

MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT

MARCH 7, 2011

NEW BUSINESS:

CASE NO. B-15314-11

Applicant/Owner: River Metals Recycling, LLC
Pat Wells, Vice President of Operations
2114 Metal Lane
Louisville, Kentucky 40206

Attorney: Glenn Price
Frost Brown Todd, LLC
400 West Market Street, Ste. 3200
Louisville, Kentucky 40202

Subject: An application for the modification of an existing Conditional Use Permit to allow for a scrap metal processing facility to allow a metal sortation facility within a 60,000 square foot building and a sound barrier for a shredder.

Premises affected: On property known as 2114 Metal Lane and being in Louisville Metro.

COUNCIL DISTRICT 9—Tina Ward-Pugh
Staff Case Manager: Steve Hendrix, Planning Supervisor

Appearances for Applicant:
Glenn Price, Attorney, 400 West Market Street, Suite 3200, Louisville, Kentucky 40202; who submitted revised conditions of approval and other information into the record.

Neal Coulardot, General Manager of Operations, River Metals Recycling LLC, 2114 Metal Lane, Louisville, Kentucky 40206.

David Jones, Senior Project Engineer, HFP Acoustical Consultants Inc., 6001 Savoy Drive, #115, Houston, Texas 77036.

Phil Bills, BTM Engineering, 3001 Taylor Springs Drive, Louisville, Kentucky 40220.

Appearances- Interested Parties:
Meme Sweets Runyon, 643 W. Main Street, Louisville, Kentucky 40206; submitted a landscape plan into the record.

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Paul Bickel, 2205 River Road, Louisville, Kentucky 40206; who submitted photographs into the record.

Appearances Against Applicant:

Peggy Heuser, Heuser Clinic, 2040 Metal Lane, Louisville, Kentucky 40206.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On February 16, 2011, River Metals, LLC filed an application to modify an existing Conditional Use Permit for a metal sortation facility within a 60,000 square foot building and a sound barrier for a shredder.

On March 7, 2011, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The audio/visual recording of this hearing will be found on the DVD of the March 7, 2011 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

9:41:43 Staff case manager, Steve Hendrix, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the subject site is between the Ohio River and River Road; and that explosions have occurred in the shredder facility. He said the plan meets applicable policies of the Comprehensive Plan and the listed requirements. He said the request will allow for increased recycling and the sound barrier wall should reduce the noise level by ½. He said he believes it will also absorb ground vibrations but the Board should verify this with the applicant's sound expert.

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SUMMARY OF TESTIMONY OF PROPONENTS:

9:47:20 Glenn Price, the applicant's attorney, said they already received approval from the Waterfront Development Corporation. He said River Metals is one of the largest recycling facilities in the area and employs 140 people and been in business since the 70's. He said the new request will add 25-30 more jobs at this facility. Mr. Price submitted revised conditions of approval he worked out with Ms. Runyon, Executive Director of Riverfields, Inc. and Paul Bickel who owns the building at 2205 River Road. Mr. Price submitted a new landscape/screening plan and said they will replace the trees and shrubs that have died. He said they will plant whatever species Riverfields and Planning & Design's landscape architect prefers. Mr. Price said they will also clean the dirt and debris along Meadow Lane. Mr. Price presented a PowerPoint presentation to the Board showing the two areas where suppliers drop off the metal. He said the price of steel has increased, so suppliers are weighing their loads down with propane tanks, which explode once they reach the shredder. He said the explosions are not dangerous to anyone who works there or in the area, but have been a source of annoyance. They want to reduce the amount of explosions, but cannot totally eliminate them. He said the proposed sound barrier wall will reduce the noise by ½; and submitted a rendering of it into the record.

10:00:50 Neal Coulardot, the General Manager of Operations, with River Metals Recycling, said the building is truly "green" and will provide 30 more jobs. He said the sorting building will reduce the waste in the landfill; and the technology is top notch. He said there will be an increase of 10 trucks per day, which is minimal. He said they are implementing several corrective measures to deal with the dust by adding another 5,000 gallon water truck to keep the dust down and wash off roads; and have also paved some of the ground which will help. He said they'll be reducing the amount of explosions by inspecting the cars in two areas for propane tanks. Member Grisanti asked what they do to companies that deliver combustible items. Mr. Coulardot said they will not be able to deliver anymore materials to their business. Member Ligin asked why the explosions are not dangerous to anyone. Mr. Coulardot said the debris cannot fly out or the shredder; and that no injuries have occurred. Member Grisanti asked if it is a common occurrence. Mr. Coulardot said yes, in the shredders. Member Allendorf said he's dealt with this issue before and other recycling companies take the gas tanks out or drill a hole in it which eliminates most of the explosions. Member Allendorf asked if he would agree to this as a condition of approval. Mr. Coulardot said they will require the suppliers to do

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this. Member Proffitt asked where the sound barrier wall begin and end. Mr. Coulardot said it will be by the shredder approximately 60X50 feet long. Member Proffitt asked about the noise levels and ground vibrations. Mr. Coulardot said he would defer this question to their sound expert.

