

DOCKET 1136

DATE OF HEARING	April 1, 2013
NAME	Michael Tarrasch
DESCRIPTION OF PROPERTY	9936 Litzsinger Road
CAUSE FOR APPEAL	Relief from the decision of the Building Official for an addition with violates Section IV, C, (1), (a) of Zoning Ordinance 1175.
RULING OF THE BOARD	The meeting was continued to allow the applicant to consider a plan revision.

MINUTES OF MEETING  
ZONING BOARD OF ADJUSTMENT  
Monday, April 1, 2013

DOCKET 1136  
9936 Litzsinger Road

A meeting of the Zoning Board of Adjustment was held at 4:00 p.m. on Monday, April 1, 2012, at City Hall.

The following members of the board were present:

Ms. Robbye Toft, Vice-Chair  
Ms. Liza Forshaw  
Ms. Elizabeth Panke  
Mr. Fred Goebel  
Mr. John Shillington

Also present were: Mayor Anthony M. Bommarito; Mr. Michael W. Wooldridge, Assistant to the Mayor / City Clerk; Mr. Michael Gartenberg, Building Official.

Vice-Chair Toft called the meeting to order. Notice of Public Hearing, as follows:

NOTICE OF PUBLIC HEARING  
ZONING BOARD OF ADJUSTMENT  
CITY OF LADUE, MISSOURI  
DOCKET NUMBER 1136

Notice is hereby given that the Zoning Board of Adjustment of the City of Ladue, St. Louis County, Missouri, will hold a public hearing on a petition submitted by Michael Tarrasch, 9936 Litzsinger Rd. St. Louis, MO 63124, requesting relief from the ruling of the Building Official who declined to issue a permit for a fence which violates Section IV, C, (1), (a) of Zoning Ordinance 1175.

The hearing will be held at 4:00 p.m. on Monday, April 1, 2013, at the City Hall, 9345 Clayton Road.

The hearing will be public and anyone interested in the proceedings will be given the opportunity to be heard.

Pursuant to Section 610.022 RSMo., the Zoning Board of Adjustment could vote to close the public meeting and move to executive session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney as provided under section 610.021 (1) RSMo.

Stanley Walch, Chairman  
Zoning Board of Adjustment

(Transcript attached as part of the minutes)

Ms. Toft continued the meeting for the applicant to consider a plan revision.

  
Robbye Toft, Vice-Chair

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ZONING BOARD OF ADJUSTMENT  
CITY OF LADUE  
LADUE, MISSOURI

IN THE MATTER OF: )  
)  
MICHAEL TARRASCH ) DOCKET NO. 1136  
9936 LITZSINGER ROAD )  
LADUE, MISSOURI 63124 )

Monday, April 1, 2013

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ZONING BOARD OF ADJUSTMENT

CITY OF LADUE

LADUE, MISSOURI

IN THE MATTER OF:            )  
  )  
MICHAEL TARRASCH            )    DOCKET NO. 1136  
9936 LITZSINGER ROAD        )  
LADUE, MISSOURI 63124        )

BE IT REMEMBERED that on the 1st day of  
April, 2013, hearing was held before the Zoning Board  
of Adjustment of the City of Ladue, Missouri, at Ladue  
City Hall, 9345 Clayton Road, in the City of Ladue  
State of Missouri 63124, regarding the above-entitled  
matter before Bobbie L. Luber, Certified Court  
Reporter, Registered Professional Reporter, a Notary  
Public within and for the State of Missouri, and the  
following proceedings were had.

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A P P E A R A N C E S:

BOARD MEMBERS:

- Ms. Robbye Toft, Chairman
- Ms. Lisa Forshaw
- Mr. Fred Goebel
- Ms. Elizabeth Panke
- Mr. John Shillington

Also Present:

- Mayor Anthony Bommarito
- Mr. Michael Gartenberg
- Mr. Michael Wooldridge
- Ms. Nancy Spewak
  
- Mr. Michael Tarrasch
- Dr. Jonathan Dehner

Court Reporter:  
Bobbie L. Luber  
Registered Professional Reporter #9209  
Missouri CCR #621  
Illinois CSR #084.004673  
Bobbie Luber, LLC  
P.O. Box 31201  
St. Louis, MO 63131  
(314) 993-0911

1                   (The Meeting of the Zoning Board of  
2 Adjustment of the City of Ladue was called to order at  
3 4:00 p.m.)

4                   CHAIRPERSON TOFT: Good afternoon, and  
5 welcome to the Ladue Zoning Board of Adjustment  
6 hearing. My name is Robbye Toft. We have one case  
7 before the Board this afternoon.

8                   I will start today's proceedings with some  
9 general procedural matters that will be incorporated  
10 into the record of the zoning appeal we will hear  
11 today, which is Docket Number 1136.

12                   I would first like to introduce members of  
13 the Board. Starting to my far right is Fred Goebel.  
14 To my immediate right is Ms. Lisa Forshaw. I'm Robbye  
15 Toft. To my immediate left is Elizabeth Panke. And  
16 to my far left is Mr. John Shillington. We also have  
17 present Mayor Bommarito and Council Member Nancy  
18 Spewak. Mr. Mike Wooldridge and Mr. Michael  
19 Gartenberg. Mr. Wooldridge is the City Clerk.  
20 Mr. Gartenberg is with the Building Department.

21                   The Code of Ordinances of the City of Ladue  
22 are incorporated into the record by reference in  
23 Docket Number 1136. The Zoning Code of the City of  
24 Ladue, Ordinance 1175 as amended will be used by the  
25 Board as the basis for reaching a decision in the

1 appeal which is before us today, and we will mark that  
2 as Exhibit A, and it will be included in the record as  
3 the docket number I just read.

4 As part of the record in the appeal we will  
5 hear this afternoon, I will explain the Board's  
6 procedure process. I think you may be the only person  
7 speaking.

8 The applicant in each appeal is given the  
9 opportunity to present reasons why he feels the  
10 variance is warranted based on practical difficulties  
11 or undue hardship. Reasons of economic consideration  
12 and self-inflicted hardship are not considered by the  
13 Board.

