STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
February 26, 2013

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, February 26, 2013, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Dean Larson in the Board of Supervisors Chambers.

Members Present: Dean Larson, Robert Grimes, Heather Stefl, Greg Poss, Larry Ingalls, Ray Davis, Danny Kim, Steven Apicella, and Ernest Ackermann

Members Absent: None

Staff Present: Melody Musante, Zoning Manager
Evelyn Keith, Recording Secretary

A. Call to Order by Chairman

B. Roll Call

C. Determination of a Quorum

D. Declarations and Disqualifications

Dr. Larson: I assume that there are no declarations of disqualifications. So, we're all the way down to E., Election of Officers. Oh, by the way, the main part of the business I think that we're conducting tonight will be dealing with the by-laws and the annual report. So, election of officers, do I have any nominations for Chairman?

E. Election of Officers

Mr. Ingalls: I would like to nominate… go ahead.

Mr. Davis: I would like to nominate Dean Larson.

Mr. Ingalls: I'll second it.

Dr. Larson: Any other nominations for Chair?

Ms. Stefl: Point of order. Is it Steven or I that's voting?

Dr. Larson: Actually, I don't think either of you are voting.

Ms. Stefl: Since Mr. Kim is not here.

Dr. Larson: No, Mr. Kim's not here. Do we have any…?

Mrs. Musante: Truthfully, I cannot remember who was sitting in October. Steve, was it you in October?

Mr. Apicella: I thought it was both of us. I'll defer to Heather.

Ms. Stefl: I don't care.

Dr. Larson: Since he's deferred to you, how about Heather if you would…

Mrs. Musante: Okay.

Dr. Ackermann: Excuse me, I don't know what the old by-law says, but the proposed by-laws say candidate for any elected position who receives a majority vote of the entire membership of the Board. So, that means both alternates could vote.

Mr. Ingalls: I don't believe it says… I don't believe it means that.

Dr. Ackermann: Well, that's what it says actually.

Dr. Larson: Actually, we need to have part of the discussion of the by-laws that we need to determine what we mean by the Board. I think, Heather, at least, you can vote while Danny's not here.

Ms. Stefl: Okay.

Dr. Larson: Any other nominations for Chair? Okay, how about Vice-Chair?

Mr. Ingalls: I'd like to nominate Mr. Kim.

Dr. Larson: Alright. I don't think we need seconds for nominations, do we? We just go with it?

Mrs. Musante: I think you do, actually.

Dr. Larson: Okay, I'll second it. Any other nominations for Vice-Chair? Okay, those are closed. Nominations for Secretary? Anybody want to be Secretary?

Mr. Ingalls: Who is our current Secretary?

Dr. Larson: I think Danny Kim is.

Mrs. Musante: Mr. Kim is.

Mr. Ingalls: Well, we're going to have to select somebody else then.

Mrs. Musante: Mr. Grimes:

Mr. Grimes: I didn't read up on what the duties of the Secretary were.

Mrs. Musante: Nothing… I take care of it all.

Dr. Larson: Okay, any other nominations for Secretary? Hearing none, those are closed. Okay, votes. All in favor of Chairman, me, say aye.

Mr. Ingalls: Aye.

Mr. Grimes: Aye.

Dr. Ackermann: Aye.

Mr. Davis: Aye.

Mr. Poss: Aye.

Ms. Stefl: Aye.

Dr. Larson: Aye. Any opposed? Okay, Vice-Chairman, Danny Kim, say aye.

Mr. Ingalls: Aye.

Mr. Grimes: Aye.

Dr. Ackermann: Aye.

Mr. Davis: Aye.

Mr. Poss: Aye.

Ms. Stefl: Aye.

Dr. Larson: Aye. Any opposed? And Robert Grimes for Secretary. Those in favor say aye.

Mr. Ingalls: Aye.

Mr. Grimes: Aye.

Dr. Ackermann: Aye.

Mr. Davis: Aye.

Mr. Poss: Aye.

Ms. Stefl: Aye.

Dr. Larson: Aye. Any opposed? Okay, and those are all unanimous. There are no public hearings tonight and no unfinished business, so now we go to the more exciting stuff, I guess.

PUBLIC HEARINGS

None

UNFINISHED BUSINESS

None

OTHER BUSINESS

1. **Annual Report**

Dr. Larson: The annual report, we were all sent a copy of the annual report. Melody put it together. I think we had some comments. Some changes were made and I only saw one comment in the email, after you sent it around the final time. Is that your recollection?

Mrs. Musante: I don't remember receiving any comments after it was sent.
Dr. Larson: I think Mr. Davis had a comment on it. Did you want to go into that, Ray?

Mr. Davis: I don't recall what it was.

Dr. Larson: Okay, then it wasn't important. It was something about, the fewer cases the BZA conducted, that meant the BZA was doing a good job and so was the County Board by clear Code and things like that. Which I think I recall seeing or hearing in one of our classes on BZA, but I didn't hear any other discussion on how to put that into the by-laws or if we were going to put it in the by-laws, not by-laws, annual report.

Mrs. Musante: Annual report. Mr. Davis, if you want to go back and resend the language that you would like in the annual report, I will gladly add that, if we want to go ahead and vote on this tonight, so I can get it to the Board of Supervisors?

Mr. Davis: I can do that.

Mrs. Musante: And we can just approve it with the amendment.

Mr. Davis: Okay.

Mrs. Musante: If you all are okay with that.

Mr. Davis: Fine with me.

Dr. Larson: We can just, you know, send around the wording and...

Mrs. Musante: Sure, sure.

Dr. Larson: I guess the hearing that comes up, we can vote.

Mrs. Musante: And I'll get on that right away so we can get this taken care of.

Dr. Larson: Okay then, is there a motion to pass the annual report with the modification that will be approved via email?

Dr. Ackermann: I make that motion.

Dr. Larson: Is there a second?

Mr. Grimes: I second.

Dr. Larson: Okay. Any other discussion on that? Okay, all in favor say aye.

Mr. Ingalls: Aye.

Mr. Grimes: Aye.

Dr. Ackermann: Aye.

Mr. Davis: Aye.
Mr. Poss: Aye.

Ms. Stefl: Aye.

Dr. Larson: Any opposed? Okay, that motion carries. Okay, now for the by-laws, since I didn't think that any member of the public was going to be here, and it is true, other than us and everybody's here, which is fantastic, except for Danny. Hopefully he will get here soon.

Mrs. Musante: Mr. Larson?

Dr. Larson: Yes.

Mrs. Musante: Would you like to skip to the minutes and get those taken care of first, if the by-laws are an issue and you would like to have the full Board here.

Dr. Larson: I think there would be a lot of substantial discussion in the by-law discussion, so yes, let's skip to the minutes.

ADOPTION OF MINUTES

2. October 23, 2012

Dr. Larson: Are there any comments or corrections to the minutes as were sent around by Melody earlier in the month? Okay, hearing none. Is there a motion to pass the October 23rd minutes?

Mr. Ingalls: I move that we approve the minutes for October 23, 2012 meeting.

Dr. Larson: Is there a second?

Mr. Davis: I second that.

Dr. Larson: Any other discussions on the minutes? Okay, those in favor say aye.

Mr. Ingalls: Aye.

Mr. Grimes: Aye.

Dr. Ackermann: Aye.

Mr. Davis: Aye.

Mr. Poss: Aye.

Ms. Stefl: Aye.

Dr. Larson: Any opposed? Okay, minutes pass.

3. By-laws

Dr. Larson: Okay, what I would like to talk about now, amongst the Board, and as I'd like to discuss the issue that we had, I believe the last time we met. Just to refresh everybody's memory.

We had two members on both, the Planning Commission and the BZA. That issue brought up several questions with the Code. I composed a letter to Mr. Ken Cuccinelli, sent via Mark Dudenhefer's office. We did not get a response from the State Attorney General, so with that in mind, I think we need to do something to our by-laws so that we don't end up in the same situation we did before. For the people that weren't here, that situation being with two members on both, the BZA and the Planning Commission, the State Law only allows for one and there was a lot of discussion about, whether… when the Code said: "Members of the Board shall hold no other public office in the locality, except that one may be a member of the Planning Commission". That's a quote. The question I asked the State Attorney General was, does the term member, used in this section, apply only to regular members of the BZA or the both, regular and alternate members. And we got no response. So, I think that we, as a Board for our by-laws, can do that, can make that determination how our Board is going to operate until we get a response that carries a little more weight. So I would like to open that discussion. When the law says "members of the Board" does that mean regular members only, or does it mean regular and alternate members?

Dr. Ackermann: Let me ask a maybe naïve question. Why do we think the Code says that only one member should be a member of the Planning Commission? What's wrong with having all of us on the Planning Commission and on this Board?

Mr. Ingalls: It's State law.

Dr. Larson: The State law says it.

Dr. Ackermann: Okay, so what's the rationale for the State Law?

Mr. Davis: I could see it as a conflict of interest. If you have something from the Planning Commission that eventually may come to this Board.

Dr. Ackermann: Because sometimes we do act on some of those issues.

Dr. Larson: Well, the law says Members of the Board, meaning the BZA, shall hold no other public office in the locality, except that one may be a member of the local Planning Commission. So that indicates to me, that the law was drafted with the view that BZA members shouldn't be doing anything else publicly, but they are going to allow one person. Okay, we are going to eek this one through. One person can do both, Planning and BZA, but no more than just one. So there must have been sensitivity to the BZA members doing something other than just BZA.

Dr. Ackermann: And why is it the Planning Commission that has the exception for that?

Mr. Ingalls: Over the years, and every time I've gone to one of these seminars, they have always talked about that a little bit. And really they thought if you had a member of the Planning Commission that maybe could bring something from a case or something that was going on in the county that would be beneficial to us as the BZA, to also have that knowledge of what they have been talking about, versus what we're talking about on a specific case. But like I said, you wouldn't want all of us to be Planning Commission members and trying to do something with the same issue and really not getting any kind of variety to this discussion. But that was my understanding, that over the years, maybe one member of the Planning Commission could be beneficial. You know, we all know that I don't know how many Boards

have or have not, that's probably most of the time about 50/50 or less to have Planning Commission members.