10:15:36 David Jones, the sound expert, said he was hired by River Metals to design a sound barrier wall. He said his report is in the staff report starting on page 27. He said according to the study, there will be a 12 decibel reduction or a 50% decrease in noise. He said the numbers look high, but not by human perception. He said the ground vibrations are not significant, and are mostly from a pressure wave which might be perceived to be coming from the ground. Member Wagaman said although there may be a reduction feels it would still make people who work in the area jumpy and nervous. Member Jarboe asked if most of the explosions are from gas tanks in the cars that they crush. Mr. Price said no, it's the propane tanks from the suppliers; and that the chamber in the shredder is able to withstand the explosions. Mr. Price said River Metals has increased the number of employees to inspect the cars, which will also reduce the number of explosions. Member Fishman asked if there were explosions prior to the price of steel going up. Mr. Coulardot said yes and that since February, they've only had 3 to 4 explosions. He said they process 800 to 1,000 cars per day.

10:51:49 Member Proffitt asked if they will measure the noise post construction; and what they will do to further mitigate noise if the sound wall doesn't contain it. Mr. Price said they can't totally eliminate the explosions, but will meet with Mr. Bickel if he desires. Mr. Jones said it's difficult to do a post construction transmission test; but said that the people in the area will be able to tell the difference. Member Proffitt asked if they would take additional measures if it doesn't work out. Mr. Price said yes.

10:59:26 Phil Bills, with BTM Engineering, was sworn in. Member Proffitt said considering the dust problem doesn't see any paved areas on the plan. Mr. Bills said some areas are not paved due to the supplier trucks; and said they would destroy the pavement. He said there are various pavement materials to accommodate the business such as pavement, gravel and dirt. Member Proffitt questioned water retention, detention and erosion. Mr. Bills said MSD has approved their plan; and Mr. Price said the land is relatively flat, so erosion shouldn't be an issue. Mr. Price said Councilwoman Tina Ward-Pugh submitted

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a letter of support (page 29 of staff report); that the Air Pollution Control District Public Works and MSD approved their plan; and that their request complies with the Comprehensive Plan and the Ohio River Corridor Master Plan. Mr. Price submitted two revised conditions of approval into the record to replace what was in his booklet.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

11:06:03 Meme Sweets Runyon, Executive Director of Riverfields, said Riverfields is a 51 year old conservancy organization, and that they have been aware of this business for many years. She said Riverfields has started working with the city to improve River Road from Beargrass Creek to Zorn Avenue; and submitted the final design of the widening of River Road. She said this could be completed by 2014. She said they partnered with WD Corporation and raised \$20,000.00 to hire a parks designer because they want it to remain "park like". She said River Metals has not maintained the landscape berm that they agreed to under the original CUP. She said 35-40% of the trees have died and not been replaced; and said a different species might work out better for them. Ms. Runyon said Mr. Price agreed that this would be resolved with the revised conditions of approval for the screening along River Road and the Dust Mitigation Plan that he submitted. She said she didn't discuss the size of the new trees upon planting with Mr. Price. Riverfields has also been aware of the noise from the explosions and that there has been on going dialogue. She said she hopes the Board supports these conditions of approval for the landscaping, dust and noise.

11:16:27 Paul Bickel with Spring River Business Park, said he has had a friendly relationship with River Metals while trying to resolve the noise from the explosions; and that a sound barrier wall is a step in the right direction. He said he has had numerous complaints due to the frequency of the explosions; and said it scares the people who work in the area. He said there are 400 to 450 workers in this business park; and that it shakes the building so hard, it knocks pictures off the walls. He said the sound barrier wall needs to be built as soon as possible. Mr. Bickel said he would like to see some sort of penalty if things don't improve. He said he has kept record of the explosions and will continue to do so. He said he hired a company to perform seismographs, who said the ground vibration is not significant, but is the air blast which is bad. He said he discontinued this company's services, because of the expense, but still has a camera pointed on the explosion area. Mr. Bickel submitted colored photographs

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into the record showing one of the explosions. Chair Jarboe asked him if he feels they are doing enough to prevent the explosions. Mr. Bickel said he knows they are making an effort, but with 60 explosions a year, still has concerns if these measures will improve the situation. Member Proffitt asked if he's seen an increase in the explosions. Mr. Bickel said he doesn't remember any explosions occurring until about 5 or 6 years ago.

