

**March 23, 2010 BZA Minutes**

***STAFFORDCOUNTY BOARD OF ZONING APPEALS MINUTES  
March 23, 2010***

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, March 23, 2010, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Robert C. Gibbons in the County Administration Conference Room. 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.

**sent:**

Ernest Ackermann, Ray Davis, Robert Gibbons, Marty Hudson, Larry Ingalls, Karl D. Larson and Paul Ortiz

**Members Absent:**

**Staff Present:** Rachel Hudson, Zoning Administrator  
Melody Musante, Senior Zoning Technician  
Aisha Hamock, Recording Secretary

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

Mrs. Musante: There are no changes.

Mr. Gibbons: There was one postponement that was requested by the applicant?

Mrs. Musante: That is correct.

Mr. Gibbons: Okay, there was a misunderstanding, not on your part but on somebody else's part. Before you hear the first case does any board member wish to make a declaration or disqualification or statement concerning cases to be heard before the board tonight? Hearing none we will continue to public hearing, now Melody this is a continuance?

Mrs. Musante: That is correct.

Mr. Gibbons: This is from the January meeting?

Mrs. Musante: Yes.

Mr. Gibbons: Can you just give us a thumbnail sketch of what's going on?

### **DECLARATIONS OF DISQUALIFICATIONS**

None

### **PUBLIC HEARINGS**

1. SE09-7/2900325 - SERGIO ORELLANA - Request a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses and Standards, A-1, Agricultural," to allow parking and storage of commercial vehicles on a parcel less than three (3) acres on Assessor's Parcel 19-26F. The property is zoned A-1, Agricultural, located at 40 Deshields Lane.

Mrs. Musante: You have the applicant, Sergio Orellana, requesting a Special Exception per Stafford County Code, Section 28-35, Table 3.1, "District Uses and Standards, A-1, Agricultural," to allow parking and storage of commercial vehicles on a parcel less than three (3) acres on Assessor's Parcel 19-26F. The property is zoned A-1, Agricultural, located at 40 Deshields Lane. We tabled the public hearing from January to allow the applicant to clean up the property, do a few things around the property and apply for a home business application of which he has done, we received that back a couple weeks ago.

Mr. Gibbons: Mr. Sergio, you came before us, are you speaking for your father?

Ms. Ramirez: Yes, he understands but I will be translating for him.

Mr. Gibbons: Can you sit up hear so we can hear you a little bit better. And who are you ma'am?

Ms. Ramirez: I am Carol Ramirez, his daughter.

Mr. Gibbons: Okay, when your father was here in January, I think it was your brother who was here, and we understood that he knew the wishes of the board to cleanup the property.

Ms. Ramirez: Which he did.

Mr. Gibbons: Which he did, okay. So in the month of February because of the snow your father requested one more month and the board went along with that. Now when we viewed the property, we had inspectors went out and took a look and it's basically almost the same condition that was when he came before us in January.

Ms. Ramirez: That particular machine is being repaired right now so he could not move that machine from there.

Mr. Gibbons: Be sure your dad knows that when we went by, the condition of the property is almost identical to when you came before us before. He said he removed one vehicle from the time I was on there your move one vehicle and everything else.

Ms. Ramirez: He's saying right now that one of the vehicles is being repaired, the gray car is being repaired and that machine, he has not been there because he's been traveling from state to state working right now.

Mr. Gibbons: I don't know how to ask this but do any of the board members have questions?

Mr. Ortiz: I actually have a quick question in terms of any pending violations so I have an understanding of what violations have been brought forward on the property in terms of what exactly, the last time we met there was discussion about they were going to present some or in progress of presenting some violations. Do you have a list of additional violations that we are not aware of?

Mrs. Musante: No, he is still in violation with the inoperable vehicles as well as a commercial vehicles that are parked there.

Mr. Davis: And the new shed that's being built there?

Mrs. Musante: The shed, he has applied for a Boundary Line Adjustment (BLA) which is still under review in the Planning Department and there are additional comments that went back out to the surveyor. He just submitted the revisions from those comments last week. Until the BLA is done we cannot issue him the permit for the shed.

Mr. Gibbons: Now do you understand what she just said?

Ms. Ramirez: Yes.

Mr. Gibbons: Does that answer your question?

Mr. Ortiz: Yes but I have another question. In your mind, what is cleaning up the property mean to you?

Ms. Ramirez: To him, that means to clean up the leaves and there is no trash around.

