

## August 24, 2010 BZA Minutes

### STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES August 24, 2010

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, August 24, 2010, 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: Ernest Ackermann, Ray Davis, Robert Gibbons, Marty Hudson, Larry Ingalls, Karl D. Larson and Paul Ortiz

Alternates Present: Heather Stefl

Members Absent: Steven Apicella

Staff Present: Jeff Harvey, Director of Planning and Zoning  
Melody Musante, Senior Zoning Technician  
Aisha Hamock, Recording Secretary

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

Mr. Musante: There are no changes.

Mr. Gibbons: Thank you ma'am. Before we hear the first case does any Board member wish to make any declaration or statement concerning any case to be heard before the Board tonight?

#### DECLARATIONS OF DISQUALIFICATIONS

Mr. Ingalls: Mr. Chairman, in all three public hearing cases tonight, in case A10-3/1000106, case V10-3/1000197 and case A10-5/1000198, those cases are represented by Mr. Clark Leming of law firm of Leming and Healy. Over the years from time to time the firm that I work for Sullivan, Donahoe and Ingalls has shared the same clients with Mr. Leming and his firm. Sullivan, Donahoe and Ingalls has not worked on these projects with Mr. Leming. I do not personally represent Mr. Leming's firm or the applicants and I have not had any contact with Mr. Leming or his firm concerning any matters before this Board except an email containing additional information that I believe was sent to all members; therefore, I am able to participate fairly, objectively and in the public interest on the cases before the Board.

Mr. Hudson: I would like to just for the record Mr. Chairman, while I was on a recent vacation, I called Mr. Leming, not too familiar with attorneys in this area and asked him for a recommendation of an attorney in a matter of law that he does not handle and has nothing to do with the case that is before us. I was looking for a personal injury lawyer and Mr. Leming was kind enough to share with me a couple names and has nothing to do with any case before us. I was out of town and my wife had an accident and I am not too familiar with the counsel in this area. He recommended names to me and that was to the extent of it.

Mr. Gibbons: Dr. Larson?

Dr. Larson: Mr. Chairman, I wanted to take this opportunity to say that I visited the site in case V10-2/1000130 and talked with one of the applicants while I was there touring the property.

Mr. Gibbons: Okay.

Mr. Hudson: I could say also Mr. Chairman, I visited case A10-3/1000106, I did not speak with Ms. Neville but I did speak with the surrounding neighbors in that neighborhood.

Mr. Gibbons: Okay, any others? I have one, I sent everybody an email. Go ahead Ray.

Mr. Davis: Mr. Chairman, twenty-five (25) years ago or so I was on the Board of Directors for the Rappahannock Counsel of Domestic Violence, Ms. Debrarae Karnes was the Executive Director and I have not had any contact with her or the Leming firm and I feel that I can represent fully and equitably.

Mr. Ortiz: One last comment Mr. Chairman, I also visited and cased the property of 106 as well, I didn't speak with anybody nor did I interface with anybody.

Mr. Gibbons: Thank you very much. I got an email from the Darley family and I forwarded it to you over the weekend so that is disclosed. I will ask the Secretary to read the first case please.

#### PUBLIC HEARINGS

1. A10 3/1000106 MYRA M NEVILLE Appeal of a Notice of Violation dated March 4, 2010, received March 26, 2010, of Section 28 35, Table 3.1 "District Uses & Standards" regarding the use of a recreational vehicle for the purpose of a temporary dwelling on Assessor's Parcel 42 14 23. The property is zoned A 1, Agricultural, located at 6 Ridgeview Circle, River Ridge Estates Subdivision.

Mrs. Musante: Case A10-3/1000106, Myra M. Neville, appeal of a Notice of Violation dated March 4, 2010, received March 26, 2010, of Section 28 35, Table 3.1 "District Uses & Standards" regarding the use of a recreational vehicle for the purpose of a temporary dwelling on Assessor's Parcel 42 14 23. The property is zoned A 1, Agricultural, located at 6 Ridgeview Circle, River Ridge Estates Subdivision. You have the application, copy of the violation dated March 4, 2010, photos of the property, definition of recreational vehicle, copy of the inspection report, the tax map and the vicinity map. Notice of violation certified mail, was sent February 23, 2010 for the use of a recreational vehicle as a residence for the purpose as a temporary dwelling while constructing a single family dwelling. Returned by United States Postal Service (USPS) undeliverable, no mailbox at this address. Another first notice of violation was sent to a post office box on March 4, 2010. This notice was unclaimed. After two failed attempts, first notice of violation was hand delivered March 26, 2010. Appeal application filed April 27, 2010. Per Section 28 25, "Definitions of specific terms", a recreational vehicle is defined as a vehicular, portable structure built on a chassis, designed as a temporary dwelling for travel, recreation and vacation licensed by the department of motor vehicles and is not a listed by right use for the purpose of a dwelling while constructing a single family dwelling in the A 1, Agricultural, zoning district. Single family dwelling permit applied for July 10, 2007 and issued August 15, 2007. Computer tracking system indicates the last inspection was framing on December 28, 2009, which failed. Stop work was placed on permit 6/28/2010 due to expiration (6 months with no inspections). Stop work order was withdrawn 8/4/2010 due to proof of continually working on single family dwelling. And you have a new inspection report that was provided to you from Mr. Leming.

Mr. Gibbons: Is this one of the ones you passed out?

Mrs. Musante: No, that was in his report.

Mr. Gibbons: Right. Do we have any questions of the staff before we open the hearing? I have one question Melody, the vehicle in which she is living out of, I will just call it a vehicle or domicile, have water and sewer that was authorized by the county and the state to be connected?

Mrs. Musante: The property itself has a well and septic permit. According to an email that we received from Tommy Thompson of the Health Department, neither of those have been given an operational permit. If you look at the second page of the email that Tommy Thompson sent, which was one of your handouts tonight. It says, the water supply and sewage disposal systems at this property have not been approved for use by the Health Department.

Mr. Gibbons: Okay and the only one that authorizes that activity is the State Health Department, right? It is not the County?

Mrs. Musante: It is not the County when it is private well and septic. They do, and I am not familiar enough with the building portion of this, but according to the inspection results, they do some kind of a water hook up and I do not understand anything about the building portion of it. When it is well and septic, it is strictly the State.

Mr. Gibbons: Health Department?

Mrs. Musante: Yes.

Mr. Gibbons: Okay. Thank you. Jeff can you elaborate on that since you are the know all, hear all, do all from the Planning?

Mr. Harvey: Mr. Chairman, I am not familiar with the Building Code regulations in this manor.

Mr. Gibbons: Okay.

Mr. Harvey: I can't answer the question.

Mr. Gibbons: Thank you.

Mr. Ortiz: Mr. Chairman, I have one quick question.

Mr. Gibbons: Yes sir.

Mr. Ortiz: Concerning the issue of the ground sewer line and based on that last paragraph. What is the correlation between the Health Department failing, his failing the inspection and the type of dwelling that is authorized or not authorized on the property?

Mrs. Musante: We contacted the Health Department after we received a copy of the information from Clark Leming and one of the... Bear with me for just a second please.

Mr. Ortiz: Absolutely.

Mrs. Musante: One of the statements in Mr. Leming's report says the recreational vehicle has been connected to water and electricity. That was one of his arguments so we contacted the Health Department to see if in fact that was done legally and approved through them.

Mr. Gibbons: Does that answer you questions?

Mr. Ortiz: I am going to wait for the dialogue, maybe that will also help. Thank you.

Mr. Gibbons: Thank you. Any other questions? Okay, we will open the public hearing. Mr. Leming? If you would please, watch those little dots there, it will tell you when you are getting close.

Clark Leming: Thank you Mr. Chairman. We will get to your question Mr. Ortiz in just a moment. Let me go over some background. This has been before you a couple of times and has been continued once at my request and once at Ms. Neville's request. A little refresher on the facts that I think are important here. The Neville's started work on their home in 2007. For economic reasons, they are there own contractors and they are the ones that hire the builders and other subs to come in and do the work. Some of it I imagine they do themselves so the work has gone rather slowly. They have a construction loan on the house and the lot, and for that reason did not attempt and did not believe they were able to rent another premises while the construction was going on. So, that is why the RV situation arose and this is something that has been ongoing since the construction on the house started. They have pets, which made the rental situation difficult as well. The house is nearly completed and candidly my hope had been that I would come to you this evening and say the house is finished and the issue is

moot but as you see from your staff report and also referenced in the information we provided to you, there was a stop work order that was issued in late June, June 28th I believe. It was lifted upon the presentation of evidence to the building code official that work had not stopped for six months and the stop work order was lifted. That prevented inspections on the property, it was a matter that could have been...

Mr. Gibbons: When was that lifted?

Mr. Leming: It was lifted on August 7th, I believe, is what your staff report indicates. I may be off a couple of days there. That is contained in your staff report. The stop work order was solely for the reason that, the acquisition was that work on the house had stopped for more than 6 months. There was documentation that was presented to the contrary but it was something that could have been fairly easily rectified. It took some time to get the documentation together of the things that went on during that six month period, which included the electrical hookup, incidentally. So that has delayed things somewhat, the builder during that delay got involved in another project. We think there is about another thirty days of work necessary on the house and the builder has been reengaged. I also bring to your attention that, for what it is worth here, Ms. Neville was originally, upon the finding of this violation suspended by the County from her employment, she is an inspector herself, suspended initially for the first month with pay and upon her appeal was suspended without pay and has since been terminated by the County. Turning to the merits of the appeal, I do have some handouts for you that I think may be somewhat helpful in my presentation. These are a series of definitions that I will be referring to. The Zoning Ordinance does not contemplate every scenario that comes up. The RV, Recreational Vehicle, is defined under the Stafford Zoning Ordinance and I have given you that definition here among the four that I have listed but it is not a by-right use in any zoning district. It is defined in the, for instance if you look at the definition of dwelling, single family, it says that "manufactured homes and RV's are not single family homes". There is also a reference to it in the context of RV campgrounds and believe it or not in the Flood Overlay District and what you have to do different with RV's if you got one in a Flood Overlay District as far as securing them but it is not a by right use listed anywhere. This is an A-1 zoning district and I am going to talk about two by right uses in the A-1 zoning district that I believe this RV meets the definition of. The first is an accessory dwelling and that is the first definition that you have there and it is defined as a dwelling unit limited to such uses, examples as a family member apartment guest house, maids quarters and there are five criteria that are set forth that it must conform with. The accessory building shall not exceed twenty-five percent of the of the total gross floor area of the principle dwelling unit, the RV in question is 320 square feet, the house is significantly larger than the 1200 and some feet that it would have to be 1280 feet, which would be four times that. I imagine it is 2000 square feet at least. There are no other accessory dwellings on the property. This would be the only accessory dwelling on the property, that is the second criteria. Number three isn't applicable because it says when an accessory building is located within the principle dwelling, this one is not, so that one does not apply. Number four, an accessory building shall have the same address as the principle dwelling which this one does and this term shall not include a carriage house. This is not a carriage house, a carriage house is defined separately in the ordinance and this is not a carriage house. So, this is the dwelling on the property that is being occupied by family members, there is no other such accessory dwelling on the property, it has the same address and is not a carriage house. On its face that meets the definition of an accessory dwelling on the property. I would ask you to consider this, maybe the Zoning Ordinance was not intended for that but that is what the definition states. If there were a primary residence that needed repairs because of a storm, something that caused it to be uninhabitable temporarily and there were an accessory building on the property that met this definition and the family that lived in the house moved to the accessory dwelling, that would not make it any more or less an accessory dwelling. That would still qualify under the ordinance while the house was being repaired. Similar situation here, you have a house being built, the primary house is being built, the family lives in an RV, which on the face of it meets each of these criteria except the one that is not applicable, number three. So, in our view it does meet the definition of accessory dwelling. I would also like you to look at the definition of manufactured home; manufactured home, which is different, defined differently in the ordinance as a mobile home, manufactured home is also a by-right use in an A-1 zoning district, which this is. The definition of, it indicates this is subject to federal regulation, which all manufactured homes are. "It is transportable in one or more sections", this one is, "eight foot body in width, more than forty feet in length, three hundred twenty (320) square feet", we have already talked about that. "It is used as a single-family dwelling", which this is and don't get tripped up over this as I did initially; the definition of single-family excludes RV's but it also excludes manufactured homes. So when this talks about being used as a single-family home, it is not run a fowl of that, in my view. "With or without a permanent foundation connected to required utilities", and we will talk about that in a moment, "includes the heating, plumbing, air conditioning, electrical systems contained in the structure", and all of those are included of course with the RV. Now, with regard to the plumbing, and I am going to let... Because this was presented to you this evening and we have not seen it in advance and I have not seen it in advance, I am going to let Ms. Neville address the issue of the tie in to the well and septic. What I would bring to your attention is the thing that Melody indicated that prompted her to inquire of the Health Department and that is the County

inspection history, which states on line 302, plumbing water line and then there is a comment that follows that. Comments for this application "water service pipe is connected to camper without backflow prevention; need to inspect insertion in the house when ready". That is all that it says. Ms. Neville takes the position that she does have the appropriate state permits and I am going to let her address that because we have not talked about this...

