

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
January 24, 2012

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, January 24, 2012, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Robert C. Gibbons in the Board of Supervisors Chambers. Mr. Gibbons introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Gibbons stated the Bylaws of this Board state the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

Members Present: Robert Gibbons, Robert Grimes, Dean Larson, Ernest Ackermann, Larry Ingalls, Steven Apicella and Heather Stefl

Members Absent: Ray Davis and Danny Kim

Staff Present: Susan Blackburn, Zoning Administrator
Melody Musante, Zoning Manager
Denise Knighting, Recording Secretary

Mr. Gibbons: Are there any changes or additions to the advertised agenda?

Mrs. Musante: There are no changes.

DECLARATIONS AND DISQUALIFICATIONS

Mr. Gibbons: Before we hear the first case does any Board member wish to make any declarations or statement concerning any cases to be heard before the Board tonight? Hearing none we will begin the first case. I will ask the secretary to read the first case please.

PUBLIC HEARINGS

1. **SE11-04/1100386 - DOUGLAS R GARGAN** - Requests a Special Exception per Stafford County Code, Section 28 35, Table 3.1 "District Uses & Standards", R-1, Suburban Residential(c), to allow tax preparation and accounting payroll services as a home business on Assessor's Parcel 55A 1 34A. The property is zoned R 1, Suburban Residential, located at 217 Brooke Road.

Mrs. Musante: Case SE11-04/1100386, applicant Douglas R. Gargan requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards", R-1, Suburban Residential, to allow tax preparation and accounting payroll services as a home business on Assessor's Parcel 55A-1-34A. The property is zoned R-1, Suburban Residential, located at 217 Brooke Road. The applicant is requesting a Special Exception to operate tax preparation, accounting payroll services as a Home Business. Requested days and hours of operation are Monday through Friday from 9:00 AM to 10:00 PM; Saturday from 9:00 AM to 7:00 PM and closed on Sunday. Applicant will provide five off street parking spaces with approximately seven customers per day. Gargan's Tax Service will provide personal and business income tax preparation as well as completed financial statements and

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payroll services for business clients. The applicant has indicated approximately 50% of tax return preparation will require an in home appointment. Home Business standards allow for 25% of the gross floor area to be utilized for the business. The applicant has indicated 218 square feet will be used for the business which meets this requirement. Single family dwelling constructed in 1977 and the home occupation permit issued August 30, 2011 for tax services.

Mr. Gibbons: Do we have any questions of the staff?

Mr. Ingalls: Does he currently have a home occupation?

Mrs. Musante: Correct. Which allows him to go to peoples... to his customers homes but does not allow for the customer to come to his home.

Mr. Ingalls: Okay, thank you.

Mr. Apicella: In reviewing the application did you see any compelling reasons not to approve it.

Mrs. Musante: No I did not.

Mr. Apicella: And is the staff recommending approval?

Mrs. Musante: We do not make recommendations.

Mr. Apicella: I thought we were moving towards staff making recommendations, Mr. Chairman.

Mr. Gibbons: I thought you did too. But is this something new?

Mrs. Musante: Can we make that for discussion after the public hearing?

Mr. Apicella: Sure. The applicant has identified specific hours that he would like to... he or she would like to operate. Did you have any concerns about those specific hours and days?

Mrs. Musante: No I don't.

Mr. Apicella: Okay, that is it. Thank you.

Mrs. Stefl: I have a quick question. Did the applicant at any time indicate if there would be a sign placed on Brooke Road that could affect traffic, people slowing down or any type of advertisement that would occur on the property?

Mrs. Musante: We did not discuss signage. But our home occupation regulations allow them to have a 4 square foot sign.

Mrs. Stefl: 4 foot?

Mrs. Musante: Yes, 4 square foot.

Mrs. Stefl: Okay. And did they sit down for the applicant interview that has been our standard...

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Mrs. Musante: Yes they did.

Mrs. Stefl: ... practice. Alright, thank you.

Mr. Gibbons: Any other questions? Melody, I thought in a residential we usually did not go past around 8 or 9 in the evening. I noticed this is 10 o'clock.

Mrs. Musante: That is a condition that you all as the BZA have the right to impose on them. If you feel like the 10:00 p.m. is too late.

Mr. Gibbons: I understand, but most of my notes in the residential that we have kept it... Okay, any questions down here? Okay would the applicant please come forward? She can come along too. I mean you have been together.

Mr. Gargan: Absolutely. She is the right arm behind the operation.

Mr. Gibbons: Go ahead sir. You have to state your name and your address please.

Mr. Gargan: Douglas R. Gargan. 217 Brooke Road, Fredericksburg, Virginia 22405.

Mr. Gibbons: Your physical address is in Stafford though isn't it?

Mr. Gargan: It is a Stafford County address. That is correct.

Mr. Gibbons: Okay so if you would please just say the same thing again. Brooke Road, Stafford, because Fredericksburg is the post office.

Mr. Gargan: Okay. 217 Brooke Road, Stafford Virginia.

Mr. Gibbons: We like to use that word, Stafford.

Mr. Gargan: Okay, that is fine.

Mr. Ingalls: Technically, Falmouth post office.

Mr. Gargan: Yes, that is right. My wife along side of me here is my partner in Gargan's Tax Service. We own it jointly. We are here tonight to seek our home business license since we are currently operating under our Stafford home occupation permit. The home business license will not allow customers to come to our home. I have been an accountant for over twenty years and this will be my twentieth year as a tax preparer. Tax season usually starts on February 1st and end around April 15th. This year it will end on April 17th, which makes the length of days to be seventy-seven or eleven weeks. I expect to prepare around two hundred and fifty income tax returns or roughly twenty returns plus per week. Approximately 50% will be face to face appointments, meaning that ten per week will be in my home office. With technology today it is not uncommon for me to not even see my clients because of email, fax, scanned documents etcetera. I do serve clients in eleven different states, Virginia being the most common, approximately 96% of that total of a hundred. My planned hours of operation are Monday through Friday, 9:00 a.m. to 10:00 p.m., Saturdays from 9:00 a.m. to 7:00 p.m. and closed on Sunday. In office appoints are always scheduled with a break in between so I don't expect to have more than one client at my house at the same time. My driveway can easily park 5

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vehicles with easy access to turn around to re-enter Brooke Road when departing in a safe manner. Accounting clients, I service my accounting clients primarily through the internet using email and fax. Reporting is completed and sent with scanned documents through email. When it is necessary I will usually drive to their place of operation for face to face meetings to review financial statements. That concludes my comments.