Mr. Gibbons: Ray you have a question?

Mr. Davis: Yes I did. The original letter that was sent in September specified problems including the vehicles, do you not understand that the vehicles had to be removed?

Ms. Ramirez: All the cars had to be removed because the vehicle that they're actually using and there is only the gray car that they are repairing right now and the machine. That is the only two things that they are actually not using because they're being repaired right now and the other vehicles have been removed.

Mr. Davis: The letter September 14 of last year states "the parking of commercial vehicles on A-1 zone requires approval of a Special Exception. You must remove all inoperable, untagged, junk vehicles, tractor-trailer trucks, parts and debris from the property".

Ms. Ramirez: Those trucks are the trucks he uses for work.

Mr. Gibbons: What we are trying to say is in a September letter it states that he did not have the authority to leave the vehicles, the one that you have there, so you either need to move them or get permission from this Board.

Ms. Ramirez: So when he came to the meeting in January he did not have permission to park those trucks there anymore or does he have permission from the board?

Mr. Gibbons: No, he was in violation of the County code and it said he didn't have it. We asked him to work out a plan and get the property cleaned up. The cars in the front yard have to be tagged and operable and if not, you cannot store them. There is a copy of what was done.

Ms. Ramirez: It says right here that he had to remove the dump truck, right?

Mr. Gibbons: And you have other trucks they are to?

Mr. Ramirez: He said he applied for the home business and those are the trucks that he actually works with, both the dump truck and the white truck.

Mrs. Musante: The home business application that was submitted is to operate the trucking business only, which does not give him permission to park the inoperable vehicles there. This home business is strictly for his trucking business and to utilize the tractor-trailer and the dump truck that he has there. We cannot approve this until you all approve the special exception for the parking of the vehicles.

Mr. Davis: Unless they have something else to give to us, should we listen to the public?

Mr. Gibbons: Sure.

Mr. Ingalls: Can I ask a question?

Mr. Gibbons: Sure go right ahead.

Mr. Ingalls: I was not here in January, who owns the vehicles that are currently on the property?

Ms. Ramirez: Every single vehicle, all of the vehicles?

Mr. Ingalls: Yes.

Ms. Ramirez: All of the trucks are my father's and there are two cars that are his cars and the other two other cars are my brother's.

Mr. Ingalls: Okay, are there any other vehicles there that are not owned by you or your family?

Ms. Ramirez: No, all of them are owned by the family.

Mr. Ingalls: All of them are owned by members of the family?

Ms. Ramirez: Yes

Mr. Ingalls: I'm going to ask the question of the County if you don't mind. I read the definition of commercial vehicle in our ordinance, am I not reading it right, they can't be owned by the person who owns the property?

Dr. Larson: Mr. Ingalls what page are you looking at?

Mr. Ingalls: On the definition of vehicles, it depends on what book you have. The internet book is different than the hardcover.

Mr. McRoberts: "Any truck, tractor, trailer, tractor-trailer, garbage truck, dump truck, cement truck or similar vehicles or equipment with a gross weight or any vehicle with a gross weight of more than 10,500 pounds, which is not owned or leased by the occupant of the property at which it is parked". So what was the question?

Mr. Ingalls: If I owned one of these vehicles I cannot park it on my property? Is that what it's saying? I can't believe that's what it says. "Any vehicle more than 10,500 pounds which is not owned"?

Mr. McRoberts: Correct. There are two categories of vehicles one is trucks, tractors, trailers, semi trailers, garbage trucks, dump truck cement truck or similar vehicles no matter what they weigh can be parked there.

Mr. Ingalls: No matter what they weigh can be parked here and be owned by the owner?

Mr. McRoberts: Doesn't matter who owns it.

Mr. Ingalls: Doesn't matter who owns it.

Mr. McRoberts: Is that right Melody, do I have the right?

Mrs. Musante: Yes.

Mr. McRoberts: And the second has any vehicle with a gross weight more than 10,500 pounds, which is not owned, leased or operated by the occupant of the property.

Mr. Ingalls: Okay.

Mr. McRoberts: I don't make it up, that's what it says.

Mr. Ingalls: I know, I read it two or three times.

Mr. Gibbons: Any other questions?

Mr. Ingalls: Melody, my understanding is you can have two inoperable vehicles on a piece of property by ordinance?

Mrs. Musante: Correct.

Mr. Ingalls: That is allowed up to two?