14 The Board may have questions of the  
15 appellant. Following that, any member of the audience  
16 who wishes to address the case will be heard. Then  
17 the portion of the hearing for public comment will be  
18 closed and the Board will discuss the matter amongst  
19 itself. We may ask additional questions of the city  
20 staff and the appellant. After the discussion I will  
21 ask if any member of the Board wishes to propose a  
22 motion to approve the requested variance. If a motion  
23 is proposed and seconded by the Board, the Board will  
24 then vote on that motion. Otherwise I will ask the  
25 Board to vote on whether the requested variance should

1 be granted. Four out of five members of the Board  
2 must vote in the affirmative to approve the variance.

3 Finally, we have visited the site. And we  
4 are aware of the circumstances as they physically  
5 exist unless there is something you believe should be  
6 pointed out to us. You don't need to generally  
7 describe the characteristics.

8 I will open the hearing at this time in the  
9 first case, which is Docket Number 1136 concerning a  
10 proposed fence which violates Section IV,C,(1),(a) of  
11 Ordinance 1175. It is the matter of Michael Tarrasch.  
12 Have I pronounced that correctly?

13 MR. TARRASCH: Yes. Thank you.

14 CHAIRPERSON TOFT: 9936 Litzsinger Road,  
15 St. Louis, 63124, requesting relief from the ruling of  
16 the Building Official who declined to issue a permit  
17 for a fence which violates Section IV,C,(1),(a) of  
18 Ordinance 1175.

19 Mr. Gartenberg, would you be kind enough to  
20 explain to us the reason or reasons why the plans were  
21 disapproved so the audience and members of the Board  
22 will have a fair understanding of the issues in this  
23 case?

24 MR. GARTENBERG: Yes, ma'am, I would. The  
25 proposed work is a fence to go around the perimeter of

1 the subject's property, which is ultimately  
2 rectangular in shape. The City Code, the Zoning Code  
3 allows a fence up to 6 feet in height to go along  
4 certain portions of the property. And in other  
5 portions it's limited to 42 inches. That 42-inch  
6 limitation would be along Litzsinger Road frontage,  
7 and the side street as well, Leagram Lane, and then a  
8 return back of 75 feet in the front yard of each of  
9 those properties.

10 So, in essence, what is being proposed,  
11 this fence, a good portion of it, a little bit over 50  
12 percent of it, actually, is limited by a code of  
13 42-inch height that is being proposed to us and 6 feet  
14 in height.

15 CHAIRPERSON TOFT: Mr. Gartenberg, because  
16 the gates are a perpetual issue, I don't see on these  
17 plans that gates for the driveway -- or a gate for the  
18 driveway has been addressed. Has the Building  
19 Department received any detail of what the gate would  
20 be?

21 MR. GARTENBERG: There is no gate proposed.

22 CHAIRPERSON TOFT: That begs the question  
23 then, I guess, how does the homeowner deem access to  
24 his home if they have a 6-foot fence right across the  
25 driveway?

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MR. GARTENBERG: Pardon me?

CHAIRPERSON TOFT: Would this not include a 6-foot fence that would go across the driveway?

MR. GARTENBERG: It's not shown on the site plan per se. The drawing you have is not overly clear, but the actual permit drawing that the city has received frankly doesn't provide much more clarity than that does. But I don't see a fence -- pardon me, a gate shown on it.

CHAIRPERSON TOFT: And, Mr. Gartenberg, I know this isn't a request for a variance for a gate, but can you remind me, if you would be kind enough to remind us of what the current ordinance is on gates? And if I seem to recall, a 3-acre lot size.

MR. GARTENBERG: Under Roman Numeral Section IV,G,D and it states that gates shall not be allowed as part of the driveway entry monument, nor shall they be allowed to be erected or designed to be erected across, over, or adjacent to any driveway within a front yard, or required front yard, whichever is more restricted, except for under certain conditions. I can read those as well.

But I must say, my review of the application was such that there was not a gate included. The project was not reviewed with that in

1 mind.

2 CHAIRPERSON TOFT: And I appreciate that,  
3 and I apologize for putting you on the spot, but given  
4 that the gate was not part of the request, and given  
5 that the proposed fence is going across what appears  
6 to be the only driveway into the home, I'm concerned  
7 if we don't consider the consequences of granting a  
8 variance here with regard to what effect it would have  
9 without a gate. I can't imagine the homeowner wants  
10 to enclose his home and not have any way of getting in  
11 his driveway. So, is this lot one that would fall  
12 within the gates exception?

13 MR. GARTENBERG: The drawing that I have  
14 reviewed does not show the fence going across the  
15 driveway.

16 Excuse me, just a second. The drawing you  
17 are looking at is different than what has been  
18 submitted for permit purposes.

19 CHAIRPERSON TOFT: Okay. That explains our  
20 confusion. Would we be able to see that?

21 MR. GARTENBERG: Absolutely.

22 MR. TARRASCH: Sorry. Yeah. Erroneous  
23 line there, apparently.

24 MR. GARTENBERG: As I said, there is  
25 some -- there is some lack of clarity with this, but

1 it does identify certain such stone columns that would  
2 be 36 inches square, and placed every 60 feet. And  
3 then here is the site plan. Litzsinger Road here.  
4 And the side street -- Leagram I believe is the name  
5 of it -- over here. And the fence is shown at the  
6 perimeter, but appears to having been omitted at the  
7 driveway entrances.

8 To me this was quite clear, there is no --  
9 no gate going across -- or a fence going across there.

10 And then there is a section drawn, actually  
11 what I call section cut showing this clearly  
12 identified as a fence style. There is reference to a  
13 gate, but clearly marked out and fence being put in  
14 there. This has been interpreted, based on this  
15 sheet, and these others just being a fence. And any  
16 communication, whether it be these plans or letter  
17 from the applicant which has come in subsequent to my  
18 denial letter, would bring certain aspects of this to  
19 the surface that I was not aware of.

20 CHAIRPERSON TOFT: Okay. So we are clear.  
21 Your denial letter is premised upon what was submitted  
22 to the Building Department which shows the fence  
23 stopping at the two driveways such as there is no gate  
24 that has been requested.

25 MR. GARTENBERG: Absolutely.

1 CHAIRPERSON TOFT: Okay. Thank you. Thank  
2 you very much.

3 Next we will mark the following documents  
4 to include in the record as exhibits in this appeal.  
5 The public notice of hearing will be marked as Exhibit  
6 B.