Mr. Gibbons: Okay, any questions of the applicant?

Dr. Larson: I have a question Mr. Chairman.

Mr. Gibbons: Go ahead.

Dr. Larson: Mr. Gargan you indicated that basically the time period is from now to mid-April-ish. Will you be conducting business in any other times of the year at your home?

Mr. Gargan: Yes I will.

Dr. Larson: Could you describe that as well. Is that more business type accounting?

Mr. Gargan: Obviously the pace goes considerably down, Dr. Larson, after April 15th, April 17th this year. And primarily I might be doing late filers or amended returns. But the number of returns go quite a bit down. The bulk of the season is really from February 1 to April 17th.

Dr. Larson: Still accounting type work?

Mr. Gargan: Yes the accounting type work, I plan for that to carry me through-out the year. That is kind of like my bread and butter revenue, income stream that will come consistently each and every month.

Dr. Larson: Mr. Gargan, do you plan on putting a sign out in front of your house for your business?

Mr. Gargan: At this time we just have a sign in the front that... right at the entry way with our name and 217, so people can see it. We have not really thought... given too much thought to putting an official sign on it. And in our literature that we have already sent out... mailed out to our client base we have already given them a detailed map with instructions and even our telling them that the mailbox is on the right side of the road, to be careful. And we are going to put an arrow on our huge mailbox so they will know it is on the left hand side and not on the right hand side. Because we are trying to do this to minimize any kind of traffic flow or anybody having any trouble getting to our place.

Dr. Larson: And if... you mentioned your hours of operation going to 10 o'clock. If the Board trimmed that to 9 o'clock, how would that affect your business?

Mr. Gargan: That would be fine. I don't think it would significantly trim it because normally what I do Dr. Larson, I will try to schedule that last appointment not at 10 o'clock but usually depending upon the type of return, if it is a business return it usually take about ninety minutes to complete. If it is an individual return it is usually about sixty minutes. So I will just kick that back an hour or an hour and a half, from 9 o'clock instead of 10.

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Dr. Larson: Thank you sir.

Mr. Gargan: You are welcome. Thank you.

Mr. Gibbons: Mr. Grimes, any questions?

Mr. Grimes: No.

Mr. Gibbons: Thank you. Doctor?

Mr. Ackerman: No.

Mr. Gibbons: Larry?

Mr. Ingalls: A home business allows for an employee, who lives outside of the home. Are you going to have an employee?

Mr. Gargan: I have not, Mr. Ingalls, planned for that right now. But that is something that I am looking at. In fact we placed a second desk in the office space for that very reason.

Mr. Ingalls: So it is something that you would possibly want to add...

Mr. Gargan: That is correct.

Mr. Ingalls: ... in the future.

Mr. Gargan: And I know I am allowed for just one. With the Federal Government requirements they already have to have a P10 number and it already had to have been paid for. So the population of preparers out there might minimize because of those additional requirements.

Mr. Ingalls: Your driveway certainly could accommodate cars back to back?

Mr. Gargan: Yes, yes sir.

Mr. Ingalls: Of course getting out... I guess my biggest concern is getting out on Brooke Road. I am assuming that when you are there you turn around up near the house and come out... straight out.

Mr. Gargan: Right, exactly.

Mr. Ingalls: And I guess I would want to make sure that your clients, in the middle of the night when it is dark, are capable of being able to turn around and not have to back out on to Brooke Road.

Mr. Gargan: Absolutely, I totally agree with that and we will make sure... make it a point of explaining that to them when they leave. That is why I put in my comments that they will turn around and re-enter Brooke Road in a safe manner.

Mr. Ingalls: Normally I probably would oppose a sign, but sometimes a sign is a safety thing for everybody. For your clients, I don't want them driving up and down the road trying to figure out what driveway is what.

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Mr. Gargan: That is a good point.

Mr. Ingalls: So I am not opposed to a sign, I don't know what the rest of them would think but it can be a benefit for the traveling public as well as for you, just to make sure they come down the road, they see the sign and turn. They don't have to pull into somebody else's driveway, back around and do something else.

Mr. Gargan: That is true.

Mr. Ingalls: That is all I have for right now.

Mr. Gibbons: Steven?

Mr. Apicella: No questions.

Mr. Gibbons: Heather?

Mrs. Stefl: I do have a couple of questions. Just because you do seem to live awful close to other neighbors, have you spoken to your other neighbors or gotten a sense from them? I know at this point it is going to be hearsay but... and I don't see any of them here either for or against your, but do you have a sense from your neighbors on their feelings of the increase of flow of traffic that will occur now around their home sometimes late at night?

Mr. Gargan: They expressed no objection to it, right honey?

Mrs. Gargan: Right.

Mrs. Stefl: Okay and would... if the Board should consider some special permit, like I don't know exactly if we are looking at times or something, but where my concern is also the bushes that are at the end of your drive. Just like for safety as Mr., I forget, Larson, I forget who said it, but you know getting out like lights or any kind of you know something to help out. Even myself who is young, I am starting to have difficulties at night seeing.

Mr. Gargan: Sure.

Mrs. Stefl: So are those things that you have thought long term or even a shingle out front?

Mr. Gargan: That is a great comment. We do have reflectors there now that do shine. Of course you can't see that in the picture. But they are there, I think there are three on each side, is there not?

Mrs. Gargan: Yes.

Mr. Gargan: Right. So that does help, you know, people who are coming in the evening to see.

Mrs. Stefl: Okay and then also you indicated that you are going to, I can't see past this bush, but there will be off street parking so you will... are you going to widen your driveway in essence to allow more cars, say I don't know if you are going to create a larger driveway or something.

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Mr. Gargan: There is already gravel adjacent to the main... and you can't see it again in the picture, but off to the right there is a gravel section that we have cleared off. I have cut down six trees to clear the area so that it would be more... easily accessible and our vehicles during business hours will not be in the main driveway. We are going to have people drive right up to the garage door. I will either keep my vehicle inside or park it alongside the house because I have gravel there as well. So I will keep it out of view so it will be easy for people as they drive in face first to just back out and turn around and come right out.