Mr. Musante: Up to two.

Dr. Larson: To your knowledge Melody, are there more than one?

Mrs. Musante: Yes, there are more than one inoperable vehicles.

Dr. Larson: Do you know how many that we are talking about?

Mrs. Musante: By looking at the photos there's at least four. Also, his commercial vehicles also need to be tagged. I believe they have 2006 tags, so they are not even current registration.

Mr. Gibbons: Looks like a couple of these inspections have been expired. Do you have any questions Dr. Ackermann?

Dr. Ackermann: No questions.

Mr. Gibbons: Any questions Marty?

Mr. Hudson: No, I don't have any questions.

Mr. Gibbons: Dr. Larson, any other questions?

Dr. Larson: No, I don't have any other questions.

Mr. Gibbons: Anybody else have any other questions? Okay.

Mr. Ortiz: Okay, so we determined there is a number of vehicles in excess of two that don't have proper registration?

Mrs. Musante: Correct.

Mr. Gibbons: Now I'm going to open it up to the public and I'll come back to you in a minute. Does anybody have any questions of the board or I want to volunteer any more information?

Fred Patterson: Yes sir, my name is Fred Patterson, I live at 48 Deshields Lane, we were hearing January and we had two major snowstorms. Basically, the only thing we wanted to do was come to let you know that nothing else has really been done. The property is still an eyesore and like you said they are tags from 2006 so the vehicle had not run in four years. There are numerous vehicles over there that are being used for parts, at least two or three that I see because I drive by everyday. It is dragging on the property values of the houses around there so far. Each year has gotten progressively worse, we have numerous leftover items that he has that were dumped out there. Either, rocks, sand, dirt, mulch and one pile is dumped right next to the road. Numerous piles of as you drive along the road, we have plenty of potholes in the road, it may be from the heavy trucks I'm not sure I don't drive a heavy truck. I do know that those types of trucks do damage to the road. It is a complete eyesore. I understand he's running a business but right now his properties is bringing down the property values. It's an eyesore to the neighborhood and he needs to park them somewhere else. I drive by there every day and I'm just disgusted with it to be honest with you.

Mr. Gibbons: Okay, thank you Mr. Patterson. Anybody else?

Barbara Edwards: My name is Barbara Edwards and I live at 44 Deshields Lane, which is across the lane from the property in question. At the last meeting the question arose, how many houses were on the road and when the answers were given people were including Deshields Court. On Deshields Lane, there are seven properties. There are five property owners that were speaking against it. One property owner was not here because they had their house on the market for over two years and then there was a person that owned the property. Clearly there was a majority of us that did not agree with what was going on within the property. There is a caterpillar tractor that sits on the side, I'm sure you see it in your pictures, it has not moved. Those two white trucks have not moved, I don't know if they're operable and it's not a good situation for the neighborhood.

Mr. Gibbons: Yes ma'am, thank you.

Linda Alvilhiera: I live at 24 Deshields Lane, I am directly in front of his house. I went by there this weekend and he still has two white eighteen wheelers sitting there and his dump truck. One eighteen wheeler has a smashed windshield, one has a County sticker 2007 on it. Like the other neighbor said he has rocks back there, he has palettes back there, he has brush back there, he has a trailer that there. He moved two his junk cars that he had back there to the front of the house now in front of his garage. Now he has seven vehicles sitting in front of his house. I don't think he's paying personal property tax on these vehicles and as a citizen of Stafford County all my life, I've lived in my house for 39 years in the neighborhood and was a good clean neighborhood. Everybody kept up their yards, cut their grass and then he moved in and the neighborhood has gone down. We live on a curved road, it's just an old country road and you have to move out of the way so somebody can get by you. We had a snow storm, he decided to bring one of his eighteen wheeler trucks down the road and got stuck in the road. The people that lived on the road could not get to their house for four hours, they sat up on the road until one o'clock in the morning because they couldn't get to their house because he was sitting blocking the road until they got tow truck and policeman to come and pull him off the road. It is stuff like that we do not want. I can't understand why it has to be such a hassle, why can't he just clean up his yard and have his one dump truck and one other truck and the neighbors wouldn't be upset about it. It just seems like he doesn't want to do the right thing.

Mr. Gibbons: Okay ma'am thank you very much. Okay, I will bring it back to the Board. Any other questions?

Dr. Larson: I think she wanted to say something.