7 The denial letter from the building  
8 official dated March 13, 2013, will be marked as  
9 Exhibit C.

10 The list of residents to whom the Notice of  
11 Public Hearing has been sent will be marked as Exhibit  
12 D.

13 The appellant's hearing requesting variance  
14 dated March 6, 2013, and any other letters of support  
15 or opposition to the request for variance will be  
16 marked as Exhibit E.

17 Mr. Wooldridge, do we have any other  
18 letters?

19 MR. WOOLDRIDGE: No correspondence.

20 CHAIRPERSON TOFT: Thank you. The entire  
21 file pertaining to the application, including all  
22 memoranda from staff and consultants to the Zoning  
23 Board of Adjustment and the City of Ladue, will be  
24 marked as Exhibit F.

25 Mr. Gartenberg, what you put before us will

1 be included in that; is that correct?

2 MR. GARTENBERG: Yes, ma'am.

3 CHAIRPERSON TOFT: Okay. Thank you. Will  
4 the applicant and anyone else who may wish to speak on  
5 the applicant's behalf or in opposition please come  
6 forward at this time and the court reporter will swear  
7 you in.

8 (At this time Mr. Tarrasch was sworn in by  
9 the court reporter.)

10 CHAIRPERSON TOFT: Mr. Tarrasch, the floor  
11 is your.

12 DR. DEHNER: I don't want to speak for or  
13 against, but I would like to ask as a member of the  
14 public just a general question, if I may.

15 My understanding at the last Council  
16 meeting there was an extension of the moratorium and  
17 any consideration of fences in Ladue until such time  
18 as the recommendation from the Zoning and Planning  
19 Commission to the Council. And so I'm wondering why  
20 you are considering a fence now, unless this is  
21 something that was before that moratorium took place  
22 six weeks ago -- not six weeks, but long before,  
23 several months, actually, or is this something that's  
24 just coming about because it was months ago it was  
25 applied for?

1                   CHAIRPERSON TOFT: I suspect I know the  
2 answer to that. I probably shouldn't say what I  
3 believe, because we are a Board of Adjustment, and the  
4 question would be whether we can grant a variance. I  
5 suspect that would be why we would still have  
6 jurisdiction, but I will turn it over to the city.

7                   MR. WOOLDRIDGE: I will answer that. It  
8 was submitted in early mid January. The action that  
9 was taken by the Council did not recommend any changes  
10 except the Council desires two small changes that  
11 appear that they are going to approve in April, and as  
12 noted on what is being proposed here.

13                   The condition, if they grant a variance,  
14 can be that if -- the permit not be issued until such  
15 time as the moratorium is lifted.

16                   CHAIRPERSON TOFT: But to answer more  
17 particularly as a Board of Adjustment, we would have  
18 the authority to grant a variance -- or we do have the  
19 authority, in the moratorium, and if we find there are  
20 practical difficulties or undue hardship we would  
21 still be entitled to grant a variance.

22                   MR. WOOLDRIDGE: I would think so.

23                   CHAIRPERSON TOFT: Although, standing, I  
24 mean, the resolution of the moratorium I guess would  
25 not be available to us.

1 MR. WOOLDRIDGE: I would say don't grant a  
2 variance until after the moratorium is lifted. It can  
3 be predicated as a condition.

4 DR. DEHNER: It was my understanding that  
5 no applications were to be entertained until the  
6 Council had made the decision of recommendation from  
7 Zoning and Planning, which is a mystery to me why that  
8 would be acted upon and come to the variance Board.

9 MR. WOOLDRIDGE: I think there is a timing  
10 issue because this was submitted prior to that  
11 moratorium.

12 DR. DEHNER: The first moratorium or the  
13 second moratorium?

14 MR. WOOLDRIDGE: The first one.

15 CHAIRPERSON TOFT: Mr. Tarrasch, you may  
16 proceed.

17 MR. TARRASCH: I'm not sure what all the  
18 timing is about, but this is a reaction on my part to  
19 something that is very concerning, not only to myself  
20 but I'm sure many others in this community, and that  
21 is the apparent uptick and rise in crime.

22 And since you all have visited my property  
23 earlier, perhaps you can see, but I can attest to the  
24 response time. That when something happens the  
25 homeowner is on his own to deal with whatever the

1 conflict may be for probably between 5 and 10 minutes,  
2 which we all know that whatever may have arisen is  
3 done by that time.

4           Since you all were able to view the  
5 property, and on this nice, warm, and sunny day, which  
6 was similar weather to when I drove home a couple of  
7 months ago, and my wife was standing out in our  
8 driveway up by Litzsinger shaking, in a ball, crying.  
9 Fortunately, I had all three children in my car. But  
10 somebody had come and broken into our house in broad  
11 daylight, 4:30 in the afternoon, very similar to this.  
12 And I'm sure you can all appreciate the fact how  
13 violated one might feel -- violated one might feel.  
14 And, secondly, you know, just by a sheer act of God my  
15 three children weren't in the house when this person  
16 came in. One and a half, who many of you may have  
17 seen when you were over at my home, 4 and 6 years old.

18           Again, it goes without saying, I'm sure  
19 many of you feel the same way, you would do anything  
20 you possibly could to protect your children's  
21 wellbeing. I will try to get through this without  
22 getting emotional about it.

23           On that day I decided I was going to have  
24 to do everything in my power to make sure that didn't  
25 happen again. As the response time was, as indicated,

1 quite a few minutes. Whether that person was still  
2 there or not, who knows. He/she may have left out the  
3 back. My wife doesn't know. She ran out the front  
4 door and waited out by the street.

5           There are certain ways to deal with that,  
6 of course. One would be move, which I don't intend to  
7 do. There are cameras that can be put up. There are  
8 fences that can be erected. There are dogs that can  
9 be purchased, which we also did. We now have a very  
10 large dog on the premises in response to that.

11           The last thing myself or anyone else  
12 probably wants to do is put up a big fence around  
13 their property to feel safe. But the reality is short  
14 of going out and buying guns, which I really don't  
15 want to have in my house, I really have no real way to  
16 protect my family for the five or ten minutes that it  
17 takes for the police to show up.

18           The biggest piece of this fence, I believe,  
19 is the piece along Litzsinger Road. I don't think --  
20 while many criminals are very stupid, I don't think  
21 they are going to pull down the lane when there is  
22 only one way in and one way out. Sure enough, that is  
23 not how the robbery took place.