Mr. Davis: We don't have a decision from the Attorney General, but we have one from the County Attorney and I would think his opinion would count for something.

Dr. Larson: Could you read that opinion?

Mr. Davis: Factual background, Mr. Gibbons was appointed to the PC on March 6, 2012. At the time Mr. Gibbons was appointed to the PC, he was Chairman of the BZA. Also, at the time of Mr. Gibbons' appointment to the PC, Mr. Apicella was an alternate member of the BZA and a member of the PC. Analysis of Virginia Code 15.2-2308A provides in pertinent part "Members of the Board (BZA) shall hold no other public office in the locality, except that one may be a member of the local Planning Commission". That was a quote. What he has written here is that the statue states that this provision also applies to BZA alternate members. Back to the quote, "The qualification terms and compensation of alternate members shall be the same, as those are regular members". End of quote. I think it's pretty clear to me.

Dr. Larson: Okay, so you're saying that the County Attorney General would say that the term member applied to both, regular and alternate members.

Dr. Ackermann: And that's based on the excerpt from the Code that said the qualifications and terms of alternate members should be the same as regular members.

Mr. Davis: Yes.

Dr. Ackermann: It seems that I share your opinion.

Dr. Larson: Any other discussion?

Mr. Ingalls: We have had this discussion before and my opinion would be different then the County Attorney, but mine probably doesn't hold the same weight as his.

Dr. Larson: Anybody else want to weigh in?

Mr. Grimes: Well, if the alternate member is considered the same as a full member and the State Code specifically says you cannot have a person sitting on there, more than one, then how is it we can have two? We can have too, because one's an alternate, correct?

Dr. Larson: I'm sorry, two alternates?

Mr. Grimes: No, two people, that sit on both, the Planning Commission and the Board of Zoning Appeals. Because the State Code says, only one member can hold both of those positions at one time. Only one member of the BZA is allowed to be a seated member of the Planning Commission. How we were able to apparently to that legally was, one was an alternate member. I don't think it was ever challenged and so I don't know it came up, but that's where I'm coming from is…like we were already in violation of the

law, correct? If we take the approach, that the alternate member is the same as a regular member, unless you put them off to the side for the meeting and only one can be a sitting, voting member during a meeting.

Dr. Larson: Well actually it wasn't clear, if we were in violation of the law for exactly the reason you are just presenting. In fact, my second question was, does this situation as it stands, constitute a violation to the State Code of Virginia. That was a serious question.

Mr. Grimes: Absolutely.

Dr. Larson: Because of this whole discussion that we're having. Please, you're not voting, you're just discussion.

Mr. Apicella: We were advised by the County Attorney staff, Bob Gibbons and I, at a Planning Commission meeting, I can't tell you what the day was because I quite frankly don't remember but as a result of Bob Gibbons…

Mrs. Musante: Mr. Apicella, sorry, can you speak in your mic please?

Mr. Apicella: I apologize. We were advised after a Planning Commission meeting by the County Attorney and Mr. Harvey, that as a result of Mr. Gibbons serving on, or being appointed to the Planning Commission, that one of us would have to leave the BZA. It wasn't at time, that they did any further research about who would be appropriate to stay on the BZA. It was just a matter of fact point, that in order to be in conformance with the law, with the State Code, that one of us would have to resign our position from the BZA. So at least from their perspective at that point in time we were in violation of the State Code. What's the relief, I mean I can't tell you, it didn't come up, but it was their view that something needed to change.

Dr. Larson: Right. So that's consistent with the County Attorney opinion that the term member applies to both, regular and alternate members.

Mr. Ingalls: Well the situation has taken care of itself.

Dr. Larson: It has, but I…

Mr. Ingalls: And I guess since I don't know what the real interpretation of the law is, I don't know that I would want to change my by-laws. Just leave it just like it is and it still maybe an issue, but it's not an issue with us as a Board.

Dr. Larson: Not now.

Mr. Ingalls: Not now. And if the next person that gets appointed to either the alternate or to the Board, somebody needs to address it then. And to find out what… I mean if the Attorney General isn't going to answer our request, then maybe he'll answer somebody else's request. But I just don't see we need to do anything right now. We've resolved it. To put it in our by-laws… I don't know if that makes it any more legal or not.

Dr. Larson: Well if it's in our by-laws that's how we operate. So if we were to put something in our by-laws that states that if, for example, the person that comes in after, if there is an established member on the Planning Commission and somebody else wants to do that, they have to quit the BZA, whether they're alternate or regular. The stickler appeared to be to me, whether that law applied to both, alternate and regular members, and again, we don't have a conclusion. So I would suggest we do amend our by-laws to account for that, until somebody comes back and says that either we're wrong or we're right, because I did not expect this situation to happen in the beginning, but it did.

Mr. Ingalls: And I don't think the legislature did either.

Dr. Larson: No. Okay. So, is there any other discussion or opinions on whether the term members applies to both regular and alternate and/or both?

Dr. Ackermann: Well, I mean 2.1 says the Board shall consist of seven regular members and three alternate members. So the Board is those 10 people, right? It seems to me, that only seven sit to hear a case. I mean, that's what that sentence says to me and I'm not a lawyer, but it says the Board shall consist of seven regular members and three alternate members and who should be residents and bla, bla, bla and all that sort of stuff. But then when we get into meetings I guess the term alternate… I mean what do we… is alternate well defined, you know, in terms of… We operate under the assumption that if we had seven regular Board members here they are the ones who would hear a case, right. And the only way alternate members get to hear a case is, if they are not seven regular Board members here.

Dr. Larson: That's actually part of the law.

Dr. Ackermann: Okay. But it seems to me that the Board is always those ten people. What the Board is, is one thing. Which part of the Board hears cases, could be another thing.

Mr. Ingalls: Well like Dr. Larson says, State Law says, every locality that is enacted or enacts a Zoning Ordinance pursuant to this chapter or prior enabling laws shall establish a Board of Zoning Appeals that shall consist of either five or seven residents of the locality. That's the definition of the Board.

Dr. Ackermann: So there is no legal standing for alternates?

Mr. Ingalls: Well, then it goes on and it talks about alternates down further in the Code, why they are created and what that meant. And again, I'm giving you my opinion. But to me, the first statement says that every Board is either five or seven. We're not 9 or 10 or how many we could be. We're always a 5 or 7 member Board and that's what the law says we are. And what duty is of the alternate, I think is confusing, I am with you on that.

Mr. Poss: Well if I can add my inexperience to the conversation. Article 2 Section 3 says that alternate members shall serve on the Board when there is an absence of a regular member. So that would lead me to believe that the alternate member will not serve, unless the condition of a regular member not being in attendance. So that makes me think, they are not necessarily a part of the Board.
Dr. Larson: Well I guess that's sort of fundamental to the issue. Is somebody… what does it take to be a member of the Board when you're an alternate? Is it only when you're sitting on the Board to vote, are

you then a member of the Board, or are you a member of the Board by virtue of the fact that you are an alternate?

Mr. Poss:: The way this reads to me, it would read "only if there is an absence of a Board member".

Dr. Ackermann: Yes.

Mr. Davis: Going back to what I read before from the Virginia Code it says "the qualifications, terms and compensation of alternate members shall be the same as those of regular members". It's not saying anything about the five or seven or if they serve when somebody's absent. It says the qualifications are the same. To me that means you're qualified, you're a member of the Board, whether or not you're sitting.

Dr. Larson: Well, I mean there are other sections of the law that you can read in Section 23-308 subparagraph D, there is a last sentence that says any Board member or alternate maybe removed for malfeasance bla, bla, bla. So they draw distinction there and in section E they talk about members of the Board shall be appointed by the governing body. The governing body of the city shall also appoint at least one but not more than 3 alternates to the Board. Those two sentences seem to indicate, that there is a distinction that regular members and alternate members… that…

Dr. Larson: I have a real hard time with this myself.

Mr. Ingalls: Yes, it's hard when you… like I said we tried to resolve it by getting an Attorney General's opinion. And that's why I'm not real anxious to change our by-laws to say one way or the other. I think we don't have a problem right now and let the next … when next Board of Supervisors wants to put somebody else on here, whether it's an alternate or Board member, they are going to have to deal with it. Rather than us saying what it is. I don't want to preclude the Board of Supervisors from doing what they want to do, by something we say and have by-laws, when we don't know if what that bylaw says is in accordance with State Code or not.

Dr. Ackermann: And likely, if we changed our by-laws to reflect the County Attorney's opinion, the County Attorney would say they are fine. Because this is what we typically do with our by-laws. We send them to the County Attorney's Office and ask for an opinion on it. So if we put in something that agrees with the County Attorney, I suspect it would… doesn't matter if we do it or not…I think, I don't know how that situation happened with two people from the Planning Commission on the Board of Zoning Appeals, and I wasn't here when you guys discussed it, when it was discussed previously. But seems to me we're all aware of it now. Maybe we weren't aware of it before, given the fact that it may have just sort of happened.

Dr. Larson: Oh, I think everybody was aware of it, but I don't think people… the same people read the same law and came up with different conclusions, because is not clear.

Mr. Ingalls: Well it really didn't affect us, I don't believe. I don't know that we ever took a vote, where both, Steve and Mr. Gibbons, voted. Did we ever do that? Do you remember, Steve?
Dr. Larson: We didn't have very many meetings last year. And Mr. Gibbons got appointed in May, was it, to the Planning Commission?

Dr. Ackermann: March, I thought you said.

Mrs. Stefl: February or March.

Mr. Davis: March 6th.

Dr. Larson: March.

Mr. Ingalls: Actually I don't know… That's one of the reasons I don't think it came up all the way, until we had a problem when we knew that we had both Steve and Bob were going to be here voting. In my opinion, which definitely violated the law, we had to do something. That's when we had a problem with it.

Mr. Apicella: I am certainly no legal expert, but even if we did have a problem, I remember from the course that we took, Dr. Chandler saying, that if you didn't… Let's say an applicant raised the issue, he or she would have had a certain period of time to make his case that the decision rendered by the Board of Zoning Appeals was an error, because both of use were serving on the Planning Commission. I believe that time would long since passed to undo a decision, even if it's found out that we didn't comply with the law.