Elise Simpson: Hi, my name is Elise Simpson and I live at 31 Deshields Lane, I live next to Ms. Alvilhiera so we are the front two houses in front of him. Just very briefly on what she mentioned about the road, it is an old gravel road, it is small and we have to yield to oncoming traffic and that hasn't been a problem, I've lived there my entire life so I don't remember it ever being a problem. I was also one of those people who sat until one o'clock in the morning on February 17, it was a Wednesday night, I remember it specifically because of sitting outside until one o'clock in the morning. It was a very difficult situation and I do empathize with my neighbor because I understand he's trying to make a living and I'm not trying to cause a problem for him but at the same time the road is just not prepared for that kind of traffic, that level of traffic. The weight of the truck, I believe and I'm not an expert by any means, it seems that have caused major problems to a road has changed over the years. Lots of people get stuck in the snow and I recognize that but with it being such a large vehicle, it caused more complicated issues and a special tow truck had to be called. It was ten o'clock when I turned into my lane and I had just happened, the lights were not on the vehicle as if he was driving down the road with no lights on. There was another vehicle behind them, I assume that was a family member because they were

talking back and forth and I sat there for forty-five minutes. At no time did Mr. Orellana or his party make any effort to come talk to us, which is fine, his son who pulled in behind me ended up having to park at his cousin's house and walk through the snow so that he could get home. I had my mother with me who has a lot of health problems and she was not able to walk in 3 feet of snow, I was barely able to walk but definitely could not walk. This definitely did cause problems, and like I said I know this was a natural disaster but it seemed like there were more problems along the way because of the condition of the road and the type of vehicles he has. Also, my great concern is that this has been going on since August, which is when the first issue was raised in March and my concern is that if everything was cleaned up now, what's to say it's not going to happen again. At some point, all of the neighbors have said, we followed the rules, we've done what's right, I would expect other people to be on the same page as me as well.

Mr. Gibbons: Thank you ma'am. I'll bring it back, do you have anything more to say?

Ms. Ramirez: On that particular day, on Wednesday, February 17, he was actually taking out his truck, it wasn't an eighteen wheeler it was just the head of the truck. They got stuck unfortunately but he was actually going to work and unfortunately it got stuck. Who would've known it would've gotten stuck.

Mr. Gibbons: We asked your dad to go get somebody if he needed some legal advice to go get it, as Mr. Hudson recommended, right now it is awful hard. I was over there tonight before I came here, and the lady's right, they're more vehicles in the front yard than there were before. Outside of one vehicle nothing has been done, the debris is there, all of the trash is still there.

Ms. Ramirez: The rocks are for planned projects that he has around the house, mulch is for the garden for the house and you saying that's trash. It is not trash it is for house projects.

Mr. Gibbons: Okay, I'll call it debris then. What are the wishes of the board?

Mr. Davis: I would like to make a couple observations, I was over there this morning and I would like to point out that the trailer in the back had expired inspection sticker that expired in January of 2006. One eighteen wheeler has no inspection sticker, the one in the back of the dump truck and the inspection sticker expired December 2007. There is a third vehicle that had no inspection sticker in this letter clearly said that you could have two inoperable vehicles on the property, but does not include the four or five that are in the front. This has been going on for six months and nothing has been done, whether you're working on them or not it clearly says you can only have two inoperable vehicles. There are at least seven there, I did not really look at the ones in the front. I can't see approving this application.

Mr. Gibbons: Do we have a motion?

**MOTION:**

Mr. Ortiz: Mr. Chairman, I make a motion to disapprove this application.

Mr. Davis: I second that motion.

Mr. Gibbons: We have a motion for disapproval and a second. Any discussion?

Mr. Ortiz: Actually, I would like to make a comment. Frankly I think your neighbors have been extremely patient and very responsive to understanding that this is your area of work. Your livelihood is important obviously to sustain yourself as well as your family. The opportunity here, I think, has been lost in the last couple months, in that, your definition of cleaning up would be just moving leaves and trash. I think it was rather clear the number of issues that probably needed to be cleared up. The fact regarding the road in the snow is an unfortunate matter and exacerbates the situation but basically, you're in violation of the code. We tried to, I believe, extend as much as possible the opportunity for you to clean up. I think in many ways there is a moral responsibility to the community and it's unfortunate that you've had neither the time to do the appropriate thing and that is the reason why I make the motion.

