Mr. M. Williams asked if it had steel reinforcement beneath it. Ms. Lucas replied it did. Mr. M. Williams asked if this was all there from 1945. Ms. Lucas replied that there has been two of the beams – one replaced and one reinforced. Mr. M. Williams asked if when the water rises if it comes up to the decking. Ms. Lucas replied it does. Mr. M. Williams asked if after the water resides if they have the decking inspected to see if any problems exist. Ms. Lucas stated that they do the maintenance and repair on the bridge. Mr. M. Williams stated that they do the maintenance and repair that they can actually see, but every year the force of that water hits the bridge. Do you get an expert to inspect the bridge about any damage that may occur from the force of the recent water hitting the decking? Ms. Lucas replied that she had the report from Reinacher Engineering from six and one-half years ago subjecting the bridge to a five ton limit which we already had because of the beer trucks. Mr. Mason asked what Ms. Lucas intends to do if the Division of Water, federal government or whoever she applied to comes back and says no to the culverts and that you can't interfere with this floodway/floodplain. Ms. Lucas stated she has hope.

Mr. Mason stated he does not feel that the Board has enough information to make a decision. He feels that it would be imperative to know first what the Army Corps of Engineers is going to allow; she needs input from an engineer to provide flood elevations; and the Board needs the floodway/floodplain information. Mr. Mason thinks that is going to dictate what will happen on the site. The entire site plan may not be any good at all. Mr. Mason apologized to Ms. Lucas for his negativity, but that is just the reality of it. Mr. Schaber stated that he wanted to interject a larger issue than the Army Corps of Engineer's decision affecting this site and that would be the issue of this site's distance from a street system. Mr. Mason agreed. Mr. Schaber stated if that issue could be overcome, a floodplain they can build in so it's not as big an issue – just one that may come with restrictions. Mr. Mason asked if the 1,600 feet back is from the end of Kay Wright Lane or from Mary Ingles Highway. Mr. Schaber stated it

had to be 1,600 feet back from a collector street or city street. Mr. Schaber stated that the key factor was a point of egress/ingress to that site. Mr. Mason stated we are talking occupancy of 240 people. He thought he saw there were going to be seventy parking spaces which really means 100 cars. Mr. Schaber stated again that the issue is how are they going to get in and out safely with safety being the acute issue. Mr. Schaber stated either way the Board should hear the remainder of Ms. Lucas presentation.

Mr. Schaber asked Ms. Lucas if she had a proposal on how to provide the egress/ingress needed for this site. Mr. Schaber stated it was suggested that a road could be put in to be turned over for county maintenance. Mr. Schaber asked Ms. Lucas what her plan was. Ms. Lucas asked if she asked the county to put in a road would the site be approved. Mr. Schaber stated if there was a county maintained road to the site, the request would be more likely to be approved. However, Mr. Schaber stated he could not speak for the County of what they would be willing to accept in for maintenance because it would be something the applicant would have to discuss with the County. It is not up to this Board to accept any road system for county maintenance. This Board only prescribes how wide, how thick or how whatever it needs to be built to according to the Subdivision Regulations. If it meets those requirements, then it is up to the County and in some part in this case the City of Silver Grove. Ms. Lucas stated that the first part would be located in the City of Silver Grove and the back part in the County. Mr. Schaber stated that in this case, both entities would need to be involved in the decision making as to accepting the road into city/county maintenance. Mr. Schaber continued stating, as discussed here, there is an issue with the floodway and you would almost have to go to them first and get their approval first that once you build this road that they will accept your road into public maintenance before you come before the Board so that we can be assured that you have approved access to the site so that we can move forward from there. Mr. Schaber stated it was not what the applicant was proposing that was an issue. If anything were to be proposed back there, they would have to meet the same criteria. Mr. Schaber stated that the Board is open to hearing any suggestion Ms. Lucas can propose to make this happen.

Ms. Lucas asked her engineer to come forward to assist her in providing ideas to the Board. Mr. Lee Knuppel, Engineer, 7770 Cooper Road, Suite #7, Montgomery, OH came forward. Mr. Knuppel stated he had been retained by Ms. Lucas to do the site engineering. Mr. Knuppel agreed that the Board was raising very valid points and there was no doubt about it. However, Mr. Knuppel stated he wanted to assure the Board that there were no intentions to build anything within the floodplain. It is their understanding that the 100 year floodplain elevation for this site is 512 feet and the church sets at least two to three feet above that. The parking lot is just a parking lot so they don't care if it floods or not. It's the Ohio River so it's a tricky situation. Mr. Knuppel stated that Mary Ingles Highway, as you know, is in the floodway. That is just a fact of life. Ms. Lucas is aware of that and we're going to live with it. The bridge – we can't do a thing until it is replaced. We can't bring concrete back there, we can't do a thing. So that is our primary goal is to get the Corps approval and to replace that structure. Mr. Knuppel thinks as for the right-of-way, from what he knows of the neighbors, they would be in support of increasing the easement to fifty feet if that is what is required. Mr. Schaber reminded Mr. Knuppel that the site must front a dedicated right-of-way. It cannot be accepted off of an easement. Mr. Knuppel stated that would take some time because there are multiple owners. Mr. Knuppel stated he doesn't know how and when but a dedication will have to take place. Mr. Knuppel stated he cannot promise what width the owners would find acceptable. Mr. Schaber understood. Mr. Mason asked if this would be a situation where the case would best be served by being tabled to allow the applicant additional time to prepare information to present to the Board so that a decision can be made. Mr. Knuppel requested that they approve the application with a caveat that the easement issue be resolved. Mr. Mason stated he would not feel comfortable making that motion. Mr. Schaber advised Mr. Mason that, if he wanted to make a motion to table the case, he would recognize Mr. Mason's motion, but first let's make certain Ms. Lucas had no other testimony or information to present to the Board.