Mr. Gibbons: Why don't you address the electric? You said that electric is...

Mr. Leming: Yes, the electric is hooked up to the house, to the trailer.

Ms. Neville: We had a temporary power pole that was inspected by county.

Mr. Gibbons: Ma'am, you have to state your full name and your address.

Myra M. Neville: Myra M. Neville, former employee, coworker of Melody Musante.

Mr. Leming: Don't!

Ms. Neville: But anyhow, the...

Mr. Gibbons: No ma'am, you have to state your name and address for the record.

Ms. Neville: Myra M. Neville, 6 Ridgeview Circle, Fredericksburg, VA.

Mr. Gibbons: Thank you.

Ms. Neville: A temporary pole was connected. An RV has a plug in, so when I had the temporary power pole inspected by the county to do the building of my house. I did connect that to the RV but I also have a generator, which I used in the beginning. As far as the plumbing, I am sorry, as far as the septic and the water well, that had all been done before we even thought about moving out there. It was inspected by an AOSE, Phil Helm, and I have all the paperwork at home but I am blindsided by this because I did not know that this was ever even a question because I went through all that and everything and everything was perfect. As a matter of fact, we can contact Phil Helm and he would verify that. I don't understand what information they are getting and how they are getting the information incorrect. It just does not make any sense to me. I would have been glad to provide...

Mr. Gibbons: Mr. Ortiz had a question, do you want to follow up now?

Mr. Ortiz: I am trying to better understand the correlations of these violations and failed items to the issue of the type of dwelling, the type of item this is on a piece of property, which I believe is the violation?

Mr. Leming: Yes.

Mr. Ortiz: And so I am trying to either better understand or separate the two because you can be in violation of one and still have an appropriate dwelling based on Table 3-1. So I am trying to better understand, if anyone could provide some insight to that.

Mr. Leming: Let me try to address that. The issue that she has been found in violation on is occupying the RV on the property and using that as a residence. The legality of the RV or any issue associated with including ultimately whether or not it is correctly hooked up is not before the BZA tonight. The only reason we got into that is to show that the County had been out there as long ago as 2007 to look at the RV and had at least from the County's end of it approved that connection, which was at that point to the RV. There was no indication that she could not use the RV for that purpose until almost two years later, well more than two years later. That was the point I was trying to make.

Mr. Ortiz: I appreciate that. I just want to make sure that I understand separating the two to make sure I know what I am deciding upon tonight.

Mr. Leming: There may be other violations pertaining to the RV that is not before the BZA tonight. Based on what has come out the issue before the BZA tonight is whether or not it's a violation for her to occupy the RV on the property while the house is being built.

Mr. Ortiz: Thank you. And again I read everything and that's what I understand to be but I just wanted to make sure. Thank you.

Mr. Gibbons: Any questions of Ms. Neville?

Mr. Ingalls: I guess I have something Mr. Chairman.

Mr. Gibbons: Sure.

Mr. Ingalls: I guess you're trying to make me believe that this is not a recreational vehicle, you will have referred to it, everybody has referred to it as what it is and I think it meets the definition of a RV Park in County Code. Is it licensed?

Ms. Neville: Yes.

Mr. Ingalls: It is licensed, okay.

Ms. Neville: It is licensed and I pay taxes on it.

Mr. Ingalls: It meets the definition of an RV park in our code.

Mr. Leming: We don't contest that, I think the issue is not whether it's an RV or not; the issue is whether an RV can be an accessory dwelling or a manufactured home.

Mr. Ingalls: Okay I guess the other thinking that I have is that my understanding of our ordinance is before you can have an accessory structure you have to have a main structure.

Mr. Leming: Well there is one, it just doesn't have a Occupancy Permit (OP) yet.

Mr. Ingalls: Right, but I think that the key is not a main structure until you have an OP. It is just a structure.

Mr. Leming: It may be the key with regard to the accessory structure. I don't think it's the key with regards to the manufactured home. That does not require that there be another home on the property.

Mr. Ingalls: Well if it's a manufactured home you can't have two dwellings of the same lot.

Mr. Leming: Well then by your logic your first one that doesn't have an OP is not a dwelling yet and they would have to discontinue with the manufactured home, they would have to discontinue that.

Mr. Ingalls: But we've already established that it's an RV and it's not a manufactured home. Any accessory use is not allowed because you don't have a main structure in the main structure is something with an OP and if you don't have an OP you don't have one.

Mr. Leming: I think that's relevant to accessory dwelling only and if, I'm not going to concede that you have to have an OP in order to have the primary structure of property. For instance, the example where a home may be uninhabitable temporarily because of some damage to the home but I don't think it has anything to do with the definition of manufactured homes. I think the question is whether or not RV can be, under this definition, a manufactured home. I don't think the fact that it's an RV means that it's not a manufactured home at least under this ordinance. Now I may not be within somebody's particular mindset, like the concept of single family home here, specifically excludes manufactured homes and RVs. But then we have the definition of manufactured home which talks about it being uses as a single family home. The important thing to remember, I think about the ordinance is that these definitions are peculiar to this ordinance, whether or not they match your own idea of what

one of these things is out there in the real world I think is irrelevant to the interpretation of the ordinance, partly. Unless there is some sort of ambiguity and you have to fall back on some sense of your own experience for common sense. But in this particular case, I don't think that RV is excluded under this definition. I think the question is whether or not it meets the definition of manufactured homes and it certainly doesn't exclude it.

Ms. Neville: it is approximately 386 square feet and within the definition it tells you exactly how to measure. Like if you have sliders that extend out, which we have, we have three or four sliders that extend out.

Mr. Ingalls: Again I think that our ordinance describes it is under recreation.

Mr. Leming: That may have not been the intent but the question is...

Mr. Gibbons: Yeah, he asked a question so.

Mr. Ingalls: I guess my other question is you indicated in your opening remarks that you were hoping tonight to come in here and say that we finished and we were going to be moving into the house and the RV is going to be gone by the time we walk over there tonight.

Mr. Leming: Yes.

Mr. Ingalls: You kind of indicated, you didn't say it but because the stop order was issued that you were prevented from doing something or maybe a period of time.

Mr. Leming: The inspections could not occur for a period of time.

Mr. Ingalls: Right.

Mr. Leming: It was about five weeks.

Mr. Ingalls: Five weeks. So if I were to ask you when is it now going to be completed? It would be five weeks from now?

Ms. Neville: I spoke to my contractor, he said he could have the installation and drywall in two weeks. He did not give me a quote on cabinets and things like that at this time.

Mr. Leming: Which would not be necessary for an OP.

Mr. Ingalls: Yeah, I don't know what it takes for an OP. I am not a building inspector.

Mr. Leming: What I presented to you was that in 30 days she thinks she can be done.

Mr. Gibbons: You said five weeks, you still within the five weeks period you should have the OP?

Mr. Leming: The Board's next meeting is September 28th, certainly by the time that meeting occurs I think she would be done.

Ms. Neville: We were moving pretty good until he got a stop work order and when the stop order got placed, my contractor took a job in West Virginia for two weeks.

Mr. Gibbons: Yes, but that's not the question. He asked the question. Let's rephrase it, by the time we meet again in the end of September, the fourth Tuesday, do you feel you will have an OP at the time?

Ms. Neville: Yes, I do.

Mr. Gibbons: Okay.

Mr. Hudson: I have a question Mr. Chairman?

Mr. Gibbons: I will make sure that he is satisfied.

Mr. Ingalls: I'm satisfied.

Mr. Gibbons: Go right ahead.

Mr. Hudson: I guess this is more of a practical sense, I happened to experience a neighbor who was a major in the Marine Corps who could not afford an RV and pitched a tent in his front yard and lived in his tent. We in the neighborhood, obviously, helped me finish his home. After four or five weeks in the tent we actually invited him to live in our home, I guess my question goes to the point of, would a tent be in violation of the code? I mean, I kind of found myself kind of twisted here because ma'am, scrap your RV and live in a tent and you would be okay. This is what this individual did in my neighborhood in Greenridge. He pitched a tent in the front yard, had three boys, I happen to have five bedrooms. I went up and met them and said you're welcome to come live with us until you finish your home. Does a tent violate the code, I asked the County?

Ms. Musante: We've actually never have dealt with that before.

Mr. Leming: The campground couldn't be there, a tent is not by right use.

Mr. Hudson: Well it was his property.

Mr. Leming: I will tell you that I had one similar experience involving Stafford Crossings Church on Route 630 here and they were going to hire workers that would come in on the weekend and do construction on a voluntary basis and the question arose at that time as to whether or not they could bring the campers that were RVs onto the property in order to have some order reside on the weekend while they were doing construction. Although, I don't think the County went so far as to say that was all right, they were aware of it and there was no violation ever issued.

Mr. Hudson: Well, I follow-up with my, I don't practice law, but my common knowledge of the law tells me that some strict application of the law certainly could impose a hardship if you're living in a tent versus living in a camper. I have seen this individual who serves our country live in a tent and I just couldn't stand it after so many weeks and I invited him to live in my home. I did visit this property, I did speak to your neighbors and I could not find one neighbor that was opposed to you living in a camper. Now that may have some kind of strict application to the code but I didn't... I actually thought I was driving back in West Virginia, you're so far back in there.

Ms. Neville: That's why we picked it. It's beautiful.

Mr. Hudson: Sometimes I have to play my gut and my common sense as to what's practical and a strict application of the law and what kind of hardship it would place on you. I understand you may have some small kids.

Ms. Neville: I have one child but the biggest thing is I have four rescue dogs that weigh over 100 pounds and no one would allow us there. And on top of that, I have two handicapped ducks but I'm not willing to give up, one is blind and one is cripple and animals would get to them so I'm willing to get the tent if they make me or my RV.

Mr. Hudson: Well I'm not suggesting that.

Ms. Neville: I've already researched it, it is in there. Campground if I remember right, is allowed with the exception of RV. They modified the State definition for campground to limit the RV, now when that took place I don't know but the way I interpret it a tent is allowed.

Mr. Hudson: I am not suggesting that, I'm just saying that a strict application of the law is certainly...

Ms. Neville: May I please express that I am on 3 1/4 acres of land with 110 foot trees. It's beautiful. We went and cut out just a little section to build our home.

Mr. Gibbons: The question is, he has asked a question, is a tent allowed in the area?

Ms. Neville: I say it is.

Mr. Gibbons: Do we know Melody or Jeff?

Mrs. Musante: I can read you the definition of a camp ground, I don't know what other issues you may have as far as the health department is concerned or building code, whether that's a means of a livable unit. "A campground is a plot of ground upon which two or more campsites are located or maintained for occupancy by camping units of the general public as temporary living quarters for recreation, education or vacation purposes. It is not intended for self-contained travel trailers or recreational vehicles".

Mr. Gibbons: Okay.

Mrs. Musante: Campground.

Mr. Gibbons: It never mentioned anything about a tent.

Mr. Hudson: But a campground is in quotes "a campground". I think there can be certainly different definitions of the campground.

Mr. Leming: It may ultimately go to intent and whether or not it is being used, a tent, as a dwelling.

Mr. Hudson: I am not suggesting that. Please don't misunderstand me I'm just saying.

Ms. Neville: I already have as a backup plan.

Mr. Gibbons: Okay. Mr. Ackermann do you have anything?

Mr. Ackermann: No not at this time.

Mr. Gibbons: Dr. Larson?

Dr. Larson: I have a question for staff Mr. Chairman?

Mr. Gibbons: Go ahead.

Dr. Larson: Can this be deferred again? Can we do for this case in a month?

Mrs. Musante: We will have to look at the bylaws and see what your bylaws state.

Mr. Hudson: These bylaws have draft on them.

Mr. Ackermann: We've existing bylaws. Mr. Chairman isn't the issue that we have to reach a decision within 60 days or in 30 days of closing the open hearing?

Mr. Gibbons: I think it is 60 days. We close the public hearing. Tonight is the first public hearing.

Mr. Ackermann: We can wait another meeting before making a decision, which is not a deferment.

Mr. Hudson: If that a fact than I would make that motion.

Mr. Gibbons: I have to close the public hearing first.

Mr. Hudson: I'm sorry. Excuse me.

Mr. Gibbons: I'm not being critical. It's okay.

Dr. Larson: The only comment that I would add here Mr. Chairman, I would be very hesitant to overrule the Zoning Administrator here because I think it's clearly an RV. I think the Zoning Administrator was correct in her assessment.