Mrs. Stefl: Do a three point turn and leave?

Mr. Gargan: Exactly, that is correct.

Mrs. Stefl: Okay. I guess those are my only questions at this time.

Mr. Gibbons: I just got to follow up on what we are saying. You have no problem with the 9 o'clock p.m. change?

Mr. Gargan: That is fine.

Mr. Gibbons: And what about Mr. Ingalls, about the egress off the property, that would be face out. Do you have any problem with living with that?

Mr. Gargan: Could you explain that a little bit?

Mr. Gibbons: Well in other words when you depart from your property that you would be coming out face out rather than backing out.

Mr. Gargan: Oh, yes, exactly.

Mr. Gibbons: You would not have any problem with that restriction?

Mr. Gargan: Absolutely not. In fact that is part of what we plan on doing.

Mr. Gibbons: Well I know but what we do with this goes with the property... it stays with the property whatever we do so we want to make sure. Like you saying in downtown Brooke there is a lot of traffic down there that we have to be concerned about.

Mrs. Stefl: Mr. Gibbons.

Mr. Gibbons: Yes.

Mrs. Stefl: We... one of the suggestions from staff was that this would not stay with the property. This would stay with them, so upon the sale of the home or even a transfer to the next of kin, this would not. So that is something that we could discuss. That was one of the suggestions from staff.

Mr. Gibbons: I think that was a good suggestion. Do we all agree on that? So it won't be transferred with the sale of the home.

Mrs. Stefl: Correct.

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Mr. Gargan: Right.

Mr. Gibbons: Okay, that is good. Good catch Heather. Any other questions?

Mr. Apicella: Mr. Chairman. Ms. Stefl brought up a good point about these hedges, I guess I call them. It is kind of hard to tell how big they are, but they could be an obstruction to people even exiting the property front wise. Would you give any consideration to trimming them back or coming up with an alternative... some alternative landscaping that will make it less of a potential for an accident for somebody exiting the property.

Mr. Gargan: Absolutely, yes. I would agree.

Mrs. Gargan: We usually do trim them back every spring.

Mr. Gargan: Right.

Dr. Larson: I think the concern would be if they could see over the hedges for... at vehicular traffic coming either way. So as long as they had a clear line of sight to the traffic that is coming either way down the road, the hedges could stay as long as they could have that clear line of sight.

Mr. Gargan: Yes.

Mr. Ingalls: The hedges appear to be further back from the edge of the road than...

Mr. Gargan: Yes, that is what I was going to say.

Mr. Ingalls: You look at it, he has a nice wide entrance and he has got flared and so... I mean you are mostly concerned about looking to the left when you pull out on roads because that the one that is going to hit you first.

Mr. Gargan: Right, exactly. Correct.

Mrs. Musante: Mr. Chair.

Mr. Gibbons: Yes ma'am.

Mrs. Musante: There is a requirement in the Ordinance for a site distance triangle. If you want me to look that up and read that to you I can. If we are talking about the hedges here and the sight issues we might... could enforce the sight triangle requirements.

Mr. Ingalls: And where, that is in the Site Plan Ordinance?

Mrs. Musante: It is in our Zoning Ordinance, but I will have to look it up.

Mr. Apicella: I think that would be helpful.

Mr. Gibbons: I don't have a problem unless it is onerous.

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Mrs. Stefl: Err on the side of caution then.

Mr. Gibbons: We sometimes have some onerous requirements, now days.

Mrs. Musante: It may... in fact it may be the requirement itself may require the shrubs to be removed completely.

Mr. Gibbons: Well should the Board make that part of the application?

Mr. Ingalls: There is a whole lot that goes along with that.

Mrs. Musante: There is.

Mr. Ingalls: And I would be very cautious...

Mr. Gibbons: Cautious, yes.

Mr. Ingalls: ... if you make...

Mr. Gibbons: Too much.

Mr. Ingalls: I have not read that section in a while, I mean if you are trying to get into a VDOT standard...

Mrs. Musante: Correct.

Mr. Gibbons: No you don't want to...

Mr. Ingalls: ... commercial entrance standard.

Mr. Apicella: I am just trying to understand, it either is required in this situation or it is not.

Mrs. Musante: It is required on commercial projects.

Mr. Apicella: Okay.

Mrs. Musante: I would have to read the verbiage to see if it something that we could enforce on residential property.

Mr. Gibbons: Well I just think if you are here and we are adding to the list, if you proffer that you are going to keep the sight distance properly and maintained, then I think that is good enough for us.

Mr. Gargan: I mean we have our children and grandchildren visiting us and we are even reminding them to make sure to be cautious.

Mr. Gibbons: Right.

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Mr. Gargan: And we have lived at the house for 7 years. So when we come down to that end, when the gentleman, Mr. Ingalls mentioned that there is an extended area from the shrubs to the end of the road. Your vehicle goes right past the shrubs and you can clearly see both ways.

Mr. Gibbons: Okay.

Mr. Gargan: You can. But I am not opposed to trimming them back if that is what the Board...

Mr. Gibbons: And you have agreed to that, to keep them in properly trimmed.

Mr. Gargan: Absolutely, absolutely.

Mr. Gibbons: So Melody have you got all of the exceptions that we have requested so far so we can go over them with him?

Mrs. Stefl: I have one more question.

Mr. Gibbons: Yes.

Mrs. Stefl: If they should put up a sign, is there any restrictions on whether it can be lit, not lit, a spot light on it? These are some of the things that might come down the road that as a neighbor would be a concern for mine, you know things like that. So I just want to make sure that we're dotting our T's and crossing... dotting our I's, sorry, and crossing our T's.

Mrs. Musante: We have days and hours of operation Monday through Friday, 9 a.m. to 9 p.m. Saturday 9 to 7, closed on Sunday. And then we can also adopt the suggested development conditions that were included in your packet which was provide 5 off street parking spaces for clients. Customers by appointment only. Must comply with all State and local codes. Approval of this Special Exception will expire when this applicant vacates the property and is nontransferable. This approval may be revoked for willful noncompliance of the conditions imposed by the Board of Zoning Appeals. And a sign to state no backing out, face out only.

