

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
September 24, 2013

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, September 24, 2013, was called to order with the determination of a quorum at 7:01 p.m. by Chairman Dean Larson in the Board of Supervisors Chambers of the George L. Gordon, Jr., Government Center.

Members Present: Dean Larson, Danny Kim, Ernest Ackermann, Ray Davis, Robert Grimes, Larry Ingalls and Gregory Poss

Members Absent: Steven Apicella and Heather Stefl

Staff Present: Susan Blackburn
Melody Musante
Denise Knighting

CALL TO ORDER BY CHAIRMAN

DETERMINATION OF QUORUM

Dr. Larson: I would like to call this meeting of the Board of Zoning Appeals to order. Good evening ladies and gentlemen and welcome to this meeting of the Stafford County Board of Zoning Appeals. The BZA is a quasi-judicial body that is appointed by the Circuit Court of Stafford County. The purpose of the BZA is to hear and decide appeals from any order, requirement or decision or determination made by the Zoning Administrator. Hear and decide upon request for variance from the Zoning Ordinance when literal enforcement of the Ordinance would result in unnecessary hardship to the owners of a property. Hear and decide on requests for special exceptions where the Zoning Ordinance allows for special exceptions. The Board consists of seven regular members and two alternate members. An alternate member may be called upon to participate when a regular member is unable to hear a case. Let the record show that we have all the regular members seated tonight at the dais. We have Dr. Ernest Ackermann, Mr. Robert Grimes, Mr. Danny Kim, Mr. Larry Ingalls, Mr. Ray Davis and Mr. Gregory Poss and myself, Dean Larson. The County tonight is represented tonight by Melody Musante, the Zoning Manager, Denise Knighting, the Administrative Manager and Susan Blackburn, the Zoning Administrator. The hearings will be conducted in the following order: the Chair will ask the staff to read the case and members of the Board may ask questions of the staff. The Chair shall then ask the applicant or their representative to come forward and state their name and address and present their case to the Board. The presentation shall not exceed ten minutes, unless additional time is granted by the Board. We are going to try to stick to that tonight, so if the presentations go long we will discuss additional minutes. The Chair will then ask for any member of the public who wishes to speak in support of the application to come forward and speak. There shall be a three minute time limit for each individual speaker and a five minute time limit for a speaker who represents a group. After hearing from those in favor of the application the Chair will ask for any member of the public who wishes to speak an opposition to the application to come forward and speak. After all public comments have been received the applicant shall have three minutes to respond. We ask that each speaker present their views directly to the Board and not to the applicant or other members of the public. After the applicant's final response, the Chair shall close the public meeting. After the hearing has been closed there shall be no further public comments. The Board shall review the evidence presented and the Chair shall seek a motion. After discussion of the motion the Chair shall call for a vote. In order for any motion to be approved four members of the Board must vote for approval. The applicant should be aware that all seven members of the Board are present, so your odds are actually better tonight then they would be if

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not all seven members were here. If the applicant decides to withdraw from the hearing, they may do so but only once in a 12 month period. In fact you may withdraw your application at any time prior to the vote to approve or deny the application provided that you have not withdrawn substantially the same application within the 12 previous months. Any person or persons who do not agree with the decision of this Board shall have 30 days to petition the Stafford County Circuit Court to review our decision. Also be aware that the Board will not hear any denied application for variance or special exception that is substantially the same request for at least one year from the date of our decision. I now ask that anyone who has a cell phone, pager or any other electronic device, to please turn it off now. Do not place it on vibrate because this interferes with our electronic equipment. Thank you. It is the custom of this Board to require any person who wishes to speak before the Board shall be administered an oath. Therefore I ask anyone who wishes to speak tonight, stand and raise your right hand. Do you hereby swear or affirm that all testimony before this Board tonight shall be nothing but the truth?

Mr. Leming: I do.

Mr. Bailey: I do.

Dr. Larson: Thank you, you may be seated. The Chair asks that when you come down to the podium to speak, please first give your name and address clearly into the microphone so that our recording secretary can have an accurate record of the speakers. Also please sign the form on the table at the rear of the room. Thank you. Are there any changes or additions to the advertised agenda?

Mrs. Musante: There are no changes.

DECLARATIONS OF DISQUALIFICATIONS

Dr. Larson: Before we hear the first case, does any Board member wish to make any declaration or statement concerning any cases to be heard before the Board tonight?

Mr. Ingalls: Mr. Chairman, I visited the site this morning, but I did not speak to anyone while I was on the site.

Dr. Larson: Are there any others? Stand-by just a second while I turn off my cell phone. I also visited the site on the way to this meeting. Now I will ask the secretary... well before we go into the first case, it is my understanding that the first case has been vacated.

Mrs. Musante: That's correct.

Dr. Larson: Alright.

Mrs. Musante: The violation has been abated.

Dr. Larson: Alright, so there's no longer a violation, therefore there should not be any more need for a hearing to appeal the violation. Is that correct?

Mrs. Musante: It still would require a BZA action unless the applicant withdraws the application.

Dr. Larson: Does the applicant withdraw the application?

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Mr. Leming: Good evening Mr. Chairman and members of the BZA. Since we are here anyway, we don't agree that there was a violation in the first place. So we are not willing to withdraw the appeal. We appreciate the County's recognition that the issue has gone away, but we contested the original violation believing that it was inaccurate and so we are not withdrawing the appeal.

Dr. Larson: Alright, thank you. Then I will ask the secretary to read the first case... or staff in this case.

PUBLIC HEARINGS

1. A13-04/1300279 - Leming & Healy, P.C. for Ramco Virginia Properties, LLC - Appeal of a Notice of Violation dated March 4, 2013 regarding Section 28-35, Table 3.1 "District Uses and Standards", for the contractor's equipment and storage yard use on Assessor's Parcel 21-49. The property is zoned P-TND, Traditional Neighborhood Development, located at 475 Aquia Towne Center Drive.

Mrs. Musante: Case A13-04/1300279, applicant Leming & Healy for Ramco Virginia Properties, LLC. Appeal of a Notice of Violation dated March 4, 2013 regarding Section 28-35, Table 3.1 "District Uses and Standards", for the contractor's equipment and storage yard use on Assessor's Parcel 21-49. The property is zoned P-TND, Traditional Neighborhood Development, located at 475 Aquia Towne Center Drive. You have the application and owners consent form. A copy of a violation notice dated March 4, 2013, photos of the violation and aerial photos. The applicant is appealing a Notice of Violation dated March 4, 2013 regarding Section 28-35, Table 3.1 "District Uses and Standards", for the contractor's equipment and storage yard on Assessor's Parcel 21-49. Staff's response to the appeal, Section 28-35, Table 3.1 "District Uses and Standards" does not permit a contractor's equipment and storage yard on property zoned P-TND. On February 28, 2013, staff inspected the property and took several photographs. In those photographs, a vehicle with a number of pipes/hoses attached to it and a truck with ladders were parked on the site. These vehicles were in addition to the various parts of concrete culverts and black drain pipe being stored on the property. The corrective measures stated in the notice of violation was to cease using the property for a contractor's equipment and storage yard and remove all such equipment and materials from the property. The applicant chose to submit an appeal of the notice of violation and not to remove the contractor's equipment or the portions of concrete culverts and black pipe. The applicant states that the approved Erosion and Sedimentation Control Plan allows for the temporary storage of construction material on a site. Staff's response is, the Erosion and Sedimentation Plan provides for many types of temporary measures while a site is being developed. The storage of construction material on an active development site is an accepted practice and is of a temporary nature because as the development progresses, the material is used and the project is completed. The applicant has stated that for this development, the decline in the economy has caused a slowdown in the development of the site. Consequently, Ramco has been forced to store culverts and pipes on a portion of the property. According to the County aerial photos, the culverts and pipes have been in place since 2010 with no signs activity on the site. By the request of the applicant, the hearing has been deferred since May. In July, the applicant began removing the concrete culverts and currently there are none on the site. The black pipe still remains on the site.

Dr. Larson: So my understanding now is that the black pipe has been removed.

Mrs. Musante: That is correct.

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Dr. Larson: And the purpose... what we are doing now is trying to determine whether the notice was issued correctly or not.

Mrs. Musante: That is correct.

Dr. Larson: Alright, are there any questions for staff? From the Board?

Mr. Kim: It says the plan allows for temporary storage of construction, what is a reasonable time line for temporary storage? How do you guys define the word temporary? Is it 6 months, a year, 2 years?

Mrs. Musante: We don't have a definition of temporary. Normally when the project is active we will allow the storage of construction materials. This project has not been active for a couple of years.

Mr. Kim: Yes, that is why I am wondering how you guys define temporary.

Mrs. Musante: We do not have a definition of temporary.

Mr. Kim: Okay, okay. Thank you.

Dr. Larson: I have a question for staff. The erosion and sedimentation plan, who issues the plan? Who okay's the plan?

Mrs. Musante: Can you repeat the question please?

Dr. Larson: The erosion and sedimentation plan that is being referenced, who issues that and who okay's it?

Mrs. Musante: The erosion plan is a part of the site plan process and is approved through a division of Public Works and the Planning and Zoning Department. It is approved by the agent.

Dr. Larson: So it is approved by, I am sorry, which agent?

Mrs. Musante: That would be the Public Works Department.

Dr. Larson: Thank you. Any other questions for staff?

Dr. Ackermann: This, I don't know if complaint is the right word, but the notice that all this equipment was here since 2010. Was that brought forward by someone in the community? Or was that...

Mrs. Musante: We work on a complaint basis only.

Dr. Ackermann: I thought that was the case.

Mrs. Musante: Yes.

Dr. Ackermann: Thank you. And was that from people who live in that neighborhood? Do you know?

Mrs. Musante: We can't divulge that information.