Mr. Ingalls: Mr. Chairman, I'm inclined to support the motion and the reason I would support the motion is the requirements that you need for granting a special exception and I would say that the parking of these vehicles here would change the established pattern and development in an area with residential housing and so forth. I don't believe it would be in harmony with the permitted uses by right under the zoning it currently is and would adversely affect the neighboring properties. I think it's certainly affecting the safety of the persons residing and working in the neighborhood due to the trucks coming and going and so forth. So that is the reason I'm going to consider supporting the motion.

Mr. Gibbons: Dr. Ackermann?

Mr. Ackermann: Mr. Ingalls pretty much took the words out of my mouth I was going to say the same thing. According to the code that we have, his request for a special exception clearly does not meet the requirements that we have for special exception.

Mr. Gibbons: Mr. Hudson?

Mr. Hudson: I don't have anything to say.

Mr. Gibbons: Doctor?

Dr. Larson: Mr. Ingalls said it quite well, I'm a little disturbed that the board gave the applicant the opportunity to remove the violations that were in place and he didn't take the opportunity to do so. I also think that in this particular case the application for special exception does not appear to be in harmony with the use of the adjacent property.

Mr. Gibbons: Okay, I'll call for the question all in favor say aye.

Mr. Ackermann: Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye. All opposed? Any abstentions? So the board has denied your application for your special exception.

Ms. Ramirez: Can he apply for another extension?

Mr. Gibbons: No, this is final, he already had one. He has 30 days to appeal it to the court if that's what he chooses. I'm very sorry but we have to judge by what we feel is best for the community. Thank you.

Ms. Ramirez: Thank you.

**VOTE:**

The motion to disapprove this application passed 7-0.

Mr. Ackermann - Yes

Mr. Davis - Yes

Mr. Gibbons - Yes

Mr. Hudson - Yes

Mr. Ingalls - Yes

Dr. Larson - Yes

Mr. Ortiz - Yes.

# Postponed

2. A10-1/1000030 -

LEMING AND HEALY, P.C. - Appeal of the Zoning Administrator's vesting determination dated January 14, 2010, regarding vesting of land use under the M-1, Light Industrial zoning district, on Assessor's Parcel 38-83H. The property is currently zoned B-3, Office, located on Venture Drive in the Wyche Industrial Park.

Mr. Gibbons: Is the second item coming back in April that has been postponed, is that correct?

Ms. Hudson: I assume that it will be on the agenda next month, yes.

Mr. Gibbons: Okay, my understanding is the applicant is going to request that you put this back on and appeal a second ruling that you gave so there would be two items.

Ms. Hudson: I did not give a second ruling. The reason this is postponed was because he had additional information that we needed to review, I reviewed it and I did not make another determination on the property. So this appeal should be coming back to you next month.

## **UNFINISHED BUSINESS**

Mr. Gibbons: Okay. Any unfinished business? Now what I had done, the Board of Supervisors is authorizing three additional alternates I think they're going to appoint them on April 6<sup>th</sup> so I had the Deputy County Attorney draft up some bylaw changes that takes care of how we conduct ourselves when we all meet as a group and how we should be seated and how we would rotate it. If we had three members A gets first, B get second and C, so it gets rotated around.

Mr. Ortiz: So the rotation happens in someone's absence?

Mr. Gibbons: Absence or if someone has to abstain on a ruling that night. Say we have five agenda items and on number three you have to abstain, then an alternate would sit in.

Mr. Ortiz: So, if someone's here and they decide to abstain even though he's present representing his area it would go to an alternate?

Mr. Gibbons: Yes, it would go to an alternate and then he would sit back down. That is what they are looking at and what they are doing. One of the feelings was that everyone would sit at the dais, we have plenty of chairs so there's no lack of room, so everyone would hear the case from beginning to end and only the voting members will vote on the issue.

Mr. Ackermann: And only the voting members will discuss the issue to correct?

Mr. Gibbons: That is correct. A lot of people have questioned that, but Andrew I went back and it came out of the transit authorities in Northern Virginia, VRE, on the federal people said that that was perfectly legal. The primary members and the alternates can sit together but only the primary members vote.

Mr. McRoberts: I certainly agree with you, how many folks that have alternates for the BZA. The deal with the issue of the language in here and is I think in the statute, when a regular member knows he will be absent from the meeting on will have to abstain, he shall notify the chairman twenty-four hours in advance before the meeting. Is that handled by a call to you Bob?

