

**MURRAY BOARD OF ZONING ADJUSTMENTS  
REGULAR MEETING  
WEDNESDAY, FEBRUARY 16, 2011  
4:30 P.M.**

The Murray Board of Zoning Adjustments met in regular session on Wednesday, February 16, 2011 at 4:30 p.m. in the council chambers of City Hall located at 104 North 5<sup>th</sup> Street.

**Board Members Present:** Scott Seiber, Justin Pounds, Mary Anne Medlock, Steven Reed, John Krieb, Brad Darnall and Bill Whitaker

**Board Members Absent:**

**Also Present:** Candace Dowdy, Peyton Mastera, David Roberts, Reta Gray, Jennifer Tolley, Officer Todd Clere, Hawkins Teague, Mike Pitman, Quentin Hines, Pat Cafferty, Douglas Edwards, Landon Folson, Wayne T. Hall, Angela Thomas, Sue Hood, Richard Reed, William Schell, Teresa Enoch, Jo Crass, Janice Simms, Sarah Fineman, Barry Brown, Harold Fones, Dick Stout, and Steve Harwood

Chairman Whitaker called the meeting to order at 4:30 p.m. and welcomed all guests and applicants. Candace Dowdy swore in new BZA member Brad Darnall. Chairman Whitaker asked if there were any changes, additions or deletions to the minutes from the January 19, 2011 regular meeting.

**Scott Seiber made a motion to accept the minutes from the January 19, 2011 Board of Zoning Adjustments regular meeting as presented. John Krieb seconded the motion and the motion carried unanimously.**

**Public hearing to review the conditional use permit application to operate an outdoor amusement area (go-kart facility) in a B-2 (Highway Business) zoning district – 800 Chestnut Street – Quentin Hines & Bruce Carter:** Candace Dowdy used a Power Point presentation to show the property at 800 Chestnut Street (owned by Tommy Carroll) where Quentin Hines is proposing to operate a privately owned outdoor amusement area (go-kart facility). The property is zoned B-2 (Highway Business) with B-2 to the north and west, G (Government) to the east and south as well as R-3 (Residential) to the south. The property is bordered by the city cemetery on the east, the Parkside Carwash to the north, Randy Thornton Heating and Air to the west, and the City Park to the south. There are also three rental properties to the south of this site. The applicant is looking to lease the front part of the building at 800 Chestnut Street and the vacant lot to the east. Ms. Dowdy said that this type of business is allowed only as a conditional use in a B-2 zone. The race track will be set up on the front of the vacant lot on the asphalt area. Ticket sales, restrooms, and storage of the go-karts will be located inside the building. The business would be seasonal with a targeted opening date of March 1<sup>st</sup> running through October 31<sup>st</sup>. There is ample room for 17 parking spaces in the front and 5 spaces on the west side of the building with additional parking along the east side of the building. The current lighting that existed for the previous auto dealership will be sufficient; therefore, no additional outdoor lighting will be necessary. Ms. Dowdy stated that she was not able to find

any information in previous records where the BZA has ever granted a conditional use permit for a business of this nature. She added that the Planning Staff had contacted other cities to acquire information on go-cart tracks and was unable to obtain anything that was similar to this particular request. Board member Scott Seiber asked Ms. Dowdy about the noise ordinances in other cities. Ms. Dowdy said that they did not research other cities noise ordinances concerning this type of business. Ms. Dowdy said that a go-kart fits the definition of a motor vehicle within Murray's noise ordinance and that noise should be contained within 50 feet of the property line. Board member Mary Anne Medlock asked if the staff had looked at the city ordinances in Cleveland, Ohio and Detroit, Michigan where Mr. Hines's father and uncle have similar businesses. Ms. Dowdy stated that she did not research them, but she did ask Mr. Hines if the businesses were located in close proximity to residential areas. Mr. Hines had indicated that the track in Detroit had frontage on a main street and the back of the business was close to a residential area. Ms. Medlock asked if Murray had an EPA measuring device for emissions. Ms. Dowdy replied that she had spoken to EPA in Paducah about the tires that would be used as barriers and was told that the tires would retain water which will draw mosquitoes. Ms. Dowdy added that Mr. Hines had given her information from the go-kart manufacturer stating that they are EPA approved for environment. Board member Chad Darnall asked if there were any residential areas that were within a 50 foot radius of the proposed track and Ms. Dowdy stated there were none. Ms. Dowdy stated that the right-of-way on Chestnut Street is 70 feet. Ms. Dowdy read a section of Chapter 73 from the Code of Ordinance book stating that *vehicles operated within the corporate limits of the city shall be so equipped as to meet any existing or imposed federal, state and municipal restriction (which) controls governing the emissions of noise, smoke, noxious fumes or other nuisance so as to protect the rights of other individuals in the city and to promote the public safety.* Board member Justin Pounds spent 10 years in the audio-video business and he shared some of that knowledge by stating that a benchmark for a library is 55 decibels. He used an example of doubling the number of go-karts from 10 to 20 and he stated that the decibels would only increase by 2.5 decibels for each go-kart, they would not double. He added that an ambient noise would have to be factored also. Attorney Mike Pitman used an example for the noise issue by saying that if an 18 wheeler came to town and drove down the street that would not be an issue; however, the issue would be if the 18 wheeler drove through town 24 hours a day and circled around and around and around. He said a nuisance would be when a noise would inhibit a person from enjoying the use of their property because of what someone else was doing. Mr. Seiber stated that the noise is in the ear of the beholder and questioned at what point does it become noxious. Chairman Whitaker asked Murray Police Department Officer Todd Clere to come forward to make comments on citing people according to the noise ordinance.

