

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

JUNE 18, 2012

NEW BUSINESS:

CASE NO. B-15314-11

(CONTINUED FROM MARCH 7, 2012)

Applicants/Owners: River Metals Recycling, LLC
Brian S. Lappin/Neal Coulardot
2114 Metal Lane
Louisville, Kentucky 40206

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

Subject: An application for the modification of a Conditional Use Permit for a scrap metal processing facility to allow a 60,000 square foot building to house a metal sortation facility and sound barrier in a W-3 zoning district. This case was continued from the original hearing on March 7, 2011. **The applicant is requesting relief from the condition requiring a sound barrier wall. The Board requested a report of the number and intensity of explosions that have occurred on the subject property since the original hearing on March 7, 2012 be submitted to staff. The Board also requested the applicant's protocol, past and present for reducing the number of explosions and all minutes from the March 7, 2012 hearing; and that this be submitted to staff two weeks prior to the public hearing. The testimony and discussion will be limited to only these issues.**

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 W. Market Street, Ste. 3200, Louisville, Kentucky 40202; who presented a PowerPoint presentation to the Board; submitted letters of approval and proposed additional conditions of approval.

Neal Coulardot, Manufacturing Executive, River Metals Recycling, LLC, 2114 Metal Lane, Louisville, Kentucky 40206.

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Meme S. Runyon, Executive Director of Riverfields, 643 W. Main Street, Suite 200, Louisville, Kentucky 40202.

Brook Egan, TPA, LLC, 401 W. Main Street, Ste. 1400, Louisville, KY 40202.

Appearances- Interested Parties:

No one.

Appearances Against Applicant:

No one.

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 January 23, 2012, the Board continued the public hearing to June 18, 2012 to allow the applicant time to submit a report on the number and intensity of explosions that have occurred on the subject site since the original hearing date of March 7, 2011; also that the applicant's protocol past and present for reducing the number of explosions be submitted to staff; and that all minutes be included in this report from March 7, 2011; and that the discussion be limited to only this issue; and information was submitted to staff two weeks prior to the June 18, 2012 hearing.

On July 5, 2011, the Board allowed an extension on the expiration date for commencement of the sound barrier construction to December 21, 2011; and that the construction of the non-ferrous metals building not be subject to the 120-day limitation.

This item was approved by the Board on March 7, 2011 with conditions of approval.

The applicant is requesting to modify an existing Conditional Use Permit for a scrap metal processing facility to allow a metal sortation facility within a 60,000 square foot building. The Board approved the sortation facility on March 7, 2011.

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The applicant is now requesting relief from the condition requiring a sound barrier wall.

On June 18, 2012, 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 June 18, 2012 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

10:55:12 Staff case manager, Steven Hendrix, gave a brief presentation of the case to the Board. He said the applicant is requesting relief from installing the sound barrier wall due to the expense and difficulty with the topography and soil to build the wall. He said he received letters of support this morning which he submitted to the Board for review. Chair Jarboe asked about the number and intensity of explosions. Mr. Hendrix said Mr. Price could explain this.

SUMMARY OF TESTIMONY OF PROPONENTS:

10:57:25 Glenn Price, the applicant's attorney, submitted a letter from Paul Bickel, and adjacent property owner, that he is in support of the request with the additional conditions Mr. Price submitted. He said River Metals has implemented protocols reducing the number of explosions, called the Combustion Incident Reduction Plan ("CIRP"), last revised on 8/31/10. He said this has reduced the number of explosions significantly and illustrated this on a bar graph in his previously submitted booklet under Tab 2. Mr. Price said the cost of installing the sound barrier wall was much more than they anticipated, due to the soil and topography (1/4 of a million). Mr. Price read the conditions of approval he submitted satisfying the adjacent property owners and interested parties.