24           It's suspected, and we actually saw it in  
25 retrospect but didn't realize it at the time, that

1 there was a car parked just on the other side of  
2 Litzsinger from my house in one of the driveways of  
3 the two vacant homes that sit there now.

4           They got out of the car. They came in on  
5 the property on the far end away from the lane and  
6 around the back, broke in, and probably exited the  
7 same way. I would like to not have that happen again.  
8 And again, short of having guns in the house, which I  
9 really don't want to do, that's the last thing I want  
10 to do, I'm attempting to do this every other way I  
11 know how, or that it has been suggested, that I can  
12 keep people off of my property that I don't want to be  
13 on the property.

14           Again, there are no gates on there. It was  
15 my understanding I couldn't have a gate even if I  
16 wanted. You know, I don't feel that a person is going  
17 to come in where there is only one way in and out. I  
18 think that would be very foolish to do. Certainly  
19 it's easy enough to park on Litzsinger and run across  
20 my front yard. Nobody out there is going to know that  
21 somebody is not supposed to be there or supposed to be  
22 there. That's why I'm here, trying to erect a fence.

23           And I will answer any questions that you  
24 might have for me. But that, really, I think I have  
25 three or four reasons. Certainly it's for the safety

1 of the kids. Running out on Litzsinger is a priority,  
2 but we watch them too closely, I think, to let that  
3 happen. However, I can't keep people off my property,  
4 and that's why I'm here.

5 CHAIRPERSON TOFT: Your rear yard has a  
6 swimming pool?

7 MR. TARRASCH: Not yet. But that's next.

8 CHAIRPERSON TOFT: You have plans to put  
9 one in?

10 MR. TARRASCH: I do.

11 CHAIRPERSON TOFT: Which is a 6-foot fence?

12 MR. TARRASCH: The 6-foot fence, as I  
13 understand, can either go around the entire property  
14 or can just go around some subset of the property  
15 around the swimming pool. I'm trying to kill multiple  
16 birds.

17 CHAIRPERSON TOFT: I don't know the  
18 swimming pool would allow you to fence the whole  
19 property. I don't know that it would allow you to put  
20 a fence in the front yard. But I was thinking it  
21 might afford you a 6-foot fence in the backyard and  
22 around the sides of the backyard.

23 MR. TARRASCH: I don't believe it's a  
24 6-foot fence all the way around. It's just along  
25 Litzsinger where I don't want people coming on my

1 property.

2 As you all saw, there is a very small  
3 chance of anybody entering these three, it's too  
4 wooded and dense. This is the 6-foot fence. These  
5 are all 4. And I wrote that on here. I messed this  
6 up miserably, obviously.

7 MS. PANKE: So the 6-foot is just across  
8 the Litzsinger section?

9 MR. TARRASCH: Correct. And again, it's  
10 not noted on here, but you probably won't even be able  
11 to see most of this fence by the time I'm done  
12 with the landscaping, because we don't want to see a  
13 fence either.

14 CHAIRPERSON TOFT: In relation to your  
15 property line, or the building setback line, where is  
16 it that you would propose that the 6-foot fence be  
17 located?

18 MR. TARRASCH: Well, since you came up  
19 Litzsinger and you saw the tree line up there, and  
20 kind of pushed back and into that tree line, again to  
21 try to make it disappear up there.

22 CHAIRPERSON TOFT: So on your side of the  
23 tree line, or on Litzsinger Road side of the tree  
24 line?

25 MR. TARRASCH: Well, I would certainly

1 prefer it be on the Litzsinger side of the tree line,  
2 because I would be giving up a lot of yard to do it  
3 that way. It could go down through the middle of all  
4 of that planting as well, which would really be quite  
5 fine with me. Again, it disappears that way.

6 CHAIRPERSON TOFT: Do you know, roughly,  
7 from Litzsinger Road how far back that line of  
8 planting is?

9 MR. TARRASCH: From the middle of the road  
10 or the --

11 MR. GARTENBERG: It would be from the  
12 right-of-way.

13 CHAIRPERSON TOFT: The right-of-way, which  
14 is roughly the middle of the road?

15 MR. WOOLDRIDGE: In some situations,  
16 depending, as we talked earlier, like on Clayton Road  
17 or Ladue Road, it would have to be set back 6 feet  
18 from the road right-of-way.

19 MR. TARRASCH: It's much more than 6 feet.

20 MR. GARTENBERG: The right-of-way line and  
21 the property line are one and the same thing.

22 CHAIRPERSON TOFT: And they theoretically  
23 go roughly to the midpoint of the roadway?

24 MR. GARTENBERG: The right-of-way would go  
25 from the property line south of the road to the

1 property line north of the road. So the road is  
2 located within the right-of-way. The right-of-way is  
3 an area. But the right-of-way line that we are  
4 speaking of is the same line, if you will, as the  
5 front property line of the subject property.

6 CHAIRPERSON TOFT: So, in this case, the  
7 southern right-of-way line would be the property line?

8 MR. GARTENBERG: Yes.

9 MR. TARRASCH: I would guess that's  
10 somewhere around 20 feet, something like that.

11 CHAIRPERSON TOFT: And for your lot, your  
12 plantings are about 20 feet south of your property  
13 line; is that correct?

14 MR. TARRASCH: Yes. Yes.

15 CHAIRPERSON TOFT: Is there anything else  
16 you wish to present at this time?

17 MR. TARRASCH: I don't think so.

18 CHAIRPERSON TOFT: Is there any member of  
19 the public who would wish to make any additional  
20 comments with regard to the appellant's application?

21 Seeing none, does any member of the Board  
22 object to closing the public comment portions of the  
23 meeting?

24 MS. PANKE: I may have a question.

25 CHAIRPERSON TOFT: But may we close the

1 public portion? If there is no objection, then the  
2 public comment portion of the meeting will be closed.  
3 The Board members may still have questions of you.

4 MR. TARRASCH: Okay. Great.

5 CHAIRPERSON TOFT: Does anyone wish to  
6 start the discussion?

7 MR. SHILLINGTON: I'm confused. I  
8 understood he wanted a 6-foot fence all the way  
9 around. Now I'm hearing it isn't so, it's only on  
10 Litzsinger.

11 CHAIRPERSON TOFT: I think from what  
12 Mr. Gartenberg has put in front of us, there is  
13 handwriting on here that indicates exactly what the  
14 applicant has said, and that would be 4-foot fencing  
15 on three sides, with a proposed 6-foot fence on  
16 Litzsinger Road side.