Dr. Larson: Well we did pass something in the October meeting, it's probably in the minutes, I didn't go to that detail, but that said basically that the two members that were on both Boards could not vote on the same issue. Which I think was what you were eluding to there. Maybe we should put that in the by-laws, given the ambiguity in the term member. Can we do that if the situation ever comes up?

Mr. Ingalls: I think that's certainly a solution to keep us… like I said, we're not going to have that problem for a while, I don't think. Unless one of us gets thrown off.

Mr. Apicella: I think what's changed is the Board of Supervisors knows that they can't have two BZA members on the Planning Commission. I'm not sure that they were as a body, all seven member, were aware that that was an issue. They shouldn't have done it in the first place, but now they know. It's out there. So I doubt it's going to happen again.

Mr. Ingalls: I don't think it will either, I really don't. I think it has taken care of itself. So I think they will be aware of it, even though the County Attorney maybe has issued an "Oh, you can maybe have it", but I don't know whether that's completely taken care of.

Mr. Apicella: And to the extent the County Attorney is involved in the appointments process, I would expect now that if the Board were to do something that were in error, the County Attorney would say Hey, time out, you can't make that appointment.

Mr. Ingalls: They (inaudible), as long as you're still on the Board as an alternate. He wouldn't be able to do it. So I don't know that its… like I said, I think it has resolved itself and like you say I think everybody is now aware of it to the point where I think it's going to never, well never is never a good word, but I don't think it will come as being an issue to us again. I really don't.

Dr. Larson: And we can always, if it is an issue again, we can always take the same action as we did before and then we can change our by-laws. Because you can change your by-laws at any time, not just the annual meeting. So we could take that course.

Mr. Ingalls: Yes, I would just hope the Board would not put us in that position again.

Mrs. Stefl: I would like to be that optimistic, but we are in an election year and I forget whose term is up at the end of this year, but four appointments will be occurring next year one way or the other. So if we do risk the chance of possibly having this conflict again in like February or March time frame, this time next year. And there is nothing to prevent the new Board from possibly appointing someone, just do force Mr. Apicella to have to resign the Planning Commission, because if we do get a ruling back that says only alternate, I mean only members, you know, kind of thing. So I'm concerned about some maneuvering that might occur this time next year. And so I would much rather take an offense, than a defense position.

Dr. Larson: The other thing that occurs to me is that the County Attorney has issued an opinion, but the County Attorney could leave, could be reassigned. I mean, we might have a different Attorney and then that different person might have a different opinion, because it's just not clear.

Dr. Ackermann: But the alternates have terms, right? Which cannot be terminated unless for malfeasance or something like that. So Mr. Apicella couldn't be forced off, right? By the appointment of someone else who is on the Planning Commission.

Mrs. Stefl: But Mr. Apicella, your turn is up at the end of December, or?

Mr. Apicella: Right.

Dr. Ackermann: So…

Mr. Ingalls: Someone else. I don't know.

Mrs. Stefl: It's him and someone else. Yes Ray.

Dr. Larson: Okay, that's a good point.

Mrs. Stefl: So Ray you are in Falmouth?

Mr. Davis: Hartwood.

Mrs. Stefl: You're in Hartwood.

Dr. Ackermann: But that's fair play.

Dr. Larson: That's a good point. I don't think they could force Mr. Apicella off the Board. And what would happen if say, a regular member became a member of the Planning Commission, then we would be in the same position. But the regular member is a regular member, so they vote, when they're here. The

only difference, I suppose, would be, if the regular member who is also a member of the Planning Commission was sitting on the Board and say two people were absent, and then we couldn't use both alternates.

Mrs. Stefl: I think we need to decide as a membership, if alternates are considered a member or not. We need to stand for something or we're going to sit here and just sway back and forth.

Mr. Davis: I make a motion…

Mrs. Stefl: Until the Attorney General comes back and says you're wrong…

Mr. Davis: I make a motion, that alternates be considered full members.

Dr. Larson: Is there a second to that motion?

Dr. Ackermann: May I ask a question about the motion? What do you mean by full member? I mean, if you mean that they have all the… we already know they have the qualifications in terms of regular members, right? And the same salary, right? Same compensation, right? What else… I mean does that mean, that they would… well, does that mean that whenever we use the term Board in our by-laws, we're referring to the full members… the regular members and the alternate members? That's what you're saying, I guess, right?

Mr. Davis: Yes.

Dr. Ackermann: Alright, I'll second that.

Dr. Larson: Okay, so my understanding of the motion then is that alternate members would be considered members of the Board, within the constraints of the law as it is written.

Mr. Davis: I'll accept that amendment.

Dr. Larson: Okay, we have a motion and a seconded. Any discussion… further discussion?

Mr. Ingalls: Mr. Chairman, I'm not sure I know what that really means, or what that really does, or anything. I mean I don't know what it helps/hurts or changes anything, so I'm going to oppose it.

Mr. Grimes: I will weigh in on the same thing. I mean the law already states that an alternate is a member. We're simply discussing about, whether or not they can vote when there's another Planning Commission member sitting on the Board, active voting. I mean if we wanted to make a change to our by-laws to try and reinforce what's already written, we can go back to what we discussed in October, which was put into the by-laws, that no voting member… or we will not allow more than one Planning Commission member to be a voting member at any meeting. Then it doesn't matter. The alternates are what they are. They can be Planning Commission they may not be Planning Commission. But even if two of us… the sitting regular members, as it's referred to, were on the Planning Commission. One of us would have to recuse ourselves every meeting and have an alternate vote for us. And I don't see that happening. But, if we

change the by-laws to simply say what we discussed before, that only one sitting member, that serves on both BZA and Planning Commission, is eligible to vote at any hearing.

Mr. Davis: But then we're disobeying the Code, which says, you can't have but one Planning Commission member on the Board.

Mr. Grimes: But that is not our responsibility to enforce that law and not to make those appointments. That really becomes the responsibility of the people making the appointments to the Board.

Mr. Davis: I agree.

Mr. Grimes: Because if there is already a sitting member on the BZA and there is a member of the Planning Commission, that spot is now filled. Technically they should not be able to make that appointment. Otherwise they are creating the violation. Not the BZA.

Mr. Davis: Well the County Attorney's opinion went on to say that, when Mr. Gibbons was appointed and accepted the position, he should have at that time have been… he should have come off the BZA. Whether he was to resign or what, it didn't say.

Mr. Grimes: And I don't disagree with that, but what does changing our by-laws do to… I mean, I don't know why we change our by-laws to enforce the Code of Virginia. Now we can put in some language that allows us to have that happen by some circumstance, but prevent us from violating it by not making sure that more than one member votes.

Mr. Apicella: May I offer just an idea or a thought as an alternate member? We have two kinds of business. We have cases that we deal with, we have all the other things that we might do. For example, for the better course of the year we were looking at our application and technically, if Heather and I were sitting as alternate members and all seven members were here, we really couldn't participate in this discussion about the application, even though it has a broad impact on what we do. Can't vote on officers, can't even vote on the annual report, if all seven Board members are here. I would just ask you to consider, kind of giving us status when we're dealing with none case issues, that we could participate and vote on those issues, because again, at some point in time what we do will impact an alternate member. So we ought to have at least some input into those none case kind of issues. I don't see where it jeopardizes anything. It certainly keeps us within the confines of the law. I agree that, if all Board members are here, alternate members can't vote on a case. I think that's pretty clear, but on other issues it is not as clear. I personally think we are Board member, as Dr. Ackerman said, in all circumstances, but for the times when we're voting on cases… when we're participating on cases.

Dr. Larson: Okay, that's sort of a corollary to the motion, I guess. Ray, did you want to amend your motion at all, or do you want to…

Mrs. Musante: Dr. Larson? Excuse me. I am not sure exactly what the State Code says and I don't have it in front of me, but I think we may want to consult with our County Attorney's Office before we make a motion to adopt something that may not be legal. And I'm not sure how much support we can get from our County Attorney's Office, since this is an actual BZA issue. But I would definitely try and see if we can get their opinion on what Mr. Apicella was saying. If you're talking about actually putting it in the

by-laws, allowing them to be… or allowing them to vote on none public hearing whatever, you know. I'm not sure.

Dr. Larson: Yes, we're not actually discussing that now. That's what I meant by corollary. We're still on the initial motion.

Mrs. Musante: Okay. I did not want you to go on… I thought you had moved on to something else. I'm like wait, I think we better check this.

Dr. Larson: No, the motion on the floor… Could you repeat the motion on the floor? Do you have the motion that you can repeat to us?

Mrs. Musante: The motion I have is for alternates to act as full members within the constraints of the law. That's what I have.

Dr. Larson: I guess I would have to agree with Mr. Ingalls, I don't see that this adds anything. I mean.

Mr. Davis: Well we had to add something. We were going around in circles and nobody was…

Mr. Ingalls: I like what Mr. Grimes… If we are going to add something, I think, to solve that one issue, we solve that one issue with what Mr. Grimes was talking about. I'll be willing to accept something like that, that puts us within the law.

Dr. Larson: In fact I think we could put… I mean we could quote: members of the Board shall hold no other public office in the locality, except on member may be member of the local Planning Commission, if it turns out that there are two…

Mr. Davis: If we break the law by having two…

Dr. Larson: No, we're not breaking the law. We haven't done anything. None of us on this Board have done any action to break law.

Mrs. Stefl: Alright, I have got a question for you. As an alternate I ran for office. If I had won that office, do you feel I should have resigned from this position as an alternate?

Dr. Larson: Yes, I do.

Mrs. Stefl: Well then you see me as equivalent to the same as a member. That I cannot hold another office besides the BZA then.

Dr. Larson: Yes.

Mrs. Stefl: So you are giving me equality there.

Mr. Ingalls: In that aspect, the law says that.

Mrs. Stefl: Well and that's all we're trying to say is that we should be considered the same in the sense that we cannot hold any other office besides a Planning Commissioner. And the argument was that Mr. Apicella was appointed first and so thus when Courts appointed Mr. Gibbons, that's when the violation then occurred because an alternate and a member, by your definition now, is the same.

Mr. Ingalls Under that aspect.

Mrs. Stefl: Under that aspect which is exactly what you all just shook your head, when I just asked that question.