Mr. Ingalls: I am going to... I would like to add 2 conditions to that. I don't know whether now is the time to add them or suggest them.

Mr. Gibbons: Well why don't we let... Heather is first. We have not answered her first. Okay on the sign, he is authorized a 4 by 4, correct.

Mr. Ingalls: 2 by 2.

Dr. Larson: 2 by 2.

Mr. Ackerman: 2 by 2.

Mr. Gibbons: 2 by 2.

Mrs. Stefl: 4 square feet.

Mrs. Musante: He is allowed 4 square feet.

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Mr. Ingalls: 4 square feet, 2 by 2.

Mr. Gibbons: 2 by 2, alright.

Mrs. Stefl: It is not that big.

Mr. Gibbons: Well I bought too many 2 by 2's in my life, so I should have... alright so we got that. But is it authorized to be lit or non-lit?

Mr. Ingalls: I am not sure our Ordinance addresses that. Is it...

Mrs. Musante: I am not sure.

Mr. Ingalls: ... not in a...

Mrs. Musante: Unlighted.

Mr. Ingalls: Unlighted.

Mr. Gibbons: Okay. Alright Heather?

Mrs. Stefl: I am fine with that. It's them, I am asking them.

Mr. Ingalls: I am not saying they have to have one, I am just...

Mrs. Stefl: No I am saying they have to have one.

Mr. Ingalls: They can have one...

Mr. Gibbons: No it says that it cannot be lit.

Mr. Ingalls: Cannot be lit.

Mrs. Stefl: Okay.

Mr. Ingalls: They can have one if they want one.

Mr. Gibbons: Okay.

Mrs. Stefl: It would also help with, I think, customers who maybe aren't familiar with the area that are coming to your home. At least those first few times, you know.

Mr. Gibbons: Okay, Mr. Ingalls.

Mr. Ingalls: I would... to try to address a couple of questions I think some of us had is, I would like to add number 6, development condition. Which would be provide adequate turn-around for clients to exit forward.

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Mrs. Musante: Okay.

Mr. Ingalls: You say it is there, I am saying it has got to be there.

Mrs. Gargan: It is there.

Mr. Ingalls: It is there.

Mr. Gibbons: Oh no, he said it was there.

Mr. Gargan: We use it.

Mr. Ingalls: He says it is there, I am just saying...

Mr. Gibbons: No he said they...

Mr. Ingalls: Right, but I want to make sure there is adequate... because that turn around only comes back so far. If you have got... happen to have 4 cars parked, can that last one in that row... is he going to find that I have got to back out because I can't get up to the turn-around area. I am just saying you have got to have it you work it out.

Mr. Gibbons: I think he has surrendered on that, so he will agree with you.

Mr. Ingalls: And for number 7, just to kind of answer a question here without trying to get too deep into sight distance. I am going to say we ought to provide adequate sight distance at entrance.

Mr. Gibbons: Okay.

Mr. Ingalls: It doesn't make you do anything other than, I think you understand that we are concerned about what we are doing and if somebody goes out there and says that shrub is awful close, then I would hope...

Mr. Gargan: I will trim it back, absolutely.

Mrs. Gargan: Absolutely.

Mr. Apicella: Is this being too petty to say at entrance/exit?

Mr. Ingalls: Yes you can say entrance/exit or exit/entrance, if you want. There is only one.

Mr. Apicella: I understand, but...

Mrs. Stefl: The concern is on the exit, not the entrance.

Mr. Ingalls: Okay, yes. Okay.

Mrs. Stefl: That is what we are mostly concerned with.

Mr. Ingalls: Right.

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Mr. Gibbons: Okay. Let's go over it one more time. Can you repeat what we are agreeing to here?

Mr. Ingalls: Well let's have a motion and...

Mr. Gibbons: Let's see what the conditions are and then we will have a motion.

Mr. Ingalls: Okay.

Mrs. Musante: Days and hours of operation, Monday through Friday, 9 a.m. to 9 p.m., Saturday 9 to 7, closed on Sunday. Provide 5 off street parking spaces for clients. Customers by appointment only. Must comply with all State and local codes. Approval of this Special Exception will expire when this applicant vacates the property and is nontransferable. This approval may be revoked for willful noncompliance of the conditions imposed by the Board of Zoning Appeals. Provide adequate turn-around for clients, face out. Provide sight distance at entrance.

Mr. Gibbons: Okay.

Mr. Ingalls: Did you say entrance or exit?

Mrs. Musante: Exit. Entrance/exit.

Mr. Ingalls: Okay.

Dr. Larson: So we got the face out exit, I guess, right?

Mrs. Musante: Yes.

Dr. Larson: Okay. You can add that word.

Mr. Apicella: If this is the appropriate time, Mr. Chairman I would like to make a motion to approve...

Mr. Ackerman: Don't we have to close the hearing first?

Mr. Apicella: Oh it is a hearing.

Mr. Gibbons: We have not opened the public hearing yet.

Mr. Apicella: Okay.

Mr. Gibbons: I have to wait until he get done and then I will open the public hearing. Okay, do we have any more questions?

Mrs. Stefl: I have nothing.

Mr. Gibbons: Okay I will bring it back to the Board. Thank you.

Mr. Ingalls: Close the public hearing?

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Mr. Gibbons: And we will open the public hearing. Is there anybody in the audience that would like to speak for or against? And I don't see any so I will close the public hearing and bring it back to the Board. We need a motion please.

Mr. Apicella: Mr. Chairman, I apologize for jumping the gun. I would like to make a motion to approve SE11-04/1100386 with the conditions as read by staff.

Dr. Larson: Second.

Mr. Gibbons: We have a second. Okay we have a motion and a second. Any questions? Okay, all in favor say aye.

Mr. Apicella: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye.

Mr. Ackerman: Aye.

Dr. Larson: Aye.

Mr. Ingalls: Aye.

Mr. Gibbons: Aye. All opposed. Any abstentions? None. And we want to say good luck to you and thank you for coming.

Mr. Ackerman: Thank you very much.

Mrs. Musante: Mr. Chair, who was the second? I missed it.

Mr. Gibbons: It was Dr. Larson. Okay the next item on the agenda, why don't we take up the thing that you deferred Melody, first before we get going here.