17 MS. PANKE: Is 4 feet within the code? I  
18 thought it was 42. So does that mean a variance on  
19 both heights?

20 MR. GARTENBERG: Well, anything that is not  
21 in the required front yard is subject to a -- is  
22 subject to a 6-foot limitation. If it is in the  
23 required front yard, anything that is within 75 feet  
24 of that property line, be it Litzsinger property line  
25 or the Leagram property line, is limited to 42 inches.

1 MS. PANKE: 42 inches. Okay. So he can  
2 have the 6-foot fence from here to there?

3 MR. GARTENBERG: Yes. And the rest will be  
4 42.

5 MS. FORSHAW: But he is not asking to do 6  
6 feet on some of those sides.

7 CHAIRPERSON TOFT: And because his fronts  
8 on Litzsinger and because of that zoning, if you were  
9 to set back 75 feet, he could have a 6-foot fence?

10 MR. GARTENBERG: Yes, ma'am. According to  
11 the current requirement. It's my understanding, and I  
12 know this secondhand, that the Council is considering  
13 revising that particular requirement. That's one of  
14 the considerations that they are currently involved  
15 with.

16 CHAIRPERSON TOFT: Does that help everybody  
17 define? If the 6-foot fence were proposed to be 75  
18 feet back from the Litzsinger Road property line then  
19 it would require no variance.

20 MR. SHILLINGTON: Up here it does?

21 CHAIRPERSON TOFT: Yes. If you come within  
22 that 75-foot setback, then a variance would have to be  
23 required for it to be more than 42 inches in height.  
24 Have I stated it fairly?

25 MR. GOEBEL: You are looking at me. I'm

1 not an expert.

2 CHAIRPERSON TOFT: If the fence were at the  
3 75-foot building line, or within, no variance would be  
4 needed, because it is within the first 75 feet of the  
5 property on Litzsinger Road; to be more than 42 inches  
6 a variance is required?

7 MR. GARTENBERG: Yes. 42 inches or less a  
8 variance would not be required.

9 MS. FORSHAW: You are making another point,  
10 I think, Robbye. I think you were asking  
11 Mr. Gartenberg to confirm that a 6-foot fence would be  
12 allowed on Litzsinger if it were at least 75 feet back  
13 from Litzsinger Road.

14 CHAIRPERSON TOFT: Yes. Is that correct?

15 MR. GARTENBERG: Under the current  
16 requirements, again with the moratorium in place, it's  
17 my understanding the Council is giving consideration  
18 to amending that particular aspect to the point where  
19 the limitation would be not required in the front  
20 yard, the 42 -- pardon me, the 42-inch limitation to  
21 the required front yard; but for the front yard, which  
22 would take it back to the building. Is that clear?

23 MR. SHILLINGTON: Not really.

24 CHAIRPERSON TOFT: The proposal now before  
25 the City Council is that if the fence were located

1 anywhere within the front yard, which would be from  
2 the home all the way to Litzsinger Road, then it could  
3 not be 6-feet tall. Currently, as the code reads, he  
4 could have a 6-foot fence starting at 75 feet into the  
5 property line, so he could have a 6-foot fence  
6 anywhere from here up to the house.

7 MR. SHILLINGTON: And no variance required?

8 CHAIRPERSON TOFT: With no variance  
9 required. But to have a 6-foot fence -- if this is  
10 passed, the 6-foot fence would have to begin at the  
11 house, and go, in this case, to the south. Did I  
12 explain that well?

13 MR. SHILLINGTON: I think you did all  
14 right. It doesn't make much sense, but that's the way  
15 the regulations are to me.

16 CHAIRPERSON TOFT: I think the very being,  
17 if I recall prior cases, that a tall fence, the  
18 further back it is into the property the less of a  
19 visual obstruction it is. And then you can get to the  
20 50 percent open, or not 50 percent open, you know, how  
21 much of a stockade fence it's going to be. But the  
22 theory being that if you take it back to your property  
23 line, if you could build a house there, then you ought  
24 to be able to put a 6-foot fence there. I believe  
25 that being the theory behind it.

1 MR. TARRASCH: Can I comment now that I  
2 understand that too. I wasn't aware of that either.

3 CHAIRPERSON TOFT: That's quite all right.  
4 You are the only case before us, and so go ahead.

5 MR. TARRASCH: Visually, again, as you may  
6 have noticed, there are many fences around there that  
7 are 42 inches, many of which have crossbars this thick  
8 in the driveway. I'm wanting to erect a black picket  
9 fence, and push it into a bunch of growth. I don't  
10 think anyone will even see it. Of course, somebody  
11 may notice it at first, but I hope it's not  
12 aesthetically displeasing.

13 MS. PANKE: Here is one thought. Of course  
14 we are all dealing with this and we all understand.  
15 You would want the fence to be sort of visible, right,  
16 though, so your house isn't chosen; right? If you are  
17 driving down looking for which house is the easiest to  
18 get in and out of, you kind of do want the fence to be  
19 visible.

20 MR. TARRASCH: Absolutely.

21 MS. PANKE: So it is going to be visible.

22 MR. TARRASCH: To someone driving slowly  
23 and casing my house. I'm sure they will pick up there  
24 is a fence there.

25 MS. PANKE: And I think if there is a fence

1 there, the question is, how high does it need to be to  
2 be a deterrent? A fence is going to deter the easy  
3 mark. It's not an easy mark once there is a fence  
4 there, and there is limited getting in and out.  
5 Whether the 42 inch versus 6 foot -- the 42 inch is  
6 going to do it, or is it going to be the 6 foot going  
7 to do it. I think that's what we are all struggling  
8 with in our own houses.

9 CHAIRPERSON TOFT: So whether an additional  
10 30 inches of height will add --

11 MS. PANKE: Just having a fence, is that  
12 the deterrent, or does it need to be a certain height  
13 to make a difference?

14 MR. TARRASCH: In my estimation, yes. When  
15 I was 20 I could jump right over 42 inches, no  
16 problem. I might even still be able to.

17 MS. PANKE: But not carrying a stereo.

18 MR. TARRASCH: They don't take stereos,  
19 just all of my wife's jewelry. You can jump over a  
20 fence with a bag of jewelry.