Mr. Gibbons: Any other questions? I think it has probably run out long before now but we deferred for questions.

Mr. Leming: Thank you.

Mr. Gibbons: So open to the public, does anybody wish to speak for this application? Would anybody like to speak against this application? Then I'll close the public hearing to bring it back to the Board.

MOTION:

Mr. Hudson: I would like to make a motion Mr. Chairman in case A10-3/1000106 if this is the first public hearing of it and that we would hold off for 60 days in order to hear the case or maybe the case can resolve itself within that period of time. That's not a very good motion but the 60 day part I do want to get in there as the motion.

Mr. Gibbons: Okay, do we have a second?

Dr. Larson: I'll second that. I think we meant to say is in 60 days we will vote on this case.

Mr. Hudson: Thank you.

Mr. Gibbons: We'll dispose of this case.

Mr. Ingalls: I assume were deferring this to our October meeting?

Dr. Larson: Yes.

Mr. Gibbons: What is the date in October? We should be specific on the date.

Mr. Ingalls: I don't want Mr. Chairman to call me up and say our 60 days is going to be up and I have to come four days before regular meeting...

Mr. Hudson: It would be the last...

Mrs. Musante: It would be October 26th.

Mr. Gibbons: So that should be within the 60 day time frame.

Mr. Ingalls: Pretty close.

Mr. Gibbons: We should change it to October 26th.

Mr. Hudson: Yes.

Mr. Gibbons: It that all right with you?

Mr. Hudson: Yes. The standard meeting in October.

Mr. Gibbons: Any other questions?

Mr. Ackermann: So just to discuss the motion, so the purpose of delaying it for 60 days is to what?

Mr. Hudson: Well the purpose to me would be in the hope that the house would be finished and we wouldn't have to deal with this again. The trailer would be gone and the people would not have to resort to coming back before us whether or not the County cites them for living in a tent and start all over again.

Mr. Ackermann: So essentially giving them the opportunity to get an occupancy permit in which case we would not have to overrule the violation? It would be moot at that point. Okay, sounds good to me.

Mr. Gibbons: Any other discussions?

Mr. Davis: Just a point of interest, I think that an RV can be parked it just won't be lived in and so won't be gone I would think.

Mr. Gibbons: Okay, we will call for the question. All in favor of the motion 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? The motion passes 7-0. Now I want to make sure Ms. Neville do you understand what we did now?

Ms. Neville: Yes sir.

Mr. Gibbons: Okay.

Ms. Neville: Thank you.

VOTE:

The motion to delay this case until the October meeting passed 7-0.

Mr. Ackermann - Yes

Mr. Davis - Yes

Mr. Gibbons - Yes

Mr. Hudson - Yes

Mr. Ingalls - Yes

Dr. Larson - Yes

Mr. Ortiz - Yes

Mr. Gibbons: Would you read item number two madam secretary.

3. A10 5/1000198 H. CLARK LEMING Appeal of the Director of Planning and Zoning's determination at the July 7, 2010 Planning Commission meeting regarding Stafford County Code, Section 28 256(c)(1) pertaining to dedication of ultimate right of way.

Mr. Ingalls: Before you read that can I ask a question?

Mr. Gibbons: Sure.

Mr. Ingalls: Is that the right order we want to read these things in?

Mr. Gibbons: Do you want to go to unfinished business?

Mr. Ingalls: No. Mr. Leming, is that the right order that you want to go in?

Mr. Leming: It is not the order that I would have chosen. Also, I would not be opposed to consolidating them. The facts are the same in both case, we are dealing with the same ordinance in both cases. The only difference is there is an argument about what the ordinance says on the appeal and then we would go through the criteria on the Variance. However you want to handle that and then you would have it all before you.

Mr. Gibbons: Do you have any objections to combining the cases?

Mr. Leming: But I would choose to hear the Appeal first if it comes down to that.

Mr. Ingalls: Your preference would be to hear the appeal first and then go from there.

Mr. Leming: Correct because there may be no need for the Variance.

Mr. Gibbons: Let me ask you, why couldn't you combine the both of them for at least one consolidated hearing because the facts would come out. Does anybody have any problems with that? Do you have any problem counsel if we combine both items for one public hearing?

Mr. Leming: No, I have no objection to that at all. Of course this means I get twenty minutes instead of ten.

Mr. Gibbons: No, no, after the last case you probably get four and a half. I would like to suggest to the Board that we combine both items for public hearing and each one would be voted on but we would vote on the Appeal first before the other.

Mr. Ingalls: I guess, as long as you feel we can discuss them together and still not get confused as to which one we are discussing.

Mr. Leming: I think I can differentiate. The argument on the Appeal is pretty straight forward. It really is just what does the ordinance say? The only real difference is on the Variance is that I am going to go through the four criteria for a Variance and say why it meets the criteria.

Mr. Ingalls: If you think you can do it I can handle it.

Mr. Leming: Okay.

Mr. Gibbons: Okay, does anybody have any objections?

Mr. Davis: If we...

Mr. Gibbons: Go ahead Ray.

Mr. Davis: If we approve the Appeal, there is no need to hear the other information.

Mr. Gibbons: That is correct.

Mr. Davis: So, why not do the appeal first?

Mr. Gibbons: If you so choose, we can do that. I have no problem with that. Okay, we are going to go with the Appeal first, good suggestion. Please read item three.

Mrs. Musante: Case A10 5/1000198, H. Clark Leming, Appeal of the Director of Planning and Zoning's determination at the July 7, 2010 Planning Commission meeting regarding Stafford County Code, Section 28 256(c)(1) pertaining to dedication of ultimate right of way. You have the application, the owner's consent form, Stafford County Code Section 28-256, "Required Standards and Improvements, Generally", draft minutes of the July 7, 2010 Planning Commission meeting for CUP2900195; Stafford Lakes Service Center, the tax map and area vicinity map. This application is an Appeal of a determination made by Planning Director, Jeff Harvey, during the July 7, 2010 Planning Commission meeting that Section 28 256(c)(1) of the Stafford County Zoning Ordinance requires dedication of the ultimate right of way as a condition of site plan approval. A Conditional Use application is pending before the Planning Commission to restore automobile fuel pumps (Highway Corridor Overlay requirement) that were removed in the mid 1990's. Dedication of the ultimate 76'(foot) right of way along this 0.96 acre parcel on Warrenton Road must be completed prior to site plan approval.

Mr. Gibbons: Any questions of staff before we start?

Mr. Ackermann: A question? The point of contention is as to when this seventy-six (76) foot right-of-way (ROW) has to be given? Is that what the issue is?

Mrs. Musante: That is what the appeal is for.

Mr. Ackermann: That is what the appeal is for. Not whether there should be a seventy-six (76) foot? Is that not the appeal?

Mr. Leming: I will clarify that. Ultimately the second question you asked is correct.

Mr. Ackermann: Okay, alright but as far as staff is concerned, the question is about the seventy-six (76) foot ROW at this point?

Mrs. Musante: Jeff, is that correct on the Appeal?

Mr. Harvey: Mr. Chairman, Mr. Ackermann, I would have to rely on the applicant as to what there specifically requesting in their appeal. I would be happy to answer any questions regarding the statements that I made at the Planning Commission meeting and how staff views ROW dedication in regards to site plan review.

Mr. Ackermann: Maybe you could help me and maybe you could too. What it means to dedicate ROW?

Mr. Harvey: Mr. Chairman, Mr. Ackermann, to dedicate ROW is for a property owner to give through a deed of land to either the Commonwealth or Stafford County for public road improvement. The ROW is the land in which a public road is located but in this specific case, the properties along US Route 17, which is a national highway system route. That would require dedication to the Commonwealth of Virginia for that public ROW.

Mr. Ackermann: And once it is dedicated, it can't be used for anything else?

Mr. Harvey: It is used for public ROW purposes for vehicular travel lanes, sidewalks, any other pertinences' necessary for the roadway in addition at times there are utilities in that ROW.

Mr. Ackermann: Thank you.

Mr. Hudson: Excuse me Mr. Chairman.

Mr. Gibbons: Go ahead.

Mr. Hudson: I don't mean to be disrespectful but I respectfully disagree that there was a public ROW in Greenridge Drive, where I live that the County disbanded and gave to the property owners on either side of it after the County decided that they were not going to use the public ROW as a road. So, I don't know if that always holds true what you just said. I mean I know for a fact that there was a road plan, it was County property and the County decided they were not going to build a road there and they divided up the property between each land owner on each side of that ROW. I am not sure if that is totally accurate to the T down the line. That has been done, I know.

Mr. Harvey: Yes Mr. Chairman, Mr. Hudson, at times there are situations where there is excess ROW.

Mr. Hudson: Yes.

Mr. Harvey: Like the situation you described where initially there had been a road plan to go somewhere.

Mr. Hudson: Yes.

Mr. Harvey: And there was never a connection made so that ROW is no longer necessary or if a road gets realigned, there may be extra ROW left over. There are different ways in which that can be dealt with, either through an abandonment by the locality or the Commonwealth declaring it as excess and potentially trading land or selling land off. So there is a number of ways to dispose of excess ROW.

Mr. Hudson: Okay, thank you for the clarification.

Mr. Gibbons: Any other questions?

Mr. Ortiz: I just had a quick question.

Mr. Gibbons: Yes sir.

Mr. Ortiz: Can you explain to me the Virginia Department of Transportation (VDOT) access management spacing exception and what that entails?

Mr. Harvey: Mr. Chairman, Mr. Ortiz, that entails a requirement that VDOT has when it looks at location of entrances for businesses and residential neighborhoods along the major roadways. It is a process which VDOT has to determine where the entrances would be appropriately located. If an entrance does not meet that criteria then there is a process in which you can apply for an exception to meet their standards in a modified sense.

Mr. Ortiz: Thank you.

Mr. Gibbons: Alright, thank you. Mr. Leming?

Mr. Leming: I have a copy of the ordinance section that we are going to be discussing. Thank you Mr. Chairman and members of the Board. Somewhat usual posture for this case, this is an application, there is an application pending before the Planning Commission for a Conditional Use Permit (CUP), the CUP was filed so the owner of the property could install fuel pumps at a property. A property that had previously been used for this purpose, it is right now just an automotive repair center and the applicant seeks to reinstate the fuel pumps but it has been more than two years so it is not a nonconforming use and because it is in the highway overlay corridor district, he is required under the ordinance to obtain a CUP for the installation of fuel pumps. As we were working through the process in the Planning Commission this issue came up and the interpretation of this particular ordinance section that we are going to discuss was raised to the Planning Commission. Jeff indicated what he thought it indicated,