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Dr. Ackermann: Thank you.

Dr. Larson: Any other questions for staff? If not will the applicant or his or her representative please come forward and present their case.

Mr. Leming: Good evening again Mr. Chairman and members of the Board of Zoning Appeals. I am Clark Leming and I am here on behalf of the applicant. The first issue is the violation notice pertaining to contractor's equipment. And what I would like to do is give the BZA a little bit of background on the development. In 2008, Aquia Towne Center was rezoned to the existing P-TND zoning ordinance. That was to develop a mixed-use development, would include residential, upscale commercial, I think we all understand what happened with the market and with the economy after that point in time. And the position that the owner, Ramco-Gershenson, has found itself in is that they cannot obtain financing for this particular kind of development. I think probably if the shopping center had been a conventional one that would have occurred. But this is something that the market is probably simply not ready for in Stafford County. So they have been unable to obtain the financing. However, what they did do is to proceed with plans as the 2008 zoning had indicated. They moved forward with the site plan. Had a site plan approved in 2008, it was revised and approved in 2011. The site plan is still in full force and effect. I have copies of a Virginia Code provision that was amended just this last legislative session by the General Assembly that extends all valid site plans until 2017. So the site plan is valid, there is work... there is planning work that has been on going with regard to that particular effort. What the developer did was to raze the old shopping center, you will hear more about this in a minute. They held on to a lot of those building materials and broke them up because they were going to be utilized for the new center. The issue that is before you right now has to do with culverts and pipes. And there was some reference to vehicles, we don't know anything about any vehicles and indeed your violation notice simply says currently you are storing contractor's equipment, culverts and pipes on the vacant portion of Aquia Town Center. So we don't know anything about any vehicles. The pipes, the purpose of the pipes were to serve the site. They were specifically purchased in order to move water from the old stormwater pond to the new stormwater pond, and to provide additional runoff. They were not installed because the project did not go forward... has not gone forward at this point. The pipes have all now been removed at the County's insistence. There is also a bond on this property that the developer would like to get back at some point. So they have all been removed and taken off site. Our position is that the zoning violation doesn't conform with your Ordinance. What the violation says is that we were permitting a contractor's storage yard on the site. The developer is not a contractor. We were not using the materials for any other development or any other project. They were purchased solely for this particular project and suited for this particular project. The only thing that happened is they didn't go forward because they didn't have the financing to go forward. So your Ordinance does not have a definition of contractor's equipment. If you look at the definition of fleet parking, however, there is a reference. It says this... fleet parking is not to be construed to include parking and storage of farm vehicles or equipment or construction equipment, such as bulldozers, front loaders, backhoes and similar devices not licensed to operate on state roads. There was no equipment like that on the property at all. There was no contractor's equipment, at least as it is contemplated within that definition. What was on site was simply the developer's material purchased for that specific purpose. The material was still necessary to implement the site plan that had been approved by the County in order to implement the stormwater portion of that site plan, these pipes would be necessary. We have now sold the pipes so that whoever comes in here to develop the site, whether it be the current property owner or another property owner, at some point in time they are going to have to purchase the pipes all over again in order to implement the stormwater plan. So in our view that does not mean that the property has been converted to a contractor's storage yard. Contractor's equipment and storage is the use that we are accused of

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putting the property to. And that simply is not the case. The only equipment that was on the premises was our own pipes and culverts that were intended for the project. The question was asked about what is a temporary period. The County has conceded that there is nothing in the Ordinance. I think what you would be guided by, however, is what the General Assembly has done. The General Assembly has said now 2 times, because of the economy we are going to have to extend plans. We can't permit plans to expire because people can't move forward as quickly as they would otherwise. So the General Assembly first extended all valid preliminary subdivision plans and site plans to 2014 and then extended this past legislative session another 3 years. So from our standpoint as long as there was a valid site plan on the property that would have required the use of these particular pipes and culverts to implement the project, we had the absolute right to have that equipment on the property. We were not a contractor's storage yard, we were not doing other projects, we were not selling to anybody else, that was there exclusively for the purpose of this particular development. So for that reason we don't... and we don't know anything about any vehicles and that was not contained in the original citation. And if you read our justification we assume that what they are talking about is what they said in their notice, which was pipes and equipment. So that's how we read it. I think that's all that I wanted to say on this subject. We don't think the violation was valid in the first place. We appreciate the fact that the County now agrees that the basis for the violation has gone away, but we don't think we should have been cited in the first place. I will be happy to answer any questions.

Dr. Larson: Thank you Mr. Leming. Are there any questions for Mr. Leming?

Mr. Grimes: I just have 1. The notice does mention contractor's equipment.

Mr. Leming: Yes.

Mr. Grimes: So I... Contractor's equipment can be ladders, vehicles or any number of things. I mean would you agree with that?

Mr. Leming: It's not defined anywhere in your Ordinance. There is no reference to it. The only thing that is there is what I read to you from the fleet parking definition.

Mr. Grimes: Well I understand, but if I were to do a Google search, for example, for contractor's equipment, it would come up with a lot of things. Ladders, trucks, shovels...

Mr. Leming: The only that we removed from the property were pipes.

Mr. Grimes: Okay.

Mr. Leming: So that's how we read it.

Dr. Larson: Any other questions for Mr. Leming?

Mr. Kim: Did you guys have plans to... I mean, I am sorry, you said there was a bond out for this location?

Mr. Leming: Yes.

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Mr. Kim: So you guys have no plans at all to use the equipment for what it was intended for, but I know you said that, I am sorry...

Mr. Leming: Well we sold the pipe.

Mr. Kim: Yes, you sold the piping, so there's no plans to... I guess what I am trying to get at is, the equipment that is there and you said the equipment is not there so I guess that is not the questions any more. I mean it's not a concern, but so you guys... so there is no equipment, no pipes. Okay.

Mr. Leming: I think the issue is simply whether or not we were a contractor's storage yard.

Mr. Kim: Yes.

Mr. Leming: Under the Zoning Ordinance definition, under that use and that is not in your Ordinance either.

Mr. Kim: No.

Mr. Leming: But whether we were a contractor's storage yard as has been alleged by the County. Now we have taken care of the problem, but our position is that we were not a contractor's storage yard. Contractor's storage yards by common definition, if you look... if some of you are familiar with construction, a contractor's storage yard is where somebody who does various projects stages their projects. They store their heavy equipment, their bulldozers, the other things that you mentioned. Certainly they could have stored pipes and things on the property for another project, but typically a contractor's storage yard is not at the project site, it is somewhere else. And in this case the equipment was solely for the use on that development that was it. And the only thing we took from... the only thing we removed from the property was the piping.

Mr. Grimes: But at the date of the violation, which was back in March, I believe there may have been equipment there.

Mr. Leming: If there was equipment there it was solely in conjunction with the project. We are not aware of any equipment that had been there for any significant period of time. Moreover, since they were not doing anything with the piping, there would not have been any reason to have any significant equipment there. So the only thing we have taken from the site is the piping.

Mr. Grimes: And that's where... when I look at the violation there was equipment there. Whether it was March or April, I can't say exactly but I remember going to the Movie Theater and seeing equipment sitting there, bulldozers, trucks and other types of equipment. And it may have since been removed but when you consider that there is no development going on the site, assuming that the contractor is using that site to store materials, we don't know what project it's for.

Mr. Leming: There is no contractor that was working on the site. If there was equipment on the site, and have the contractor here, if there was equipment on the site it would have been for that particular project, it would not have been used for some other project.

Mr. Grimes: But given the fact that there was no development, nothing happening on the site, but yet there were still vehicles there and materials...

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Mr. Leming: Do you know... let me see if we can get... do you know whether there was equipment... come on up. He has been sworn in. This is Mr. Jack Bailey, who is a contractor.

Mr. Bailey: I became involved in this project in early May. I have lived in Aquia Harbour for 30 years and go by there twice a day. And other than the ugly piles of concrete and pipe, I have never... any equipment that has been over there, and I'm not saying that... a lot of workmen stay in that hotel, the Days Inn hotel and I know that there was... one of the first things that Ramco asked us to do was barricade the entrances. Someone had moved the jersey walls and they were dumping trash. So I'm not saying that somebody didn't park something illegally over there because if they park in the asphalt lot they get towed away. So someone may have parked over on the stone. But since May, if there was any equipment over there it was ours. And, you know, to expand... now we have a situation where we have got 7 or 8 piles of recycled concrete...

Mr. Leming: We are just on the equipment right now.

Mr. Bailey: Any equipment that was there since I have been involved in this project was mine. And it was site specific. Everything there, the pipe was site specific, it's all gone. But there was no... here again if there was something there it was parked illegally, but it wasn't relative to the site.

Dr. Ackermann: When did you start on this project?

Mr. Bailey: We started in May. We were asked by Ramco to come in...

Dr. Ackermann: So it might be possible that the violation started in March, before you were there.

Mr. Bailey: Right.

Dr. Ackermann: And you can't speak to that.

Mr. Bailey: I can speak to the fact there was no construction equipment there.

Dr. Ackermann: In March?

Mr. Bailey: In March.

Dr. Larson: If I may, I am going to have to verify with my colleague here. When I first heard of the violation, I went to the site personally and saw, I think it was a backhoe, parked on the site. And if you look through our package, we don't have these numbered, but there is picture in our package showing the black pipe and three large pieces of construction equipment, one of which looks like a backhoe. I can't tell what the other 2 are. I think... I saw equipment there and my colleague saw equipment, so I think... I am not sure this is particularly the relevant except that I think there was equipment. I think it's quite...

Mr. Leming: I am looking. Are these the pictures?

Mr. Grimes: Yes the picture is dated July...

Dr. Larson: I am not sure you have the right...

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Mr. Bailey: Well July it was my equipment. If it was a picture in July, yes it was... we had equipment there removing the pipe.