21 MS. FORSHAW: Does anyone have any  
22 recollection of the situation with other houses along  
23 Litzsinger Road and our history of granting or denying  
24 variances? It seems to me we denied one in the last  
25 year or two.

1 MR. GOEBEL: I think that was on  
2 Old Warson, and we did deny one on Old Warson. I  
3 think the question there was a solid fence, and a  
4 height, and berm, and other things as well. And the  
5 house was right at South Warson. I don't think it was  
6 off of Old Warson frontage at all.

7 MR. WOOLDRIDGE: But you did grant a  
8 variance on South Warson just south of Litzsinger.

9 MS. FORSHAW: It was a replacement of an  
10 existing fence, I think.

11 MR. WOOLDRIDGE: No. Across the street  
12 there was a wrought iron fence put in where they  
13 wanted to fence the whole yard. And they used the  
14 reason that they had a pool, and they were trying to  
15 protect their kids from the horses next door.

16 MR. GARTENBERG: Right at Somerset.

17 MR. WOOLDRIDGE: Just before Somerset.

18 MR. GARTENBERG: Several years ago.

19 CHAIRPERSON TOFT: And those weren't just  
20 horses, but those were barrel-jumping horses. And  
21 there was a stable. There were lots of things, yes.

22 MR. GARTENBERG: And it was a flag lot.

23 CHAIRPERSON TOFT: Yes. And I remember  
24 that distinctly, because there were so many swimming  
25 pools backing up to that, that if each homeowner had

1 elected a 6-foot fence they would have had a solid  
2 wall, multiple walls, because almost everybody had a  
3 swimming pool adjacent, so that was a pretty well cut  
4 and dry case. The Fisher case --

5 MR. WOOLDRIDGE: That was Old Warson.

6 CHAIRPERSON TOFT: That was Old Warson.

7 Okay. Is that the one you are speaking of? I can't  
8 remember if the variance was granted.

9 MR. GARTENBERG: It was not.

10 MR. WOOLDRIDGE: It was turned down.

11 Because I believe, as Mr. Goebel said, they were  
12 putting it on a berm, and it was not an open-style  
13 fence.

14 CHAIRPERSON TOFT: Right.

15 MR. GOEBEL: Am I correct, we don't have  
16 any neighborhood letters of commentary that are in  
17 support or in objection to this?

18 CHAIRPERSON TOFT: None. One way or the  
19 other.

20 MR. GOEBEL: Not across the street, not on  
21 Leagram, or anything like that? There are no letters  
22 one way or the other?

23 CHAIRPERSON TOFT: I would say that the  
24 Leagram home has -- is there a 6-foot fence on Leagram  
25 or 4-foot?

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MR. WOOLDRIDGE: 4-foot.

CHAIRPERSON TOFT: And what they are doing on Leagram.

MS. FORSHAW: 42 inches, right?

CHAIRPERSON TOFT: Well, 42 in the front yard. 4 feet on Leagram, or 42 inches?

MR. GARTENBERG: 42 inches. Anything within that 75 foot.

CHAIRPERSON TOFT: On the Leagram side they can go 4 feet?

MR. GARTENBERG: No. It's still a front yard. It is basically two front yards.

MR. GOEBEL: The applicant is asking for 4 feet on Leagram, and 6 feet on Litzsinger?

CHAIRPERSON TOFT: So that would actually be two variances, one on the Leagram side by 6 inches, and then 30 inches on the Litzsinger side.

MR. TARRASCH: The lady next to me put a 5-and-a-half-foot chicken wire fence up the other day, but I think the city asked her to remove it. So she didn't write a letter, I guess.

CHAIRPERSON TOFT: I think we are familiar with that neighbor.

MR. TARRASCH: I'm sure you are.

MS. PANKE: In the Zoning Ordinance number

1 8 it says that we have the discretion to permit a  
2 fence up to 6 feet in height in a required front yard  
3 where the yard abuts a major thoroughfare. And I  
4 don't know, I can't imagine Litzsinger as a major  
5 thoroughfare. It is the road, but it is not a major  
6 thoroughfare.

7 CHAIRPERSON TOFT: It has not heretofore  
8 been considered by the Zoning Board of Adjustment to  
9 be a major thoroughfare. I can say that. I think we  
10 had the one fence on Clayton Road, that was considered  
11 a major thoroughfare.

12 MR. WOOLDRIDGE: They were removing a  
13 6-foot cyclone fence, chain link, and replacing it  
14 with wrought iron.

15 CHAIRPERSON TOFT: Right. And we granted a  
16 variance under the theory that Clayton was a major  
17 thoroughfare.

18 MR. GARTENBERG: We do have those major  
19 thoroughfares specified in our code.

20 MS. FORSHAW: Could you tell us, Mike,  
21 because Mike Wooldridge couldn't remember if there was  
22 a definition.

23 MR. TARRASCH: People with three small kids  
24 and any more than one car per hour, I would guess.

25 MS. FORSHAW: Incidentally, the time on

1 Clayton Road had another issue involved, which is it's  
2 an institution, which is covered by another section of  
3 the ordinance.

4 MR. GOEBEL: A lot of times when we  
5 consider things here at the Board, they have to do  
6 with the aesthetic affects on the community. They are  
7 about appearance, they are about land use, they are  
8 setbacks in relation to neighbors' homes, visibility,  
9 things like that. I think when it comes to fencing,  
10 and particularly in the case of the applicant, it  
11 crosses the line here to a subject that frankly is a  
12 little out of our knowledge which has to do with  
13 community policing and security.

14 You know, I guess when I look at this -- I  
15 have a fence. It's not 6 feet, but it had to do with  
16 dogs originally. But I'm certainly sensitive to the  
17 fact that there is a shock affect that comes along  
18 with any community crime.

19 And I guess maybe the question in my mind  
20 is, you know, there is security, and then there is the  
21 semblance of security without it. I guess I would  
22 hope, that whatever we approve accomplishes what the  
23 applicant wants to do, which is to increase security.  
24 But there is a side of me that knows that it's not  
25 getting out the product that's the consideration here,

1 it's the danger to people, you know, for things.  
2 There is insurance. For people, it's not like that.  
3 But without gates, I don't think it accomplishes that.