Officer Clere compared a reasonable person to an unreasonable person in complaining about noise. He said that the city has received complaints concerning the fireworks on the 4<sup>th</sup> of July as well as lawnmowers in the middle of the day. He added that they had also received complaints on lawnmowers in the middle of the night, which is obviously not a reasonable time to do certain things. He stated that the police do take consideration as to what time of the day the complaint is aimed towards and what is happening. Officer Clere said that if they have people who continuously complain, they send them to City Hall to speak to the Mayor.

Chairman Whitaker opened the public hearing and asked if there was anyone that wished to speak in favor of the application.

Quentin Hines, 81 Princeton Drive, Murray, KY was sworn in. He stated that he was there to present his company's plan for an outdoor amusement go-kart riding facility with future plans to add miniature golf as well as arcade games. He stated that the proposed go-kart tract will be placed on the 80' X 160' flat asphalt paved lot to the east of the property. Mr. Hines presented pictures to the board of two different ways that the go-kart track can be constructed. (*Pictures were submitted as Exhibit A & B.*) One method is with water filled barriers that interlock together and the second method is the most commonly way with tires securely connected together by tie bolts. The go-karts will be produced and manufactured by J & J Amusement Products with 70 CC Honda engines. They will have all the commercial safety features and will be designed to run at 17 mph. After doing research, Mr. Hines said one of America's leaders in decibel control is Decibel Clear. They produce the decibel chart that says that normal conversation is 50-60 decibels. He added that 2010 Ford Taurus running produces 82 decibels. Mr. Hines said that his manufacturer sent him a spec sheet on the 70 CC engine go-karts with the displacement of approximately 64 decibels and he added that there was very little change in decibels whether the go-kart was idling or was at top speed. Mr. Hines stated that the go-karts should not cause any more of a sound problem than the casual traffic of a 2010 Ford Taurus strolling down Chestnut. Mr. Hines plans to operate the business on a seasonal basis, Sunday through Saturday, 1:00 p.m. through 9:00 p.m. Mr. Hines said that their designers were coming up with a plan to use the water filled barriers on the sides and use the tires for the turns. Mr. Hines worked with his dad for 4 years at his track and he said that you couldn't make a track safe until you lay it down on site and ride it yourself. Ms. Medlock asked about a barrier between the barriers and the right-of-way. Mr. Hines stated that there would be a temporary chain linked fence around the track to keep people from running onto the track in order to keep it as safe as possible. Board member John Krieb asked how many go-karts would be operating at the same time. Mr. Hines stated that the maximum would be 6 with 2 spares. Ms. Medlock asked if there had been any thought to putting the track where they currently were proposing the overflow parking. Mr. Hines stated that within 60 days they plan on paving that parking lot and actually repositioning the track farther back on the lot. John Krieb asked how the use of the track would be coordinated during funeral related activities in the cemetery. Mr. Hines said that there should not be any additional noise than the common flow of traffic already experienced on Chestnut Street. Ms. Medlock asked if there were any smells with the engines. Mr. Hines said there were not. Mr. Krieb asked about the distraction that the go-kart tract might cause to the traffic on Chestnut. Mr. Hines said he did not know how much of a distraction it was going to cause. He expects that it will catch people's eye and he would be open to suggestions as to what he could do to prevent that from happening.