Mr. Ingalls: But the Board is five or seven members. The Board is not nine or ten.

Mrs. Stefl: So what would have prevented… then why couldn't I also be on that elective position right now and also sit here then, because you are saying?

Dr. Larson: Because if you were you could never sit on the Board as a voting member, because you would then have this dual membership, this dual hat, and that's not allowed.

Mrs. Stefl: Alright, well, I mean… I understand what you're saying, but in the same sense the hat passes back and forth, depending on who's here and who's not. I mean, we never even defined, if a case is continued and Mr. Apicella and I sat on that case, do we not see it through to the next month, or does the member, who's now present, vote on that case?

Dr. Larson: Again, that's a different issue.

Mrs. Stefl: These are all Pandora's Boxes that are opening up, that if you're not appointing a member with an alternate.

Mr. Ingalls: We need to probably solve that issue.

Mrs. Stefl: These are all thing that… I think we need to stand for something, and then when the Attorney General comes back and says no, you're wrong. At least now we have an answer from him and he's going to finally give us something.

Dr. Larson: What we are running into is we're running procedural issues with alternates.

Mr. Ingalls: Okay.

Dr. Larson: That's okay, they're new and procedural issues are what the by-laws are designed to address so I think they are appropriately addressed in the by-laws. I'd like to hold a discussion to this one point right now, the dual hatted Planning Commission point. I'd like to see if we can resolve that. There are other issues we need to talk about, but I don't want to talk about those now, until we can this issue resolved.

Dr. Ackermann: Well we do have a motion on the floor that we need to vote on and I'd like to call for a vote.

Dr. Larson: Alright, the motion is that alternates will be…

Mrs. Musante: The way I have it is alternates will be considered full members within the constraints of the law. That's how I have the motion.

Dr. Larson: Which means we will follow the law with respect to alternates.

Dr. Ackermann: Right.

Dr. Larson: Alright, all in favor say aye.

Mr. Ingalls: Aye.

Dr. Ackermann: Aye.

Mr. Davis: Aye.

Mr. Poss: Aye.

Ms. Stefl: Aye.

Dr. Larson: Aye. Any opposed?

Mr. Grimes: No.

Dr. Larson: Okay.

Dr. Ackermann: Ayes have it.

Dr. Larson: Ayes have it.

Mrs. Musante: I have one no and the rest were yes, correct?

Dr. Larson: Yes.

Mrs. Musante: Mr. Grimes?

Mr. Grimes: I'm still trying to… I want to say no, because I don't think it does anything to improve where we are. So, nay.

Mr. Ingalls: I don't think that solved the issue, but if you all think it did, let's go on.

Dr. Larson: I didn't say it solved anything.

Mr. Ingalls: Let's go on to the next issue.
Dr. Larson: I'd like to discuss Mr. Grimes's proposal a little further, if we can.

Mr. Davis: That was?

Dr. Ackermann: Which was?

Mr. Grimes: From the October meeting, I posed that… so that we didn't put ourselves into violation, whether or not we had two Planning Commission members appointed to our Board, that is out of our control, but so that we, as the BZA, did not put ourselves in violation, that we include, or we could put it in our by-laws, I am not sure… I guess it's procedural, that on any vote we could not have more than the one Planning Commission member as a voting member of the BZA for that hearing, for any hearing. So if were to revise it, to address the by-laws as a whole is that no more than one Planning Commission member could be a voting member of the BZA at any hearing, and just would prevent us from ever allowing to happen, even we were put into violation by somebody else.

Dr. Larson: Comments?

Dr. Ackermann: It seems rather specific to the current law. If the current law changed to allow for someone to also be on the School Board, then why do we have to change our by-laws to say School Board? I think what we just passed covers that. That's what I think. I respect your opinion. I think that's a particular issue that we want to solve, but whether… is that general enough?

Mrs. Stefl: I agree that you shouldn't be on any other Board besides one member being with the Planning Commission. My argument is that we have a quality with members, because we have to go through the same steps as you do. We're appointed by the Circuit Court. We're recommended by the Board of Supervisors to Court, but it's ultimately the Court that has decided all of our seats, so we've all gone through the same hoops and I would argue that, yes, if I had won, I would have had to step down, according to the law. So I don't think we need to address other positions.

Mr. Grimes: And if I am correct the only violation that we're all aware of right now is the Planning Commission. So I respect to try to broaden it, but what would we broaden it to? Any other Board? Well there's people up high, for example, that sit on the ADA Grievance Committee that would exclude a lot of us from being able to do anything, because we do serve on multiple Boards.

Mrs. Stefl: I thought that issue was also brought up at one time with another Commission.

Mr. Apicella: It did come up because both Bob… It started way back when Bob Gibbons and I were both on the Utilities Commission and the County Attorney's view was, the Utilities Commission was an advisory body. It did not serve in an official capacity. It wasn't… it didn't have any official role per se. How do you define, what' an official… a public official verses a non-public official? I don't know. I think you would have to deal with that on a case by case basis. But in terms of the Utilities Commission, all we were doing was making recommendations to the Board of Supervisors, which they ultimately approved or disapproved.

Mrs. Stefl: The same as all the other, like you said Commissions and….

Mr. Apicella: There may be other Commissions that you do cross the line of being a public official. I just don't know. That's why I say, I think you have to deal with it on a case by case decision. For example, the

EDA might be… someone who's on the EDA might be a public official, because they are actually granting money to parties who are seeking grants. I think it depends on where your official role begins and ends. And that's why the Utilities Commission wasn't an issue, because they weren't the final arbiter on the matters that came before it.

Mr. Ingalls: I think it's a real broad term. I know at one time we had a member of this Board who, somebody wanted him… The Board wanted him to be on the Airport Commission and he had to step down from the BZA to be on the Airport Commission, and he did. So I don't know how broad any other Boards or Commissions is. If that's what it means, I don't know.

Dr. Ackermann: But the Code says no public office in the locality.

Mr. Ingalls: Right.

Dr. Ackermann: So whatever… I don't know if the State Code defines public office. We probably all know what no means, but public office.

Mr. Ingalls: I guess over the years I always thought it meant any kind of serving within the County, I always felt that, you know whatever. I would have thought Utilities Commission would have been just like Airport Commission, just like Wetlands Board, just like a lot of these other Boards. You just can't serve, if you're going to serve on any of those other things, then you can't be a member of the BZA. Like I say again, that's just my opinion. Which I don't think that's an issue here tonight.

Dr. Larson: No, well the Board has already passed… we passed the resolution last time, that if we have a situation where two, call it what you will, members of the Board are on the Planning Commission, that they cannot vote on the same case. We passed that last time. That's a matter of record. The question is, do we want to make it part of the by-laws? And if so, is there a motion? Okay. Hearing no motion, it sounds like we don't want it to be part of the by-laws.

Dr. Ackermann: Mr. Davis's motion, is that going into the by-laws?

Dr. Larson: No. That's a motion… that wasn't something that changes… that wasn't part of the motion.

Dr. Ackermann: Okay.

Dr. Larson: I mean we're following the law.

Dr. Ackermann: Yes. That's good we are.

Dr. Larson: We are trying.

Mrs. Stefl: So we were hoping to… I am just not sure what… I would like to have a discussion. You're asking me if we want a proposal to change the by-laws.

Dr. Larson: Yes. With respect to… I'm trying to run this particular issue to ground. It sounds like we have. We passed a motion last time, but it's not part of the by-laws. So what that means is, when people

forget that we've passed the motion, then we'll do something else. I mean it is not part of how we operate. Okay. Well, that's what I wanted to discuss with the by-laws tonight. There were a couple of other issues raised. Do people want to talk about those issues now?

Dr. Ackermann: Just for curiosity's sake, what happens when we continue discussion on something with alternates and regular members.

Dr. Larson: It's not in the by-laws.

Dr. Ackermann: I know, but could… would it be appropriate for me to ask the Chair to ask the County Attorney for some guidance on that, since we have no legal counsel.

Mr. Davis: What would we ask him specifically?

Dr. Ackermann: If an alternate is hearing an application and the application is continued to another meeting, is the alternate still part of the Board that hears that.

Mr. Davis: I would think that this could be something we could decide.

Dr. Larson: I think we could decide that. I don't think that's a legal question. I think that's how we operate type question.

Dr. Ackermann: Okay.

Dr. Larson: Alright, well now that we're talking about it, does anybody else have an opinion on if an alternate hears a case and then the next time around that alternate isn't needed for the next Board meeting, all regular Board members are available, but that case is still continuing, should the alternate be at least inserted into the Board for that case or for the whole meeting? I think there are probably two ways you can look at it.

Mr. Davis: I think they should for that case because that came up. We had the questions here from an attorney complaining that the same people were not hearing the case where he had presented everything before and he wanted his ten minutes again. And I think it's not fair to the person, nor to the person that wasn't here to hear what went on.

Mr. Grimes: I agree with that. That in fairness, that would be the right thing to do, but from a procedure standpoint, do we start and stop the meeting? Because when you convene it's the members that are sitting are voting. So we have to know that there is a continuance and make that decision and make sure the alternate is there before hand? Because we're not going to able to switch in the middle of the meeting, right? I mean you start, you adjourn.

Mr. Davis: We do that when Larry has had a conflict, he would excuse himself and the alternate would take the position.

Mr. Grimes: So just through Gentlemen's agreement, excuse me for being gender biased, one of the members will simply say I recuse myself for this case, the alternate would sit and then the member would come back.

Dr. Larson: It would be part of the by-laws, so it wouldn't be a Gentlemen's agreement, it would be part of the by-laws.

Mr. Grimes: Okay, that makes a lot of sense.

Dr. Larson: And I think that we could, maybe through scheduling, make the meeting go as smoothly as possible, knowing we're going to have a slight change of personnel in the Board. So I think that's doable. Any other discussion?

Mr. Ingalls: How do we word it? Because I think this is a fair way to do it. I agree, if I was not here I wouldn't want to come and pick up a case and only hear the last few sentences. I wouldn't want to have to vote. So what's the wording?

Dr. Larson: I think it's fair all the way around. I think it would be, in my opinion, for that case and not for the whole new cases.

Mr. Ingalls: Yes, not for the whole meeting, no.