4           Without -- and I'm afraid it's not so much  
5 the getting out part that I would be concerned about,  
6 it's the getting in part. If we don't prevent them  
7 from getting in, the getting out could take 5 minutes  
8 or it could take 5 hours. And the terrible things  
9 that can happen in any duration are pretty serious  
10 considerations.

11           I guess I say all of that because I would  
12 hope that whatever provisions the applicants take  
13 doesn't depend on this fence, because I'm here to the  
14 tell you that it will not accomplish the kind of  
15 personal safety that is the essence of what drives  
16 this.

17           This, along with other things, is a big  
18 expense. And I can certainly appreciate the need for  
19 safety in a home. Especially if you have experienced  
20 a theft or something. I have to say I have not. But  
21 in a city like ours, in any given year, we have lots  
22 of instances. Some which gratefully turn out to be  
23 the way that this one did, which was no violence. But  
24 there are others that turn out greatly different.

25           I would just hope, you know, that when we

1 talk about like fencing, we keep in mind that there  
2 are a lot of elements to being safe in a home.  
3 Fencing can be one of them. But, you know, with a  
4 separated home like this away from neighbors, it's  
5 very hard to know who is really there and who is not.

6 I'm just afraid by approving a fence there  
7 is a semblance of security without it. You know,  
8 someone can get over the fence. By the time they are  
9 over the fence, I'm afraid the danger is done.

10 Getting out -- I mean, in crime reports all  
11 the time, you hear someone being attacked in the home  
12 and they drive the homeowner's car out. Or they take  
13 them to an ATM. Or things like that. But, again,  
14 that's way beyond our abilities. We are a Zoning  
15 Board dealing with fencing issues. Most of the time  
16 it's about aesthetics or the affects on the neighbors.  
17 This is not. This is truly a gentleman who has a real  
18 security concern. And I'm afraid a fence, whether  
19 it's 4 feet or 6 feet, is not enough to accomplish  
20 that.

21 This is the dialogue part with you, but I  
22 would say I'm almost inclined to agree with the  
23 gentleman, if he thinks the fence is important, let's  
24 give him the fence. If he thinks it has got to be 6  
25 feet, let's give him a 6-foot fence. But I hope no

1 one leaves the room thinking that that can be enough  
2 to achieve personal security in a home.

3 You know, there is a fencing part. There  
4 is the issue of what our Board does, but there is a  
5 lot that goes into security of the home that addresses  
6 the concerns of the applicant.

7 MS. PANKE: Well said. But if we think the  
8 reason we don't have a 6-foot high ruling allowable is  
9 so that a narrow road like Litzsinger doesn't become a  
10 walled tunnel. So for the aesthetic viewpoint, as  
11 much as the 6-foot fence is reassuring to the  
12 homeowner, do we want -- then the next neighbor has to  
13 have it, and pretty soon we have a wall along  
14 Litzsinger Road. So it's 42-inch high down Litzsinger  
15 Road, is that a walled road?

16 MR. GOEBEL: I agree with that, and I would  
17 add to that. And even with all the fences, I would  
18 say -- I would contend that no one is yet safe,  
19 because we still haven't gotten to the point where the  
20 people with fences are safe, because there is a lot of  
21 things that go into it being safe, and not just a  
22 fence.

23 MS. FORSHAW: Mr. Gartenberg, did you find  
24 the definition of a major thoroughfare in the  
25 ordinance?

1                   MR. GARTENBERG: Well, the streets that are  
2 listed here under fence regulations where we have  
3 interpreted over the years as being such, it states --  
4 it speaks specifically to double frontage or corner  
5 lots in residential districts. It says: Fences in  
6 yards that abut Clayton Road, Conway Road, Dielman  
7 Road, Ladue Road, Lindbergh Boulevard, McKnight Road,  
8 Price Road, and Warson Road may be erected up to 6  
9 feet. It doesn't specifically state these are fitting  
10 that definition. That has been the application over  
11 the years.

12                   MS. FORSHAW: Thank you.

13                   CHAIRPERSON TOFT: And I apologize that my,  
14 perhaps, personal feelings are coming into play here,  
15 but my neighbor's home was broken into this year. And  
16 I live very close, and they were highly disturbed by  
17 it, understandably. And we live on a street where I  
18 guess having heard that, she could put a 6-foot fence  
19 up. I would be horribly upset if they put a 6-foot  
20 fence up. And I don't care if it were the most  
21 magnificent fence. I would be horribly upset if she  
22 encased her property with a 6-foot fence, because  
23 then, quite frankly, then I would start to feel that  
24 now I have become a target, and I don't have a fence  
25 and so now I have to put a fence up. I think that

1 once this happens, my perception is, and I have seen  
2 this in neighborhoods where somebody puts iron bars up  
3 at their front door, and you drive by a year later and  
4 all of a sudden all of the front doors have iron bars  
5 on the doors and the windows, and the community starts  
6 to look pretty different when that starts to take  
7 place.

8 MS. FORSHAW: I would concur that the  
9 6-foot fence is a very high fence, and it would be  
10 unfortunate if that became a pattern along Litzsinger  
11 Road. And I guess I would also point out, apparently  
12 under the current law there could be a 6-foot fence  
13 just with the greater setback on Litzsinger if you  
14 really wanted to have one, except with the issue of  
15 moratorium and the possible amendment of the ordinance  
16 by the Council, which makes me a little uncomfortable  
17 about doing anything at this point given with what is  
18 going on with Council.

19 CHAIRPERSON TOFT: Are you proposing that  
20 we hold this in abeyance until such time that Council  
21 makes a decision on the fence height issue in the  
22 front yard?

23 MS. FORSHAW: I think I am personally  
24 uncomfortable with approving a variance today given  
25 that an alternative exists to have a 6-foot fence

1 without a variance under current law, although we have  
2 the backdrop of the moratorium and the possible change  
3 in the law, and I feel -- I don't feel prepared to  
4 grant a variance at this time.

5 CHAIRPERSON TOFT: If there is one other  
6 member of the Board who has a similar feeling, I would  
7 say if we call for a vote on this then those votes  
8 would be negative, in which case the homeowner would  
9 be turned down. So I guess we have an option of  
10 either, I can see if there is someone who wishes to  
11 make a motion, or if I hear another Board member  
12 express that they are not willing to vote on the  
13 matter given the pending moratorium, then I would say  
14 we need to continue the case until such time as the  
15 City Council votes on the fence height issue. So let  
16 me ask, is there anyone else?