Mrs. Musante: Of course it has been a few months since we have met and discussed. So I may be talking out of line here. But if I recall we had been advised by our counsel not to make recommendations for approval. Now I can go back and speak with our County Attorney's office again. But I believe that was our discussion last time and maybe I was supposed to go back and talk with them some more. But I don't remember us deciding that staff would be making recommendations.

Mr. Gibbons: What would be different from the staff making recommendations at the Planning Commission or staff making recommendations at the BZA? What is the difference?

Mrs. Blackburn: Good evening Mr. Chairman. I am Susan Blackburn. If I may, the Planning Commission is an advisory board to the Board of Supervisors and as you state in your opening statement, you are a quasi-judicial Board. You are making decision on exceptions to law. And it is not the general practice for staff to make recommendations on that as it would be an attorney to come in here and say, you know I really think you should do this. This should be great. They would lay out

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the facts and yes they may lay out the facts that lead you to think it is a good idea. We can, again as Melody said, double check with our legal counsel to make sure what our parameters actually are. In case something has changed within the laws of the court... of the State Code. There seems to be several things changing with that, you know, over the past couple of years, and just double check with them. And what we maybe can do if we do find out that no we cannot make recommendations, we can make staff reports such that, for example in an agricultural district adding additional horses to a 20 acre farm when surrounded by other horse farms should not make any difference to the neighborhood. Things like that, but not that we recommend that you should approve it.

Mr. Gibbons: Okay.

Mrs. Blackburn: Okay?

Mr. Gibbons: What is the Board's feeling?

Mr. Apicella: I recall having this discussion. I thought we were going to actually move towards... and I thought the consensus was to get the staff to make recommendations. I know when Heather and I took the course in Richmond from Dr. Chandler, we brought up the issue of recommendations and he certainly strongly favored that approach. I would say at a minimum, if for some reason that it is not prudent to have staff provide recommendations on zoning appeals, I think there is a difference between that function which is quasi-judicial verses our legislative functions. And I think at a minimum on legislative functions, and I thought a special exemption was a legislative function, that it would be permissible and helpful if the staff made a recommendation. If in those other cases it is not prudent to do so.

Mr. Ingalls: So variances we would not...

Mr. Apicella: I would say the whole spectrum of things unless the county attorney say otherwise, and if so then I would say we will take it... at this point we will take the advice of the county attorney and limit it to just legislative functions.

Dr. Larson: Mr. Chairman.

Mr. Gibbons: Go ahead.

Dr. Larson: Personally I am comfortable with having the staff not make recommendations.

Mr. Gibbons: Okay.

Dr. Larson: I don't see the requirement for that, as long as we get the facts.

Mr. Gibbons: Doctor.

Mr. Ackerman: Well I think... the way I felt being on this Board is that we always have the opportunity and freedom to ask the staff lots of questions about things. And I think there have been several times when we've asked does this particular... with this particular actions does it violate the code or is it supported by the code and I think we can derive that ourselves. I agree with Dr. Larson, I feel comfortable with the situation as it is. And then the other thing I would... additionally we will

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have to be very careful about... as we, that we are really thinking about our legislative prerogatives as opposed to our judicial ones. Just make sure that is clear.

Mr. Gibbons: I know you are brand new, but do you have any feelings? We are all together.

Mr. Grimes: No I really don't have anything to add to that since I am new and just learning the process.

Mr. Gibbons: Larry.

Mr. Ingalls: I guess I am a little uncomfortable, I think Mrs. Blackburn made a great point in... if the staff comes in with a recommendation and we turn it down, they take us to the court are they going to use that against us? Well they did not follow what the staff said. And I don't want to get trapped into... because we are making decisions; we are not making something that somebody else is going to make the final decision. Ours is the final decision and I think as stated we have an opportunity to ask questions of the staff, gather as much evidence as we have in each case and make our decision. I don't think we need to depend on the staff to say here is my decision, now y'all overturn it or accept it. I would be... it seems to me when I first came on this which was a long time ago, that we used to get, somewhere in all those travels it came and went that we got recommendations, but that was a long time ago. I personally would not need a recommendation, I think I could ask enough questions and make my own decision and I think y'all ask some... we asked some good questions of staff tonight about what you thought about this, what you thought about that. I find that is interesting enough to do and I could ask all the questions I wanted and I think I could maybe read between the lines enough to know without them saying, yeah I... we approve this special exception or... And like I say in variances I certainly would not want any at all.

Mrs. Stefl: Right and one of the analyses that when Steven and I went through training was being that, you know, here in Stafford we do allow the special use permit and we do in essence have two roles. And he used an analysis of we have our black robes and our white wigs on when we are in that quasi-judicial role of variances. But then when we are on the other side of the spectrum we are not and we are trying to work together as a team. Especially since we don't have legal counsel now, I know we started... when I first came on Board we had it but we don't now. It would definitely, I think, be helpful if we can at least get on the legislative side, a suggestion from staff just like the Planning Commission. Jeff does recommend approval or disapproval and we can take it and run... whoever we wish on that side of the spectrum. I do agree that when we are on that variance side it is very grey area and the courts are the next step after us. I am all for the county giving us a suggestion, at least on the legislative side.

Mr. Apicella: All I would add is again as a member of the Planning Commission; I think it would be very hard if we didn't get a recommendation from staff. I think it also, I don't mean this to be pejorative, it forces staff to really do their homework and make sure the package is a 100% air tight before they bring to us and that they have dotted all their I's and crossed all their T's and I think it is very helpful. It does not force us to go along with the staff's recommendation. I don't think there is any legal issue, again I am new to the Planning Commission, but I have been there several months. I don't think it is an issue if the body itself takes a complete turn from what is recommended by staff. Ultimately that is the panel that makes the decision and there are many decisions that the Planning Commission makes without going forward to the Board of Supervisors. So again at the end of the day it is just an additional piece of information to help us in adjudicating our decisions, certainly on the legislative side if that is the only area where it makes sense to get a staff recommendation.

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Mr. Ackerman: Can I say something else? I think a couple of things have come to my mind. One is if I were a member of the public and I was at a hearing and some cases got recommendations and some didn't I would... you know it is clearer to us as to why we would have recommendations on some and we would not have recommendations on others. I think members of the public might not see that difference as clearly as we do. And also if the staff gives us a recommendation saying it should not be approved, then I think we have... it makes it... it sort of prejudices our opinion as to if we think it should be approved, that we have to work harder, I think maybe harder than we might normally do to approve something that the staff recommends that it not be approved, and the other way around as well. You can just add something into it that is not that I think is... it certainly would be different from what we have done before.