Dr. Larson: There are several new cases they could, the new… the regular member could sit on that. So yes, wording, I tell you what. I can work on some wording for that, send it around via email and maybe we can vote on it next time or talk about maybe modifying the wording next time.

Mrs. Stefl: So this would be a modification of 7.9 that says within 60 days of the completion of a public hearing the Board shall render a decision on the case. So basically what usually, procedurally happens is, a case we decide to close the public hearing and we'll defer to the next meeting, but of course we would have had to dispense with it within 60 days. So the matter has to be concluded, so we would want to say, you know, all sitting Board members would want to…

Dr. Ackermann: Well I think…

Mrs. Stefl: So that is probably where would make the alteration. I mean I'm not the wordsmith.

Dr. Ackermann: We don't have to conclude a public hearing within one meeting. Sometimes we have continued… Have we continued public hearings over meetings sometimes?

Mrs. Stefl: Actually we have held them open.

Dr. Larson: Yes, we have held them open.

Dr. Ackermann: So 7.9 is maybe not the place to put it. I think we should have a separate number that states: "if an alternate member is on the case", something like that.

Mrs. Stefl: Like at 7.10?

Dr. Ackermann: Yes, or something like that.

Mrs. Stefl: Okay.

Dr. Ackermann: Whatever.

Dr. Larson: Okay, so I will draft some wording for the by-laws so that alternates, once they hear a case, if it is continued they will continue with the case.

Mrs. Stefl: Yes.

Mrs. Musante: Mr. Chair, while we're talking about 7.9, I believe there is a conflict with our by-laws and the State Code on the 60 days and I'm sorry, I don't have the State Code with me, but I believe that does say 90 days and I can verify that.

Dr. Larson: Please.

Mrs. Musante: We may want to change that to match the State Code.

Dr. Larson: Probably, although I doubt, I mean, you know… Yes, we should. I was going to say, normally if a lower body is more restrictive then the higher body says yes go right ahead and more restrictive if you want to, but yes, given the other directions that our cases can take some times, yes, I think probably we ought to conform. Alright, I will draft that and send it around. There was another issue dealing with alternates that Mr. Apicella raised, I think, and if I can paraphrase that, tell me if I'm close. I think the idea was, you were wondering if when there is… When there are cases… When there are no cases, when we are dealing with business, the housekeeping business of the Board, should the alternates be (a) allowed to participate and (b) allowed to vote?

Mr. Apicella: That is it.

Dr. Larson: Discussion please?

Dr. Ackermann: I think the more the… I think we could gain from the wisdom of the alternates. As long as they vote the same way I vote, that's fine with me. I have got no problem with it.

Mr. Ingalls: I don't have a problem with them being part of the discussion. I think we have already done that. Like Steve pointed out with the applications of bringing their advice in and seeing so forth. But again, I think the Board is seven members. I guess I would feel a little bad, unlike you Mr. Ackerman, that if we had three members, who were alternates and they might change the by-laws on me. Well, it could, you know, there are things and it's the Board, in my opinion, the Board's by-laws and the new alternates, as they come in, they abide by the by-laws of the real Board, which is in our case seven members. So I don't know that I would want to say that they should be telling the Board, they can tell me their opinion, I would welcome their opinion. But on a voting part of it, I would say, we as a Board should make the decisions of how we want to operate and they come in on the cases and operate under our by-laws.

Dr. Larson: But, for example, in this situation we have an alternate sitting on the Board filling in for a regular member and she's been voting, well she's been discussing and voting.

Mr. Ingalls: My opinion would be that her vote shouldn't count tonight, but that does not bother me.

Dr. Larson: Any other discussion?

Mrs. Stefl: Does this also go as far as hearing cases, whether or not you can voice our opinion or possibly ask questions? I'm not saying vote, I'm saying we might bring a perspective or ask questions, or something along those lines.

Mr. Ingalls: My answer would be no.

Dr. Larson: Yeah. I think we have two, kind of separable things here.

Mrs. Stefl: Okay.

Dr. Larson: And I think even Mr. Apicella separated them. So let's focus on the first one, that's doing internal business of the Board. I agree, that the alternates have opinions that are valuable and I like to hear them and that's one of the reasons Mr. Apicella is sitting over there right now giving his opinions. So I would suggest that when we're doing housekeeping type chores like we're doing tonight that the alternates would be as involved in the discussion as they'd like. As far as voting, I think we should follow the rules that we follow for normal cases. If seven regular members are there, seven regular members vote. If there are six regular members and an alternate filling in, then the alternate can vote along with the other six regular members of the Board on the housekeeping issues. So in this case, as we've been doing tonight, Heather would be voting with the Board and Steve would not. I think that's the right way to do it.

Dr. Ackermann: And what if the discussion goes over one meeting, then Heather and Mr. Kim doesn't get to vote on the by-laws issue.

Mr: Kim: What was that? I'm sorry.

Dr. Ackermann: I said what if our discussion continues over more than more meeting?

Dr. Ackermann: You mean like the by-laws discussion? I am being facetious obviously. I think I know what you what you want to say, but I think… I almost think we should say the by-laws have to be amended… like Article 8.1, these by-laws may be amended by a majority vote of the regular members of the Board. If that's the way you want to play it. That could be… and then of course, if you have four people here then they get to vote on it. Because we've got all these things, a candidate for any elected position who receives a majority vote of the entire membership of the Board. It says entire membership of the Board, my opinion on the entire members of the Board is not the same as everybody else's opinion… or not the same as everyone else's opinion. Some people share it I think. So, we have got... I guess we want to see how we want to… is the Board something that just exists, while it's hearing something or does it consist of its members, regular and alternate? I think we need to, you know, be careful what we do with this.

Dr. Larson: Were you reading that somewhere, that the by-laws are changed by regular members?

Dr. Ackermann: No, no, no, no, no. 8.1 says amended by a majority vote of the membership for the Board. So does that mean regular members and alternates? In my opinion it does, but that's my opinion and so you don't get into this whether or not Mr. Kim didn't come until later so an alternate (inaudible) (1:09:39) the case. Same thing 3.3 a candidate for any elected position who receives a majority vote of the entire membership of the Board, I think we need to… If we want to distinguish between regular and alternate members in terms of voting then we need to address those or we don't distinguish between the two. Because it's only in… I mean they may be the only cases. I don't know about the procedure of hearing cases, or where it says how we make up a body to hear a case.

Mrs. Musante: Mr. Ackerman, I think at the time that most of these by-laws were written, the alternates did not exist.

Mr. Ackerman: I agree completely and if we are going to differentiate between them, between regular and alternate members some places we ought to do it consistently.

Mr. Ingalls: Well, if what you say, if a majority the membership of the Board, and this is kind of to the question too. Are we a nine member Board or a seven member Board?

Dr. Ackermann: Yes.

Mr. Ingalls: Does it take five votes if we get on a case where it says the majority of the Board, and now we have to have five votes. That's why I said, the Board in Stafford is seven members.

Dr. Larson: I agree with that. So then the question is, if a regular member is gone and an alternate fills in, is that alternate a member of the Board at that time and I would say yes. That would be my opinion. Somewhere in here it says when the Board is voting, there is a majority… I mean doesn't it call out somewhere that the Board is seven members in the by-laws?

Dr. Ackermann: It just says that's if a motion fails to receive four supporting votes.

Dr. Larson: Okay, which…

Dr. Ackermann: An application may…

Dr. Larson: It implies seven.

Dr. Ackermann: Well you have to have four supporting votes for something to be approved.

Dr. Larson: Right. And if you had eight, then you couldn't approve. So the implication is seven members.

Mr. Apicella: Can I ask a basic question? If someone were to ask me, are you a member of the Board of Zoning Appeals, I would say yes, I'm a member of the Board of Zoning Appeals. I agree with Mr. Ackerman that there are two classes of membership on the Board of Zoning Appeals, alternate members and regular member. And the extent of our participation depends on the matter of business before the

Board of Zoning Appeals. At the end of the day I would think everybody would agree that I am a member of the Board of Zoning Appeals, as is Heather.

Mr. Ingalls: Under whatever rules the state allows you as an alternate to be, you are a member of the Board, I would agree.

Dr. Ackermann: I think we all know what we mean. As Mr. Ingalls is saying, and certainly when we're hearing a case, we think of the Board as the people who are hearing the case and who may vote on the case. And that's the one issue we wanted to see about, when a case needs to be continued, we want to have a consistency of the Board at that point, but when we bring up the other issues of modifying by-laws, electing officers, I guess we could, in terms of an agreement among peers here that it would be just as we have done tonight.

Dr. Larson: Right.

Dr. Ackermann: And I think that's…

Dr. Larson: The agreement among peers is the by-laws.

Dr. Ackermann: Well the by-laws don't say that though. That is the thing.

Dr. Larson: That is correct.

Dr. Ackermann: The by-laws don't say how to elect somebody except… right.

Dr. Larson: I would prefer to operate as we have here tonight, as Dr. Ackerman just said, that if we have six regular members and an alternate member can fill in and the alternate member votes on housekeeping chores as well as they would have if they were voting on a case. I don't think that the other alternate member that's not part of the seven should be voting and he hasn't. But he has contributed which I appreciate.

Mr. Kim: Mr. Chairman, can I make a statement.

Dr. Larson: Oh you are here.

Mr. Kim: First off I'm sorry I am late, it took me two and a half hours to get here so I apologize. Traffic was going about 15 miles pretty much all the way from DC to here, so it took me two and a half hours and I didn't have a number to call, so I apologize for that. But I kind of read through the by-laws a little bit and I know that I'm late and I'm sorry that we're backtracking a little bit, but from my understanding with meetings, you know I mean alternate or not, Heather and Steven are still members, but reading the by-laws it kind of states that there should be seven members up at the dais. Was there any discussion of that? And I'm not nitpicking, but there have been a couple of times where there were eight, Heather and Steven, here. I don't know if that's… as I read the by-laws and as I understood the by-laws, I would say that seven, if you guys already discussed this during my tardiness I apologize, but I mean, is that one…

Dr. Larson: I think that is another issue that needs to be discussed.