Mr. Kim: That was actually relevant to the actual moving of...

Mr. Bailey: Right, right, yes.

Mr. Leming: The purpose of that equipment was to deal with the other violation, that is the crushing...

Dr. Larson: Okay. Alright, that is fine. I also saw at least a backhoe in... parked there much earlier than that, but I can't tell you exactly when.

Mr. Bailey: If it was there...

Dr. Larson: It was after the first time I learned about it.

Mr. Bailey: ... (inaudible) being there it wasn't relative to anything Ramco was doing and here again...

Dr. Larson: Okay.

Mr. Bailey: One of the first things they asked us to do was... I found a fox living there, deer carcasses, I mean people have been doing all sorts of illegal things there.

Dr. Larson: Okay.

Mrs. Musante: Mr. Chair, if you look at the... page 1 of the attachment that you were just in. You won't see equipment but you will see vehicles, trucks parked there.

Mr. Kim: Oh yeah.

Mrs. Musante: And that was dated February 28th.

Mr. Bailey: Here again that doesn't surprise me because there is full time security... because I have asked the guy not to tow by car, my vehicle away, and so it doesn't surprise me that someone or a workman doing something unrelated to this site would park over there where the old Dollar General was. That would not surprise me.

Mr. Leming: When I read the staff report, going back over it today and saw the reference to the vehicles, I scoured these pictures to try to figure out what they were talking about. We simply don't have any... it was not Ramco's equipment, it was not authorized by Ramco if something was there it was beyond the scope of anything that they permitted someone to do or anything they had a need for, because they weren't doing anything. We don't know what that goes to, and I am still trying to see even trucks.

Mr. Bailey: I think those pictures were taken last week because I didn't haul the pipe away until Friday.

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Mr. Kim: If you are looking at the... well so, do you guys have any plans to start up construction? Because there is the extension of the permits, you guys are pretty much going to say you are holding off until the year 2017.

Mr. Leming: I will tell... I will share with you what the current plan is.

Mr. Kim: Okay.

Mr. Leming: There is a contract to purchase the development, the commercial and the office portion of the development. Ramco expects to go to closing shortly. The staff has put together a letter for us actually addressing... helping us with that particular issue. There needs to be a closing out of certain things, particularly a condominium arrangement on the property. A new site plan will, in all likelihood, come in from the new developer. It is not likely that things like the stormwater plan are going to change significantly, so the need for the pipe is still there. But that is the current plan of the owner of the property.

Mr. Bailey: If I can interject, there is a plan which I received last week to the pond behind the... I have got to modify the pond behind the movie theater.

Mr. Leming: Right.

Mr. Bailey: There are 3 ponds, 2 of them we have got to modify to bring to a permanent status, then some of the pipe that Ramco had me haul away and I sold, now I have got to purchase again to come back in and connect some of the storm drains. So there is... we are going to be back in there sometime next week to commence this work.

Mr. Leming: And what that has to do with is the bond that is on the property. When you get a site plan approved then you have to put up security for certain things that are done, including the stormwater. Most of the bond covers stormwater. So in order to proceed with the sale and to get the bond released, they have to do certain things to stabilize the stormwater system on the property. And that is what Mr. Bailey is talking about. That is a separate issue that we are working with the County on as well.

Dr. Larson: Mr. Leming you mentioned the law the legislature passed...

Mr. Leming: Yep.

Dr. Larson: ...extending site plans to 2017. Do you have a copy of that?

Mr. Leming: Yes, in fact I think I made copies for everybody.

Dr. Larson: Do we have a copy? I am sorry, we have it in our supplemental information here.

Mr. Leming: (Inaudible) 15.2-2209.1, extending valid... any...

Dr. Larson: Yes I see it here on my desk. Thank you.

Mr. Leming: Okay. And I think the important section of that, any recorded plat or final site plan valid outstanding as of January 1, 2011 (inaudible) shall remain valid until July 1, 2017. So the site plan is

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still good. It doesn't mean the new owner of the property, assuming the settlement occurs, would not come in with some revision to the site plan. Depending on how much there is they could either amend the current site plan or do a whole new site plan, but this one... the one that is there new would remain in effect until 2017.

Dr. Larson: Okay, any other questions for Mr. Leming?

Mr. Ingalls: I have one Mr. Chairman, or maybe more. When did the site shut down? When was the decision made to shut it down and there wasn't going to be any further construction because of the loan or whatever, about what time frame was that?

Mr. Leming: Well in 2011 they were redoing their site plan, so it would have been shortly after that point in time that it became clear that they were not able to proceed and nothing else happened on the site after that point in time, sometime late in 2011.

Mr. Ingalls: So no construction took place until 2011.

Mr. Leming: No construction took place... well what had happened up until that time is that the old shopping center had been removed.

Mr. Ingalls: Well that's... okay, so that had been part of the original approval of the site plan, was to demolish and do all that.

Mr. Leming: Right.

Mr. Ingalls: That was part of the original approval. So work had been started prior to then, but by 2011 they decided not to go any further.

Mr. Leming: In 2011 as far as new construction was concerned. There were still negotiations going on with perspective users, efforts to re-negotiate the lease with the Rite Aid, effort to... or plans underway to redo the theater. There was no actual construction but there were plans at least with both of those two things that were ongoing. The relocation of the Rite Aid and the relocation and redoing of the theater were the first two things that were to happen. So there were paper exercises that were going on and leases that were being discussed. But there was no actual construction that occurred. If the theater construction had occurred, that would have required the movement of the stormwater pond and that was... Regal had a whole new theater that was planned but it would have interfered with the existing stormwater site. So the purpose of having that equipment there was to accommodate that first portion of the construction. But there was no actual construction that took place on either of those projects.

Mr. Ingalls: So for almost two years, if you shut it down in 2011... at some time in 2011 until... of course the violation notice is based on an inspection made on February 28, 2013. That is almost two years...

Mr. Leming: It would have been about a year and a half.

Mr. Ingalls: Alright a year and a half, okay, that nothing was going on, yet

Mr. Leming: No construction.

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Mr. Ingalls: ... everything was left on the site and I guess I view storage as when I take something from one site and move it to another site I am storing it over here. It's not something that generated on the site, it was something that you moved to the site and you were storing it until you needed it, I understand. But when you say the Ordinance says temporarily, well is 18 months temporary? If fact it seems like it just got moved within the last month, maybe.

Mr. Leming: Well it got moved because of the other activities that we talked about, the fact that there is a contract to purchase the property.

Mr. Ingalls: Well, I mean...

Mr. Leming: As far as storage is concerned, I think the narrow issue is whether or not this is a contractor's storage yard within the meaning of the Ordinance. There is no question that the developer was storing building materials on the property. The question is whether or not that constitutes a contractor's storage yard. There was no contractor, I mean there was a developer that had purchased materials that were necessary to implement that particular site, and particularly the stormwater provisions of that. But they were not using it for any other purpose and they were not a contractor in the usual sense of the word, like Mr. Bailey is.

Mr. Ingalls: I assume there was a contractor...

Mr. Leming: Well there was not...

Mr. Ingalls: ... prior to Mr. Bailey. Mr. Bailey testified that he just came on in May, so...

Mr. Leming: He came on specifically to address the issues that have been raised by the County.

Mr. Ingalls: Right, right. So he is just...

Mr. Leming: Not to construct anything on the site.

Mr. Ingalls: Right. But I assume there was a contractor on site that maybe he ordered the pipe, I don't know.

Mr. Leming: The pipe was ordered by Ramco, there was no active contractor. There was no work that was going to be done, so there was no active contractor. If they had proceeded, then yes, they would have entered into an agreement with another contractor to do the stormwater pond. It may have been Mr. Bailey, it wasn't...

Mr. Ingalls: So you bought all this, but you said you just removed the pipe. Actually if you look at the pictures there was precast manholes, there's drop inlets. There was quite a bit of...

Mr. Leming: There was all of the things necessary to implement the stormwater.

Mr. Ingalls: Yes, a lot of different things according to the pictures.

Mr. Leming: Right, everything necessary for the stormwater plan.

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Mr. Ingalls: But you say there was no contractor.

Mr. Leming: There was no one doing anything with the things that were on the site.

Mr. Ingalls: The man bought these things and stored them on this piece of site so he might eventually use them. He didn't even have a contractor to put them in the ground.

Mr. Leming: No... Well I mean... no they had not gotten to that step because there was not a construction plan for the relocation of the theater. Until there was some actual construction that was going to occur, there was not a contractor. There was material that would have been used by a contractor at some point.

Mr. Ingalls: Like I say, he brought it there with no... he didn't have a contractor, he just bought it to use on the site...

Mr. Leming: (Inaudible) purchased the material, I assume somebody delivered it to the site, but there was not an active contractor because the work as far as razing the old site had been completed and there was no new construction that was going on. The conventional... my understanding of a contractor's storage yard is that it is where a particular contractor who has jobs, stages things, stores their equipment and equipment can be as broad as you want it to be, and then takes that equipment and goes to a job site somewhere. This wasn't that because this was... these were the materials that were necessary for that particular site. And they had been ordered and delivered so that work could be done at some point in time, as soon as the theater contract had been completed.

Mr. Ingalls: Most construction sites of this nature and size, you would have had a contractor, he would have brought his materials there, he would have stored them there but he was there using them on a frequent basis because he was under construction. But what you are saying is the materials were brought there with no contractor under contract to even do anything with it.

Mr. Leming: Well there was no work that had been approved. They would have had to have had new plans to move ahead to the next stage of the development. Specific construction plans...

Mr. Ingalls: So the first... the plan that we had, we just had a couple of sheets of the erosion plan...

Mr. Leming: I have the whole plan here.