17 MR. SHILLINGTON: A continuance, or turn it  
18 down.

19 MS. PANKE: Yes, continuance.

20 MS. FORSHAW: If we were to vote it down, I  
21 think the applicant would be barred from bringing it  
22 for quite a while.

23 CHAIRPERSON TOFT: For six months.

24 MS. FORSHAW: It would be better to  
25 continue it than to vote it down from the applicant's

1 standpoint.

2 CHAIRPERSON TOFT: I think, Mr. Tarrasch,  
3 what they are saying is, if someone were to make a  
4 motion in favor of this, it would require four people  
5 to vote, and there have already been two members who  
6 expressed that they would be unwilling to vote in  
7 favor given the City Council's consideration of the  
8 fence height issue.

9 So, rather than if that motion were made to  
10 approve it by one member of the Board, knowing that it  
11 would fail, given the inclinations that have been  
12 cited, we are going to continue this until such time  
13 the City Council rules.

14 I suppose your options would be -- and I  
15 understand how you feel. I truly do. And I had a  
16 strange person walk into my house one night, and I  
17 still think about it, and it has been a decade. And  
18 so I understand how you feel. Not that you would want  
19 to invest in a 42-inch fence now in the meantime, but  
20 that would be an option, I think that you could get a  
21 building permit on the side yard and front yard -- or  
22 your two front yards, actually, 42 inches in height,  
23 without any need for us to vote, and not that you  
24 would want to go and invest in a higher fence. But  
25 you are not precluded by our decision to continue this

1 from erecting a fence that does not require a variance  
2 be granted; does that make sense to you?

3 MR. TARRASCH: What you said makes sense.  
4 Is that right along Litzsinger and Leagram, I can put  
5 a 42-inch fence up?

6 MR. GARTENBERG: Yes.

7 MR. TARRASCH: No matter where it is? As  
8 close to the fence as I want?

9 MR. GARTENBERG: Within a matter of a few  
10 feet, absolutely.

11 MR. TARRASCH: Okay. Great. I have to ask  
12 the question, because I'm very curious, and this is  
13 very personal, extremely personal. What is the levy  
14 against me should I erect a 6-foot fence?

15 MS. FORSHAW: The city will require you to  
16 take it down.

17 MR. WOOLDRIDGE: If you put it up without a  
18 permit, you will be summoned to court. You could be  
19 subject up to, I think it's \$1,000 a day in fines.  
20 And you would have to take it down.

21 MR. TARRASCH: That sounds fairly steep,  
22 1,000 a day.

23 MR. WOOLDRIDGE: It may be 500. I can't  
24 remember what the actual amount is.

25 CHAIRPERSON TOFT: And then you have to it

1 take it down anyway.

2 MR. GOEBEL: But under the current  
3 ordinance, along Litzsinger Road, if you stay back to  
4 the 75-foot building line, the current ordinance  
5 allows you to put up a 6-foot fence today without a  
6 variance. It wouldn't be in the landscaping.

7 MR. TARRASCH: No. It would be right in  
8 the middle of the front yard.

9 MR. GOEBEL: Well, except for the  
10 moratorium, but the ordinance today addresses that.

11 MR. WOOLDRIDGE: But I feel somewhat  
12 confident that that will change to 42.

13 MR. TARRASCH: Yes. It doesn't sound as if  
14 the future is brighter for my case given a continuance  
15 or not. That's why I asked the other question. I'm  
16 trying to avoid buying guns. But there are no choices  
17 out there in the country.

18 CHAIRPERSON TOFT: And please don't think  
19 it's a group that is not sympathetic to your concerns  
20 at all. I think one of the reasons why most of us  
21 live here is one of the nice things about Ladue is  
22 that we have --

23 MR. TARRASCH: It used to be.

24 CHAIRPERSON TOFT: Yes. And to lose that  
25 sense of security is a horrible thing to lose.

1 MR. TARRASCH: Yes, it is.

2 CHAIRPERSON TOFT: And it may take a while  
3 to get it back. And I hope you do get it back. The  
4 problem for us is that we have had -- almost everyone  
5 who has sought a gate or a fence has come in with an  
6 instance of a drunk kid stumbling in, or some person  
7 driving around, you know, at 3:00 o'clock in the  
8 morning. Everybody, thankfully, has not had --  
9 everyone who has ever had confrontation with that  
10 person, other than the teenager that sat down at the  
11 kitchen table with the family members.

12 Most everyone who has sought a variance  
13 from us has had an incident that has been very  
14 upsetting to them, and triggered a request for a gate,  
15 or a tall fence, or something like that. Without  
16 exception we have turned them down. So I'm just being  
17 very honest with you. And thankfully we have not had  
18 any home invasion where people have been injured in  
19 that home invasion. And maybe it's because of that,  
20 that we remain as steadfast as we are in our  
21 reluctance, because we wouldn't want a neighbor to do  
22 it to you, and then to make you any more likely to be  
23 broken into than they are.

24 MR. TARRASCH: Of course. I had to be the  
25 statistic, however.

1                   CHAIRPERSON TOFT:  And you have a lovely  
2 family.

3                   MR. TARRASCH:  I will tell you, it's a  
4 little troubling to me, and I mean no disrespect by  
5 this.  But by saying it forces my hand to put up a  
6 fence if my neighbor puts up a fence, because I don't  
7 want to be more of a target.  I'm worried about me  
8 being a target, and I want to do anything I can to  
9 defend my family, my children.  You know, I guess --

10                  MS. FORSHAW:  Your big dog is probably an  
11 even better solution.

12                  MR. TARRASCH:  I hope so.  Alarm, dog.  I'm  
13 trying to do everything I can to avoid being the place  
14 where violence happens.  A fence seems like a very  
15 nonviolent way to help achieve that, but at any rate.  
16 Very good.

17                  CHAIRPERSON TOFT:  Thank you very much.

18                  MR. TARRASCH:  Thank you.

19                  CHAIRPERSON TOFT:  With that, we are  
20 adjourned.

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CERTIFICATE OF REPORTER

I, Bobbie L. Lubber, Registered Professional Reporter, Certified Court Reporter, and Notary Public within and for the State of Missouri, do hereby certify that the meeting aforementioned was held on the time and in the place previously described.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.



Bobbie L. Lubber, RPR, CCR #621