Pat Cafferty, 89 Princeton Drive, Murray, KY was sworn in. Mr. Cafferty is currently a student at Murray State University. He stated that Murray State has been referred to as a "suitcase" school because students pack up their suitcases and leave on the weekends. Mr. Cafferty said that it is unfortunate that there is not a lot to do in Murray and thinks that a go-kart facility would

be an added attraction to the community. The facility would generate more job opportunities and that would also be a positive move for the community and the university.

Douglas Edwards, 1608 College Farm Road, Murray, KY was sworn in. Mr. Edwards stated that he is a lifelong resident of Murray and he is aware of the noise that is already on Chestnut; however, he does not think that go-karts were going to contribute to that problem. Mr. Edwards said that go-karts were not going to be any louder than the crowds at ballgames held at the city park. He added that the community needs something for the children to do and that local churches are even reaching out to other areas for places to send the youth for entertainment. He could see that the land owners on Chestnut Street might be affected by property values, but he feels that this is a “win win” situation. Mr. Edwards said that there was going to be gas & oil sold, additional employment opportunities, a place for the children to go in addition to more family oriented activities for the community. He would like to see the people put money back into this community instead of taking it outside.

Landon Folson, 1608 College Farm Road, Murray, KY was sworn in. Mr. Folson said that the idea is sustainable in that Mr. Hines will be turning a vacant property into something to draw people to the community. Mr. Folson stated that Mr. Hines has a future dream to evolve the plan into something bigger where he would actually outgrow the site and have to move somewhere else. Mr. Folson said that the location is a great place in the town to make people aware of the business. Mr. Folson currently resides near the Murray State University Police Station and hears noise from banging speakers and loud trucks all night long. He said that he does not think that go-kart noise will be any different than the current noises. In conclusion, Mr. Folson said this country is all about taking an old vacated site and making it into a new idea and he wishes for the board to give Mr. Hines that opportunity.

Chairman Whitaker asked if there was anyone that wished to speak in opposition to the application.

Wayne T. Hall, 503 Beale Street, Murray, KY was sworn in. Mr. Hall stated that noise would be his number one opposition. He said that he moved to this area because it was relatively quiet. Mr. Hall stated that noise would be a factor to older people since he likes to take an afternoon nap about the time the go-karts would get rolling. Mr. Hall stated that he had been around go-kart establishments before and from his experience, the noise was much greater than they were being led to believe by Mr. Hines. Mr. Hall concluded that this would be a welcomed attraction for young people; however, he feels that there should be another location that would be more suitable. Mr. Hall presented a letter of opposition from his neighbor that could not attend the meeting. (*The letter was entered as Exhibit C.*) Mr. Mastera read the letter aloud.

Angela Thomas, 416 North 8<sup>th</sup> Street, Murray, KY was sworn in. Ms. Thomas stated that her property is adjacent to the proposed track. Ms. Thomas said that she and her family would be more affected than anyone else in the town if the go-kart facility is allowed to go in across the street from her house. Ms. Thomas read lines from the city noise ordinance: *each resident of the city is entitled to live in an environment in which the level of impulse and amplified noise is*

*minimized for the community good.* Ms. Thomas commended the public officials that wrote the ordinance. She stated that they left no doubt that the ordinance is for the welfare of all the citizens. Ms. Thomas said that the facility will cause her, her family and the residents of her neighborhood to suffer actual, consequential and specific damage which are distinct from the rest of the community. The quality of their lives would be greatly diminished because of the 8 hour continuous noise level, the problem with being able to rent out her 3 units (which make up a substantial part of her total income), the value of her property would be drastically affected, and damage to residents health from pollution. Ms. Thomas stated that she had gone through the neighborhood letting others know of the meeting because the city was only obligated to notify adjoining property owners of the hearing. Ms. Thomas added that she would like to voice an opinion of an elderly neighbor who was unable to speak for himself. That neighbor was greatly concerned as he had buried his wife of nearly 70 years in the Murray City Cemetery less than a month ago. Ms. Thomas urged the board to object to this proposal. She added that she is not against go-kart tracks, but she is opposed to them being located next to a cemetery, a public park, and a residential area. Ms. Thomas concluded with an abbreviated line from the city noise ordinance identifying a noise as follows: *a noise that disturbs a reasonable person of normal sensibilities or endangers, injures or seriously interferes with the quiet enjoyment or the reasonable use of your real or personal property.*