Mr. Kim: Is that an issue that we… And it's not that I don't appreciate… but it just seems that if we are going to go through the by-laws and stick with it and try to understand it as our interpretation, I would say seven members, either two alternates, no alternates, just seven members. It kind of makes it… and the reason I said that is because of your point of are we an eight member Board or are we a nine member Board? And here it says seven members.

Dr. Larson: Yes. I draw a distinction between a situation like this, where we have no cases and we're only discussing housekeeping.

Mr. Kim: Oh no, this today is not a big deal.

Dr. Larson: That's why Mr. Apicella is sitting where he is. We have not discussed the other part of your…. We have not discussed that part either actually. I mean that could be part of the by-laws too, but we haven't discussed when we're hearing actual cases. We have not had that discussion who should be sitting in.

Mr. Kim: Then I will hold off for the time that it comes up to bring it up in discussion. I apologize.

Dr. Ackermann: Just to throw something out there. What about having something in the by-laws that says for all purposes of business, an alternate may vote only in the case that a regular member is not present or has recused herself from an issue.

Dr. Larson: That is perfect from my perspective.

Dr. Ackermann: I mean, if we put something like that in place that doesn't let everybody vote on everything, which I don't know if I agree, but I think this seems to be what we're talking about though. The only time alternates may vote on something is when regular members are not present or when the regular member has recused herself or himself from an issue. And that would cover the situations of where I have a conflict of interest where the case has been presented and I can sit out that case. It handles the situation where we were talking about voting on the by-laws or voting on officers.

Dr. Larson: Any other… any discussion on that?

Mr. Davis: I think that that could be changed. The last sentence in 2-3 could be changed slightly to include that.

Mr. Ingalls: What was the motion again?

Dr. Larson: He was still discussing it.

Dr. Ackermann: I am just.

Mr. Ingalls: Oh you have not made a motion, excuse me.

Dr. Ackermann: Well, I think it's probably not a good idea to actually make language of by-laws as a group like this. I mean, just put it out as an idea and then somebody can work on it. The thing was to

define when alternates may vote. They can only vote when there's a regular member not present or a regular member has recused herself or himself from an issue.

Dr. Ackermann: But I feel bad about that.

Mr. Apicella: If you're amending 2.3, would I would suggest is, alternate members shall serve on as a regular member of the Board in the absence of a regular member. The point is, as I said before, my view is, there is a Board of Zoning Appeals, there is two classes of membership, alternates members serve as regular members in the absence of another regular member. So you move from being an alternate member to being an official regular member for the time being that you are authorized to participate in that capacity.

Mr. Ingalls: But the bylaw… that last sentence, such alternate member may vote on any application in which a regular member abstains. I know and that says to me, alternates vote on applications. And still my base for this whole alternate thing is to make sure we have enough members here on the Board to have the public have a regular hearing, which they have enough people to make a logical decision.

Mr. Davis: I think the Code requires you to have five.

Mr. Apicella: Again, my issue is, the circular one that we keep going around is, whether an alternate member is a member of the BZA. My view is yes. Here he or she is, except that his status changes when he's needed to pinch hit because a regular member can't… isn't here or abstains. And with all due respect, I don't mean to chime in with what you said earlier. I am sitting in a staff seat. Staff sits over there. I don't see a big deal if we're sitting here in a staff seat verses sitting down in the audience waiting for two hours, because in an hour two Larry can't participate in the meeting and now I have to get up with all my stuff, walk up here and sit down so I can participate.

Mr. Kim: Are you saying that if we had two issues on and someone recused himself from one of the…

Mr. Apicella: Unless someone doesn't show up in the meeting… I'm kind of digressing and I apologize. We weren't always very good about telling an alternate member, up until the very minute of the meeting, oh by the way, you're on. And I will have done all my homework for all the pieces of business that are going to come before the BZA, not knowing whether I was going to participate or not. And then subsequently, even when I show up, I won't know until that matter of business comes up. We've got in theory four cases that have come up and Larry says on case number four, two hours into the meeting, oh I can't do this one, for whatever reason. So I need the alternate member to sit in on this one. So all I'm saying is, because it came up before, somebody had suggested we be resign to sitting in the audience unless and until we're called to participate. I think that's a little unfair and number two, not particularly easy to do, because sometimes our packages are pretty big. I don't see a big deal of us sitting in the same place where a staff person would sit.

Mrs. Musante: If I could chime in Mr. Chair. The issue that we have had previously with the alternates sitting up here, if they are not participating is, who has the right to vote. If they are in discussion it becomes very confusing to staff and our recording secretary, it's like wait a minute, who's voting, because we have, technically, a seven member Board. We've got nine or eight people sitting up here. The eighth person is in discussion an we're back… it's difficult enough for staff to try to keep track of what

the motion is and what people are saying, then have to worry about wait a minute, let's go back, who's voting and it's actually embarrassing when you've got a full audience and we're sitting up here discussing who's voting and who's not. So from a staff point it is confusing when we have the eights member sitting up here and only seven voting if all eight are participating in discussion.

Mr. Apicella: I think that's easily solved by swapping seats with whoever has to recuse themselves.

Dr. Larson: I think the point Melody's making, I think it's valid, is that contrary to what we're doing tonight, if you were to sit there and be in the same situation as you were here, you wouldn't be allowed to comment. I mean no questions, no comments. That's, I think, what Melody is saying.

Mr. Apicella: And we shouldn't when it's a case.

Dr. Larson: That's right, when it's a case.

Mr. Apicella: But all I'm saying is, again to Danny's point, I think sitting is these two seats, if there was a third member of the alternate class of BZA members sitting in the staff seats, I don't see where that is a big deal.

Mr. Davis: Besides that you got a little seat.

Mr. Kim: I'm just going off of 2.1 where it says the Board consists of seven members and I would hate for the public to say wait, there is seven, why are there eight.

Mr. Apicella: But there is two people sitting over there. How are they going to make that distinction that they are not part of the BZA?

Mr. Kim: Because they are staff.

Mr. Apicella: How do they know that?

Mrs. Musante: We are actually introduced as staff at the very beginning of the meeting.

Mr. Kim: Introduced as staff and seven members.

Mr. Apicella: And there are two alternates. I don't understand why they can't be sitting here and may participate in the meeting as necessary. I mean… I really… I just… Look at it from my point, as an alternate, you're asking me to sit out in the audience until I'm ready to go.

Mr. Kim: No, no, no.

Mr. Apicella: You want me to sit for two hours in the audience while I am waiting to pinch hit.

Mr. Kim: I really don't see the big deal. If I was an alternate I don't think there would be an issue.

Mr. Apicella: You are not an alternate, so you don't appreciate, again, the fact that some of our packets are pretty good… big okay. And I have to read through it. I have to sit there until I'm asked to participate.

Mr. Kim: I just want to… I mean, like for us… I mean, are we changing the by-laws here or are we trying to amend it or are we…

Dr. Larson: We have been talking about changes to the by-laws to account for the alternates, because we've run into procedural issues on how to treat the alternates.

Mr. Ingalls: Steve, I have been told, and I don't know this to be true, that some BZAs their alternates sit down here, unless they're serving on the Board that night.

Mr. Apicella: Then I would say that unless… if that's case, if you want us to be resigned to not participating, then every member ought to, prior to the meeting, say whether they are going to participate or recuse themselves from a particular matter of business.

Mr. Ingalls: We normally…

Mrs. Stefl: (Inaudible) close to 24 hours before the meeting advise the Chairman.

Mr. Ingalls: We try, and I know that when they ask for disqualifications at the very beginning, I state which ones I am, right then at the beginning of the meeting, I state on the third case, or the case so and so, I'm going to abstain. I actually get up and leave. I don't even like sitting up here as part of… when I've abstained, if you'll notice…

Mrs. Stefl: Yes you do.

Mr. Ingalls: I have gotten up, gone to the back so that I am not a face, I am not anything to look at. I get up and leave.

Dr. Larson: So when that happens an alternate could come in…

Mr. Ingalls: Maybe an alternate should come in and take my place.

Dr. Ackermann: But the by-laws say that you have to notify the Chair 24 hours…

Mr. Ingalls: I still do… I have still done that. I've told the Chairman so he can alert somebody…

Dr. Ackermann: Right, sure, sure.

Mr. Ingalls: … one of the alternates that I am going to abstain.

Dr. Ackermann: Oh yeah, yeah.

Mr. Ingalls: I have tried to do that every time.

Mr. Apicella: I have almost never been alerted before and I have to usually ask.

Mr. Ingalls: And I would agree…

Mr. Apicella: Are Heather and I pinch hitting for the next meeting.

Mr. Ingalls: I agree.

Mr. Apicella: I don't know until the very day, after having done my homework for the meeting, whether or not I was going to participate and I tell you it's pretty frustrating when there's a volume of stuff to go through, to find out, well no, we don't need you this tonight.

Mr. Kim: That's a very valid point, but I mean we can usually fix that by saying now if you're going to abstain from the vote or a case give 24 hours prior.

Dr. Ackermann: Well that's what the by-law apparently says.

Dr. Larson: We can make it 48.

Mr. Ingalls: I think we've done a poor job, like you say Steve, of identifying… I come in here and I look around, and I'm saying… I never hear somebody saying tonight Heather is going to be the alternate voting for so and so, who is absent tonight. I have never heard that, so I'm looking around, well who's…

Mrs. Stefl: I typically get an email from Melody…

Dr. Larson: Actually you heard it tonight.

Mr. Ingalls: Excuse I heard it tonight.

Mrs. Stefl: … or Mr. Gibbons has called me one time and let me know that I was probably going to be pinch hitting. That was typically in the morning that I was notified by Mr. Gibbons that you're going to be on tonight. Now Melody is pretty good and she, I think, at least a day or two before,

Mrs. Musante: I try, if I know.

Mrs. Stefl: … because she does RSVP. She asks us all to RSVP. So I mean she is pretty good, but I don't know which of those… I don't always know I am going to be sitting on case 1 or case 2, so I, like Steven, prepare for all three cases and it's kind of like put me in Coach, I'm ready to play and I would get very frustrated if that was the case, but that incident we had tonight, Mr. Kim didn't know that he was going to be late, so…

Dr. Larson: And well people get sick at the last second to, I mean.