SUMMARY OF TESTIMONY OF OPPONENTS:

11:26:13 Peggy Heuser, Chief of Operations of the Heuser Clinic, said they have leased the building for 8 years, and much to her dismay, the owner of the property did not want to get involved. She said the Heuser Clinic teaches people how to live healthy through food choices and exercise. Ms. Heuser said she's only been invited to two meetings—one from Paul Bickel and this hearing today. She said the noise and dirt have increased drastically over the last 5 years. She said at one point, there was so much dirt on River Road that someone finally paid to have it removed; and added that it's worse on Metal Lane. She said the water trucks only turn the dirt into mud; and said there's a huge puddle along Edith which is dangerous. She said the supplier trucks go in clean and come out dirty; and that there is even dust and dirt on the trees and landscaping. She said the water on River Metals' property is not contained and runs onto the property carrying mud and nails. She said they've had three flat tires over the last couple of months. Ms. Heuser said the noise from the explosions are frightening and feel like an earthquake. She said she is here today to ask River Metals to be a good neighbor and requested several things be done to resolve their issues such as: clean the trucks before they leave the property; puncture the gas tanks to decrease the explosions; build a sound barrier wall to protect all adjacent property owners; fix the drainage problem leading to mud build-up, puddles, potholes. She said River Metals only cleans up the mud when they complain; and that they should have regular maintenance schedules. Member Proffitt asked why she thinks the wall will not protect her business.

Mr. Price interjected asking Ms. Heuser numerous questions regarding her knowledge of the mud just coming from River Metals property considering there's a soccer field and other businesses nearby; not responding to Mr. Coulardot when he tried to address her concerns (submitted and read this letter into the record); invitation to the neighborhood meeting; and showing her photographs of the landscaping and both sides of the street with no mud or dirt. Member Proffitt

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asked Mr. Price if thought all the mud and dirt are coming from River Metals. Mr. Price said no and that River Metals cleans River Road and Metal Lane.

REBUTTAL:

11:55:33 Mr. Coulardot said he's never been contacted by the Warners', who own the property that the Heusers' lease. He said he's talked to Ms. Heuser regarding their cleaning schedule and said their sweeper service even cleans this lot. He said the manager on site inspects the roads and picks up debris; and that they haven't had any violations. He said they just bought another \$30,000.00 water truck to mitigate the dust problem; and that their plan today will mitigate the other problems. He said they will try to resolve the plume of dust coming from the sweeper trucks. Chair Jarboe questioned the dirt on the trucks. Mr. Coulardot said their trucks get washed once a week. Chair Jarboe asked if the supplier trucks maneuver in muddy areas on the property. Mr. Coulardot said yes.

12:00:32 Mr. Price asked their sound expert, Mr. Jones, to discuss the sound barrier wall with regard to the Heuser business. Mr. Jones said the design was complaint driven and they didn't hear any complaints from this business. Mr. Jones said that the wall is also arranged for room to allow shredder maintenance. Member Proffitt asked what the length of the wall would have to be to mitigate the noise from the Heuser building. Mr. Jones said probably another 60+ feet, but this would interfere with room for maintenance of the shredder. Member Wagaman said the proposed sound barrier wall as proposed will not decrease the noise for the Heuser business. Mr. Jones said no. The Board discussed continuing the case to allow Mr. Price to discuss an additional sound study in relation to this building. Mr. Price said it could take up to 4 weeks to provide the new study. He said it's imperative that the sorting building be built as soon as possible.

The Board took a 10 minute break to allow Mr. Price time to consult with his client.

12:32:32 Mr. Price said Dr. Heuser approached him during the break and said he was not concerned with expanding the sound barrier wall. Member Wagaman said he wasn't sworn. Mr. Price said he could get a written signed statement from the Heusers' regarding this. Chair Jarboe said they should have the same protection as the other surrounding property owners regardless of what

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they said. Mr. Price said if it's not a nuisance to them, then they shouldn't have to provide mitigation. He added that they weren't required to hold a neighborhood meeting, but did anyway to hear the neighbors' concerns. Member Wagaman asked if there are any other tenants in this building. Member Grisanti said if these people were concerned, they would have been at the meeting today.

12:39:28 Mr. Bickel said there were other people who complained east of his building, but said the mitigation plan should cover it. He said sound barrier walls are more effective at lower grades and that the taller the building, the less it reduces noise.

12:42:40 Ms. Runyon said she talked to Ms. Heuser during the break and said her biggest concerns are the drainage, mud and dust from the subject site.

12:44:17 Mr. Jones said their sound studies include up to three floors and the wall will still reduce the noise to half of what it is at this level.