that information has been provided to you in transcripts. I think telling is the staff report itself, which reinterprets that ordinance in the same fashion that Mr. Harvey indicated to the Planning Commission or states it is exactly consistent with that. That is the issue that is before the Commission, what does the ordinance actually require the land owner to do here? Mr. Ackermann asked a very good question and that is whether or not the issue tonight is, whether any dedication is required under this ordinance section or whether it just goes to the timing. What has come up in the context of the CUP application because of the condition that had been proposed by staff, became a timing issue. The applicant through negotiations agreed that at a later point in time when it was time for the project to actually be built, the widening of Warrenton Road, that the dedication would be made at that point in time so that VDOT would have the ROW at the time that it was necessary to have it. That was not something that could work under Mr. Harvey's definition or interpretation of this ordinance because Mr. Harvey advised the Planning Commission that the dedication would have to be made at the time of site plan approval. Therefore, regardless of what the Planning Commission did in the way of structuring a condition to address this issue, it wouldn't matter because the ordinance would override the condition that we had proposed in lieu of the staff condition. A little background of the property, this is an unusually shaped piece of property. If you have been out to see it, it is a elongated triangular piece of property that has roads on all three sides of the triangle; Warrenton Road, Berea Church Road and Fleet Road. It is small, it is shy of an acre, about 42,000 square feet. I have told you what the owner seeks to do with the property. The owner in response to staff condition came up with a proposal that would permit him to dedicate a limited amount of ROW necessary to make a right turn improvement that was required by the County and VDOT and some dedication along Berea Church Road that would not interfere with the existing structures on the property. That really is the problem that is posed by this. When the ultimate dedication is made here, it takes about a fourth of the property and of course if nothing was proposed, VDOT, the state would have to buy that property. Now the owner is being asked to give that property in the context of this CUP application. So, in response to Mr. Ackermann's question, the applicant has been negotiating in good faith with the Planning Commission to try to work something out so that in the interim we don't know when Route 17 is going to be widened. This is a forty million dollar (\$40,000,000) project that is underfunded at this point by about twenty-five million (\$25,000,000) and that information comes from Mr. Neuhard, the Deputy County Administrator and ultimately from VDOT. So, there is no telling when this is actually going to happen. In the meantime, if all of this dedication is required, the applicant, because of the size of the parcel and the encroachment of this dedication, would have to tear down the existing building, the existing canopy, restructure everything. So, what the applicant was asking and what the issue was before the Planning Commission is can I defer, can I delay the actual dedication of ROW until such time that it is really needed. Why should VDOT hold it in its coffers when I can use the property in the meantime and not have to demolish the structures on my property? That is what gives rise to the issue of the interpretation of this ordinance. I will also tell you that this, the interpretation of this ordinance has come up previously with other clients. Normally, there is enough, there is a big enough parcel, they are anxious enough to move ahead with the project that they don't question it. I have never read this particular ordinance section as requiring the dedication of all ROW that could ever be envisioned for a particular roadway along a property that is being developed but most of the time it never gets challenged because the owner is in a position to dedicate it and we move on. It asks you to look at the ordinance section itself and I want to split it up into two sections here. If you look at the first section it says "when a site development plan abuts one side of any public street, which is in the state highway system or maintained by the County, which is proposed by the Comprehensive Plan of the County, the subdivider", key word here, "the subdivider shall be required to dedicate at least one half of the ROW necessary to make", this language is important too, "make horizontal and vertical adjustments to such street". And it goes on to say "any such ROW addition shall be dedicated for public use when the plat is recorded". That does not apply here because the applicant is not subdividing the property. There is no subdivision at issue, there is nothing that is going to record plat, the approval of a site plan does not get recorded so that does not apply. If you look at the second portion here, it says "when a site development plan is presented on public streets of less than fifty (50) feet in total width", key provision here, "less than fifty (50) feet in total width, additional ROW shall be dedicated to achieve at least a minimum of fifty (50) feet in width". The last part is not applicable I think, at all. So, Route 17 is clearly more than fifty (50) feet in width, this pertains to public streets less than fifty (50) feet in width. Neither sections pertains to this area, no subdivider, no plat recorded, not a street less than fifty (50). Where does the dedication language come in here? Even if you look over all of that and assume there is something for the County to hang its hat on here, the language that is used here say "necessary to make horizontal and vertical adjustments". Now the widening of Route 17, I don't see as a vertical or horizontal adjustment. Adjustment is a realignment made necessary by a particular development like the right turn lane. That is a horizontal or vertical adjustment to the street and that is being done without this massive ROW dedication. So that is the problem with the ordinance and I would also suggest that the fact that the staff proposed a CUP condition that is something that would run with the CUP itself that would require the dedication is an additional indication that it is not here in this ordinance. Otherwise, why propose a condition if the ordinance requires it anyway? That is how we read the ordinance, we don't think that it applies in this particular case, I am not sure it applies or requires dedication in any case. That is the interpretation that we have, I think it is clear from

your staff report, Jeff can clarify it further if you would like him to do so. We are asking the Board of Zoning Appeals to hold that this ordinance section does not require dedication of public ROW period. Now we are content to continue to negotiate with the Planning Commission and come up with a condition that would reserve the ROW and at such time that VDOT is ready to move forward with the project, be it four or five years down the road here, then the dedication would be made. We proposed putting the deed in escrow so that it could be executed at that point in time and if we get into the Variance we have a particular condition that addresses that. First issue before you is whether or not this particular ordinance section requires any dedication of ROW and it our view that there is no way to read this ordinance that requires the dedication of ROW in this case or any other unless you have a street that is not fifty (50) feet, less than fifty (50) feet wide or unless somehow you are subdividing or are going to record a plat. None of those factors are applicable here and it is not a horizontal or vertical adjustment the widening of Route 17.

Mr. Gibbons: I have to give you credit you wrapped up right on time. Is there any questions? I will start with you Doctor.

Dr. Larson: Thank you Mr. Chairman. I am scratching my head here wondering are we the right body to consider this question?

Mr. Gibbons: Yes, we checked into that.

Dr. Larson: Thank you.

Mr. Leming: Could I say something? The Board at its last meeting passed a new ordinance, an amendment to the zoning ordinance designating Mr. Harvey is one of the administrative officers who can interpret the zoning ordinance, that is what we are bringing before you interpretation of the zoning ordinance. State law has always indicated that an appeal could come from any administrative officer. That is why the appeal came from Mr. Neuhard because we had an e-mail from him saying here is what the ordinance requires or doesn't require and we've resolved that. The County has now narrowed Mr. Harvey and assistant planning director, I think, is also designated as administrative officials for the purposes of this section of state code that says if they interpret the ordinance and we disagree with that that we bring the appeal to you.

Mr. Gibbons: In addition to the Zoning Administrator?

Mr. Leming: Yes. In addition to the Zoning Administrator, that's correct. I do have that ordinance here if that's helpful to you.

Dr. Larson: Thank you for the clarification.

Mr. Ortiz: Mr. Chairman I have a question?

Mr. Gibbons: Yes sir.

Mr. Ortiz: Mr. Harvey can you comment on the 28-256(c)(1) in terms of Mr. Leming's comments?

Mr. Harvey: Mr. Chairman, Mr. Ortiz I believe Mr. Leming summed it up as far as difference of opinion with regards to the issue. From my perspective, the way I read the ordinance is that the right-of-way dedication is required for site plan approval. I take that as being the right away necessary based upon a Comprehensive Plan and recommendations from VDOT. We have not gotten to the point where we have a specific recommendation from VDOT because we are not a site plan states yet, however we do have preliminary designs from VDOT with regard to where they think the right-of-way line would be at a specific location. That was the basis of my points of discussion with the Planning Commission and how that would potentially interlay with the requested phase of dedication of right-of-way discussed.

Mr. Ortiz: Thank you.

Mr. Hudson: Is there a time period you have for that? Time period for VDOT or the Commission... I thought you had indicated that there was some work done but is there a calendar of events that this is going to happen on XYZ day or could this go on for years but they don't do anything with it?

Mr. Harvey: I'm not certain of VDOT specific timeframe. They have had their public hearing on the road right-of-way for that section of road improvement but I'm not certain is how they want to incorporate all the comments and when they will come out with a final design.

Mr. Hudson: Does the final design mean they have the funding to do it?

Mr. Harvey: It means that they have designed the necessary right-of-way, they would have to acquire funds to start acquiring the right-of-way prior to moving utilities and beginning construction.

Mr. Hudson: Thank you.

Mr. Ackermann: If this is not dedicated at this point and VDOT at a later date says it needs the property then with the site owner be regarded dedicated at that point?

Mr. Harvey: Unless there's a commitment from the owner to the County through a site plan or Conditional Use Permit or Rezoning then no, VDOT would have to acquire the land from the owner.

Mr. Ackermann: So if it is not dedicated at this point, in fact if we overrule your ruling, I guess where go with the appeal then the... And then at some future date if VDOT needs the property they would have to purchase the property, is that correct?

Mr. Harvey: Correct.

Mr. Ackermann: Thank you.

Mr. Gibbons: Any other questions?

Mr. Ortiz: Just one last question. This can't be that unusual in terms of dedication of right-of-way prior to execution of the plan. Has there been other instances on 610 or Route 17 similar to this?

Mr. Harvey: Mr. Chairman, Mr. Ortiz I am not familiar with any situations where we've been to the Board of Zoning Appeals for an appeal. We have had situations in the past where there have been issues where someone was doing a subdivision plat and may have needed to dedicate additional right-of-way, which would have placed an existing structure and a nonconforming status or made a nonconformity worse, in that case it would've come before the Board of Zoning Appeals for a variance of the dedication requirement.

Mr. Ortiz: Secondary to that would be, so is it mandatory to dedicate land immediately or can it be reserved and has there been any precedence for that?

Mr. Harvey: My reading of the ordinance that says "dedicate right of way at site plan approval". I take that as being that they have to donate the land to the County at the time.

Mr. Ortiz: Thank you.

Mr. Ingalls: Mr. Harvey, kind of following up to make sure we all understand what his question was. When you, the County, has approved site plans for all those businesses up and down Route 17, you have required them to dedicate right-of-way? Is that a correct statement?

Mr. Harvey: That is correct provided that in consultation with VDOT and looking at her transportation plan we see that there is a need for additional right-of-way. Route 17 is an unusual case because the road is not necessarily built in the middle of the right-of-way. In some cases we may not need right-of-way and in other cases, we may need more than we normally expect.

Mr. Ingalls: Mr. Leming kind of placed a little bit of emphasis on the word subdividing. I guess he thinks that somebody different than when somebody developing a site plan. Each and every time that you do a plan and right away dedication, you call it a subdivision, he goes to the subdivision process basically, is that correct?

Mr. Harvey: Yes, that is correct. By definition in our subdivision ordinance, anytime you're adjusting property lines it is classified as a subdivision. Administratively what we do is call it a dedication plat.

Mr. Ingalls: Right. So when the word plat is recorded, you know what he was trying to indicate they are but I still believe a subdivider, if you have to do anything on a site plan you become a subdivider by default because you're dividing a piece of property either by cutting it into or your subdividing right-of-way off of it. Is that a fair statement?

Mr. Harvey: Based on the definition, yes. It is creating essentially two parcels, one is the area to be dedicated for right-of-way and the other is the parcel for the remainder of the property.

Mr. Ingalls: If a piece of property is adjacent to a road that has indicated on the Comprehensive Plan to be expanded to some future section, two lanes to four lanes or four lanes to six, we have, you the County, have people to dedicate a specific amount of right-of-way except on special occasions where maybe there was some give-and-take in there. Is that correct?

Mr. Harvey: That is correct. We've had some situations, especially along Route 1 where our Comprehensive Plan may call for a six lane facility we don't have a specific right-of-way called out in the Comprehensive Plan. That is where we may get into situations where we look at the site conditions and negotiate with appropriate based upon what VDOT needs and what the county anticipates could work in that area. In this particular case we have a better beat on what that ultimate right-of-way would be based on the VDOT plans to this date. However, in our Comprehensive Plan we are in that situation where this calls for an eight lane divided facility and we don't have in our Comprehensive Plan a typical section for how much right-of-way is required with eight lanes.

Mr. Hudson: Is that taking the land or is that negotiating and purchasing the land?

Mr. Harvey: For a right-of-way dedication, that is something that the proponent for the development donates to the County as part of their process for approval. There is no purchase on the county's part.

Mr. Hudson: Is there a purchase on the states part?

Mr. Harvey: No, not unless the state is going to acquire it through a different process.

Mr. Gibbons: That is a voluntary contribution on the applicant's part when he comes forward?

Mr. Harvey: Correct.

Mr. Gibbons: Okay, and it's not a taking and I think that is what you are getting at.

Mr. Hudson: Yes that was my question.

Mr. Ingalls: I'm not sure it's voluntary.

Mr. Gibbons: There is no right-of-way on this property, right?

Mr. Ingalls: Yes.

Mr. Gibbons: The property as it sits now, much right-of-way does VDOT have on a property?

Mr. Harvey: Well, they have right-of-way up to the current property line.

Mr. Gibbons: That's correct. But they don't have enough to expand the right-of-way that they wish to have.

Mr. Harvey: For the widening route 17.

Mr. Gibbons: That's correct. Now they've come forward with a Conditional Use Permit and we followed that. So say nothing of the property then VDOT would have to pay them when they started to widen the roads anyway so what is the problem with delaying the right-of-way until VDOT calls for the right-of-way? I can't follow you on that Jeff. I have done a lot of zoning in my life and have not ever had this happen because we have had premature right of ways sitting on Route 1 when we are going to six lane it 25 years ago and we still haven't fixed it in certain parts. What do you gain by not getting this right-of-way at a later date when VDOT calls for it? Do you ever fear that you won't get it at that time?

Mr. Harvey: Mr. Chairman, my focus is strictly on what I think the ordinance says. It says we get to that site plan approval, which I'm taking that as the first site plan which is approved. I don't read in the ordinance where there is a flexibility for first staff on administrative decisions to allow deferral of the right-of-way or more limited scope on first dedication and more dedication of a later date, which is part of the current Conditional Use Permit proposal by the applicant. Hence the reason why I think we're here is...

Mr. Gibbons: You're saying that this ordinance is not applicable to the current CUP application?

Mr. Harvey: No, I'm saying that the way I read the ordinance, when they come in for site plan they are going to be required to dedicate the right-of-way at that point in time.

Mr. Gibbons: At the point when the site plan is platted?

Mr. Harvey: At the time that site plan is approved, yes.

Mr. Gibbons: Approved or platted.

Mr. Harvey: Approved, yes.

Mr. Gibbons: Okay.

Mr. Ingalls: Prior to approval.

Mr. Harvey: Yes. Mr. Ingalls, VDOT will not sign the site plan until the right-of-way dedication plat has been recorded so they know that the right-of-way is in place.

Mr. Gibbons: How does VDOT do that when they are not the zoner?

Mr. Harvey: VDOT is a signatory on the site plan.