Mr. Gibbons: Go ahead.

Mrs. Stefl: Also too, I know something that came up I believe it was around Christmas... our last time we met. This is the only time we get together and we don't talk outside of these chambers. So there has been a lot of back room... not really back room I should not have said that. But there has been some background information that needs to be brought up; like you brought up that certain clients don't always sit down for your interviews. And these... I think this would also be an opportunity for us to give us more of that background of what is and isn't happening on the day to day up in the Planning and Zoning that could also go into our decision on a acceptance or a denial. Because I would like to know whether all steps were followed and that makes me uneasy when applicants don't always follow all the steps.

Mr. Gibbons: No I think...

Dr. Larson: We can ask that question.

Mrs. Musante: I can give you and... or speak about this particular case. I sat down with the Gargan's for one hour and went over this application from start to finish. They dropped it off on a day that I was not here. I had to contact them four times, so even though I sat with them for one hour, one solid hour and when through start to finish on this application, I still had to keep going back to them to get additional information as I went back through the packet. So I mean, yes we do need to have the pre-application meeting with the clients, but even though they appeared to understand when they left, everything that I needed, by the time they got home, processed it and brought it back it wasn't there. And that is fine, but that is some of the things that we go through from start to finish.

Mrs. Stefl: It sounds like a lot of hand holding that you do.

Mrs. Musante: It is.

Mrs. Stefl: And then on other cases you don't always get everything. You know things are thrown at you last minute.

Mrs. Musante: That happens.

Mr. Gibbons: But we as a Board discussed this at our last meeting.

Mrs. Stefl: But this is not something she brings up in her staff report though.

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Mr. Gibbons: No but... okay but going back to when we met and the Doctor was up here. What we agreed upon and I was going to bring it up again tonight, that we would not proceed with the application if it wasn't complete. And this Board would make that decision. Now the Chairman or the Vice-Chairmen can be called or can go down to review the package, but we won't go forward with advertisement unless the package is complete. We all amongst ourselves agreed on that. We have had this case that last minute some courier on a bicycle drops the package off, throws it through the window because the window was left open because the air conditioner fell out. You know that type of stuff. So it was delivered. But we agreed that we would not go forward unless the package was complete. Remember that Larry? And when we get done next month, when we do our by-laws and everything we will make sure we get that in there. So we have agreed on that Melody and you can pass that on. But I can see... you can feel reluctance in the staff and I sense that you want to keep things separate. And I want to remind everybody that the case on Seven Lakes this year was a fine case of that going up in the court. Or when they went to... you know, Seven Lakes went to court and sued the county as well as the other one because the county did not enforce the BZA decisions. And so I can see where the staff did not agree with us on that nor did they present it so, I kind of feel that we are on our own Larry. I mean we are here, we are appointed, it is the same thing if you are on the grand jury. You sit there, nobody gives you... they don't recommend one way or the other. You look at what is presented and you decide whether to go forward or not.

Dr. Larson: I certainly would not want to compel the staff to give a recommendation that they were reluctant to do in principle; I would not want to do that. And even in the case of a special exception, I would not want to put the staff in a position (inaudible) give a recommendation, then that is fine.

Mr. Gibbons: Well why don't we try it for say a half year or a year and see how it is going and if we find out that it is not going, well then we will go back and re-address it. Is that fair enough?

Mr. Apicella: I think that would work.

Mr. Ingalls: In the meantime I think you can ask you County Attorney, just for your own clarification and our own clarification.

Mr. Gibbons: But I do know that on the Seven Lakes case the Senior Circuit Court Judge did say, because we got the comment back, that is an independent body and it took a decision and you did not support that decision. It kind of puts the staff in a heck of a bind when they have got to come in to help us and Susan I want you to know we have never had nothing but support from our staff. So that is not a problem. We have always been very fortunate with that. So why don't we try that and then we will take it back up.

Mr. Ackerman: What are we going to try?

Mr. Gibbons: We are going to go along with... they don't make the recommendations. If we feel that with the questioning or the answers they give or the package they give us that we are not getting that, then we can go back and re-address it.

Dr. Larson: Okay, thank you.

Mr. Apicella: So you are saying it is status quo, we are just not...

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Mr. Gibbons: Right. But we will re-address it if we feel that...

Mr. Apicella: What is the point? Because that is what we are doing now, why would we re-address it?

Dr. Larson: I think what would be more helpful is if we had something like what we had before, where we had counsel, Andrew, sitting here with his knowledge of case law. That he could give us relevant examples of case law, I think that helped a lot.

Mr. Gibbons: Well we are blessed with this thing now.

Dr. Larson: I understand.

Mr. Gibbons: And we will go back, I will take it for action tonight. We will go back and see if the Board won't do the counsel. But one of the main reasons that we had counsel before is that we could have been... legal action could have been taken against us. And the legislature stopped that, so we can't be sued. And it is just like if... the reasoning that they did not want to give us is if the Circuit Court... if somebody appeals the Circuit Court the Judge does not get sued and goes to Richmond. The case goes before the Supreme Court not the Judge. The whole document and the case load goes. I think we will be alright. We will take up Susan's thing where, when you look at it you are being coaxed into something rather than pushed into something.

Dr. Larson: I think that it is worth thinking about and that... like you say what is the point of doing it? I think our consciousness has been raised about the issue now that there is some concern about should we have recommendations from the staff. So let's think about that and see how that goes. I mean I had never thought about it before at all and it seems to me that we proceed along on our own and that seemed fine. But I think it is worth thinking about.

Mr. Gibbons: Sure. The next item we have is the draft variance... now we never heard back from Doctor Chandler at all?

UNFINISHED BUSINESS

2. Draft Variance Application

Mrs. Musante: We received an email from him before the first of the year that said he had been out of town and that he would take a look at it and get back to us. Aisha sent out another email on Monday, January 23rd at 12 o'clock asking again and we have heard nothing.

Mr. Gibbons: Okay, let the Board... I am going to send an email to the Chairman and Anthony tomorrow morning asking them to get a hold of him. You know we have a committee set up to do this and I thought by this time we would have something in our hands. Because he said... he volunteered to do it.