Mr. Schaber asked Ms. Lucas if there were any additional information to present. Ms. Lucas asked if her other companion wished to speak and he did. Mr. Schaber asked him to step forward and state his name

and address for the record. Mr. Tom Schenk, Schenk Builders Inc., 42 St. Nicholas Place, Ft. Thomas, KY, came forward. Mr. Schenk stated he believes Mr. Klear was correct in stating the width would need to be fifty feet, but he thought he also heard forty feet. Mr. Schenk stated he built a condominium complex off Memorial Parkway in Ft. Thomas and they only had a thirty foot width. Mr. Schenk was curious when the width changed. Mr. Klear stated that the County minimum is forty feet; however, it depends on how many lots are being serviced. Mr. Schaber added that Ft. Thomas standards may be different from County standards as they have their own Subdivision Regulations.

Mr. Schaber recognized Mr. Klear who added that, just as a point of information, before the County would accept any road for maintenance, it would have to be built to County standards and it would also have to be elevated above the floodplain. As the engineer indicated, the flood elevation is 512 feet at that location so at a minimum the road would have to be elevated to 513 feet. They're showing portions of the existing road below 500 feet so you are talking about the placement of at least fourteen feet of fill to elevate the road to get it above floodplain stage. That is not a small expense. It is not going to happen anytime soon. When you say let's wait and see, they don't meet the minimum standards as specified in the Zoning Ordinance. To do the first standards is going to be hundreds of thousands of dollars and it is not going to happen anytime soon. Mr. Klear stated he understood that the Board wants to work with the applicant as much as possible. Mr. Klear stated the applicant is nowhere close to meeting the minimum standards. Mr. Knuppel responded that he took exception to Mr. Klear's comments. There are all kinds of highways in this county that are below the minimum floodplain standard. Mr. Knuppel stated surely this is not a restriction just for Ms. Lucas. Mr. Schaber stated it was not a restriction just for Ms. Lucas. Mr. Knuppel asked who the restriction is for then. Mr. Schaber stated the restriction is for anyone who cares to build a road to any specific site that runs through the floodway or floodplain must meet the criteria and must be held to be above those elevation specifications whatever they are in that area. Mr. Knuppel stated his point is that you have hundreds of miles of highway right now that are below the 100 year floodplain. Mr. Klear replied that was correct, but if you put in a new highway today, you would not put it in a floodway or floodplain. Mr. Schaber agreed and added the expressways are not located in the floodways or floodplains. Any new roads have to be elevated one foot above those flood elevations. Mr. Schaber added that the federal government is even holding to their own laws on this issue. Mr. Knuppel stated that was the federal government though. Mr. Schaber stated he should hope so. Mr. Schaber reassured Mr. Knuppel that the Board's intention was not to be argumentative over the whole situation. Speaking only for himself, Mr. Schaber stated the Board is guided by ordinances and regulations.

Mr. Knuppel stated that if they built the road to an elevation above the floodplain, they wouldn't be able to tie into Mary Ingles Highway because there is a grade difference of fourteen feet. Mr. Schaber stated he was not an engineer and couldn't reply to that question. Mr. Adams asked what the elevation of Mary Ingles Highway was. Mr. Knuppel stated it was below 500 feet. Mr. Adams stated he knows – we all know that. His point is that to say the applicant has to build this driveway back to this church fourteen feet above Mary Ingles Highway seems pretty ridiculous. Mr. Klear attempted to explain that the elevation is not straight across the site and that the base flood elevation changes as you move from Mary Ingles Highway back to the site. There are a number of factors that go into determining that base flood elevation. Typically, in Silver Grove and in other places, that elevation is 503 feet. In this case, there are places that jump up to 512 feet. There are other locations in Campbell County where it is even higher.