Mr. Gibbons: We understand that but that's not the zoner, and that is what happened in a couple of other cases that got overturned. They required that they would not approve the site plan unless the right-of-way was there but they did not have the zoning authority, like the court judge said, you're not the zoner the County holds that title. You can take a signatory to the right-of-way, the deed and everything but how does VDOT determine the County's role as the zoner?

Mr. Harvey: VDOT's roll in the site plan process is that they look at what improvements are going to be designed for the public right-of-way to ensure that it meets their criteria and also if there is any right-of-way necessary for public street purposes, that that right-of-way has adequately been depicted that it's dedicated.

Mr. Gibbons: If this is less than 50 feet, then Jeff had he get that interpretation on the ordinance? I can understand your two differences, Route 17 is not 50 feet. Why would you say this section applies?

Mr. Harvey: Correct, Route 17 is not 50 feet wide. When I'm looking at the ordinance that says they have to dedicate right-of-way at the time of site plan approval. Our Comprehensive Plan identifies a need for it.

Mr. Gibbons: Yes, but this is the rule here this is not the Comprehensive Plan but this is the rule. How do you get around the 50 feet? I'm following you on the other one but how do you get around the 50 feet?

Mr. Harvey: I don't read the ordinances limiting the right-of-way dedication as to right-of-way that are less than 50 feet in width.

Mr. Gibbons: It says on "site development plans presented on public streets are less than 50 feet".

Mr. Davis: Finish reading.

Mr. Gibbons: All right. "Additional right-of-way shall be dedicated to at least the minimum of 50 feet in width". Route 17 is wider than 50 feet.

Mr. Ingalls: That is when the first half of that statement applies. When a site backs a public street in the state highway system and or maintained by the County or which is proposed by the Comprehensive Plan of the County. That is where you are coming from?

Mr. Harvey: I'm sorry.

Mr. Ingalls: I read the first statement, there is two statements here and one is about minor streets that are less than fifty (50) feet wide, have no Comprehensive Plan, nobody is planning to widen them out, the County is just trying to get enough right-of-way to make normal improvements and get public right-of-way on those roads that maybe are prescriptive right-of-way and things like that. The first part of that statement to me says that if there is a Comprehensive Plan street that has a proposed right-of-way width or road section, then the County is requiring you to dedicate whatever the Comprehensive Plan says you should dedicate if you want to develop along that road. Is that correct?

Mr. Harvey: That is my review of it.

Mr. Ingalls: That is your review, okay.

Mr. Harvey: Mr. Leming said we are not... I don't think there is a conflict with the first part of that right-of-way less than 50 feet in this case.

Mr. Ingalls: Yeah, that part doesn't apply to 50 feet in the Comprehensive Plan.

Mr. Harvey: The question is how much right-of-way and what's the timing mechanism.

Mr. Ingalls: Right.

Mr. Gibbons: Any other questions?

Mr. Ackermann: I am still... You mentioned the timing mechanism, so it's your, as I recall, there is essentially no deferment of this, there is no two-stage process or multistage process in this in your opinion?

Mr. Harvey: That is my opinion and reading the ordinance. It does not give staff latitude to make those kinds of decisions.

Mr. Ackermann: And you've essentially applied this statute in other decisions have been made for other properties?

Mr. Harvey: Yes.

Mr. Ackermann: Thank you.

Mr. Gibbons: Any other questions? Okay, thank you Jeff. I will open up for comments. Anybody that would like to speak for this appeal, would they come forward. Anybody who's wants to speak against the appeal, would they come forward. Then Mr. Leming you have a rebuttal.

Mr. Leming: Thank you Mr. Chairman, I will be brief and I'll try to clarify what Jeff said is correct really are the first two sentences that I think there is disagreements about regarding the interpretation. Mr. Ingalls correctly stated that, the problem as far as the timing issue is concerned is that I don't know how you build in conditions when you're considering an appeal. Obviously, as Jeff has indicated the County, the way they are reading it, there is no timing factor here. It says, the way they read it, it says when the plat is recorded, dedicated for public use when the plat is recorded. Now that's the problem here and Mr. Ingalls looked at the word subdivider and suggested that if you're dedicating right-of-way there is some sort of subdivision going on. Certainly not a conventional subdivision, this is the word that the ordinance uses "subdivider", and if it were just that then maybe we get past that. But it specifically goes on to talk about when the plat is recorded and I think Mr. Ingalls would agree with me that site plans do not get recorded. It is not like the division of the residential subdivision or even a commercial subdivision where plats actually go to record and that is what this says. It is not clear to me what this section pertains to. I can see that the staff has consistently interpreted it in this fashion. However, the ultimate question, I think, has to be what does this section say? And is a dedication required outright? There is a well-established principle of law that... And this goes to US Supreme Court as well as Virginia Supreme Court. The Virginia Supreme Court case is called CUP and what it principle stands for is that when a landowner comes before the government to request a particular permit or authorization to do something like specifically a Conditional Use Permit, but the government is entitled to extract in the way of conditions are those things that reasonably have occurred or are related to the proposed development. The impact caused by the impact of development and the purpose of conditions or ordinances like this is to ensure that the impact of the development is controlled. Notwithstanding the language here, there is a question I think of the overall legality of what's being done here. But you don't have to go that far, the ordinance on its face is not clear as to what it is that is contemplated here but to go the to the other point for just a moment. If the County came in and required as a condition, as staff did, that all this right-of-way be done upfront, be dedicated at the time of the first site plan approval, which is generally what the condition that they proposed said that we went along with the ordinance, that condition bears no nexus, no relationship to what the proposed development is. I don't think it would be a valid condition. A condition is not going to go with this and I think everybody understands that but we still have the problem of the ordinance, interpretation of it and what it specifically means. The Planning Commission, I think, is entitled in response to the question "well what happens now? When does the County get the right-of-way?" One answer to that is that they may not be entitled to the right-of-way because of this particular development. In the context of the conditional use permit process, the Planning Commission is certainly focused on ultimately getting the right-of-way and we have given them a proposal that would indicate how they can get the right-of-way. Those discussions will go on. What is key to the decision that you all make tonight is whether or not there is a condition to be negotiated? Or whether that is simply irrelevant because the ordinance requires the dedication completely independent of any condition that the Planning Commission would come up with to require a later dedication of right-of-way. So that is why I come back to the simple issue before you is what does this ordinance state on its face? And the fact that it may be have been misinterpreted in the past I don't think is ultimately relevant to the decision as to what this ordinance says. The county could try to craft a clearer ordinance, it might be that they came right out and said what is that that would be a challenge on the other grounds I was talking about. But the issue tonight and what would then give guidance to the Planning Commission either through this or consideration of the next application is simply what does it say on the face. Mr. Ingalls is absolutely correct, there is nothing voluntary about this process at all. This is an extraction that is made, it is a condition of approval, in this case as Jeff reads the ordinance, a condition of approval of the site plan. Have to do it, mandatory, nothing voluntary about it whatsoever. That is the issue that I see before you.

Mr. Gibbons: So what are the questions you said again and we will ask Jeff. Jeff stated that the site plan approval and the ordinance calls for the site plan recordation.

Mr. Leming: Yes, the plat is recorded.

Mr. Gibbons: The plat is recorded, there is a big difference between approval and recorded. Am I correct?

Mr. Ingalls: Yes. Can I ask Mr. Leming a question?

Mr. Gibbons: Sure.

Mr. Ingalls: Just to clarify a few things with Mr. Leming. First, State Code, State of Virginia, based on what you said does allow for counties to, I won't use the word extract I will say require developers to do certain things. One of those things is to get additional right-of-way; if there is a Comprehensive Plan or something that's already out there, maybe they can make up stuff but normally it is a Comprehensive Plan in which the developer of that site knows about, if they are, he knows it, it is not a surprise because he's done his due diligence and he knows there's a proposed widening of that road.

Mr. Leming: That is what Jeff says the ordinance says. I am not aware of...

Mr. Ingalls: Does it allow them to do that?

Mr. Leming: I am not aware of any provision in state law that permits that.

Mr. Ingalls: Okay.

Mr. Leming: So that would be the starting point here, whether or not the County has the ability to do something that is not specifically delegated.

Mr. Ingalls: Every County I know of extracts...

Mr. Leming: Well you know it's an interesting concept because I probably think that is true in practice. And I think it probably is true in practice for the reason that I indicated a few moments ago. In most cases it doesn't matter. You have plenty of land and a little additional frontage and in this particular case these dedications are one fourth of the overall lot and requires the owner to do some pretty significant things as far as demolishing and starting again what he already has on the property.

Mr. Ingalls: That is more of a variance position then...

Mr. Leming: Possibly but I don't think there's any statute that says that the County has the ability to require dedications of public right-of-way in consideration for site plan approval or for a conditional use permit approval. It can't say that because the Virginia Supreme Court case law says there has to be a nexus, there has to be a relationship between what the County can extract as a condition of the approval and the impact of the project. This project is not creating a need to widen Route 17, I think that's very well-established law. That does not mean that counties don't do it but that doesn't mean that Stafford County has not done it time and time again. That does not mean that they won't do it again. But in this case we're saying number one, the ordinance does not permit them to do it and then in response to your question, I don't think they have the ability to do that under state law.

Mr. Gibbons: Any other questions?

Mr. Hudson: Just one.

Mr. Gibbons: Go ahead.

Mr. Hudson: I guess maybe to the County, is there better coordination to know when the process would actually need or have to take place? We are asking for it tonight and I don't think any of us in here would hesitate to think that the state and Department of highways is rolling in money right now. Is there any kind of coordination between when something is going to happen, why set the stage for something that may not happen for four or five or six or seven years down the road? Is there no communication between the departments that would allow that kind of action to take place in coordination to when it's going to happen, to when this action might actually come to life?

Mr. Harvey: Mr. Chairman, Mr. Hudson there is coordination with the County and VDOT on all road projects that VDOT is working on and the County is working on with VDOT. As far as transportation, dedications and planning goes, typically the County's Comprehensive Plan is a 20 year document that looks at road improvements that we might need over the next 20 years and that is where we would try to acquire right-of-way or reserve right-of-way

for those types of improvements. That is a time horizon we are typically working in. As far as specifics on VDOT programming, they usually have a timeline of general parameters, typically when they start a project within their six year plan it may take eight years to get it fully completed. So there process from preliminary engineering two public hearings and design usually takes a number of years to get their just that process.

Mr. Hudson: I just sit here and wonder. I have not been out on 630 for some time now but I assume it is still not widened to the new high school, I assume it is still a two-lane curvy road all the way up through there. I have been hearing ever since my kids were in grade school that we were to have four lanes of through there. It seems to me like budgets control everything and we all know that the budgets are tight but I thought maybe common sense or the application of when something might happen may make a difference in life. I understand what you're saying, we want to plan 20 years down the road but I think we're still planning to widen narrowed also, right?

Mr. Harvey: Yes. It is going to be a number of years because of the funding situation.

Mr. Hudson: You touched on the word. The funding situation, I just wonder sometimes if we don't get the cart before the horse but so be it.

Mr. Gibbons: Well the way the funding is we might be going back to the horse and cart.

Mr. Ackermann: So is the widening of Route 17 in the Comprehensive Plan?

Mr. Harvey: Yes sir.

Mr. Ackermann: And so that is expected to be done within a 20 year period, is that what you're saying?

Mr. Harvey: That is our thought process, that these are roads that may be built over the next 20 years. That ends up changing in all reality based upon funding availability.

Mr. Ackermann: Okay and Mr. Ingalls, the issue of a subdivider, the ordinance defines the subdivider and I guess it's an issue that you brought up that of anyone who was involved in any sort of commercial or private transaction with the property, is that correct?

Mr. Harvey: I was referring to the Subdivision Ordinance definition of what subdivision is.

Mr. Ackermann: Okay. But the ordinance that is in question here uses the term subdivider, I think. It says when any subdivider blah, blah, blah, that sort of stuff. Well, that is not a question, the definition is in the Code as to what a subdivider is. That says it is "an individual, corporation, trustee, joint venture, partnership, or other entity, having legal or equitable title to any tract or parcel of land to be developed". That is how subdivider is determined and I guess we can look at that how we want to look at it. Thanks, that's all I have to say.

Mr. Ortiz: Mr. Chairman, one quick question. There is no ambiguity in your mind to this paragraph, is there?

Mr. Harvey: Not in the fact that right-of-way dedication is required for site plan approval.

Mr. Ortiz: Based on the amount of dialogue here, amount of transcripts, there is significant dialogue there. It appears that there may be some, I'm going to use the word misperception of what this paragraph means on how it's applied. My question is, is there any other way to solve this issue and move forward at the same time? And at the same time not pay for property at a later date?

Mr. Harvey: Mr. Chairman, Mr. Ortiz, the applicant has another application for you tonight for a Variance that could take care of that situation.