Mr. Ingalls: He volunteered to do it.

Mr. Gibbons: We did not ask him to do it. So with your permission I think we will delay this until next month. One month is not going to set us back and I will try to get what he agreed to. Now what we did get, which I want to thank staff about. But I went through this over Christmas and a couple glasses of merlot.

Mr. Ingalls: Bottles or glasses?

Mr. Gibbons: Just glasses. No I learned a long time ago that sometimes you have got to leave things alone. But merlot seems to go good with zoning for some reason. And this is a pretty good template, pretty good document I think. So I think along with the draft I will send a request back to the Chairman again for legal, for the meetings. I will try to get that, because we did have a good proposal that was very reasonable. And now that we can't be sued they can just give guidance. So I will do that this month. The annual report, Steven you had some suggestions in the annual report.

OTHER BUSINESS

3. Annual Report

Mr. Apicella: We had discovered as a result of our deliberations that there were certain ordinance or provisions of ordinance that were in conflict with each other. And I think part of our responsibility is to advise the Board and/or the Planning Commission where these issues come up and where they might want to consider making appropriate fixes. I recall the situation where it was questionable whether or not the application should have even been put forward as a variance request as one of those situations. So I think it would be helpful to add to the annual report some... to report back our findings and conclusions where those situations exist that it would be prudent for the county to consider making modifications.

Mr. Gibbons: I think there were 3 instances, weren't there? Somebody is going to have to... do you remember?

Mr. Apicella: I don't and I am sorry to say it might be helpful if the staff kind of looked back through some of the minutes since we don't have a summary it is hard to know when those specific instances came up. But I know there was at least 3 times.

Mr. Ingalls: The Flood Plain Ordinance has that.

Mr. Gibbons: Right.

Mr. Ingalls: One place it says no increase in the flood and the one place it says you can have a foot. And there is a conflict I think in our Ordinance there.

Mr. Gibbons: Right. Okay that was one of them.

Mr. Ingalls: That was one of them, but I can't remember the other.

Mr. Gibbons: The other one was the application of the...

Mr. Apicella: The Highway Overlay District provisions.

Mr. Gibbons: The Highway Overlay there is a difference of...

Mrs. Stefl: It happened with the Department on Aging.

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Mr. Gibbons: Right and that application... and the Board took that for action, sent that back down. I mean... but we will put it in the document that we...

Mr. Apicella: Again, I think it would be helpful if the staff went back through the minutes though and just checked to see if there was any other time where it came up.

Mr. Gibbons: I think it was 3. 3 instances where we want to make a, so can you all give it an evil eye? And then... go ahead.

Dr. Larson: So is it the recommendation that those instances be noted in the annual report?

Mr. Gibbons: Yes.

Dr. Larson: And then perhaps if there was something done about it make a note about what was done and how it was resolved or still...

Mr. Gibbons: Right. So we will hold this until next month and come up with a new draft. But I think there were 3 cases that... Larry is right. And there is one other one. Okay so we will do that. Anybody have any problem with the report as it was presented? I thought it was an excellent written document. You can see, I thought it was interesting in here that the workload, Mr. Ingalls, how the workload has gone down.

Mr. Ingalls: Yes.

Dr. Larson: That is a good thing.

Mr. Gibbons: That is a positive.

Dr. Larson: That means that people are doing what they should be doing.

Mr. Ingalls: We used to have that many cases in a night.

Mrs. Stefl: Mr. Chairman, under the legal advice you just said that we... are we still seeking outside counsel?

Mr. Gibbons: We asked for it.

Mrs. Stefl: We are still going to ask for it?

Mr. Gibbons: Right.

Mrs. Stefl: I thought you said that we don't need to...

Mr. Gibbons: No we... it is different. No it was different from what it was before Heather. Because before if we got sued and the case went forward or got personally sued, then we had our own attorney. Right now we can't be sued anymore.

Mrs. Stefl: Right.

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Mr. Gibbons: But we could get legal advice at a meeting like Steven is saying. So if you have got a question on different issues...

Mrs. Stefl: Okay we are still seeking...

Mr. Gibbons: And we did get a reasonable bid in. It was something that was... and now that we are down to ten or twelve meetings a year. Well I mean in cases, so it is not bad. Then the next item that we have is adoption of minutes of 3 October. Any corrections or editorials?

ADOPTION OF MINUTES

4. October 25, 2011

Dr. Larson: Mr. Chairman I have 1 correction. Page 16 line 806, accredited the model and give us some, it should be confidence. I probable did not enunciate very well. Confidence we are doing the right. So it would be adding confidence we are and deleting competence.

Mr. Apicella: Mr. Chairman I have 1 change on page 17 I think its line 846, close to the end of that first line where it says ultimately FEMA has to approve it before it before, I think it's a typo. I think it is supposed to be FEMA has to approve it before they do the construction plan.

Mr. Gibbons: Do you want to go over that one more time?

Mr. Apicella: I think it should read ultimately FEMA has to approve it before they do the construction plan. So there is an extra before it that needs to struck.

Mr. Gibbons: Okay, you got that? Are you sure you didn't say it twice Steven?

Mr. Apicella: It is possible.

Mr. Gibbons: So do we have a motion as amended?

Mr. Ackermann: So moved.

Mr. Gibbons: Okay we have a motion.

Dr. Larson: I will move the minutes be adopted as amended.

Mr. Gibbons: Well he already moved.

Dr. Larson: Oh well then I will second it.

Mr. Gibbons: Second it. Two PhDs seconded. All in favor say aye.

Mr. Apicella: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye.

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Mr. Ackerman: Aye.

Dr. Larson: Aye.

Mr. Ingalls: Aye.

Mr. Gibbons: Aye. All opposed. And now Susan do you have a report for us?

ZONING ADMINISTRATOR REPORT

Mrs. Blackburn: Mr. Chairman, Board members I do not have any report at this time. I just want to say I am very happy to be the new Zoning Administrator at Stafford County and I look forward to working with you all. And I know Melody has done a wonderful job. I have seen her files and her past reports. And I know she will continue to do a wonderful job for you all. And if we have any additional questions, I am here for her support.

Mr. Gibbons: Okay.