BUSINESS SESSION:

12:46:59 The Board discussed making the applicant provide another sound study and possible expansion of the sound barrier wall to decrease noise for the Heuser business. Jon Baker, the Board's legal counsel, questioned why the owners of this property didn't show up at today's meeting. Member Liggin said other tenants in this building are not complaining; and if it was his property, he would have attended today's meeting. Member Grisanti added that this business has been here since the 70's; and appears they are trying to be a good neighbor by the nature of the request.

1:13:58 After the public hearing in open business session, on a motion by Member Proffitt, seconded by Member Grisanti, the following resolution was adopted:

WHEREAS, the Board finds, from the file of this case, the staff report, the PowerPoint presentation and the evidence and testimony submitted at the public hearing that the applicant is requesting a Modified Conditional Use Permit to allow a scrap metal processing facility to allow a metal sortation facility within a 60,000 square foot building and a sound barrier for a shredder; and

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WHEREAS, the Board finds that the property is within a Suburban Workplace Form District; and

WHEREAS, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan since the proposals are a modification of the existing Conditional Use Permit for a scrap metal processing facility; and because the sortation facility will be enclosed, be more than 310 feet from Metal Lane and not visible from River Road; and because the sound barrier will decrease the noise and vibration from the shredder; and

WHEREAS, the Board finds that the proposal is compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale intensity, traffic, noise, odor, drainage, dust, lighting and appearance because the proposal is a modification to the existing Conditional Use Permit; and because the applicant has stated that the proposed process produces no regulated air emissions, wastewater discharges, significant noise, or hazardous waste; and because the process noise will be contained within the building and will not be audible outside the property boundaries; and because the sound barrier will increase the compatibility of this recycling facility since it will reduce the amount of noise and vibration; and

WHEREAS, the Board finds that the necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services etc. because Public Works and MSD have both approved the plan; and

WHEREAS, the Board finds that the proposal complies with specific standards required to obtain the modified Conditional Use Permit because the original Conditional Use Permit was issued as a Hazardous or Objectionable Use that allowed a scrap metal recycling and storage facility in 1997; and because a new specific Conditional Use Permit listing of Scrap Metal Processing Facilities and Junkyards best defines this special use and was adopted on August 29, 2002; and

WHEREAS, the Board finds the proposal to be in conformance with the Comprehensive Plan because it complies with all applicable guidelines, principles and objectives of the Comprehensive Plan, as it has received preliminary approval from Transportation Review and Louisville and Jefferson County Metropolitan Sewer District;

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NOW, THEREFORE, BE IT RESOLVED, that the Conditional Use Permit is hereby **APPROVED ON CONDITION** that the applicant's revised Conditions of Approval submitted at today's hearing be implemented; that the Dust Control Plan under Tab 4 of the applicant's booklet, dated March 2, 2011, also be implemented; and that the time of construction of the sound barrier wall and proposed building shall commence within 120 days from this approval; also based on the previously approved conditions of approval.

The conditions are as follows in addition to the previously approved conditions of approval:

1. **Screening along River Road.**
 - (a) Landscaping materials shall be planted along the River Road frontage of the site in accordance with the Article 12/Tree Compliance Plan (the "Landscape Plan") marked approved August 3, 1998, by Jonathan D. Henney.
 - (b) To the extent landscaping does not presently conform to the Landscaping Plan, installation of new, conforming landscaping is required. Applicant agrees to substitute any plant materials shown on the Landscape Plan with plant materials recommended by River Fields, Inc. provided that the Planning Commission Landscape Architect concurs. All new plantings shall conform to the Land Development Code Chapter 10.
 - (c) Weather permitting, all live landscaping materials shall be installed no later than June 12, 2011, although the DPDS landscape architect may extend the time for installation for reasonable cause.
 - (d) Applicant agrees to maintain all landscape materials shown on the Landscape Plan in healthy condition, including all trees. Maintenance includes, but is not limited to; appropriate watering for plant and tree success, trimming of dead limbs, mulching and removal of invasive species and vines.
 - (e) Applicant shall replace any dead trees within three (3) months of a tree's demise, weather permitting, but in no event more than five (5) months.

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2. **Cleaning of Metal Lane.** Applicant agrees, on an as-needed-basis, to clean dust and debris (1) from Metal Lane at its intersection with River Road, and (2) on Metal Lane within 180 feet of the River Road right-of-way line.
3. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
4. The Dust Control Plan submitted by the applicant shall be implemented (under Tab 4 of the applicant's booklet dated March 2, 2011).
5. The time of construction of the proposed sound barrier wall and building shall commence within 120 days from the approval date.

The vote was as follows:

YES: Members Wagaman, Liggin, Grisanti, Fishman, Allendorf, Proffitt and Jarboe.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.