Mr. Ingalls: I know, I don't want to see it all, 61 pages, I don't think I need to see that. But there... you started the project based on the original approval, which was in 2008, I believe you said.

Mr. Leming: 2008, and then it was revised...

Mr. Ingalls: And you went out there and you started your demo. Demo was phase 1 or whatever you call it. On the E & S plans it said phase 1, you were going to demo some buildings and I think do some reconstruction of those stormwater ponds and maybe build a new one and take one out or build a new one or something, I couldn't quite figure it all out, but anyway. But you really have... like I say, if you... to me now you really are storing if you didn't even have a contractor out there with any intention of putting it in the ground. All you did was bring it... he ordered it, okay I am going to take it off of the building... who sells this stuff. I am going to take it off of his yard and put it on my yard.

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Mr. Leming: Somebody like Mr. Bailey would have done something with the material, if there had been an agreement to move forward with the theater. Because the first step of that would have been to redo the stormwater...

Mr. Ingalls: I understand that, but there was no agreement, if, and/or but.

Mr. Leming: All I can tell you is what happened, we weren't storing material for any other project. It was the material specifically for this project.

Mr. Ingalls: I understand that. I guess what I am really getting around to is what is temporary. Maybe 18 months with no activity is longer than temporary.

Mr. Leming: I think temporary... I think the General Assembly has told you what temporary is. Temporary is as long as the site plan is valid. And as long as the site plan is valid then I think we have a right to have materials on the property that are necessary to implement that site plan.

Mr. Ingalls: I haven't read that so I don't have any knowledge of agreeing or disagreeing with you.

Mr. Leming: Well we have a valid site plan and the materials were solely related to that.

Mr. Ingalls: Thank you.

Dr. Larson: Mr. Leming, when the owner of the property or the applicant or whoever is relevant here, moved the piping and other materials relevant to the development of the property to the property, did they have somebody on contract or were they in talks with somebody to do the work?

Mr. Leming: Sure, I mean the sequence would have been work out the new construction for the theater, they were the first thing to move. So the full anticipation with the appropriate funding, the full anticipation was that the theater would move and the stormwater pond issues would then have to be addressed. Because the new stormwater facilitates would have gone where the old theater is located. So that would have been the first step that would have had to have been... that would have been necessary. The Regal Theater is still negotiating, they do have another site. They want to move up further on to the property. They will continue to negotiate with the new owner, if that occurs that still would be the first step and the stormwater would still have to be the first thing that is addressed. So, you know, when this goes forward, when the financing is adequate either with this owner or a new owner, the very first thing that will have to be done is to go out and buy this same piping and come back in to address the... and install that to address the stormwater concern and move the theater.

Dr. Larson: I understand what the plan is, my question is, and I understand what the intentions were, my question is was somebody... were they in discussions with a contractor to do the work?

Mr. Leming: They had contractors that were ready to do the work, not under contract, because they didn't know exactly what the work was. But contractors were ready to do the work and enter into agreements with them when the work was ready to commence.

Dr. Larson: And they moved the material in anticipation of getting one of these contractors to do the work?

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Mr. Leming: Sure, yeah, absolutely. I mean they wouldn't have done it themselves, they would have to have had a contractor do it just like they had a contractor raze the buildings. But that contractor finished with that work and they weren't to the next step yet.

Mr. Bailey: I think what further complicated things is the contractor that they hired that they hired to do all the pipe work went broke.

Dr. Larson: So they actually hired a contractor to do this work?

Mr. Bailey: That is my understanding, I am going back... they hired a general contractor to do the building. I think that was Coakley and Williams, and then Coakley and Williams then subcontracted out some of the pipe work, for whatever was anticipated and that material would have been ordered for a specific... I mean there was not only the black pipe, there was almost a hundred thousand dollars' worth of duct alarm pipe. Because water lines had to be rerouted, sewer lines had to be rerouted to make all of this work. I mean the... Ramco has in essence given up over a hundred thousand dollars' worth of materials to get rid of off of the site that was site specific. And I assure you that a contractor, someone ordered that material for that site. They were paid for and then my understanding was Hopke shut the doors a couple of years ago, so that stuff has.... It was ordered by somebody, but it wasn't shipped there, it was there anticipating some work being done and that's it. But the pipe line got stepped on, the funds dried up and they were told to hold up. As far a temporary, I am just now paving a site today that was dormant for three years. You know we shut it down, stabilized it, this has been going on for some time and we are told the new owner has a plan. He is almost (inaudible) due diligence and a plan will be submitted to the County and some of the things that they have already gotten rid of they will have to purchase again.

Mr. Kim: Mr. Chair, can I ask the staff a question? Did they submit the papers?

Mr. Leming: No they haven't.

Ms. Musante: No.

Mr. Kim: They have not.

Mr. Leming: There is no new site plan that has been submitted to the county. They won't do that until they go to closing.

Mr. Kim: Okay, well maybe I just misunderstood. So I'm a little lost here, if you don't mind Mr. Chairman, so you guys had these pipes that you needed to do the draining for the pond in the back behind the movie theater. Then you got rid of the pipes. Ramco got rid of the pipes, because you're the first contractor that was hired, which was in May, got rid of the pipes and then... Why would you get rid of the pipes if you needed those pipes for the bonding so the sale can go through? I'm a little confused on that.

Mr. Leming: The bonds and these violations are on somewhat different tracks. The bonds secure the stormwater pond construction. The pipes are necessary for the stormwater pond construction, the stormwater system construction. The county found the owner in violation. Ramco. We've been trying to work with the county to address the problems and Mr. Bailey was specifically hired to do that, to find another buyer for the pipes so we can get off the property. Remember, at the time he started his work,

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we didn't know that there was another buyer in sight. Now that's something that has materialized fairly recently. So his instruction was to stabilize the site, find another buyer for the pipes so we get them off the site and break up the piles that you'll hear about in a little while – whenever, break up the concrete, the debris from the old buildings that was going to be used, was initially planned to be used for the site, on the site, for roads and things like that. What is it...the 21A...that they break this material up into and that was stored on the site to be used on the site, not to be used somewhere else. That's what he's been working on.

Mr. Kim: I guess...and once again, maybe I'm not grasping this, but...so you're saying that you guys are appealing our violation, but you guys still followed what we instructed you guys to do. So you got rid of the pipes and the culvert, whatever you guys got rid of, that you were going to definitely need to use to finish up the sales. See maybe that's why I'm a little confused.

Mr. Leming: If we were right, why did we get rid of the pipes?

Mr. Kim: Yes, I know and you're still...I guess where I'm confused is, you still arguing that the county was wrong, which I don't see, if you guys responded to our violation, I don't see how we would be wrong.

Mr. Leming: You know, I think that what it comes down to is that an outstanding violation or a publicly traded company like this, it's a very serious matter. They have shareholders to report to.

Mr. Kim: No, no, I understand.

Mr. Leming: If the violation stands as it can, if the violation stands then a number of things are put at risk, at least as far as the company is concerned. The county acquires the ability to go to enforcement, to take another step. The county can certainly use that violation as a basis not to release the bond. So that's the tie in between the two. If there are outstanding zoning violations, the performance agreement very clearly says, that's a basis to declare the land owner in default. So we're playing both sides of the street. We don't think the violation was correct in the first place. We don't think we have a contract or storage yard. By the same token the county has a very powerful hand to play, because they're holding a large bond for this developer. So we can't run the risk that we lose any portion of that, or that that bond be called in, because of the financial implications for the corporation.

Dr. Larson: But if I may, since the violation's been abated is it not no longer outstanding?

Mr. Leming: It's still a violation. When the county says it's been abated, that means we've resolved it.

Dr. Larson: Yes.

Mr. Leming: But there's still a violation on the books and they have not resolved the second portion of this.

Dr. Larson: We'll come to that.

Mr. Leming: Yeah. So you know, from our standpoint the fact that the county says the current violation has been corrected, you know, maybe that is something you all do something with. It's really not that big of an issue anymore, but for us there's still a violation on the books and if we don't appeal that

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violation and continue to appeal that violation, then that violation becomes final. It's not appealable anymore. We can't...you were going through the withdrawal procedures and we can't withdraw this, because we're on a 30 day limitation period for any zoning violation. So if we withdrew it we're outside of the window. So that's simply not a risk that the corporation is willing to take.

Mr. Kim: So you're saying you're playing both sides of the fence, but still the action of selling the equipment, that you're...I'm sure you sold it for a discounted prices...selling the...actually not equipment, but the material needed. I'm a little confused at that. It's like, if you didn't do anything wrong, why try to correct yourself?

Mr. Bailey: In all honesty, the first meeting I had with the gentleman from Ramco they told me that they had to do something about the muddy name they had and they didn't use mud and they were well aware and at the time they didn't have a buyer for the site and I'm on my third contract. The first contract was to clean this mess up. And they want to do that as a gesture of good faith, in all honesty. The stuff had been there for years and it needed to go and they did not know that the third plan that we have with the...I think we got a 48 inch pipe we got rid of and now I got to turn around and buy a 48 inch pipe. They didn't know that at the time.

Mr. Leming: This may help you too. What we asked the county to do was to rescind the violation, not abate it, but to rescind it. So it was as if it had never existed. If there were another violation the county could always issue another violation, but we cleaned up the site, because we wanted to get rid of the violation. So if the county had rescinded the violation we would have been fine, but they didn't. They abated it which means it's fixed but as of the date it was originally made it was still a violation from their standpoint.

Dr. Larson: Any other questions for Mr. Leming?

Mr. Ingalls: Just one. Why did we keep postponing it if we've gotten to the same point?

Mr. Leming: Because we were continuing to try to work with the county. He just moved the pipes out of there.

Mr. Ingalls: But I'm talking about you. You, Mr. Leming, why did you keep postponing this thing if we're still down to the same point? Whether you decided to move it or not, I don't know, at some point they decided to move it. Why didn't you just come in here in May and let's see if we couldn't resolve it back in May?