Mr. Ortiz: Thank you.

Mr. Gibbons: Jeff, let me read this again because I'm interested. You said, "any such right-of-way shall be dedicated for public use when a plat , you said, approved", this says "recorded". There is quite a difference there.

Mr. Harvey: Yes, there is a difference. I am more or less focused on site plan approval because again VDOT requires a plat be recorded...

Mr. Gibbons: No, no but I'm saying this document and I didn't like it, I've never liked it because people sit on the plat for years even though the land has been rezoned to save taxes until we record it. It says here for public use when the plat is recorded. How do you change it to approved? How do you feel that that has changed? To me it is a big difference, you can approve a zoning and sometimes it takes years for people to record the plat.

Mr. Harvey: With regards to recording plats, the Subdivision Ordinance has a requirement that the approval is only valid for a certain period of time and if the plat is not recorded within that time period, it expires. I believe it 60 days. Again, that is an issue where from what you're reading that does not quite square with the practical application of how business is done.

Mr. Gibbons: But you don't argue with what this says here then, right?

Mr. Harvey: I don't have it in front of me but I'm assuming based upon what you've read, this was a recordation of the plat.

Mr. Gibbons: You said in your interpretation is when it's approved, not when it's recorded.

Mr. Davis: Once it's recorded you can't change it. So you would have to file it, approve it and record it. The file is what's going to be recorded.

Mr. Gibbons: No, you can approve something and it could be years before that thing is recorded. You know that.

Mr. Davis: He just indicated that you have 60 days.

Mr. Harvey: Mr. Chairman, in reading this sentence again "in any such right-of-way condition shall be dedicated for public use when the plat is recorded". That is a fact. When a plat is recorded and the deed is recorded with a plat that is when the county or the state acquires that right-of-way.

Mr. Gibbons: Yeah, but it could be months, years before that's done. Your statement is "when it is approved". I'm just going back and following what you're saying tonight Jeff because I've been in a long time and you're dealing with people's ability to use their property and you're putting a restriction on the use of it. The people are saying that they would give it to you at a different point in time and you're saying that you wanted at the time of approval, that is what you said tonight. Here it's saying that "at the time it's recorded".

Mr. Harvey: I think maybe we're talking about two different things.

Mr. Gibbons: Okay, it could be. I will go back and read it. I mean I understand.

Mr. Harvey: I'm referring to the first sentence "when a site development plan abuts one-sided a public street which is in the state highway system and/or maintained by the county in which it is proposed in the Comprehensive Plan of County, subdivider shall be required to dedicate at least one half of the right-of-way necessary, etc. etc."

Mr. Gibbons: Right.

Mr. Harvey: So again, my comments are mainly geared towards the dedication of right-of-way as part of the site plan approval.

Mr. Gibbons: It says right here Jeff, "the subdivider shall be required to dedicate at least half of the right-of-way necessary to make the adjustment". One half.

Mr. Harvey: Yes.

Mr. Gibbons: That is where I am confused but I will back out because I don't think we have a leg to stand on. When you're taking something away from somebody, they can sit there and you have to pay for this and you're going to pay very dearly. I think that's what Mr. Ortiz and some of the others are trying to say. You're saying that here it says one half, at recordation not at approval. I've been through it too often, were to lose one of these and we're going to set ourselves back 25 or 30 years.

Mr. Hudson: My point Mr. Chairman is it seems to me at the takings clause without any demonstration taking clause is necessary until such time as needed. I understand your point, the technical part of what you're asking, I also understand the practical terms that you're taking the potential business and it could be for years. I mean if we exercise that to the fullest extent would we be out here telling these businesses on the right-hand side of 630 that we wanted them out of there because we are widening 630. That is the takings clause, I think it prohibits people from making a living until such time as necessary. Maybe I am missing something but that... Why prohibit someone from making a business and earning a living. We all know that everything turns on politics and the budget from the Department of Highways, what comes down from the Governor to what county gets what in revenue. I know how long it took us to get 610, and how long we've been working on other roads in this area. I truly respect what you're saying but I have to respectfully disagree with the timing of which are saying.

Mr. Gibbons: Any other questions?

Mr. Ackermann: Do you have any opinion on what would be the effect of us overruling your decision at this point in terms of precedent in terms of other cases?

Mr. Harvey: I guess it would depend upon what the Board of Zoning Appeals ruling is. I guess the question is ultimately how is the appeal going to be fashioned in terms of the ruling. Is it ruling that dedication of right-of-way is required or is it ruling that there is a provision where something is required less than the provision that we've identified in the Comprehensive Plan.

Mr. Ackermann: But if we support the appeal, then we're saying that your decision doesn't stand, right? That was inappropriate in this case? Do you have any opinion on how that would apply to other cases?

Mr. Harvey: I would have to talk to our counsel to see their recommendation to me for other cases.

Mr. Ackermann: Okay, thank you.

Mr. Hudson: Is there any thought that you believe that the Department of Highways would change their opinion based on us overruling you tonight?

Mr. Harvey: I think the Highway Department will finalize their plans for Route 17 and acquire the right-of-way that they need to acquire, the question may be through the discussions we've had the Planning Commission to date, whether that is the appropriate amount of right-of-way based on VDOT's design. Again they have to finalize things but from what we see we are using the best estimate based on the VDOT design.

Mr. Hudson: I appreciate that.

Mr. Leming: I would like to ask Clark one thing. What I am trying to wrestle with now is which are you asking us to do. If I read your thing right, I think what you are asking us to do is overturn his statement that says the "Stafford County Zoning Ordinance requires dedication of ultimate right-of-way as a condition of site plan approval even if the Planning Commission and Board of Supervisors approved a Conditional Use permit with conditions that allow dedications of a lesser amount of right-of-way".

Mr. Leming: That is the statement that Jeff made.

Mr. Ingalls: And you want us to say that that's not what the ordinance says?

Mr. Leming: That is not what the ordinance permits.

Mr. Ingalls: That is not what the ordinance says so that is what we're dealing with.

Mr. Leming: Yes I think that is correct, that is the statement that was made at Planning Commission and that is where negotiations shut down the conditions because there was nothing left to talk about.

Mr. Ingalls: If we were to overturn him, we are saying that the Stafford County Zoning Ordinance does not require dedication of ultimate right-of-way as a condition of site plan approval.

Mr. Leming: Ultimate right-of-way is the key here. Ultimate right-of-way, Jeff has told you a couple times now that this is just an estimate.

Mr. Ingalls: Right.

Mr. Leming: We don't know what the final design is the right-of-way is going to be.

Mr. Ingalls: I guess if I were to think about voting one way or the other, that is the statement I am focusing on is that all I would do is substitute... We would say the Stafford County Zoning Ordinance does not require dedication of ultimate right-of-way as a condition if the Planning Commission or whatever approves something less.

Mr. Leming: All we can do is appeal the statement he made.

Mr. Ingalls: That's right.

Mr. Gibbons: Any other questions? I will bring it back to the Board. The designers of the board?

Mr. Ackermann: Can I just ask Mr. Ingalls to go over that one more time that you just clarified with Mr. Leming?

Mr. Ingalls: My understanding is what Jeff said, he said the Stafford County Zoning Ordinance requires dedication of the ultimate right-of-way as a condition of site plan approval. Even if the Planning Commission and Board of Supervisors approve a conditional permit with conditions that allow dedication of a lesser amount of right-of-way. I think what the applicant is saying, he wants us to say this ordinance does not say that. He wants us to say that the Stafford County Zoning Ordinance does not require the ultimate right-of-way but the Planning Commission could accept less you or they could ask for some more, I don't know. They could ask for the ultimate. It gives the Planning Commission and the Board of Supervisors the right to make that determination and not Jeff or the County planning staff.

Mr. Ackermann: Okay, thank you.

Mr. Ingalls: I guess, Clark knows we've all gone through this process of the submitting site plans of the County asking us and our clients to dedicate right-of-way and most of the time everybody is ponied up and down it like Clark said because there was room to do it usually and nobody ever questioned this ordinance. When I got the case I went to that section and read it and I read it again, I know how the County has interpreted it over the last 20 years. I know how every County interprets some similar type ordinance that they have. It should have been maybe better written so everybody can understand it. I'm not sure that it says what I thought it said for the last 20 years so I'm struggling.

Mr. Ackermann: So that if we support the appeal we are not saying that dedicated right-of-way may be required? I mean if we support the appeal then dedicated right-of-way may still be required but not a site plan?

Mr. Ingalls: I think that's what we are saying. I think we're giving the Planning Commission and the Board of Supervisors under approval of a CUP to be able to make that decision and require maybe something less.

Mr. Ackermann: Thank you.

Mr. Ingalls: They could require the ultimate but they could require less is what I think the applicant wants us to say. That is pretty much a statement that Jeff made I think.

Mr. Ortiz: Mr. Chairman just a quick comment then, just to review in my mind one more time, I think it was clarified but if we support Mr. Harvey's position, we are saying that the property needs to be provided right now?

Mr. Ingalls: Do you want me to answer that?

Mr. Ortiz: Anybody on the Board. If we support the appeal it could be delayed?

Mr. Ingalls: In my opinion, if you support Mr. Harvey, he is going to say that any site plan submitted to him, whether it is phase 1 of phase 2. The first site plans he gets on a piece of property, I am going to ask for the ultimate right-of-way.

Mr. Ortiz: Right, okay. I got it, okay. I'm sorry Mr. Chairman.

Mr. Gibbons: No, go ahead.

Mr. Ortiz: I was trying to look in my notes in terms of if we decide to not support, Mr. Harvey, if we decide not to support your decision, can that decision be overturned based on regulation being what it is?

Mr. Harvey: Mr. Chairman, Mr. Ortiz, the body that would be that potentially could overturn the BZA's ruling would be the Circuit Court.

Mr. Ortiz: Right, okay. There was just something in here, I was trying to find something that said one would overrule the other but I just can't find it right now. Thank you.

Mr. Gibbons: Go ahead Ray.

Mr. Davis: My questions is can we support Mr. Harvey to the point of ending this statement for even if the Planning Commission and the Board of Supervisors etc.? We just support his determination that Stafford County Zoning Ordinance requires dedication of Ultimate right-of-way as a condition of site plan approval, period. Then let the Planning Commission decide to give a Conditional Use Permit.

Mr. Gibbons: What you have done there, I guess been there and done that. You are taking away the ability to negotiate with a property owner. What you feel at the time and place is right-of-way and he is saying no, that the time the site plan comes in is the ultimate at that point.

Dr. Larson: I think we can only uphold or overturn the decision, I don't think we can modify it. The decision has been made, it is up to us either to affirm it or not.

Mr. Ingalls: I don't believe that is quite true. When we have an appeal, I believe we can modify, we can uphold some portion of it, there are some other words in the ordinance that tells us what we can and can't do. I was thinking it was in our ordinance somewhere. But when you can have an appeal you can accept part or none or do a bunch of things with it. I think it applies to both.

Mr. Gibbons: Go Ahead.

MOTION:

Mr. Hudson: I have a concern Mr. Chairman that if this were to pass, who is to say that at a twenty year projection and if the County and Department of Highways look at it like that and say we got forty two businesses out on Route 610 but we are going to widen 610, it might be twenty years from now but therefore we are going to make this decision now so the businesses that are there were about... I call it a taking clause, take the property and may not make it functional for the next twenty years and on the flip why not allow people to operate the

property that we are talking about right now until such time as it is necessary. I mean, I just see it as a far reaching act that we would allow this and none of us have in front of us the Department of Highway plans for any businesses up and down Route 1 or 610 or 630. I am little bit concerned that we could have a room full of people in here the next time saying you are taking my property fifteen years from now. That is a concern of mine and if I knew how to make the proper motion I would make the motion that we not grant, that we grant the appeal, I think I want to say it right of A10-5/1000198 and overturn the County's position if I articulated that right. It may not be right but that is the meaning of what I am trying to say.

Mr. Gibbons: We have a motion, is there a second to uphold the appeal?

Mr. Ingalls: I would second it but I would want it to state what I think it should state and that is that we are going to overturn his opinion or determination and say that the Stafford County Zoning Ordinance does not require dedication of ultimate ROW as a condition of site plan approval. Even if the Commission and Board approve a Conditional Use Permit with conditions that allow dedication of a lesser amount of ROW.

Mr. Gibbons: Will you accept that?

Mr. Hudson: I would accept that, yes I would accept that.

Mr. Ingalls: That way... Jeff probably said a lot of things at that meeting and I don't know... I think that is the statement that the applicant has asked us to look at and to decide whether that is a correct statement or an incorrect statement. If we can decide that that is an incorrect statement, we think that Mr. Harvey was in error and that the ordinance does not say what it he thought it says, what his opinion is of it, then we should say this is what it says.

Mr. Gibbons: We have a motion and a second on the floor, any discussion now?