Mrs. Blackburn: Okay, thank you so much.

Mr. Gibbons: Now I need a motion so I can give a letter to Anthony and the Chairman on Aisha's performance.

Dr. Larson: I will certainly move that Mr. Chairman.

Mr. Gibbons: We have a motion.

Mr. Ingalls: I will second it.

Mr. Gibbons: Second by Mr. Ingalls. All in favor say aye.

Mr. Apicella: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye.

Mr. Ackerman: Aye.

Dr. Larson: Aye.

Mr. Ingalls: Aye.

Mr. Gibbons: Aye. All opposed. And that passes. And the other thing I wanted to go over now... last year we were given and I want to make sure we start off the year right. We had Zoning Ordinances is there any other changes? Last year you gave us a complete packet and we stuck it in our book.

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Mrs. Musante: What I have been doing is sending the updates as they have come in and we have not received an update probably in 4 months. So if you want me to print you off a new Ordinance just to make sure that you have all of the updates, I will gladly do that. That book that you have there Mr. Gibbons is probably old.

Mr. Gibbons: No I put the changes in it.

Mrs. Musante: Oh you have put the... okay as long as you have been putting the changes...

Mr. Gibbons: That is what we have been doing. We have been changing it. Is it simple, can you do page changes?

Mrs. Musante: That is what we normally do because when Municode sends us the update we just take the pages out and keep the book.

Mr. Gibbons: I don't think I have kept up to date on it, have you?

Mr. Ingalls: I would... my thought coming tonight would be I would like to have a new Ordinance.

Mrs. Musante: You want a new one?

Mr. Ingalls: It has gotten to be a little confusing as to...

Mrs. Musante: Okay. I will have them for you coming with the February packages.

Mr. Gibbons: We will put it in here and then we have got this. Melody reproduced this and I think this is valuable. Anything... other than the attorney, anything else that we need to do? I am still trying to find out what happened with Seven Lakes. I thought it was an agreement and the sign has not come down yet. So I don't know if it is sixty days or ninety days, is that what the...

Mrs. Musante: I don't know that we ever received anything on that, so I am not sure. I knew that it had gone to court and it was done, but we didn't receive the...

Mr. Gibbons: You have not seen it?

Mrs. Musante: No.

Mr. Gibbons: Let me get a copy of it. Because I know they had a nice green Christmas wreath up and nobody wanted to take the Christmas wreath down. But you know now it is over with. Okay so we will take the 3... we will do the minutes again next month and I will write for a get together with Susan to see if we can't get an attorney for the meetings. You know just to do that. Go ahead.

Mrs. Stefl: I also... at the last Board of Supervisors meeting I was watching it and listening on line so I don't remember who gave the report, if it was Jeff or someone else. But they stated that Planning Commission and BZA was one of the groups that were looking to... you know the Board has gone to iPads and that they were starting to...

Mr. Gibbons: Mr. Grimes has one already. He is the newest member.

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Mr. Grimes: I want to say I went online and downloaded the Code, bookmarked it so you can go straight to the sections if anybody wants (inaudible).

Mrs. Stefl: Well it was something that was being provided by the county.

Mrs. Musante: I spoke with Mr. Harvey today regarding that...

Mrs. Stefl: Yes.

Mrs. Musante: ... and he said that it is still in discussion.

Mrs. Stefl: Oh.

Mrs. Musante: That they have not worked out the details yet on cost and it may be where the Planning Commission and the BZA share, where you cannot take it home. It will be here for you to use at the meeting.

Dr. Larson: (Inaudible) electronic version of the code.

Mrs. Musante: Correct.

Dr. Larson: And would we...

Mrs. Stefl: We would get our Board packages.

Mr. Ackermann: Yes there is a... the Board of visitors at the University of Mary Washington, they have gone to all electronic documents which has been helpful, particularly going back to looking up past decisions if you need to do that. If it is all there and it is easy to search, you know it helps, it helps get things going. It is just easier to deal with sometimes with all that and the other stuff. And having it present at the meeting is what they do and I think that would probably be sufficient to do that.

Mr. Gibbons: We've done it, done it in the Coast Guard. Up at DOD we started with it and we have gone back to a modified thing. Going back to what you said Doctor. We use it for research, but when they go to a meeting they still like to have the scribble the notes and... but when you research it to go back and pull up history and minutes and stuff it's fantastic. But the current thing was still in front of you. And we have gone back to that and it is amazing how we stopped it and went right back to it. But the history of it, the research is valuable. You know I could see minutes or codes... like instead of this big thick code you just hit the button and...

Mrs. Stefl: Well also if an iPad is shared and we make our notations within or something it is also FOIAable and it is allowed to then be brought into evidence if a case should then go up to the courts too.

Mr. Gibbons: But if you are going to go to that extent then you might as well put a workstation here that plugs into the monitor, it's the same thing. Why go out and spend \$500 for an iPad.

Mrs. Stefl: They are trying to go green here in the county.

Mr. Gibbons: Well that is green too.

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Mrs. Stefl: I agree (inaudible). I was wondering about that.

Mr. Gibbons: Okay.

Mr. Ingalls: I have got one thing while we are talking about electronics. I happened to go on the BZA website, which I have probably only been on there one other time. I would like for you to change my email to my correct email. And according to that I have already... my term is already expired so you might get my term straight.

Mrs. Musante: I will do that and I also have membership list here. When you all sign the form, if you can review your information to make sure it is correct please and Mr. Ingalls we will take care of that.

Mr. Gibbons: Anything else for the good of the order?

Mr. Ackermann: Do we have election of officers at our next meeting?

Mr. Gibbons: Next meeting, that is the annual meeting.

Mr. Ackermann: Okay, that is the annual meeting, fine. And do we know what kind of cases we might have for that meeting?

Mrs. Musante: We have a special exception for rural home business for outdoor weddings.

Dr. Larson: Sounds familiar.

Mr. Ingalls: Just one? Outdoor wedding?

Mr. Ackermann: Business must be booming.

Mr. Gibbons: Anything else?

Mrs. Stefl: (Inaudible) a divorce attorney.

Mr. Gibbons: Okay we will stand to be adjourned.

ADJOURNMENT

With no further business the meeting was adjourned at 8:07 pm.

Robert C. Gibbons, Chairman
Board of Zoning Appeals