Mr. Leming: For the simple reason that we thought we could resolve it with the county. We were continuing to negotiate with the county. They were extending our performance agreement which they, I think erroneously, have indicated as expired. So we were continuing to work with the county and, as Mr. Bailey indicated, the sign of that good faith was going on and cleaning up the site. And frankly, from the standpoint of putting this issue to bed, the course of least resistance at that point, was to continue to work with the county to try to get it resolved at that level rather than ever coming here. And in fact today, the county got in touch with Dr. Larson about putting this off again, because we were continuing to work with the county to get those issues addressed.

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Mr. Ingalls: Well if we were to, tonight, to vote and say well we believe...or that vote is our opinion that this is a valid violation, the county can still, I assume, rescind it, right? All we're saying is, it is a valid violation and if it is, they can still rescind it, if they want to. That's up to them. That's not up to us.

Mr. Leming: They could. No, absolutely not. You're not in the position. They're the only ones that can rescind it.

Mr. Ingalls: All we can say is, we believe it is a legal violation and then it's up to...you can still negotiate with the county.

Mr. Leming: Well, the corporation would appeal to the Circuit Court to keep the thing on ice and yes, we would continue to negotiate.

Mr. Ingalls: Right, you keep going to try to resolve. If they rescinded it...that's up to them, not us.

Mr. Leming: Well, I didn't suggest it was up to you all. I'm just letting you know what would have prevented us from being here, or would have resulted in our withdrawing the appeal. If the county had rescinded it we would have withdrawn the appeal, but they didn't, they abated it, so we didn't.

Mr. Kim: May I ask staff a question? Who has Ramco or Mr. Leming been working with on the county side negotiations? Because I thought I was pretty...just wondering who he was actually dealing with.

Ms. Musante: Susan, do you have that information?

Mr. Leming: It's Keith Dayton, one of the deputy directors. Keith Dayton and Mike Smith have been the ones we've been working with on the site.

Mr. Kim: And Mike, I'm sorry?

Mr. Leming: Mike Smith. He's the director of Public Works.

Mr. Kim: Thank you.

Dr. Larson: Any other questions for Mr. Leming?

Mr. Leming: Alright, thank you all for hearing us. Thought that would be 10 minutes, huh?

Dr. Larson: Well, it doesn't include questions and answers.

Mr. Leming: Sure.

Dr. Larson: Thank you very much. Questions for staff? Do you have a question for staff? Go ahead.

Mr. Davis: On page 2, on the justification for appeal under argument, second paragraph, it says that the sediment and erosion control plan expressly permits, Quote: the temporary stockpiling of earth and construction materials "dot, dot, dot". What comes after dot, dot, dot? Did I hear you say that the construction material could be there during time of construction?

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Ms. Musante: Mr. Davis? Which staff report are you referring to?

Mr. Davis: I'm referring to, I guess that's Mr. Leming's justification for appeal?

Ms. Musante: Ah, ok, hold on. Mr. Davis, this is Mr. Leming's staff report. It's not ours. So I'm not sure what the dot, dot, dot means.

Mr. Davis: Well, the dot, dot, dot means that something else comes after it. And my concern is, or my question is, what comes after that. Is it part of the Code?

Mr. Leming: What's circled in red there is (*inaudible*) That's the erosion and sediment control portion of the site plan.

Dr. Larson: Mr. Davis, could you read that out loud for the record please?

Mr. Davis: The temporary stockpiling of earth and construction materials shall only be permitted in areas scheduled for development. Earth piles shall be stabilized with temporary vegetation in accordance with county and state erosion control practices.

Dr. Larson: Thank you.

Mr. Davis: But did I hear before something about when the construction material was allowed on the property? I guess it would be something in our Code. And while they are looking for that, I'd like to state my opinion that regardless whether there is a contractor, a contract, or whatever, if the material was stored on the property, it was in violation.

Dr. Larson: Any other questions for staff?

Ms. Musante: You're going to have to clarify what you're asking, because I'm not sure.

Mr. Davis: I would think somewhere in our Code, where it talks about storage of construction materials, it would say...it says temporary, but I thought I heard someone say it could be stored during time of construction.

Ms. Musante: The staff report states: The erosion and sedimentation plan provides for many types of temporary measures while a site is being developed. The storage of construction material on an active development site is an excepted practice and is of temporary nature, because as the development progresses, the material is used and the project is completed.

Mr. Davis: That's what I was looking for. There was no construction going on, nothing going on, so the materials should not have been there.

Dr. Larson: Any other questions for staff? Does any member of the public wish to speak in support of the application? If so, please come forward. Seeing none...if any member of the public wishes to speak in opposition to the application, please come forward...or the appeal. Seeing none, I'll now close the public hearing for this appeal and bring the matter back to the Board for motion and decision.

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Dr. Ackermann: Mr. Chairman? I'd like to make a motion that we uphold the violation A13-04/1300279. From what I've been able to gather through studying the materials presented and hearing the testimony tonight, remarks by Mr. Leming, I'm sorry I forgot the name of the contractor...

Mr. Leming: Bailey.

Dr. Ackermann: Bailey, right....and members of the Board and staff, it seems to me that there was a violation, that equipment was stored there while construction was not going on. I think it's, of course, unfortunate that funding may have run out, but that really is the concern of the developer, not the concern of the public and if we have Ordinances that say equipment should not be stored for a period of time that...not the Ordinance says it has to be done while construction's there, but that construction material should not be stored. I think that's the problem of the developer, not the problem of the public and I think the Zoning Administrator was correct in citing a violation and that we should uphold it.

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

Mr. Davis: Second.

Dr. Larson: Any other discussion on the motion? I think I'm going to support the motion, because I believe that the equipment and material was stored on the property with no construction happening and no real hope of construction happening for an extended period of time. One can only wonder what would happen if a buyer hadn't come forward and there was not a citation. I would assume that the hardware would have been on the property for many years and I don't believe that's the intent of the temporary nature of storage. I believe that contractors certainly have the right to put material on the property they're developing, while they're developing it or while they have people under contract to develop it, but that doesn't seem to be the case here. Any other discussion?

Mr. Davis: I think the developer should be commended that they did remove the materials. Obviously too late.

Dr. Larson: Good point, Mr. Davis. Keep in mind that what we're doing here is trying to decide whether or not the Zoning Administration Office acted properly in issuing a citation at the time of the citation.

Mr. Grimes: Mr. Chairman, I would lean towards upholding the violation also. Mainly from the point of when active construction is taking place it's a staging area, it's not storage, it's staging. Active construction. The material move and are used as the construction progresses. Since there was no active construction for at least two years, it seems, that material was being stored. Stored by a contractor...whether there was a contractor involved or not, Ramco was acting as the contractor by buying and putting the materials on site. And with no active construction I have to agree, it's a storage area.

Dr. Larson: Any other discussion on the motion? Okay, those in favor of upholding the Zoning Administrator's decision say aye.

Mr. Kim: Aye.

Mr. Ingalls: Aye.

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Mr. Grimes: Aye.

Mr. Davis: Aye.

Mr. Poss: Aye.

Dr. Ackermann: Aye.

Dr. Larson: Aye. Any opposed. Okay. Would the staff read the next case please?

2. A13-05/1300280 - Leming and Healy, P.C. Ramco Virginia Properties, LLC - Appeal of a Notice of Violation dated March 4, 2013 regarding Article XIV. "Site Plans"; Section 28-245, "When Required", for stockpiling without an approved major grading plan on Assessor's Parcel 21-49. The property is zoned P-TND, Traditional Neighborhood Development, located at 475 Aquia Towne Center Drive.

Ms. Musante: Case_A13-05/1300280 - Leming and Healy, P.C. Ramco Virginia Properties, LLC - Appeal of a Notice of Violation dated March 4, 2013 regarding Article XIV. "Site Plans"; Section 28-245, "When Required", for stockpiling without an approved major grading plan on Assessor's Parcel 21-49. The property is zoned P-TND, Traditional Neighborhood Development, located at 475 Aquia Towne Center Drive. You have the application and owner's consent form, copy of the violation notice dated March 4th, 2013, photos of the violation and the aerial photos. Staff response to the appeal justification: Ramco received permission for the temporary stockpiling of materials as part of its Erosion and Sediment Control Plan approved by the County, and such activity does not support the notice of violation. Staffs response: Article XIV, Site Plans, Section 28-245 "When required" (e) states: "A major grading plan may be required for the purposes of clearing, grading or stockpiling an area twenty-one thousand seven hundred eighty (21,780) square feet (one-half acre) or more that does not involved any structures, buildings or public facilities."

A grading plan can provide for the temporary stockpiling of material if it is included in the approved plan. The grading plan currently approved as part of the approved site plan for this property does not include any area designated for the stockpiling of material. The corrective measures stated were to submit an application for a major grading plan to include the stockpiling and receive approval of said plan or cease stockpiling and remove all stockpile material from the site. The applicant did not choose either of the stated corrective measures and chose to appeal the notice of violation to the Board of Zoning Appeals (BZA). The appeal was submitted on April 3rd, 2013 to be heard by the BZA on May 28, 2013. By the request of the applicant, the hearing has been deferred since May. In July, the applicant began reducing the stockpile of topsoil by spreading it over the site and started crushing the broken concrete. To date, the stockpile of topsoil has been removed by using the soil in the re-grading of the site and the broken concrete has been crushed and re-stockpiled. There is no record that a new plan has been submitted to the County showing the location of the stockpiles.

Dr. Larson: Any questions for staff?

Dr. Ackermann: So are the photos on page 4...those are the existing conditions?

Ms. Musante: That is correct. They were probably taken 2 weeks ago, but you do have current photos in the handouts that you were given tonight. Those were taken today.