Mr. M. Williams stated that the Dollar General site was a golf range site and to get approval they had to add fill to raise them out of the floodplain. Mr. Klear stated the Dollar General added six to eight feet of fill at least to get out of the floodplain. Mr. Mason asked if that was the same street that the applicant wanted to pull their drive off of. Mr. Klear replied that it was. Mr. Klear stated the reality is that their site was elevated up out of the floodplain so that they could build. Mr. Mason asked if the applicant is going to have to elevate her roadway out of the floodplain as well. Mr. Klear replied she would have to in order to have it considered for a public road. Mr. M. Williams asked if that was a requirement that could be waived by the Board. Mr. Klear replied it could not be waived and Mr. Schaber agreed.

Mr. M. Williams asked if anyone had asked if this was the only entrance in or out of that property. Mr. M. Williams stated he thought he remember it mentioned in the staff report. Mr. Hutchinson stated that, from his observations, he did not see any other entrance or exit point. Mr. Hutchinson stated that, when Ms. Lucas pointed out an access point to the fishing lake on the slide, he was not even aware of that until she pointed it out. Ms. Lucas stated it also goes out to Route 8. It was used by the City of Highland Heights to dump their trash, but Mr. Harold Jackson purchased that property to prevent them from using that culvert. He uses it as a private entrance and prefers to keep it as private.

Mr. Schaber asked Ms. Lucas if there were any additional information to present. Ms. Lucas stated she believed she was done. Mr. Schaber stated he would ask if anyone wanted to speak in opposition or in favor. There being no one, Mr. Schaber closed the public hearing.

Mr. Schaber opened the floor for discussion among the Board. Mr. M. Williams opened the discussion stating that he has done a lot of traveling down in Eastern Ky. for work. He has seen the areas where people live up the "hollows" where roads are really just creek beds until it rains and it becomes a creek again. Mr. M. Williams stated after just a short rain you could literally be trapped there and that bothers him. These old bridges have stood for years. Mr. M. Williams stated he could remember on three separate occasions where he was stranded – once because after the rain, the bridge wasn't there anymore. Half of the bridge just fell down. Mr. M. Williams stated he is very bothered by the bridge in this situation because he could see that whole scenario potentially developing. We have no control over what the federal government declares and it doesn't bother him with Mary Ingles Highway because Mary Ingles Highway was there a long time before any Subdivision Regulations existed. But, if you were going to build that Highway now, it would have to be elevated. Mr. Schaber added like the AA Highway is. Mr. M. Williams agreed. Mr. M. Williams continued that he is truly concerned about a couple hundred cars getting stranded on the other side of the bridge. Mr. M. Williams stated he doesn't see how the Board can afford to ignore these rules. Mr. Schaber stated that safety is one of the guidelines with every decision that we make – safety, health and welfare must be in the highest standard.

Mr. Schaber asked if there were any other comments or discussion. Mr. Bachmann stated that even without the floodway/floodplain, the Ordinance is clear. This is a land-locked piece of property with no road frontage. The Ordinance clearly states a church must be adjacent to an arterial or collector street – not even considering the floodplain issues. Mr. M. Williams advised the Board he was not prepared to just ignore the Regulations. There are times when he might when it is just an aesthetic issue alone and there are no safety factors or issues, but here we have safety issues. This is not just aesthetic. Mr. M. Williams stated he feels very uncomfortable ignoring those safety rules or regulations or whatever else you want to call them.

Mr. Schaber asked if there were any other comments for discussion. There being no further discussion, Mr. Schaber called for a motion. Mr. M. Williams made a motion to accept staff's recommendation to deny #BA-03-12, Theresa R. Lucas, request for a conditional use to build a church. Mr. M. Williams asked legal counsel if his motion was sufficient. Mr. Duncan advised Mr. M. Williams to include in his motion the findings that are included in the staff report as bases for the recommendation and further that it does not meet the minimum requirement for a conditional use application pursuant to the "All Requests" portion of the application. Mr. M. Williams stated he adopted by incorporation what legal counsel just recommended. Mr. Schaber asked if there were any discussion on the motion. There being none, Mr. Schaber asked if everyone understood the motion. Mr. J. Williams asked Mr. Schaber to clarify the motion. Mr. Schaber stated that the motion at hand was to deny the request for approval of the church and that the finding of fact is the staff recommendation as shown in front of you. Mr. Schaber asked again if everyone understood the motion. There being no confusion, Mr. Schaber called for a second to the motion. Mr. Bachmann seconded the motion. Mr. Klear advised that a "Yes" vote was a vote for

denial. Mr. Schaber called for a roll call vote. A roll call vote found Mr. Bachmann, Mr. J. Williams, Mr. M. Williams, and Mr. Mason in favor. Mr. Schaber abstained. Motion passed.

There being no other items of action before the Board, Mr. Schaber recognized Mr. Klear to present the Director's Report. Mr. Klear advised the Board that he did not have a Director's Report for this evening.

Mr. Schaber asked if the Board had any other matters to discuss. There being none, Mr. Schaber called for a motion to adjourn. Mr. M. Williams made a motion to adjourn the meeting. Mr. Mason 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

David Schaber
Vice Chair