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11:10:21 Neal Coulardot, Manufacturing Executive of River Metals Recycling, explained the steps they have taken to reduce the number of explosions, by adding more employees to inspect the vehicles for combustibles. Member Grisanti asked how the current explosions happened. Mr. Coulardot said they never said there would not be any explosions; and said it's interesting how people hide things in the car that could be combustible. He said this particular client's privilege was suspended. The Board discussed the conditions of approval and how to determine how many explosions are too many. Mr. Price said Mr. Bickel asked him to include this condition of approval. Mr. Price said he could change the wording to include neighbors instead of just adjacent property owners which would allow them to ask for a public hearing if the explosions get excessive; and where the Board would then determine if the sound barrier wall should be built.

11:20:45 Meme Sweets Runyon, Executive Director of Riverfields, said the applicant has been working with the adjacent property owners and others to resolve the problem. She said the explosions are not only loud but shake surrounding buildings and are shocking for people to experience. She said she appreciates the applicant and their honesty in trying to reduce the number of explosions. Ms. Runyon said complete revocation of installing the sound barrier wall was not appropriate, because businesses can change hands, so the condition of approval will give area residents some leverage. She said she would also like the third condition of approval to be changed to allow neighbors or anyone else affected by the explosions to be able to ask for a BOZA hearing.

11:26:11 Brook Egan, said she is representing Mr. Bickel, who could not be present today. She said Mr. Bickel appreciates River Metals effort reducing the number of explosions; and said they do support suspension of the sound barrier wall at this time with the three conditions of approval submitted. She said it's important to keep the explosions to a minimum.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

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REBUTTAL:

11:27:50 Mr. Price agreed to change the language of the condition of approval to be more inclusive of area residents, and that anyone affected could request a BOZA public hearing if the explosions become excessive again.

BUSINESS SESSION:

11:28:58 Member Grisanti recommended changing the third condition of approval to: "If adjacent property owners or lessees of property owners believes the number of explosions to be excessive, they can request BOZA to hold a public hearing; a public hearing shall then be scheduled, and the Board shall determine from the evidence whether the sound barrier wall must be constructed." The Board agreed.

11:30:54 After the public hearing in open business session, on a motion by Member Grisanti, seconded by Member Allendorf, 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(s) that the applicant is requesting a Modification of an existing Conditional Use Permit pursuant to Land Development Code Section 11.5.A.1.E, the Applicant/Owner requests relief from the requirement to construct the sound barrier wall, which the Board imposed as part of its approval of the Modified Conditional Use Permit on March 7, 2011 with additional conditions of approval submitted by the applicant's attorney today, in which the Board amended; and

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

WHEREAS, the Board finds that the applicant received various letters from adjacent property owners and interested parties not opposed to the request since the number of explosions have been significantly reduced since the applicant implemented the Combustion Incident Reduction Plan ("CIRP" see in booklet dated June 4, 2012 submitted by Glenn Price, Attorney under Tab 3); and because the applicant submitted additional conditions of approval protecting area residents which would allow them to ask the Board of Zoning Adjustment to

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conduct a public hearing if the explosions become too excessive again and determine if the sound barrier wall should be built; 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;

NOW, THEREFORE, BE IT RESOLVED, that the Modified Conditional Use Permit is hereby **APPROVED** with the previously approved conditions of approval (COAs) with the exception of COA #5 from the March 7, 2011 public hearing and with the additional COAs submitted today by the applicant with a change made by Member Grisanti.

The conditions are as follows:

1. The Applicant/Owner shall implement the Combustion Incident Reduction Plan ("CIRP") last revised on 8/31/10.
2. The requirement to build a sound barrier wall at this time shall be suspended indefinitely as long as the explosions are kept to a minimum level satisfactory to the Louisville Metro Board of Zoning Adjustment ("BOZA").
3. If adjacent property owners or lessees of property owners or any other persons affected by the explosions in the area believes the number of explosions to be excessive, they can request BOZA to hold a public hearing; a public hearing shall then be scheduled, and the Board shall determine from the evidence whether the sound barrier wall must be constructed.

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The vote was as follows:

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Proffitt.

ABSTAINING: No one.