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Dr. Ackermann: Alright, thank you.

Dr. Larson: Any other questions for staff? Will the applicant or his or her representative please come forward?

Dr. Ackermann: Excuse me, can I just...so these photos...I'm sorry...so these photos that were taken today, are they from different angles than the others or are they essentially the same angle. Can you tell me are those the same piles of materials in both photos?

Ms. Musante: Yes, they are.

Dr. Ackermann: And the second photo, or the one taken today is just from a different angle I guess, is that right?

Ms. Musante: That is correct.

Dr. Ackermann: Thank you.

Mr. Kim: A different location.

Dr. Ackermann: A different...

Mr. Kim: Location.

Dr. Ackermann: A different location or a different angle of the same location? It's a different angle?

Dr. Larson: Both. Both.

Dr. Ackermann: I mean it was taken from a different location.

Dr. Larson: It's taken from a different location, therefore the angle is different.

Dr. Ackermann: Yes, thank you. Got you. But it's the same pile of stuff.

Dr. Larson: Yes. Mr. Leming, please proceed.

Mr. Leming: Good evening again. On this appeal the county's taking the position that, pursuant to Zoning Ordinance section 28-245 subsection (e) "major grading plan may be required for the purpose of clearing, grading or stockpiling an area of 21,700 square feet, that's a half acre, or more that does not involve structures, buildings or public facilities. Now, no question this is...the area that's involved here is more than a half an acre. What this comes down to, and I think the frame work for this one is very straight forward, we and approved site plan. The pages that I handed up to Mr. Davis a moment ago and I hope he handed those down, include... because there's a copy for each of you and I think this is, I think, much more relevant to this appeal than to the prior appeal. There are two important provisions here. These are comments that are made on the erosion and sediment control portion of the site plan. And if you look in the right hand column under management strategies, it specifically says, the temporary stockpiling of earth and construction material shall be only permitted in areas scheduled for development, which this is. Earth stockpiles shall be stabilized with temporary vegetation in accordance

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with county and state erosion control practices. If you look in the other column at the heading off-site areas, no off-site construction is anticipated. Soil will be stockpiled on site within the approved clearing limits and contractors shall adhere to all the requirements of the VESCH (Virginia Erosion and Sediment Control Handbook). The stockpiles shall be stabilized with temporary vegetation, similar to the language previous. Construction debris shall be stockpiled on site. If for any reason the contractor needs to stockpile soil offsite, which is not relevant here. These were the provisions that were submitted with the approved site plan. The anticipation was that the material that was used from the raised site would be re-distributed for the new site, and the stone would be crushed, reutilized for roads and subsurface and that is why the material was kept on the site. What is going on now, and this is somewhat collateral to the issue of the original violation, is that the material has been further crushed. It is the 21 grade that Mr. Bailey referred to. There are perspective purchasers for that material. This kind of material will still be needed for the site when it's developed. That's why it was kept on the site. That's why it was anticipated that it would be necessary for the site. You still have the issue of "was temporary". It is still our position that as long as there is a valid site plan, and bear in mind here perhaps even more directly linked than previously, this is the approved site plan, anticipating these materials would be stored here. The site plan is good until 2017. So from our standpoint, the fact that this was the approved plan eliminates the need for any other plan. The particulars are included here. The plan itself, and I have the full plan with me, is complete with great details, final great details about how this is all going to get distributed, what the levels are going to be at the end of the process. As we talked before, things stopped. We didn't get to the end of the process. The materials are still there. They're in the process of moving them. The violation is a little more obtuse here I think. Because what the county is saying, for the first time, is that we're now obligated to submit a grading plan. Now, I'm not sure exactly what the violation did, because we've never been asked to submit a grading plan and the ordinance is pretty clear. It simply says a grading plan may be required for the purpose of clearing grading or stockpiling. It doesn't say that one is required. From our standpoint, the fact that there is an approved site plan that covers this same subject eliminates the need for any other plan. And I'm not really sure how the county could find that we are in violation of not having submitted a grading plan, because the approved site plan contains the material that essentially would be required in a grading plan. So that's our position. We're not sure exactly what the violation is. Yes, there are stockpiles on the material. Yes, it was anticipated in the context of the site plan and the site plan approval that that would be the case and that these materials would be utilized for this particular purpose, so we are consistent with what was anticipated and what the county is saying is that we can't have the stockpiles there without a major grading plan, even though the stockpiling issue was addressed and was approved in the context of the site plan. So that is our position. I think that's about as succinctly as I can state it. The statutes that we looked at before of course are still relevant. The general assembly has extended the site plan to 2017. It wouldn't have expired anyway, because this was renewed in 2011. We're still under a performance agreement. Site plans are good for 5 years even independent of the general assembly's action. So the materials are there. We are in the good faith process, because the county wants us to do this. I hope this doesn't create confusion again. We are in the process of moving these things, because the owner needs to move on, because there's a contract on the property and we need to try to address these issues. But that is why the materials were there. We don't think that it's a violation of your Zoning Ordinance and would ask that you overturn the Zoning Administrator on this.

Dr. Larson: Thank you, Mr. Leming. Are there questions for Mr. Leming?

Dr. Ackermann: What's in these piles?

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Mr. Leming: There are two things. There is stone that is debris from the parking lot, the materials that were raised. That is what's being crushed into this 21 grade material. There is also simply top soil that is necessary for the site. So there are two separate... Mr. Bailey can tell you exactly what's out there now.

Mr. Bailey: It's recycled concrete. It's all the... when they demoed the slabs and foundations, the stuff was run through a three screen process to grade it to a similar to a road base material and the intent is to use it for structural filler on the site.

Dr. Ackermann: And when were the piles constructed? I mean, when did they do that?

Mr. Leming: When were the piles put on the site?

Dr. Ackermann: Yeah.

Mr. Leming: The raising occurred in 2010.

Mr. Bailey: Yeah. I think the buildings were demoed in 10 and they crushed in in May and the guy couldn't get there until July I think.

Mr. Leming: So some portion of the piles has been there since at least 2010.

Dr. Ackermann: Okay. Thank you.

Mr. Davis: I have a question. Is there an area designated as stockpiling for this area for this material in the site plan?

Mr. Leming: Well what the note says, I think addresses your question. It says: Them temporary stockpile shall be only prohibited in areas scheduled for development. That's pretty broad, but that's clearly where the stockpiles are, in an area that will be developed. And we're not storing them offsite. We're not storing them in an area that is currently being utilized and will not be changed. There are a couple of those areas on the site. This is an area that would be re-developed.

Mr. Davis: Well, do you disagree with the violation and the...it says specifically: the grading plan currently approved as part of the approved site plan for this property does not include an area designated for the stockpiling of material.

Mr. Leming: No more than this, but this is what the county approved. This was the language that was in the site plan that was approved by the county. So our position is that nothing further is needed. What the county approved is a note on the erosion sediment control of this plan, saying that these stockpiles can occur in an area to be developed, which is exactly what has happened. So that would be our position on that.

Mr. Davis: So the site plan was approved without an area. It's not required.

Mr. Leming: That's correct, because of this comment.

Mr. Bailey: Its comments for the site were short material and the intent with the approved site plan was to take that area towards the site where the movie theater is and raise it about 7 feet. So not only was

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this material set aside for that purpose, but there was a big stockpile of earth that was brought from the expansion of the Walmart site to this site and again, we hauled some of that away to show good faith, but all that stuff, again, was needed to achieve the final site plan design.

Dr. Larson: I have a question for staff. Does the county normally require the major grading plan in question for construction sites? Is that something that's standard?

Ms. Musante: It is standard with the site plan, yes.

Dr. Larson: But it wasn't required in this case, when the plan was submitted. Is that correct?

Mr. Ingalls: He references 245. You got to read all of 245. It starts out with one thing and one of them in there is: when a major site plan is required you have buildings and so forth. What they submitted was a major site plan. The part he reads to us is about if you had a site where you were just going to do grading, no buildings, no public utilities, none of those things you were going to do. You just want to go in and I just want to clear the site and grade it then that is where that paragraph comes in. But they had submitted a site plan which includes a grading plan. It includes all the things...erosion plans, it includes the whole set of stuff that we have in the Ordinance. It's not just a major grading plan. A major grading plan is, in my opinion, the way the Ordinance reads, is for only sites that you're not going to build anything on right now.

Dr. Larson: Is that your understanding staff? Okay, so why, if this is a violation cited to a site that is going to have buildings and a major site plan has already been approved then why are we using the term major grading plan in the first place. Isn't that incorrect, Mr. Ingalls, to use that term if we're talking about a major site plan?

Mr. Ingalls: My opinion today, right now, before it gets too far into discussion, is, what they really should have required, or really what they should do is amend their current erosion plan for what they have now. They have an erosion plan in the site plan, part of those copies of drawings we had, 26, 27 and 28, is part of that site plan. And that's the erosion. I thought, what they should've done is just amended that plan. Now, most major site plans require a stock...if you're going to stockpile your topsoil or whatever you're moving around and if you were going to bring in excess from outside to bring in on the site and stockpile it, most major site plans, and I would have thought it's in the Ordinance, says you shall designate on the site where you're going to build that stockpile. Now this particular plan, the way I read it, has no designated stockpile sites on the approved set of site plans. It even goes on to say and I think what you handed tonight is what I would call boilerplate. It probably is on every site plan that this person does. It's very close on everyone. But the site plan, or the erosion plan, does not designate any stockpiling to be done and because what it says: development to generally stay at existing grade, no grading anticipated, no E&S controls anticipated, add controls at the direction of the E&S inspector if required. Now, the way I read this plan I didn't...in Phase 1 there was going to be no need for any erosion, according to that note, except round those areas where they looked like you were doing away with a stormwater pond and maybe building a new one I think.