Sue Hood, 405 North 7<sup>th</sup> Street, Murray, KY was sworn in. Ms. Hood stated that the neighborhood has been to the BZA numerous times to try and protect the integrity of their neighborhood. Ms. Hood said that a go-kart facility was a wonderful idea and the people that spoke in favor of it spoke eloquently about why we need one in this community; however, it is not needed on Chestnut Street. Ms. Hood is concerned about the information that is presented by Ms. Dowdy and Mr. Hines to the board and feels that the BZA only has a limited time to decide. Ms. Hood said that she had some research of her own and her findings were that one go-cart can produce from 78-80 decibels of noise. Ms. Hood played a recording of a go-cart sound. She added that she grew up around a go-kart track and the tires were also noisy. Ms. Hood said that this neighborhood is their home. They live there 24 hours a day. They don't start at 1:00 and end at 9:00. They do take naps during the day. Some of the residents work during the night and are required to sleep during the day. Ms. Hood said that she is frustrated that they were even there to plead their case. Ms. Hood said the chain link fence would be obnoxious. Ms. Hood added that there is a day/night average decibel level (DNL) and the EPA has set it for 55 decibels in residential neighborhoods, HUD has set it at 60 decibels, Highway Administration has another decibel level and Land Use Planning has a nationalized standard level of 55 and less for a single family home with extensive outdoor use. She urged the board not to approve the application.

Richard Reed, 311 North 5<sup>th</sup> Street, Murray, KY was sworn in. Mr. Reed stated that he is opposed to the location where they are proposing to put the go-kart tract. Mr. Reed resides and owns rental property in the area and he feels that they will be affected if this application should be approved. Mr. Reed said that the intersection where Arcadia meets Chestnut is already a problem and if the application is approved, it will bring even more problems. Mr. Reed does not think that there should be anything at that location that would attract children from the park; the

possibility of children darting across the busy street could put them in danger. He concluded that Murray does need more activities for their children, but 800 Chestnut is not the place for it.

William Schell, 406 North 8<sup>th</sup> Street, Murray, KY was sworn in. Mr. Schell said that the area is not suitable for a go-kart track because of the small size of the track. He said that locating the track at 800 Chestnut is inappropriate because of the location of the cemetery. He added that his property value would be impacted. Mr. Schell said that whether or not the decibels levels are distracting is not the key element, it is the perception. Attempts to buy, sell, or rent properties in that area will be affected based upon perception. Mr. Schell stated they we do not know the exact noise level that will be produced. He said that it had been stated that the number of decibels would not double if you had two go-karts instead of one; however, the more go-karts that you operate, the greater the noise level. The additional traffic at the corner of Arcadia and Chestnut will increase the possibility of accidents. Mr. Schell suggested that Mr. Hines find a more suitable place for his business instead of locating at the proposed spot that already has a lot of popular discontent.

Teresa Enoch, 804 Olive Street, Murray, KY was sworn in. Ms. Enoch stated that she is probably the most further away from the proposed track than the others that have spoken. She said that there is a difference in hearing a bat hit a baseball at the city park, Racer Band at Murray State University football field, or a Murray High football game than a continuous humming noise of go-karts. She urged the BZA not to approve the application for that purpose.

Jo Crass, Beale & Payne, Murray, KY was sworn in. Ms. Crass stated that she had lived at her residence since 1952 and she watched Chestnut Street develop. She is appreciative that the city has good ordinances and a good Board of Zoning Adjustments and that everything has developed in an orderly manner. She said that this application is not compatible with the neighborhood.

Janice Simms, 712 Olive, Murray, KY was sworn in. Ms. Simms was worried about the animals in the area. Ms. Simms said that an animal's hearing is more sensitive than human's and if this application is approved, the sound of the go-karts will drive the animals nuts. She concluded by saying that the go-kart track was a good idea, but it should be located outside the city.