Mr. Gibbons: Gail was working on this and I want you to look at it too but I think we will set it up as a group, but they will notify the staff. If we have the alternates, number one alternate or number two will be called to attend and they will be a voting member that night and should be present.

Ms. Hudson: Gail did indicate to me today that she would like some direction from the BZA.

Dr. Larson: Will there be three alternates?

Ms. Hudson: It would be up to three alternates.

Mr. McRoberts: The statute and the ordinance both say up to three.

Mr. Gibbons: Yes, they have chosen to do three.

Ms. Hudson: We have not heard back from the board at this time with any appointments.

Mr. Gibbons: I am saying they received a call from the chairman and he's trying to put it on for April 6<sup>th</sup>, and they will get it out, I asked Gail to come back with a draft. I just want to come back with a draft and say this is what we feel and will get back to them.

Mr. Ingalls: There are occasions when I come to the meeting and then I find out that someone is representing them that I have not noted in the package and I say these people are my and I'm not going to vote on that for whatever reason. There were a number of times until I got here I didn't know what the case was about, who was going to speak.

Mr. McRoberts: Well that was my question, obviously if you know twenty-four hours in advance and let the board know. I can certainly do some research and how this is applied. I will say in a little bit of research this afternoon I found absolutely nothing, no attorney general's opinion, no cases.

Mr. Ackermann: Isn't Alexandria the County that has alternate members? I know when I had went to training, one of those jurisdictions had members that were alternates.

Mr. Gibbons: I guess that we're saying is we would like to have some feedback and will get together and make a decision.

Mr. Ingalls: Did you envision all three of them coming to every meeting?

Mr. Gibbons: I just wanted to get some feedback.

Mr. Ingalls: But you haven't made that decision?

Mr. Gibbons: No, we will make that decision together. I just asked the attorneys to sit down and give us some guidance and we will sit down and draft the bylaws. If they don't come to the meetings and something happens they won't have any history of the case and they would say they needed another meeting to look this over and over doing is delaying the person, which is the same delay we're trying to avoid by having an alternate members and it would more or less be defeating the purpose.

Mr. Davis: You would run into that same problem if you had a rotation if that person didn't happen to be there when the case was heard.

Mr. Ackermann: Or if we put something off a month, it would be a good idea to have the folks hear what was going on before, perhaps.

Mr. Gibbons: Andrew, would you get a hold of Gail and come up with something that we could review next month and see how it looks.

Mr. McRoberts: I think absolutely having the folks there in case they need to fill in at the last minute or something like that, they would have a history in the case.

Mr. Gibbons: They did take her suggestion and budgeted for the school so all three will go to the course. The board put the money aside so that everyone would be certified the same as we are.

Mr. Ackermann: And we would need to send packets to them as well to.

Mr. Gibbons: Yes, that's correct.

Mr. McRoberts: And if they are seated up on the dais once they are actually acting BZA members they would not speak and would not participate.

Mr. Ackermann: Okay.

Mr. McRoberts: I will talk to Gail about it and see what we come up with.

Mr. Gibbons: But I preferred they are all there. Okay, so wanted you to know that was what was going on and we would make a decision on how we wanted to conduct our meeting within the law.

Mr. Ortiz: A comment; I think I talked to everybody prior to the opening of the session but there were a couple people that were not here. I just want make it known, that before you read in the papers, that I'm being sued by Dick Nageotte and the reason I'm bringing it up is because he is being represented by Mr. Leming. I am being sued for the purpose of being on the BZA board. I would like to get some legal advice with the position I have, if Mr. Leming is in the situation, what are my options?

Mr. McRoberts: I'm glad you made that statement because obviously I can't give you legal advice in a lawsuit. Certainly, I think regarding a conflict or issue in a case that he is out there representing an applicant, I think you're right to be concerned about that.

Mr. Ortiz: Was that advice?

Mr. McRoberts: I think it's a conflict of interest in the sense of a conflict of interest act but if it's something that you don't believe that you could fully and fairly represent the interests of the people you're representing on the BZA.

Mr. Ortiz: I just wanted everybody to understand that as far as I am concerned that we do it based on the facts that are presented to you and the regulations and nothing else. This is not a political board, for whatever reason they want me off the board that is another issue. I just wanted everybody to know and be up front with everybody. As progress is made I will let everybody know.

Mr. Gibbons: Well that is what is part of the County seal, progress.