Mrs. Stefl: If it's a last second illness, I mean, we have a lot of scenarios that do occur. And it is very frustrating and I feel, honestly, demoralized sitting down in the audience, but that's just my personal opinion and I can put my big girl panties on.

Mrs. Musante: Okay, here I go again with my questions. Do… Steve and Heather, do you all want to come to the meeting if we have a full Board? Because there have been meetings that we have had all seven members, you all are here and you do not get to participate. I have actually asked other localities this question and their alternates do not come to the meeting unless they are sitting.

Dr. Larson: Is that a by-law rule or is it just an alternate preference?

Mrs. Musante: I don't know that. This has just been…

Mrs. Stefl: But did you ask them what would what have happened, like for instance this evening when Mr. Kim was late. This is an unforeseen example of we just didn't know.

Dr. Larson: Or not only that…

Mrs. Stefl: So if we had a hearing Steven and I would have to pinched hit.

Dr. Larson: What if we have a case and it's continued and then somebody can't attend the next, a regular member can't attend to the next meeting.

Mrs. Musante: We still have quorum though.

Mr. Grimes: That's my point that the clarification is you still have a quorum.

Mr. Ingalls: Yes you have still got…

Mr. Apicella: You may not though.

Mr. Grimes: You may not, the meeting doesn't go forward. You don't have a meeting at all.

Dr. Larson: But that's why you have alternates.

Mr. Apicella: So if only have four regular members who show up and you actually need the alternate to come to have a full regular meeting.

Mr. Grimes: Right, and that means we have three of us out. Three people out. The chances of that are small. It can happen.

Mr. Apicella: That is not small, that is why there are alternates, because that happened in the past.

Mr. Ingalls: But we're supposed to notify the chairman, if we're going to be, so the Chair knows and I also notify Melody, what I'm going to be doing. So the Chair knows. If nobody has notified the Chair that they're not going to miss, I guess he's going to assume we all seven are going to be here. And let's say what happens, like Mr. Kim tonight, he could have done the same thing. We could be in here, but we would have heard… there still would have been six of us here to hear the cases, so we still would have been able to go forward. And even if it was six of us, or seven of us here and you were both here voting and I got to a point in the case and I said oops, that's my very best friend's wife right there. I am going to

abstain. I am going to walk out. The six of you are still going to vote and the case is going to go forward. So if the Chairman doesn't know that anybody is going to be missing he could notify you, maybe he should or would, but all seven members were going to be present tonight. You are not required to be here. I think, if you want to be here, that's great. If you want to come, that would be okay. But I think if you came, would you set up, the question is would we do it this way, like we've done tonight. I think people have trouble, you know, we don't have to stand behind that mic and try to figure out who's talking to me, so that you know, when you have this many people trying to talk to that person. I think they get confused as to who's talking.

Mr. Apicella: The Board of Supervisors has seven members. There is staff sitting over there and they have staff sitting over here. The public comes before them and they have lots of business that they do. I don't see the staff… I'm the County Administrator, I'm the County Attorney, I'm whatever and the staff over there saying I'm so and so, and I'm so and so. They manage to get through their business just as well as anybody else.

Mr. Ingalls: They have a plaque that says County Administrator, County Attorney.

Mr. Apicella: Well, I can get a plaque that says Steven Apicella, alternate member. I don't care.

Mr. Ingalls: Okay.

Dr. Ackermann: Or you could even turn your placard down.

Mr. Apicella: That is fine. I just think it's very inconvenient to ask me to come to a meeting, not knowing if I'm going to participate and they resign me to the bleacher seats waiting to, to … call me in Couch, when it's time. You're asking a lot of somebody.

Mr. Ingalls: I agree. I don't disagree with you a bit on that.

Mr. Apicella: And I'm telling you, I've come here with some big packages and it's not very convenient to be sitting on the seats, to go through them all, waiting for my turn to participate. I just don't think it's fair, I don't think its right, I don't think it's necessary to treat us second class citizens. That wasn't the intent of the Board when they created all of this. It was to solve a problem that did exist that meetings had to be (inaudible) (1:35:13) and you guys have been here longer than me. Meetings had to be dispensed with, because we didn't have enough members here. So that's why they added alternates. It wasn't because it was a nice thing to do, it became a necessary thing to do. And as I've heard over the course of the conversation tonight, the by-laws don't necessarily fully reflect the fact that the alternate members are brought into the equation. So, it hasn't been looked at with a fine tooth comb. I think there have been issues that have come up that are novel because we have alternate members and we're just trying to deal with that. All I'm asking is for some equal and fair treatment as an alternate member not a second class citizen.

Dr. Larson: Yes, if I could make a suggestion. I heard somebody suggest something over here that I think was good and I think we can add onto it. If we had a situation in a regular meeting, like we had tonight, where Danny was gone and Heather was filling in for him, we would have everything set up as we had. If Steve sat there with his name tag flipped over so you can't see his name. And then in the beginning, when

we open the Board, if I were to say and on the end there is Mr. Apicella. He's in observer status tonight. Would that solve the problem? Would that be clear enough for people that, you know, Mr. Apicella is here in alternate status but he's in observer status tonight.

Mr. Davis: Works for me.

Mr. Apicella: That works, great.

Mr. Ingalls: If that is the way… I think that's a solution. I think we need to have a mechanism, Steve, right, that we're going to operate under. And that's all you're saying. That would be fine.

Mr. Kim: You would be fine with that? I am just asking so you are going to sit up here?

Dr. Larson: Just sit here. Take notes. Observe the interaction, the questions.

Mr. Apicella: Until your time is up for whatever…

Mr. Ingalls: His time may never come up.

Mr. Apicella: And the next time that issue may be held over to another meeting where I do participate. And I want to have taken notes, up here, where it's convenient to take notes if I have to pinch hit another time on the same case.

Dr. Larson: So I think that deals with the public's ambiguity about who is actually the Board. If I specify the members that are on the Board tonight and we have a person here that's an alternate and not participating tonight, but they're here in observer status. Is that…does everybody else agree with that? So I think we can do that. Good.

Mr. Davis: I think another question is who determines which alternate will serve.

Dr. Larson: We have some mechanism for that, right?

Mrs. Musante: The way we were doing it, we were just alternating. Nice word to use. If Steve sat one time, next time it would be Heather. So we just went back and forth. Actually the by-laws, let me see what it says, it says The Chairman shall select an alternate to serve in the absence. So it doesn't state, so technically it's up to you how you want to handle it.

Dr. Larson: Right.

Mr. Ingalls: That's what State Code says. The Chairman shall select.

Dr. Larson: How about if we alternate, you give me the name, if that person is available, that's the one. If they're not available, we'll go with the other one.

Mrs. Musante: That's fine. We can continue that way.

Mr. Ingalls: And if somebody misses theirs are you're going to swap it around?

Dr. Larson: You are making it complicated on me now. Are there any other… I think we've covered the issues that we floated about alternates tonight. Am I correct in that?

Mr. Ingalls: I have a couple of suggestions or thoughts to throw around about the by-laws. You know, one of the issues that has come up is they're not voting when we have had a tie vote on something, or on a negative vote.. The motion was to approve the vote was against that motion. Or if there is a tie…

Mr. Davis: How could there be a tie with seven…

Mr. Ingalls: Well it could be. It could be six of us here and it could be three to three. What is… how is that case rendered. And I saw in looking into somebody else's by-laws. And it said a tie vote or a negative vote of a majority defeats the application appeal or motion. They had that in their by-laws. They had that in their by-laws. That just said, okay that's how it is disposed of. If it's a tie vote, it's a negative.

Dr. Larson: Well it has to be, because you have to…

Mr. Ingalls: I know that.

Dr. Ackermann: No, no, no. Yeah, but… I think you are mentioning the situation where I'm making a motion to not approve this application.

Mr. Ingalls: Right.

Dr. Ackermann: And that gets five votes. That still hasn't handled the situation of the person not receiving four votes. I mean there has been no motion made in favor of their application. And that's where the negative would mean the person doesn't get a positive.

Dr. Larson: I understand that part of it, but the tie vote…

Mr. Ingalls: I think most of us understand, all of us understand, when we have a tie vote that is a rejection. I saw that in their by-laws and it interests me, because we have had that. Like I said, the time when there's a motion to approve, or … I can't remember which way it was, but anyway… we all just sat there and said Well do we need another motion to go the other way? And you don't need another motion. That's just something to think about.

Dr. Larson: You want to craft some words for the by-laws for that, Larry?

Mr. Ingalls: I might. And I also saw where somebody said, I think it's in an application that says if no one appears before the Board to represent the application, the application could be denied. We have something on the application, but it's not in the by-laws. You remember what it says Melody, on the application?

Mrs. Musante: I don't.

Mr. Ingalls: I think it just says you should be present.

Mrs. Musante: Yes, it does. It does address that.

Mr. Ingalls: I didn't know, whether that was something we would want to consider, because that's how we have been operating, that if this person doesn't show up, nobody shows up to speak for this application, then more than likely we're not going to approve it. I know lots of times, most of the time, we have given the benefit of the doubt to the applicant and we have let the case go to the next month. And there have been times, I know that sometimes he hasn't showed up the next month and we have voted him down. And I didn't know whether that's a by-law thing or that's just something procedurally we have?

Dr. Larson: We could say that, if nobody is in attendance to speak to the application, the application can still be considered. We could approve it or disapprove it.

Mr. Ingalls: Well I assume we can have a public hearing and still vote on it. All that it did, to me, is telling the applicant, the wording in the one I looked at said could be denied, which there may be something that is so obvious that we would approve if they weren't here, but I am just throwing these out as information.

Dr. Larson: You are trying to stir up trouble.

Mr. Ingalls: Yes, I'm stirring up trouble, I'm sorry.

Mr. Kim: Has that ever happened, an applicant didn't show up to the hearing?

Mr. Ingalls: Yes.

Mr. Kim: Oh really?

Mr. Ingalls: Like I said, normally we have given the benefit of the doubt. They had traffic tonight and they couldn't get here, okay. And so they didn't get here and we finished up early and left. And we've given him a chance. We have notified him, okay. And I think we kind of put it in strong language, I think. Melody told him Hey, if you don't show up next time your chances of getting this thing approved are slim to none. And so we had him come back. But there have been once or twice, that seem to me, that they didn't show up either time and we just voted it down. Another interesting thing I saw in somebody's by-laws, you know, I shouldn't read… the internet is too much, you can find all this crazy stuff. Was a request for a re-hearing and consideration. I don't know that we've ever had that, a request for a re-hearing? I know that…

Mrs. Musante: It states that if it's denied that they cannot come before you for a year.