Mr. Leming: Right.

Mr. Ingalls: And then they had a phase 2 E&S plan which is the sheet 27, which shows the new buildings and new parking and maybe that's where they were going to raise that building. I don't know. I can't tell from the site plan. It's too small for me to read.

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Mr. Leming: I have the full one here.

Mr. Ingalls: I can see enough to know generally what's going on. But in neither case are stockpiles shown, which I'm surprised, because all of the site plans and erosion plans I ever did for the county they required to show a location if I had one. I was anticipating having a stockpile of any kind, even if it's just taking the topsoil off and piling it right here temporarily, I had to show that, because we were going to put it there temporarily and then we were going to put the topsoil back in the areas that weren't being utilized for building or parking.

Mr. Leming: And for whatever reason that didn't occur here. Mr. Bailey tells me that when this site plan was approved in 2008 initially, it was redone in 2011, there was not such a requirement, doesn't mean it didn't happen with other plans, but not a requirement that stockpiles be shown. What the Ordinance...what Mr. Ingalls is referring to, there's a lengthy list of requirements for final site development plans, which this qualifies as. The erosion and sediment control portion, which they do comply with provision for...the plan must include provision for adequate control of erosion and sedimentation indicating the proposed temporary and permanent control practices and measures which will be implemented during all phases of clearing, grading and construction. These shall be reviewed under the procedures established in the county erosion and sediment control ordinance. Now that does not address the issue specifically of stockpiling, but it does require that all of the grading, the final contours and things be shown which would have incorporated the materials that they anticipated using on the site. Our position is simply that whatever we're cited for here we didn't violate. They approved the site plan that addresses these provisions that we cannot be required to now come back and prepare a major grading plan. Which I think is what we're being cited for, because we didn't submit a major grading plan. Which we don't think there is a requirement for under the Ordinance.

Dr. Larson: Any other questions for staff or Mr. Leming and Mr. Bailey?

Mr. Ingalls: I visited the site this morning and walked it and of course the site is different in terms of what I see. If I had this erosion plan in my hand what is gone out there is different than what's on either one of them, phase I or phase II and it looks like somebody has spread...I didn't realize it brought in a lot of dirt, so like I said, I didn't see it till today. I only saw what's there today, but it looked like it was a lot of earth in that one area that was formerly a parking lot. It's been almost filled in a couple of feet or so.

Mr. Bailey: Actually there's been about 7,000 yards hauled.

Mr. Ingalls: And somebody has, looks like, graded it down and put straw on it. If I was an inspector I'd say looks like the grass hasn't taken. Probably needs to be reseeded, but other than that...

Mr. Bailey: Need a permit to shoot all the damn geese.

Mr. Ingalls: It looks fairly decent. The other thing I would look at, if I was out there as an inspector, I'd say, well the erosion control has failed in some areas. It needs to be redone. Silt fences have fallen over. Because the site is different than what it was. So the biggest issue I have is that, when I go out there and what the site looks like and the plans that you currently have approved is totally different. And, I mean I don't have a problem...I don't know that I would have a problem if you said I want to leave that stockpile there of material. I think if you had shown it on the site plan...stockpile...did a revised E&S plan, basically showing what you got there right now and showing me two...because you got a little bit

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of...two earth piles there up against one side of it and you got the big pile of 21A crushed stone or whatever. Show them on your plan and I think they would approve it.

Mr. Leming: Well to get off... they may and I think they will, but that's a separate issue, but to get off bond we are having to submit a revised plan showing what is to be done with storm water and finishing up the erosion and sediment control. So that kind of thing is coming if they can continue to have stockpiles on the property, I assume they'll show them.

Mr. Ingalls: Well if you could include what are the E&S controls that are now out there on that plan that aren't shown on either one of these plans. Show where the two stockpiles are, or three, whatever it is. But it sounds like to me it would be almost what they're asking for.

Mr. Leming: And that may be fine, but what we're... the violation goes to failure to submit a major grading plan.

Mr. Davis: It doesn't say that.

Mr. Ingalls: It went on to say something else. There is another sentence there, isn't it?

Mr. Leming: It says: Violation of Site Plans "When Required". Major grading plan...it simply cites the Ordinance...the following corrective measures must be taken: Submit a major grading plan to include stockpiling and receive approval of said plan or cease stockpiling and remove all stockpiled materials from the site.

Mr. Ingalls: But doesn't say because the site plan doesn't show it?

Mr. Leming: The violation is that we...the section let's say we violate is 28-245 "when required". When is a major grading plan required? And as I said, our position is simply that we...understand your reading of the Ordinance and when these things kick in we did a major site plan and whether or not stockpiling should have been included, was required to be included at the time is really a side issue and not relevant to this violation at this point. The fact is that the application was...well the site plan was approved as it is, without any of this.

Mr. Ingalls: Well the sentence I wanted you to read was where it says as part of that violation notice it says...they quoted the Code there, 245, but then it said the grading plan currently approved, as part of the approved site plan for this property does not include any area designated for stockpiling of material.

Mr. Leming: There is no Ordinance section cited for that. There is no provision of the Zoning Ordinance that requires that. Our plan was approved without that on it.

Mr. Ingalls: I might disagree with Mr. Bailey. I quit doing site plans in 2009 and I know I had to show them long time before that...we had to show where stockpiles were going and what the controls were...but anyway, but I think if you had submitted a revised...which it sounds like you're going to do.

Mr. Leming: Yeah, we're doing that in the context of the bond.

Mr. Ingalls: So what you're really saying is, you're going to do everything the county wants and I guess this is just another...are we really again getting back to trying to get rid of the violation?

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Mr. Leming: Correct.

Mr. Ingalls: Rather than...you're going to correct all the issues.

Mr. Leming: That's right.

Mr. Ingalls: It appears to me you're attempting to, and it sound like you've got somebody on the job now that knows what to do and how to do it, and so he's going to correct all these issues and all you want to say is, well, there wasn't really a violation, even though we corrected them. We feel like there was no violation to start with. Is that what we're going back to again?

Mr. Leming: Correct. Well on this particular appeal, I think perhaps even more specifically then on the...in the previous matter, the issue here is that the only Ordinance section cited is 28-245, which talks about when a major grading plan may be required. The other language that you refer to with the violation is not part of any Ordinance and we have an approved site plan that contains, otherwise I assume it would not have been approved, all of the requirements for a final site plan contained in 28-249.

Mr. Ingalls: You know what, with a little bit of heartburn, I can almost agree with you about the 245. That may be the wrong section.

Mr. Leming: So that is...this may be a technical argument, but that's what lawyers do.

Mr. Ingalls: It may be a technical argument.

Mr. Leming: But, as you point out, what we're doing is moving ahead to take care of the issues, one way or another and the public corporation does not want to have county zoning violation hanging over its head and so that is the basis for the appeal. It's not that we're not doing what we need to do, it's that we think that the county in this particular case cited the wrong Ordinance or doesn't have an Ordinance that it can cite and we don't wish to have the violation notice. We think that was an error.

Dr. Larson: Any other questions?

Mr. Leming: And I would point out, Mr. Ingalls that on this list of things there's nothing, even now, about stockpiling. It may be somewhere else in the Ordinance.

Mr. Ingalls: It's probably in the E&S Ordinance. I didn't bring that with me, but I'll bet you it's in there.

Dr. Larson: I have a question for staff. Can somebody locate the Ordinance that requires the location of stockpiling on a site? Do we know any of that out the top of our heads?

Ms. Musante: If it's an E&S regulation, we will have to pull the E&S Code to see what that states, otherwise it's the section that we...

Mr. Ingalls: Doesn't E&S refer to the state's manual. It's a green book. About that thick and has all the rules and regulation you're supposed to do to prepare an E&S plan.

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Dr. Larson: Right. Well the Ordinance that is cited says: A major grading plan may be required for the purpose of clearing, grading or stockpiling in an area 21,780 square feet, half an acre, or more. That does not include any structures, buildings or public facilities. That doesn't appear to fit this property. Is that correct?

Ms. Musante: They would need to do a separate plan for the stockpiling, which would be a major grading plan, because it was not a part of the site plan.

Ms. Blackburn: Mr. Chairman?

Dr. Larson: Yes.

Ms. Blackburn: It was our thinking in looking at this, that the site plan did not need to be revised. There was no construction going on the site and they did have the stockpiles and this was the measure in order to get a grading plan to address the stockpiling so there was a plan for it on the site.

Dr. Larson: So then your interpretation was there were no existing structures, buildings or public facilities.

Ms. Blackburn: Yes, Sir.

Dr. Larson: Thank you. Any other questions? Seeing no members of the public present, wishing to speak, I'll close the public hearing and bring it back to the Board.

Mr. Ingalls: Can I ask the staff a clarification again, Mr. Chairman?

Dr. Larson: Please.

Mr. Ingalls: So what you're saying is, since the approved site plan doesn't show any areas designated for stockpiling material, rather than revise the site plan, you were saying...and because now the site, as it now is, has not buildings...has no, what does it say...does not have any structures, buildings or public facilities and I assume you look at the site where it is today, that's probably a true statement. It has none of those things, maybe, I have to think about it a little more, but there may be some public utilities running through there. It may have water lines running back and sewer lines running back and maybe some county easements on it. I don't know that. So that's why you're quoting 245. Okay, the site plan doesn't show it, so you need to give me a major grading plan to show it. Is that what you're trying to accomplish?

Ms. Musante: Yes, Sir.

Mr. Ingalls: Okay.

Dr. Larson: Just to reiterate, what we're trying to do here is determine whether the violation as issued was appropriate, whether we should uphold it or not.

Mr. Grimes: I have one question. It's probably for you Mr. Leming. These notes are just a blowup of the actual approved site plan?

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Mr. Leming: Yes, that's correct.