Sarah Fineman, 202 North 13<sup>th</sup> Street, Murray, KY was sworn in. Ms. Fineman said that she believes in entrepreneurship; therefore, she commends Mr. Hines for wanting to start his own business. Ms. Fineman has only had one experience with a conditional use permit and it was granted in 1988 in Murray to a business located near her home. From time to time that business has trash that spills into Ms. Fineman and her neighbor's yards. Ms. Fineman stated that business has not been in compliance with the conditions that were placed on the CUP since it was approved. Ms. Fineman said that she has made numerous complaints to the city concerning the situation and nothing has been done; thus, she and her 90 year old neighbor call the business and continue to complain. She said that the reason she is bringing this up is because she is concerned that should the application be approved, that it will be the same situation as the CUP that was granted in 1988 and no one will enforce the conditions that might be placed on the

application. Ms. Fineman stated that she is against the business being in the proposed location and she asked the board to deny the request.

Barry Brown, 511 North 7<sup>th</sup> Street, Murray, KY was sworn in. Mr. Brown lives one block from the proposed site and he stated that he has a 2010 Taurus that was mentioned earlier. Mr. Brown said that when he stomps on the gas, it makes a lot more noise than it does when he is just cruising along. He suspects that the manufacturer of the go-karts is going to give the best numbers in order to make that sale. Mr. Brown said when you ride a go-kart you just don't just cruise around: you stomp on it, whip around the curves and then stomp on it again. He added that that was the fun part of it. Mr. Brown is concerned with the noise being a constant nuisance. Mr. Brown stated that he hopes that the BZA denies Mr. Hines's request and that they are able to work with him to find a more suitable location as this is a needed attraction for this community.

Harold Fones, 509 Beale Street, Murray, KY was sworn in. Mr. Fones said that several years ago he lived on 79 East outside of Paris Tennessee where a go-kart track was built across the road from his home. Mr. Fones said that he did not know anything about decibels, but he stated that go-karts are loud. He said that it didn't bother him long because he moved away and rented that house. Mr. Fones stated he is not leaving Beale Street. He added that there is enough noise pollution on Chestnut Street already and he does not wish to have any additional noise. Mr. Fones suggested that the idea be moved to the outskirts of town.

Dick Stout, 805 Olive, Murray, KY was sworn in. Mr. Stout said that since he was only made aware of the meeting on Sunday afternoon by a neighbor, he did not have ample time to prepare; however, he said that he thought enough research had been presented on the levels of noise that go-karts present. Mr. Stout said that he thinks that this idea is a great thing for the children and teenagers of the community; however, he was against the go-kart track being located on Chestnut Street because of the noise as well as the fact that it would also be located next to a cemetery. Mr. Stout added that pollution is another concern of his. He said that if the EPA did a test around a go-kart track, the pollution numbers would be extremely high which will not only affect people that already have respiratory problems, but it could cause respiratory problems in people that do not currently suffer from them. Mr. Stout referred to a go-kart track located on Highway 45 Bypass in Jackson, Tennessee and stated that it is not located in a residential area or near a cemetery. Mr. Stout loves the idea of a go-kart facility, but he thinks that there should be a more suitable place to put the proposed go-cart track other than Chestnut.

Steve Harwood, 416 North 8<sup>th</sup> Street, Murray, KY was sworn in. Mr. Harwood bought his property in 1981 and never imagined that a go-kart track would be proposed to moving into the neighborhood. Mr. Harwood does not believe in go-karts. He said the whole idea in riding a go-kart is not to putter around, but to make it go fast; thus, a lot of noise. Mr. Harwood stated that he owns a farm outside of town and when the state decided to build Highway 80, he lost 10 acres of his property to the state and had no say in the matter. In this situation, Mr. Harwood questioned why this matter would be considered knowing upfront that there was so much opposition. Mr. Harwood said if the go-kart facility was allowed and they were still operating 6 go-karts at 9:00 at night, what would keep them from being opened until 12:00 a.m. since their

objective is to make money. Mr. Harwood said that it is important to him as a resident in the neighborhood not to allow this type of activity and he asked the board members if they would want this in their backyard. Mr. Harwood concluded by saying that there are other places in town that could provide a more suitable location for a go-kart track than the proposed location on Chestnut.

Chairman Whitaker asked for the people that supported the application to raise their hands. Chairman Whitaker then asked for the people that opposed the application to raise their hands. Of the residents that were still in attendance, there were 7 for and 22 against the application. Chairman Whitaker asked if there was any rebuttal.