Mr. Ingalls: Right. I think it was Fairfax's I looked at which I should never look north. And it was something about they couldn't hear it at the same meeting. We took a vote and somebody wanted to bring it back up, after we've taken a vote that night. They said you couldn't do that, but they said you had to have some reasoning for us to re-hear it. Maybe that was some information, that wasn't brought out or something that sounded like to me that was significant enough that they thought they should get a re-hearing rather than go through the appeal process. And what they did is, if I remember correctly from reading it, they actually brought back the request to re-hear it to the Board. The Board would vote

whether not to re-hear it or to re-hear it at that time. I believe it took, I forget, somebody who was on the positive side of the vote had agreed to it. But that's just another consider… We have not, to my knowledge, had re-hearings at all, so that was kind of my farfetched one. I know the tie vote, you know, let's clarify that.

Dr. Larson: I think it's a good idea to clarify. I think the tie vote is obvious to me, the negative one is a good idea.

Mr. Davis: One way to clarify the tie vote is to put a phrase in here to indicate that unless in conflict with these by-laws, Robert's Rules of Order will be the authority. Robert's Rules says if there is a tie vote, then it's disapproved.

Mr. Ingalls: I believe we follow… I believe we have Robert's Rules in there, in the by-laws, don't we?

Dr. Ackermann: Yes, somewhere in there.

Dr. Larson: There is one other thing now that we're talking here just among ourselves, it has happened in the past that bothered me a little bit. It hasn't happened for a long time, but maybe two or three years ago, this happened a couple of times. When we have an applicant come in and we have a large public response, there is a lot of people in the crowd that are very interested in this, and the applicant's attorney gets up and says you know, we would like to not consider this today. We would like to consider it next time. And we have been very liberal and saying sure, we'll go along with that. But then I was thinking, you know, all these people that showed up, don't we owe them something too that they've taken the time to come here and hear something? Shouldn't we be doing something for them too? Because are they going to come back again next time? I suppose they will, if they feel fired up about it, but, you know, I thought that we were being gratuitous to the applicant and that's fine, but I thought we were ignoring the fact that there are a lot of other people that had come to say something or hear the case.

Mr. Davis: And some were vocal about that also.

Dr. Larson: And being ignored. So, just something to consider how we treat those things in the future. And again, it hasn't happened in probably two years, but at the time it didn't seem right.

Mr. Apicella: 5.7 deals with Robert's Rules.

Dr. Ackermann: 5.7 does, but 7.6 says we give… the applicant may withdraw his or her application any time prior to a vote. That's withdrawn application.

Dr. Larson: Withdrawn application. This was sort of postponement.

Dr. Ackermann: Yes, but once they withdraw it, they can't bring it back for another twelve months.

Mr. Apicella: Are you saying though they want to defer discussion… they are not withdrawing it they just say I don't want to talk about it at this meeting.

Dr. Larson: For some reason they want to postpone. I can't tell you whether that was the reason or not, but it just, after the fact it occurred to me that there are a lot of people here that took the time out of their day to come here. They should be considered too.

Mr. Kim: How do you guys… how would you suggest we do that?

Dr. Larson: I think it's a case by case basis. Well, we always vote.

Mr. Kim: Oh I know, vote to let them go and move it out to next month or…

Dr. Larson: Well maybe we should open a public hearing and see if people want to speak for or against and hear it then whether the applicant is prepared to present their case or not, I don't know.

Mr. Ingalls: Or would you change like 7.6 the applicant may withdraw his or her application at any time prior to the vote to approve or deny the application and it goes on and on. And then 7 says on request from the applicant at any time prior to the Board taking a definite vote, the Board will consider a request to defer any agenda item he has pending on the Board.

Dr. Larson: I don't think we need to change it. I just think we need to consider the situation and maybe allow the public to speak.

Mr. Ingalls: Well would you change 7.6 to say the applicant may request, just like you have in 7.7 rather than he may withdraw it. He shows up and he might stand up and say I want to withdraw my item from the agenda.

Dr. Larson: I think that's fine.

Dr. Ackermann: But he can't come back for another year then, right?

Mr. Ingalls: Well suppose he says I want to delay it till next month.

Dr. Ackermann: Well, that's another issue. That's 7.7.

Mr. Ingalls: Is that 7.7?

Dr. Ackermann: Yes.

Dr. Larson: That's right.

Mr. Ingalls: Okay, as long as what we all understand.

Dr. Larson: I think we are covered. I just think we need to execute that a little different depending on the situation.

Mr. Apicella: May I suggest that when somebody asks for a deferral that the Chair will look into the audience and ask if there is anybody who wants to speak on that matter? And then you would have a

better sense of… because you don't know for certain that there are people sitting in the audience who would like to speak on that topic verses a different topic. You might have to make a judgment otherwise. But you can specifically say the Board makes a decision on this deferral unless anybody else who came here would like to speak on this issue.

Mr. Ingalls: And if there was a number, would we then proceed… we would open the case actually. So what they would have to say is on the record?

Mr. Apicella: I am just throwing it out there that one way to figure out the path forward, so just to poll the audience to see did ten people here to talk about this one and if we do want to open it up, but defer final action.

Dr. Larson: Yes, I mean what I would like to do is hear what they have to say. Get it as a matter of a record and then if the applicant wants to come back and present their case the next time. This person who came, took the time out of his day to show up here, can say what he needs to say and then doesn't have to show up next time.

Mr. Apicella: I think that is fair (inaudible).

Mr. Ingalls: The Chairman has a lot of latitude.

Dr. Larson: I just wanted to pulse the Board and see what you guys think. Okay, I think we've considered the by-laws quite a bit. I have a couple of homework assignments here. Larry, would you like to try to take that on, the negative vote wording?

Mr. Ingalls: Yes, I'll try to take that one on.

Dr. Larson: Alright. See I got the one where alternates will continue cases that they start and, I wrote something else down here, oh 2.3.

Dr. Ackermann: I think 2.3 needs a little tightening up.

Dr. Larson: The last sentence, I think what you suggested Ernest was, basically we change the word application to all business.

Dr. Ackermann: Yes.

Dr. Larson: Such alternate member may vote on any business in which the regular member abstains.

Dr. Ackermann: Or in his absence, I guess.

Dr. Larson: So that addresses Larry's concern that the by-laws were actually talking about applications and not housekeeping business. So I think that one is an easy one if everybody signs up.

Mr. Apicella: Will we have a Gentlemen's agreement that alternate members can participate…

Dr. Ackermann: Discuss, yes.

Dr. Larson: Oh yes, well it can be a Gentlemen's agreement or we can put it in the by-laws. I don't think I feel strongly one way or the other.

Dr. Ackermann: But we have to be clear that we're talking about housekeeping business verses cases.

Dr. Larson: Cases, yes. I can toy with some wording on that if you'd like.

Dr. Ackermann: Yes. Is there a by-laws competition we can enter, and have the most wonderful by-laws?

Dr. Larson: Alright, so that's my third homework assignment. Okay. Zoning Administrator's report?

ADOPTION OF MINUTES

4. October 23, 2012

Discussed before By-laws

ZONING ADMINISTRATOR REPORT

Mrs. Musante: I have two things. One, back a few years ago you all heard a variance to allow a shed to remain too close to the property line as well as the dwelling. It was… Ryan McGee was the applicant. They appealed your decision to the Circuit Court.

Dr. Larson: I thought we… didn't we approve that.

Mrs. Musante: No, you all denied it.

Dr. Larson: Oh Okay, I thought there was one we approved like that.

Mrs. Musante: They have since filed a motion to dismiss. I did have an inspector go out and look and the shed has been removed, so that case is closed. So one is gone. And we have one case for March. It's an appeal and it's a Chesapeake Bay appeal violation. They appealed a notice of violation. So unless something comes up in the next two weeks where they withdraw, we will be having a March meeting and that will be the only case that we have.

Dr. Larson: Is it a duck blind?

Mrs. Musante: Let's not…

Mrs. Stefl: A duck blind?

Mrs. Musante: Let's not go there. They are really using their imagination on this one. Just like the duck blind, but in a different sense. Currently, as you all know, we do not have any Admin support. Evelyn, which is my right arm in the daily process in our office, has been so kind to come in and help us tonight.

So I'm not sure who we are going to have next month until we can get our normal Admin person back in and we have actually released two Admin in December and we're trying to replace those. So please bear with me and if you have any issues, just let me know.

Mrs. Stefl: I have a question. I don't know if this was actually has been brought up or not, but I was told that one of our decisions that we approved, a neighbor filed an appeal of that variance in Court. Now, I was told the Court date was here in 2013, so I don't know if that's something that's on the radar.

Mrs. Musante: I have heard about it. I have not received anything on it.

Mrs. Stefl: Okay. So the County… would they typically receive some kind of…

Mrs. Musante: We probably would not. Our County Attorney's Office probably did. We followed through… once the variance was approved, we followed through and issued the building permit, so I do believe that addition has been constructed and he still filed the appeal. So I'm not sure what the process is, but we have not gotten anything to appear in Court.

Mrs. Stefl: Okay.

Mr. Davis: Is that the one where they were going to build on the back so the woman could live upstairs.

Mrs. Musante: His wife, yes.

Mrs. Stefl: The neighbor sought legal counseling at the time.

Mr. Apicella: If we had just gave him a water bill he wouldn't have filed.

Mrs. Stefl: Exactly.

ADJOURNMENT

Dr. Larson: Okay, thank you Melody. That's it. Do I have a motion to adjourn?

Mr. Davis: Done.

Dr. Larson: Second?

(Inaudible)

Dr. Larson: Those in favor.

Mr. Ingalls: Aye.

Mr. Grimes: Aye.

Dr. Ackermann: Aye.

Mr. Davis: Aye.

Mr. Poss: Aye.

Mr. Kim: Aye.

With no further business to discuss, the meeting was adjourned at 8:59 p.m.