Mr. Davis: Yes.

Mr. Gibbons: Go ahead Ray.

Mr. Davis: I believe the ordinance does say it must be in the site plan but I don't think the second part is correct. I believe that the dedication of the ultimate ROW is required but the Planning Commission can require a lesser amount.

Mr. Ingalls: That is what we are saying. If we say the Stafford County Zoning Ordinance does not require dedication of the ultimate ROW as a condition of site plan approval. Even if the Planning Commission approves something else on the Conditional Use Permit basically. To me, it still gives the Planning Commission the right to require whatever they want to require, whether they want to require the ultimate or they want to require something less. We would be saying, in my opinion, that this ordinance allows them to do that, to say you can have some subjection there and come up with some other compromise if you don't want to require an ultimate. They could say and it sounded like, I never saw a complete copy of all the conditions that they were laid out but from reading the notes and reading the minutes, it sounded like the Planning Commission had pretty well accepted some conditions and it was staff that said I am not going to accept them but the Planning Commission sounded like they were ready to accept them. To me, if we were to overturn him with this statement tonight then the Planning Commission can do what they want to do, they can do whatever and approve whatever and go on with what they wanted.

Mr. Ackermann: I am not comfortable with voting on this at this meeting. I think it is a fairly complex issue and given the fact that we may in fact modify the order, if that is what we want to do, I would like to think a little bit more about the language. I cannot vote for this motion as it is, I would like to think a little bit more about the language and see what is a really good thing that we can come up with. I don't know if it is in order or not but I would suggest that we postpone a decision until we craft this a little more carefully.

Mr. Gibbons: Your motion is defer it to a specific date or the next meeting?

Mr. Ackermann: Next meeting, yes.

Mr. Gibbons: Okay, so we have a motion on the floor to defer to the next meeting the action on this. Do we have a second?

Dr. Larson: I will second that.

Mr. Gibbons: Second, any discussion?

Mr. Hudson: The discussion is that I would hope that by the end of next meeting that it would be brought out much clearer on the intentions of what is before us and not just twenty years down the road. If there are people that want to run a business for four years, I would like to have clarification as what the real intentions are if at all possible.

Mr. Gibbons: Any other discussion?

Mr. Ortiz: So between now and the next time we meet, what will occur that would give anyone here a better perspective on the decision tonight?

Mr. Ackermann: Well, what would occur for me is I would have a chance to re-read this more than I have, to think some more about how I would like to maintain the rights of the property owners and also have that in concert with how we approach planning in the county. I am just concerned about setting a precedent that throws some things out of kilter. I want to see how we can maintain that.

Mr. Ortiz: Thank you. I appreciate it.

Mr. Gibbons: Any other discussion on the motion? 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. Opposed? Okay, we are deferred to the next meeting. Can I ask for a couple of volunteers to, I would like to craft something so we have two courses of action so we say if we do it this way, this is the language. Would you be willing to?

Mr. Ackermann: Sure.

Mr. Gibbons: Larry, would you?

Mr. Ingalls: Yes.

Mr. Gibbons: Anybody else?

Mr. Ortiz: Yes, I will.

Mr. Gibbons: You will, okay. So we have three, we have Dr. Ackermann, Mr. Ingalls and Mr. Ortiz and we will bring two or three courses of action to the next meeting and thank you very much. Now we have one unfinished business, is that correct?

2. V10 3/1000197 H. CLARK LEMING Requests a Variance from Stafford County Code, Section 28 256(c)(1), "Required standards and improvements generally", to reduce the required right-of-way dedication for future development on Assessor's Parcel 44 75. The property is zoned B 2, Urban Commercial, located at 1006 Warrenton Road.

Mr. Ingalls: Now the next case... If we're going to postpone the decision on this one, we can hear it but I'd rather postponement so that we can go ahead and... Unless you want to hear this one? Depending on what we did do this only makes the next one moot.

Mr. Leming: That's right but then you have all your options open for you at the next meeting and you just have a decision to make.

Mr. Ingalls: Well...

MOTION:

Mr. Davis: I move for a deferment.

Mr. Leming: It's your call.

Mr. Gibbons: You all want to hear this now or rather wait?

Mr. Leming: It's short.

Mr. Ingalls: Yeah right.

Mr. Gibbons: What is the wishes of the Board?

Mr. Davis: I move for deferment.

Mr. Ortiz: Second.

Mr. Gibbons: We have a motion, second by Mr. Ortiz. 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? Okay. Now we have one unfinished business.

VOTE:

The motion to defer this case until the September meeting passed 7-0.

Mr. Ackermann - Yes  
Mr. Davis - Yes  
Mr. Gibbons - Yes  
Mr. Hudson - Yes  
Mr. Ingalls - Yes  
Dr. Larson - Yes  
Mr. Ortiz - Yes

#### UNFINISHED BUSINESS

4. V10 2/1000130 L. PERRY AND LISA M. DARLEY Requests a Variance from Stafford County Code, Section 28 35, Table 3.1, "District Uses & Standards", front yard requirement, to allow the construction of a building on Assessor's Parcel 43 6. The property is zoned A 1, Agricultural, located at 71 Coakley Lane.

Mr. Gibbons: Item number four madam secretary.

Mrs. Musante: Mr. Chair, do you want me to reread the case?

Mr. Gibbons: Does anybody want it reread? No I don't think so.

Mrs. Musante: Okay. We have Mr. Darley here in the audience tonight if there are any further questions that the case was closed.

Mr. Gibbons: I think we ought to bring him up. You want to come up Mr. Darley. I know Mr. Ingalls had some questions, for review the plat that he gave me and I forwarded the e-mail. Every member should have the e-mail now. So Larry you had a couple questions?

Mr. Ingalls: I didn't.

Mr. Gibbons: Okay.

Mr. Ingalls: Did we have a motion last week and did we table the motion?

Mr. Gibbons: No, we tabled it so that if people wanted to retake a look at the property they had a chance to do that. Go ahead Ray, it is in the Hartwood area.

#### MOTION:

Mr. Davis: I move for approval of this Variance for case 10-2/1000130.

Mr. Gibbons: I have a motion, do I have a second?

Mr. Ortiz: I second.

Mr. Gibbons: Second by Mr. Ortiz. Any discussion?

Mr. Ingalls: Mr. Chairman, I guess my opinion is still the same as it was last time and that is that there is adequate property for the applicant to consider and build a shed on. I think if somebody came to me I would've been able to find a place to put it. I realize where he wants to put it is convenient and it's very helpful because he cannot get his hay very easily. It is a convenience and I can understand but when I read my ordinance I guess I try to follow what the ordinance gives me the power to do and what I should consider. Our ordinance that would effectively prohibit him from usable unrestricted uses or utilization of his property; He can still utilize his property so I'm going to vote against the motion.

Mr. Gibbons: Okay.

Dr. Larson: Mr. Chairman, I agree with Mr. Ingalls, I went out to the property and took a good look around and I think that the proposed location is certainly, if I am the property owner, that is where I would want to put it, but I think that there are other areas across the driveway easement in the pasture area that may not be as convenient but are certainly just as usable and for that reason I don't think that there is a hardship to the level, in my mind, that would justify a variance.

Mr. Ortiz: Mr. Chairman, just as a point of clarification. Although I think my fellow board members make a very valid point, in my visit to the property I thought it was undue hardship if he had to put extensively further down based on the terrain of the property. I, in fact, believed with Mr. Ingalls previously but when I went out there I just thought a little bit differently. That is the reason why I supported the motion.

Mr. Gibbons: Any other discussion?

Mr. Ingalls: Can I just make one statement first?

Mr. Gibbons: Sure.

Mr. Ingalls: In Mr. Darley's e-mail to you he said that I had stated that he had a house that was illegal or something. I don't believe that I said he had an illegal building, I said, according to the minutes, the house is in violation in the garage that was well into the front setback. I did not say they were illegal, I just stated what I thought they were not illegal.

Mr. Darley: I misremembered, I apologize.

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

Mr. Davis: Aye.

Mr. Hudson: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye. All opposed?

Mr. Ackermann: Nay.

Mr. Ingalls: Nay.

Dr. Larson: Nay.

Mr. Gibbons: We have three nay's and four aye's, is that correct?

VOTE:

The motion to approve this application passed 4-3.

Mr. Ackermann - No  
Mr. Davis - Yes  
Mr. Gibbons - Yes  
Mr. Hudson - Yes  
Mr. Ingalls - No

Dr. Larson - No  
Mr. Ortiz - Yes

Mr. Gibbons: Four aye's and three nay's.

Mrs. Musante: So his Variance passes? Just so we make that clear.

#### OTHER BUSINESS

##### 5. Discussion of Bylaws

Mr. Gibbons: Yes ma'am. Okay, other business, discussion of bylaws? I thought we agreed that if we didn't have any adverse... I'm sorry Mr. Darley, Ray made a good point, you are allowed to use the hay shed. Thank you very much. We didn't receive any adverse comments.

Mrs. Musante: We have not.

Mr. Gibbons: So it is on here for what?

Mrs. Musante: There had been some changes to the bylaws. This has come before us the last few months and there were some changes. Everything that's in the red or blue are additions or deletions in the bylaws and we have never adopted these.

Mr. Gibbons: Okay.

Mr. Ackermann: I was not at the last meeting but from looking at the minutes as he said you discussed this and are there any objections to anything that's in the blue or the red?

Mr. Ingalls: Well I have a couple of comments, I don't know about objections, but a couple of comments on some wording and everyone to go back to 2.2-3. After tonight's hearing I worry about, I'm not a very good writer of ordinances and I don't think I would be, under 2-3, it talks about if you're going to be absent you should notify the chair. I thought I would've said Chairman, one of the chair as though I think he is but rather than chair I would have put Chairman and maybe the zoning staff. I don't know if the chair is going to be able, if I call the chair and he's not...

Mr. Gibbons: I think it would be appropriate.

Mr. Ingalls: I could do both, I would try to attempt to notify the Chairman and I would also maybe want to notify the staff.

Mr. Gibbons: Okay put both in there.

Mr. Ingalls: Like I said if I can't get hold of the chair, at least I can get a hold of somebody 24 hours in advance. You may be on vacation and coming back the day of the meeting, I don't know.

Mr. Gibbons: Okay.

Mr. Ackermann: Could we be more specific about who would contact?

Mr. Ingalls: Yes, I think it should state that we would notify the Zoning Administrator, which is...

Mrs. Musante: And if she is not there?

Mr. Ingalls: Well I'm assuming that somebody would get the message.

Mrs. Musante: Me.

Mr. Ingalls: I can't list everybody there.

Mrs. Musante: You could say staff.

Mr. Ingalls: Zoning staff?

Mrs. Musante: Just say staff.

Mr. Gibbons: Yeah, just staff.

Mr. Ingalls: I would really want the Zoning Administrator to know.

Mr. Ackermann: I would like her to know to.

Mr. Ingalls: Because that's a person.

Mr. Ackermann: The Zoning Administrator has more responsibility in terms of getting everybody here at the meeting and in terms of notifying the chair if the chair is not here or the vice chair. Giving it to staff, not that staff would not follow through but you would never know. Would staff be anyone working in the office?

Mrs. Musante: It would mean me.

Mr. Gibbons: Okay, we agree on that one. What's next?

Mr. Ingalls: I guess the blue and the red... I have concerns about this because I know the past we've had problems with some lawyers who would bring in on meeting night an inch thick document and say here's my case. We would all sit here and say I don't have time at the meeting to read all this and we would either have to postpone it or we would have to figure whether we would vote or not. I always felt like if we didn't have time to read it we would be subject to an appeal that said you didn't even look at my information. I want to make sure that we'll go back to that where Mr. Leming ran the lawyers going to bring in a pile of information, or any applicant for that matter, on meeting night because he couldn't get it to us on time. Having said that, if most of the board feels different that's fine, I like the work packet, I thought staff report was a more appropriate term. I don't know what a packet is, it could be a box of chocolates, I don't know.

Mr. Davis: It is the staff report.

Mr. Ingalls: It is a staff report, it's not a packet. I guess to let everyone know, when does that... If I want to get something to the Board of Zoning Appeals in the staff report, when do I have to give it to the County? My thinking was if we had a date, you have to give it to the Department of Planning and Zoning 10 days prior to the meeting, would I give them the time? I don't get my package until five days before the meeting, if then.

Mrs. Musante: The meeting packets are sent out the Tuesday before the meeting.

Mr. Ingalls: I don't know when I got that one because I was on vacation last week. I found it on my doorstep on Sunday.

Mr. Ackermann: Could I just say a couple things to that? The way the bylaws are now, in fact we can't receive anything outside of the meeting, and of course the idea behind this was to allow that to happen. I think that it would be wise to let the staff decide on what that date might be.