Quentin Hines said that he heard from several people about their concerns for the noise that would be generated from the go-kart track and he stated that he had researched this to the best of his ability and presented the facts as they were given to him by the manufacturer. He added that there are going to be cars that drive down Chestnut during all hours of the evening and night that are loud and he said that the go-karts would be no louder than the casual traffic. Mr. Krieb asked how long of a duration would a purchased ticket last on the track. Mr. Hines stated about 5 minutes. Mr. Krieb said that in comparison to a vehicle going down Chestnut that the go-kart ride would last a lot longer. Mr. Pounds asked Mr. Hines what his main attraction was to the particular property. Mr. Hines stated that the lighting, paved lot and gravel area for future expansion made it a perfect setting. He said that he had been researching and trying to find a suitable location for two months and he feels that this is that location. Other places that he has found that were comparable to this spot are not for lease, the owners only want to sell their property. Mr. Hines said that Mr. Carroll had been willing to help him and work with him up to this point. Mr. Darnall stated that since the facility would be seasonal, what would happen with the facility when the season was over. Mr. Hines said that everything would be packed up and removed and the facility would look as it does today. Ms. Medlock said that she thinks it is a great idea and that the community needs it; however, she wanted to know how Mr. Hines would convince the neighborhood that he was not going to break the city ordinances (since the perception is already against him). Mr. Hines said that this location offers everything that he needs and that he has worked as hard as he could to obtain information from the manufacturer. He added that he has located a sufficient location and he couldn't just base his decision to open this business off perception.

Sue Hood asked again for the BZA to deny the request based on the noise concerns. Ms. Hood referred to the city ordinance and said that in order for this to be allowed in a B-2 zone it has to have a conditional use and that the ordinance reads that it must be a *privately owned outdoor amusement area*. Ms. Hood does not think that adequately describes a go-kart track. Ms. Hood stated that this area is the oldest community in Murray and she feels that allowing the request would be detrimental to the neighborhood and they will no longer have the peacefulness that they have come to love. Ms. Hood again urged the BZA to deny the request. Ms. Medlock addressed a comment that Ms. Hood had made earlier concerning the board only having an hour to prepare for the meeting. Ms. Medlock clarified that the board gets their packet one week before the meeting and that they do research and try their best to know what's going on before



the meeting. Ms. Medlock said the board has just as much time as the residents do to prepare. Ms. Hood stated that they needed more time to do an adequate amount of research. Mr. Pounds added that the BZA does not have to make a decision the night that the material is presented. If they feel that the information is inadequate they have the opportunity to table it until more research can be done.

Chairman Whitaker closed the public hearing and turned it over to the board for discussion.

Steven Reed stated that he lives in the proposed go-kart area and he thinks that the opposition has presented their material adequately. He does not like the idea of added traffic to Chestnut or the temporary fence and he feels that this will be an eye sore. Mr. Reed stated that he is a small business owner and he supports small business; however, he does not think this is a good location for this type of facility.

**John Krieb made a motion to deny the conditional use permit application as it will adversely affect the public health, safety and welfare of the community, it will alter the essential character of the general vicinity, and it will cause a hazard or nuisance to the public based upon several facts that were learned during the hearing:**

- 1) **It will be an attractive nuisance that could attract children from the park to cross Chestnut Street**
- 2) **It will bring additional traffic loading to the Arcadia and Chestnut Street intersection**
- 3) **There is real and perceived noise that will affect the elderly, young children and the cemetery mourner type of activities that go on the area**
- 4) **The potential impact that be seen on the property values for resale, the potential for rental on the rental units and the use of the property themselves due to the continuous nature of the noise**

**Steven Reed seconded the motion and the motion carried with a 7-0 voice vote.**

Mr. Seiber stated that he thought Mr. Hines made an excellent presentation. He thinks that this is a good idea and he is hopeful that Mr. Hines will continue to pursue this even if it is not allowed in this particular location because this is something that the community needs. Chairman Whitaker said that he thought both sides of the presentation was excellent and he thanked the public for their participation. *Officer Clere left the meeting at 6:45 p.m.*

**Update on Zoning Ordinance revisions** Candace Dowdy informed the commissioners that the Planning Staff is beginning the process of updating the zoning ordinance. Houseal-Lavigne located near Chicago, Illinois has been contracted to assist in the updates. There will be two workshops offered during the evening hours for community input. The first workshop will be held in the Council Chambers on Monday, February 28<sup>th</sup> at 6:00 p.m. All Commissioners, BZA members, and City Council members are invited. People that served on the Comprehensive Plan Advisory Committee are encouraged to attend the next evening. In order to make the revisions effective, input is needed from the members that deal with these ordinances through subdivision, annexation and PDP processes. The second workshop will be held on Tuesday, March 1<sup>st</sup> and

will be opened to the general public including business owners and citizens. Ms. Dowdy added that the updating process could take up to six months.