Mr. McRoberts: Mr. Chairman, I would like to say that I'm looking forward to seeing Paul and all of his BZA colleagues for training next week. I'm going to be there in Blacksburg.

Mr. Gibbons: It is down in Blacksburg?

Mr. McRoberts: Yes. It typically is in Charlottesville and Richmond but apparently there were some complaints by the BZA members in the Southwest that you never come anywhere near us so Mike Chandler decided to move down there.

Mr. Gibbons: Zoning Administrators report.

## **ZONING ADMINISTRATOR REPORT**

Ms. Hudson: Aisha has handed out the ordinances that were approved on the 16<sup>th</sup>; there were three of them. The granting of variances, they deleted two words "approaching confiscation"; the amendment to the code amending 28-35, we will going back to the board with another definition, they took out a fact that, you can only do a medical and dental clinic with a conditional use permit and a change will now be by right use in that district. Then an ordinance to amend and re-ordain the code section definition, specifically signs, subdivisions. There has been no writ ordered yet for the HCS holding company versus the BZA. One of the attorneys checked over at the court and the writ had not been ordered.

Mr. Gibbons: Don't you feel that it's not going to be?

Mr. McRoberts: It has to. I just has not been done yet.

Mr. Gibbons: Okay. We have one item that has been floating around here for two months, that is the report to the Board of Supervisors. Does anybody have any changes to that so we can get it on to the board?

Mr. Davis: I have attained on the first page it says "the BZA has seven members in all months except, there is six of them" and we only met eight times.

Dr. Larson: I was going to suggest "the BZA had seven members in attendance at meetings of the BZA and all months except February", I think that was the intended wording of that.

Mr. Gibbons: Is that all right for corrections? Next one?

Mr. Davis: The next one is on page 2, under legal advise, fourth line under legal advice "the BZA asked the Board of Supervisors to provide legal counsel to represent the board when our decisions are appealed", I think those last four words should be deleted.

Mr. Gibbons: Okay. Anymore?

Dr. Larson: I have two others Mr. Chairman, along the same vein as the last change, still under legal advice the last paragraph "the BZA would like to thank the Board of Supervisors for setting aside to fund to engage legal representation to the BZA", change the word represent to advise.

Mr. Gibbons: Okay.

Dr. Larson: And then back on the very last page second to the last appeal, under the column outcome second to last line is "appeal overturned Zoning Administrator's determination", instead of appeal overturned put administrator's determination overturned.

Ms. Hudson: Or you can say appeal upheld.

Mr. Ackermann: The appeal was upheld.

Dr. Larson: Right, however we want to do this upheld or overturned.

Mr. Davis: I have a question on the last appeal, did we actually defer that for four months?

Ms. Hudson: Do you remember?

Mr. Ackermann: We decided on it in January?

Ms. Hudson: That was the one regarding the funeral home.

Ms. Musante: I know we double check that you can double check them again.

Mr. Davis: It looks like we did for four months.

Ms. Hudson: No.

Mr. McRoberts: Typically it was counsel asking for the deferrals.

Mr. Ackermann: I think we did one month.

Mr. Gibbons: We did one so we could have Thanksgiving and Christmas at home and the applicant that the other one. Any other additions? Okay, so get the corrections and send them out by e-mail by the end of next week and if we don't get any nays back then onto the board. Is that fair enough?

**MOTION:**

Mr. Gibbons: I will make a motion that staff make the corrections as duly noted tonight and will e-mail to all members and if there's no objection will forward it on to the Board of Supervisors, that's the motion.

Ms. Hudson: So you're going to vote tonight that it would be approved subject to corrections noted...

Mr. Gibbons: It would be approved subject to corrections noted sent out this week and with no objection forward it to the Board of Supervisors.

Mr. Ackermann: Second.

Mr. Gibbons: All in favor say Aye.

Mr. Ackermann: Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye. All opposed? Any abstentions?

**VOTE:**

The motion to approve with corrections and passed 7-0.

Mr. Ackermann - Yes

Mr. Davis - Yes

Mr. Gibbons - Yes

Mr. Hudson - Yes

Mr. Ingalls - Yes

Dr. Larson - Yes

Mr. Ortiz - Yes.

**ADOPTION OF MINUTES**

None

**OTHER BUSINESS**

None

**ADJOURNMENT**

Mr. Gibbons: Anything else? Okay, we adjourn the meeting and thank you very much.

With no further business the meeting was adjourned at 9:12 P.M.