Mr. Ingalls: I was just saying that I think it ought to be here so that the applicant knows.

Mr. Gibbons: Yes, but that ought to be a part of the application process. When he sits down and applies, he knows at that time here is the process structure gathering data and you need to give it to the staff by a certain date to get it to the board in a hearing. So when they sign an application, they know at that time what the rules are.

Mr. Ingalls: I just want to make clear to the applicant when he has to get it to staff. If he misses that date he is going to bring it here.

Mr. Davis: I think it should be left up to staff to tell when the time limit is for the application.

Mr. Ingalls: Yes.

Mr. Ackermann: So do we want to put that in the bylaws?

Mr. Gibbons: Yes.

Mr. Ortiz: I would say put it in the bylaws to make sure that everyone is clear in the event that somebody reads what our bylaws are, so they have an understanding of what's reasonable in terms of what we are for so we can be properly prepared.

Mr. Gibbons: We agree.

Mrs. Musante: Really, the only issues we have is like a situation with Mr. Leming because most of the time when the homeowners come in, they have their packet complete. We are not waiting on anything from them, even when an attorney submits an application they are submitting that application is complete. We know you are going to get additional information but they are submitting and signing that that application is complete when they submit it to me on the deadline date.

Mr. Ortiz: We need to do something about the arrival of packets of information within 24 hours with the expectation to read it because we do want to make the best decision possible by considering the information.

Mrs. Musante: Right.

Mr. Ortiz: It is something we do need to at least agree upon. I do agree, Leming does send these packages to us and we get them the day before. Fine print and we need a magnifying glass for some of that stuff. I like to make sure we read it .

Mr. Gibbons: We all agree on that?

Mrs. Musante: So we're going to add language in here and we're going to put a date in and you are going to leave it up to us as to what date to put in?

Mr. Gibbons: Right.

Mrs. Musante: Because when that application or when you receive your material, that is when you want everything in there?

Mr. Gibbons: That's correct.

Mrs. Musante: So you are going to leave it up to us to put the date in there?

Mr. Gibbons: Yes.

Mr. Ingalls: Yes. You may require him to give you X. number of copies.

Mr. Ackermann: Yeah, there is no reason why you couldn't require them to give me copies.

Mrs. Musante: We do require them to provide us with 11 copies when they submit.

Mr. Ingalls: I'm assuming in the application you can also have rules or something to go along with that because I don't want you to do that some date 20 days prior to the meeting but you have to give it to them because now... When is he submitting the first time?

Mrs. Musante: They submit one month before.

Mr. Ingalls: So he submits it approximately 30 days prior to the meeting?

Mr. Musante: Correct. Like today was the deadline for September.

Mr. Ingalls: Right. So we want the stuff between ten and something.

Mrs. Musante: Even if we did the Friday before whatever the date is, I'll have to check it, but if we had it the Friday before the Tuesday that the packets are supposed to go out.

Mr. Ingalls: Right. You would just want to put it as the Friday before that date.

Mr. Gibbons: What's the next question?

Mr. Ingalls: I did not have any more.

Mr. Gibbons: Anybody else?

Dr. Larson: I just have a question on 7-5, while a special exception is deleted?

Mr. Gibbons: Didn't the Board take that back?

Mr. Ingalls: Yes. Special exceptions don't require four votes.

Dr. Larson: Okay, I thought that.

Mr. Gibbons: Okay, so you will make the corrections and will send out one final draft and if we don't get any negative comments we will assume they are good to go. Next the discussion of the application submission process.

## 6. Discussion of Application Submission Process

Mrs. Musante: That was concerning an e-mail from Mr. Apicella and he's not here tonight and I don't know if you want to postpone this until September but the issue was why when the advertisements go out and they are in the newspaper Clark Leming is the applicant. That is what that was about.

Mr. Gibbons: You mean for the lawyer being applicant rather than the owner of the property or operator of the business, is that what you are saying?

Mrs. Musante: Correct.

Mr. Gibbons: What is the rule on that?

Mrs. Musante: It is just the way we've always done it. Nine times out of ten, Clark is the applicant, isn't owner consent form from the owner, he filled the applications out to the applicant for.

Mr. Ingalls: That's proper, right?

Mr. Harvey: Mr. Chairman, Mr. Ingalls that is the way that one law firm typically submits applications for all aspects of County business. It is that the attorney is the applicant for the property owner.

Mr. Ingalls: I see other jurisdiction that sometimes lawyers seem to want to be the applicant rather than the owner and they speak on his behalf. A lot of times they want to be the applicant. I have even seen engineers be applicant's and maybe you have to. I would never do that because I would like that responsibility but it is proper and legal.

Mr. Harvey: Yes.

Mr. Ingalls: For the property owner to give permission for him to be the applicant?

Mr. Harvey: Yes and from staff perspective, if that's the way the application has been applied for, that is what we put out and advertise and put in the staff reports.

Mr. Gibbons: Alright, I want to draft a response back to Steve and tell him what we've discussed.

Mrs. Musante: Sure.

#### 7. Order to Withdraw Application A10-4/1000116

Mr. Gibbons: The next one here is an order to withdraw an application A10-4/1000116. That was Mr. Leming appeal on the deputy county administrator, correct?

Mrs. Musante: Correct.

Mr. Gibbons: I explain that an e-mail.

Mr. Ingalls: Do we need a motion to accept Mr. Leming's withdraw?

Mr. Gibbons: No, you sign a court...

Mrs. Musante: It is a court thing.

Mr. Gibbons: The court wanted the County to sign it and I signed it.

Mr. Ingalls: Okay.

Mr. Gibbons: It is in court now, Seven Lakes to get to court. Mr. Hudson had a very good point, when he comes up and says under what rule does the Deputy County Administrator say that this is an advisory body, the judge said somebody has to go back and read the code. We are not advisory body. Jeff, you could take this back, one of the concerns there a couple of concerns is that what came out of this whole thing in other counties they been watching it, will give the County of the governing body the right to pick and choose what it wishes to enforce from the BZA when it's on appeal that the court. In other words, if you don't feel it on time it's really a matter of law that you have to enforce it. Everybody says that Stafford just pick and choose when they want to enforce something and when they were don't want to enforce something.

Mr. Harvey: I'll take that under advisement Mr. Chairman.

Mr. Gibbons: All right thanks. Anything else?

#### ADOPTION OF MINUTES

8. May 25, 2010

Mr. Gibbons: The minutes of May 25, 2010? Do we have a motion or any changes?

Mr. Hudson: I think I was absent and I will abstain.

Mr. Gibbons: I think I was absent and Mr. Hudson was absent, correct?

Mrs. Musante: Correct.

Mr. Gibbons: Okay, so we need a motion for approval please.

Dr. Larson: I have one correction, in line 1289, page 27.

Mrs. Musante: Okay.

Dr. Larson: On 1289, it starts out, it says "you have to have some reference just like you had to have a reference". I think the first you is supposed to be something like "the property behind you had to have some reference", that was the intended meaning. You can double check the recording, maybe it's not hearable.

Mr. Gibbons: Do you make a motion for approval?

MOTION:

Dr. Larson: I moved to approve those minutes.

Mr. Gibbons: Do I have the second?

Mr. Ortiz: Second.

Mr. Gibbons: All in favor say aye.

Mr. Ackermann: Aye.

Mr. Davis: Aye.

Mr. Hudson: Abstained.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Abstained. All Opposed? Two abstentions.

VOTE:

The motion to approve the May 25, 2010 minutes passed 5-0.

Mr. Ackermann - Abstained

Mr. Davis - Yes

Mr. Gibbons - Abstained

Mr. Hudson - Yes

Mr. Ingalls - Yes

Dr. Larson - Yes  
Mr. Ortiz - Yes

9. June 22, 2010

Mr. Gibbons: June 22, 2010, any corrections, additions or deletions?

Dr. Larson: I have again just one correction on page 25, line 1188, the second to the last word says "she felt", and I think it should be we felt.

Mr. Gibbons: Okay we need a motion for approval please.

MOTION:

Dr. Larson: I moved to approve them.

Mr. Gibbons: I have a motion and duly seconded. Mr. Gibbons: All in favor say aye.

Mr. Ackermann: Abstained.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye. All Opposed? One abstention.

VOTE:

The motion to postpone this case until the September meeting passed 7-0.

Mr. Ackermann - Abstained  
Mr. Davis - Yes  
Mr. Gibbons - Yes  
Mr. Hudson - Yes  
Mr. Ingalls - Yes  
Dr. Larson - Yes  
Mr. Ortiz - Yes

#### ZONING ADMINISTRATOR REPORT

Mr. Gibbons: Okay, the Zoning Administrators report. How many applications we have next month?

Mr. Musante: We have two new variances that are coming to you, one of the couples that were sitting in the back, they constructed a shed on their property and did not receive the proper permits, does not meet setbacks and did not meet the 10 foot separation requirement. The second one is a variance from an attorney on a single family house that was built down on Sandy Ridge Road a few years ago. The variance has been to you prior through sunshine homes, which was denied. They are coming back again.

Mr. Gibbons: Is that the one with the porch?

Mrs. Musante: No, one front portion of the house does not meet the setback.

Mr. Gibbons: Has that been occupied?

Mrs. Musante: Yes, it's been occupied.

Mr. Gibbons: How can you occupy if you don't have a variance?

Mrs. Musante: They had an OP, they had an OP issued without that being brought to our attention that there was a setback issue. Issued an OP and then the bank called and asked, hey we have the survey that does not make this up front setbacks and we had early issued occupancy permit.

Mr. Ingalls: That is 100% of the time that you all do that.

Mrs. Musante: We don't require wall checks either.

Mr. Ingalls: No.

Mrs. Musante: If they don't call in and inquire about them, we don't know.

Mr. Gibbons: Do we have the one from Vulcan coming in on the 610 quarry?

Mrs. Musante: The Vulcan was submitted today, they have also submitted a determination for Rachel so not sure if you're actually going to see the variance for September.

Mr. Gibbons: Okay.

Mrs. Musante: We also have the Chesapeake Stafford that came to you all a few months ago, that will be as unfinished business because the public hearing was closed. That is the Wyche Road.

Mr. Gibbons: Okay. The board decided differently on it. Jeff would you get the detail on it and get back to us? We submitted it to the Board and the Board said that they were going to take a look at it and that's the last you ever heard of it.

Mr. Harvey: We will check into that Mr. Chairman.

Mr. Gibbons: Just give us in the packet with the Board's wishes were.

Mrs. Musante: Okay. You also have two new ordinances that have just been passed for nonconforming structures, which will be good for you all because you will no longer be seen special exception before you for additions on nonconforming structures as long as the additions meet the setbacks. So that is one ordinance has been approved and the other one talks about, definitions, it defines administrative officer and a written order.

Mr. Gibbons: Just one small one that I would like since Jeff is here tonight, the case we had tonight, the first case, years ago when you built a home you could have a mobile home, I forgot how small 38 or 40 feet, you could get a temporary permit to put on your property.

Mrs. Musante: That was in the 1991 ordinance. That's correct.

Mr. Ingalls: It was something that came to the BZA as a...

Mrs. Musante: It came as a Special Exception and repealed the 1995 ordinance.

Mr. Gibbons: We might want to revisit that.

Mr. Ingalls: We might want to ask them if they want to think about it.

Mr. Gibbons: It sure saved a lot of problems. The one you had tonight would not have occurred.

Mr. Ingalls: Yes it would have and we would've said we would give it special exception for one year.

Mrs. Musante: That's the way it used to be.

Mr. Gibbons: Right, but we at least had control of what was going on. Anything else?

Mr. Hudson: If it's not out of order Mr. Chairman, I would personally make a suggestion but to write a letter that each one of the signs to go to each one of our particular supervisors expressing our dissatisfaction with the lack of legal support. I think if each one of earnings was on it and went to each one of our supervisors, sometimes no harm no foul, it seems like you've been carrying the water on this and I'm certainly willing to sign it to my supervisor.

Mr. Gibbons: Here is what I did so everybody knows. I went to the County Attorney's and he's gone back to the chairman and the County Administrator to see what type of funds he has available and what they can give. Then he has gone back, there is a list of eight, Andrew could be in it but we cannot select Andrew. That is up to the County Attorney. He has taken that for action so I would like to wait see his recommendation. As soon as it comes in I will CC everybody what he said. If it isn't to satisfaction then I will do what he says.

Mr. Hudson: This is just a suggestion.

Mr. Gibbons: I think it is a good suggestion.

Mr. Ortiz: One more comment from me. I have my case this month so I may or may not be here next month.

Mr. Gibbons: When is it?

Mr. Ortiz: September 16th. Trial by jury.

Mr. Gibbons: That is unusual.

ADJOURNMENT

With no further business the meeting adjourned at 9:41 PM.

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Robert C. Gibbons, Chairman  
Board of Zoning Appeals