**Questions and Comments:** Candace Dowdy reminded the board members that they should turn in their W-9's.

Chairman Whitaker stated that he had driven by and taken pictures of John Gray's establishment at the corner of South 4<sup>th</sup> & Sycamore Industrial. Chairman Whitaker said that he had contacted the Planning Staff and asked them to take pictures of the area as well. Mr. Gray was issued a CUP on outdoor storage at his business on September 20, 2006. Peyton Mastera showed pictures from August 2010 that the Planning Staff took and pictures from an e-mail that was received from Chairman Whitaker on December 2010. After receiving the e-mail from Chairman Whitaker, Mr. Mastera said that Mr. Gray was contacted and reminded of the conditions that were placed on the Conditional Use Permit. Mr. Mastera said that a few weeks after he had sent Mr. Gray a letter, he went out and took pictures again. Mr. Mastera stated that Mr. Gray had once again brought his property into compliance and he showed the most recent pictures. Mr. Mastera also showed a site plan entailing where Mr. Gray is allowed to have his merchandise stored in relation to South 4<sup>th</sup> and Sycamore Industrial Street. Mr. Mastera reviewed that Mr. Gray's merchandise is supposed to be behind his front building line and any trailers advertising his business must be in the rear yard. Mr. Gray is to store merchandise within the 25 foot right-of-way area off Sycamore Industrial. Chairman Whitaker asked the BZA members why they were allowing this to go on when Mr. Gray had been before the BZA eight times already and is constantly found to be violating the conditions placed on his permit. Chairman Whitaker stated that the Planning Staff contacts him and then he brings it up to compliance once again. Chairman Whitaker continued that Mr. Gray just didn't get the message; he continually has merchandise out of the boundaries. Mr. Gray has violated all the stipulations and he continues to get away with it. Chairman Whitaker recommended that Mr. Gray be sent a letter to bring him back before the board where they could revoke his outdoor storage. There was discussion concerning other Conditional Use Permits for outdoor storage that were also in violation. Mary Anne Medlock suggested that they revisit each of the ones that were not in compliance. Ms. Dowdy said that the board has actually revoked a Conditional Use Permit that was not in compliance. Before it would be revoked the individual would be given a time limitation to have the area cleaned up and if they are given notice and they do not correct the problem, they go to court and pay a penalty. Mike Pitman read the ordinance to the BZA for not being in compliance to a Conditional Use Permit. The termination of the CUP will be reported to the city and the county attorney would file a misdemeanor at that time for violating a statute. Chairman Whitaker asked if the permit could be revoked if the business was in compliance after the Planning Staff had sent them a non-compliance letter. Mr. Pitman said it could be revoked if there were repeated violations. Scott Seiber compared revoking a conditional use permit to that of firing a teacher with tenor. He said that it is hard to do. Documentation has to be kept consistently. Chairman Whitaker asked if this was the only documentation that Planning Staff has. Mr. Mastera stated that it was not and that he has every picture that has been taken of Mr. Gray's facility and documentation for every time that he has violated the conditions. Ms. Dowdy said that this type of item could be updated in the zoning ordinance. She also said that they

Murray Board of Zoning Adjustments Regular Meeting  
Wednesday, February 16, 2011

---

could contact other cities and see what their ordinance is for outdoor storage. Ms. Medlock stated that she could see the need for a code enforcement person in order to see that BZA decisions are enforced.

Mr. Reed stated that he had previously spoken to several City Council members about the need for a Code Enforcement Officer. Ms. Dowdy said that there had been discussion for the last couple of years concerning the need for an officer; however, that position is yet to be approved in the budget.

Mr. Mastera reported that the Ad Van has their business license and is currently making trips around town. The boxcar truck is a mobile advertising business with changeable signs that are continuously rotating. The vehicle is to remain active and not to remain in one place for very long.

**Adjournment: Justin Pounds made a motion to adjourn. Scott Seiber seconded the motion and the motion carried with a unanimous vote. *The meeting adjourned at 7:45 p.m.***

---

Chairman, Bill Whitaker

---

Recording Secretary, Reta Gray