Mr. Grimes: So...I can't make this...the note for stockpiling of earth, they basically have been approved to create the stockpiles anywhere they want to on the site, depending on which phase of construction they're in.

Mr. Leming: What the language says is, "in an area scheduled for development".

Mr. Grimes: Which would be the entire site, anywhere there's a new building, parking lot, road or otherwise.

Mr. Leming: Correct.

Mr. Grimes: So the requirement of the grading plan after the fact, I mean, just an observation from my point in looking at the site and the plans that were kind of included in references that these stockpiles probably will move around the site as the site is developed and used as needed during the construction. which may be why they filed the site plan in the way they did, without identifying a single location for stockpiling. The stockpiles could move as they needed it as the site developed. So therefore they submitted their site plan so they could stockpile anywhere they wanted.

Mr. Davis: I have a little bit...a different view than that. I feel that when they submitted the site plan, the site plan was approved, there was no intention of stockpiling. There was no intention of bringing extra soil in, because that phase is not depicted. But now that material is stockpiled there, I think the violation says there needs to be something to tell us where it is. That's the violation.

Mr. Grimes: And I agree with the thought process on that, except, the site plan that was approved allowed them to stockpile any place on the site that there is development. Whether they intended to or not.

Dr. Larson: Does it say that on the site plan somewhere?

Mr. Grimes: I won't speak for you, Mr. Leming, but it is part of the general notes, probably on a cover sheet or specification sheet that's part of the...

Mr. Ingalls: 28? Is that...this is just a portion of sheet 28, which we have a copy of it, but nobody can read.

Mr. Leming: We have the full sheets here if that would be helpful, but I tried to give you a blown up version so you could at least read.

Mr. Ingalls: Do you have the other section on that sheet.

Mr. Leming: All I have on this particular sheet are the notes. I do have the actual plan. It's a two sided page of notes, but then there was also the site plan itself. This is the page that precedes it. That's even smaller, but I do have the full size plan here, if anybody would like for me to unroll that. It's not that easy to find these sheets.

Ms. Musante: Mr. Chair, we have the plan if you would like to look at this.

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Mr. Ingalls: I'd like to just glance at it.

Dr. Larson: Please bear with us. We're going to try to find some relevant language here.

Mr. Ingalls: Just a quick glance. I don't see anything that says one way or the other.

Dr. Larson: I believe it was Mr. Bailey that said that somewhere it says: stockpiling may occur on areas to be developed. Mr. Bailey or Mr. Leming, do you know where that particular phrasing might be on the plan?

Mr. Leming: Well it's in the language we have cited here, which you have a copy of, smaller version, occurs on sheet 28. Its number...yes, under management strategies it's number 6. It makes the specific reference to stockpiling.

Dr. Larson: I see it. Would you like to read it Mr. Leming?

Mr. Leming: The temporary stockpiling of earth and construction material shall be only permitted in areas scheduled for development. Earth stockpile shall be stabilized with temporary vegetation in accordance with county and state erosion control practices. There is another provision over to the left, under the offsite areas. But it references stockpiling too. No offsite construction is anticipated so it will be stockpiled onsite within the approved grading limits and the contractor shall adhere to all the requirements and then it goes back into the requirements of erosion and sediment control. Another reference to stockpile down in the next sentence, all construction debris shall be stockpiled onsite. So at least those references to the stockpiling on the approved plan.

Dr. Larson: Okay thank you. Thank you, Mr. Ingalls. Is there a motion on this appeal?

Mr. Grimes: As much as it troubles me, considering the visual impact that it has over at the town center and the development being at a halt, I would move to grant the appeal for A13-03/1300280, that it is not a violation of the cited section 28-245.

Dr. Larson: Okay, so the motion is to overturn the citation, or the notice of violation. Is there a second?

Mr. Ingalls: I'll second that motion, Mr. Chairman.

Dr. Larson: Is there any more discussion on this?

Mr. Ingalls: The reason I second it, Mr. Chairman, was, I just think the county has cited the wrong Code maybe and what should have been cited is that they needed a revised site plan, is what they should have been required to submit, showing the revisions that had been made to the E&S plan and the grading plan and whatever, because they already had a major site plan and then turn around and make them do another major site plan just to show the two stockpiles. And I still say that the E&S requirements require that stockpiles be shown on the plan, but the county didn't require them to do that, so...either they didn't anticipate it and like I said these notes are boilerplate maybe, but I just, like I said, it pains me a little bit to agree that maybe we've cited the wrong Code. But they still should be required to give a revised plan, but it ought to be a revised site plan and the E&S part of it should be revised, rather than a major site plan as talked about in 245...whatever the number is.

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Dr. Larson: Any other discussion? I think I'm going to support the motion as well and in my opinion the approved site plan allows for stockpiling. The county may want to have more information on where the stockpiles are and then I'm inclined to agree with my colleague that maybe an amended site plan might be the way to do it, but I believe the violation is not correct. Any other discussion? Those in favor of the motion say aye.

Mr. Kim: Aye.

Mr. Ingalls: Aye.

Mr. Grimes: Aye.

Mr. Davis: Aye.

Mr. Poss: Aye.

Dr. Larson: Aye. Any opposed?

Dr. Ackermann: Opposed.

Dr. Larson: One opposed.

Mr. Leming: Thank you all.

UNFINISHED BUSINESS

Dr. Larson: Okay, let's press on to unfinished business. Many weeks ago you all got copies of suggested changes to the bylaws and the preamble. Actually the changes to the preamble relate to the changes to the bylaws. We've had lots of time to look at these. If anybody has any questions or wants to discuss it further, we can, otherwise I'd like to vote on it. Discussion?

Mr. Davis: Section 7-4 once again allows applicants to present a ton of information to us at the time that we're meeting and I disagree with that. It was so much better before, when we got everything in advance.

Dr. Larson: I agree with that, but the...I think part of the point is, how can we say that certain members of the public can give us information during the hearing and others can't.

Mr. Davis: I don't think we're saying that at all. We're saying no one should be giving us stacks of information. They had their 10 minutes. They had time to do their application. The application should have been completed. There shouldn't be any reason for all this extra paperwork that we get.

Dr. Larson: Yeah, I think it says: Large amounts of additional material may require a deferral at the Boards option.

Mr. Davis: Then they're going to say "may" when we're trying to defer it.

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Dr. Larson: No, we decide to defer. It's at the Board's option. For example tonight we got a stack of information that was relevant to the case as we walked in, from our own staff.

Mr. Davis: I think it was like 3 pages and 2 of them were photographs.

Dr. Larson: Exactly. That's appropriate. What's not appropriate is when we get an inch thick document like we did 2 month ago and that's what I think this addresses. Any other discussion?

Mr. Grimes: Actually just a question. Did you get any feedback from our absentee members?

Dr. Larson: No.

Mr. Grimes: So we'll take it that there...no commentary.

Dr. Larson: The only feedback I got was from Danny. Thank you for doing the work. And that was it.

Dr. Ackermann: I also want to thank you publicly for the work. That's a lot of work. But I was also thinking section 7.4 it is really incumbent on each member of the Board. Thank you for getting too much for that person to deal with. I had a meeting to ask for a deferral.

Dr. Larson: I agree with that. So it's at the Board's option, but obviously any member of the Board that feels like we're getting too much information and we need to postpone to give us a proper look. I think there are two underlying things that we want to try to do to be fair to everybody. One is to give the applicants enough time to prepare, two is to give us enough time to review the applications and I hope that this will allow both. And this also, I believe, allows for things that may come up within 10 days of the hearing that anybody can...that's relevant to the case that anybody can submit and then it's up to us to decide whether we can digest the information now at the hearing or we need additional time. Any comments on...that's the only section that's changed in the bylaws. Any comments on the preamble? I separate withdraw from deferral there.

Dr. Ackermann: The part about silencing or turning off cellphones and electronic equipment and here I am sitting with an iPad that's connected by Wi-Fi that's doing everything except...I don't know if Skype's on, so it's not receiving phone calls. And it doesn't seem to have any effect on anything that we do and I think it's sort of...it's just old fashion. I mean particularly when you have members of the Board who are in direct violation of that. And it is very useful to be able to look up the Code this way.

Dr. Larson: Let me ask staff. It says...this may be dated...it says that: Please do not put your phone vibrate as this interferes with the electronic equipment?

Ms. Musante: It does not.

Dr. Larson: I didn't think so. How about if we change that to say...just silence it. Because we really don't want to hear the rings.

Dr. Ackermann: No and we're not flying aircrafts or anything like that.

Dr. Larson: Okay, I have that change...silence the phones. Anything else on the preamble? Okay. Are there any motions for this?

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Dr. Ackermann: I move we accept the bylaws as amended and approve the preamble as well.

Dr. Larson: With the change that...

Dr. Ackermann: Yes, with the changes as presented.

Dr. Larson: Second?

Mr. Kim: Second.

Dr. Larson: Those in favor say aye.

Mr. Kim: Aye.

Mr. Ingalls: Aye.

Mr. Grimes: Aye.

Mr. Davis: Aye.

Mr. Poss: Aye.

Dr. Ackermann: Aye.

Dr. Larson: Aye. Any opposed? Good

OTHER BUSINESS

None

ADOPTION OF MINUTES

June 25, 2013

Dr. Larson: Let's go to the minutes, the June 25th minutes. Any corrections or revisions to the June 25th minutes?

Mr. Grimes: I have a few.

Dr. Larson: Please continue.

Mr. Grimes: I have to get to the page, but I became Mr. Gibbons.

Dr. Larson: I was wondering who became Mr. Gibbons.

Mr. Grimes: For several comments. Maybe it is the second set of minutes, but let me see. I tried to mark the pages...

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Dr. Larson: I saw it.

Dr. Ackermann: Oh no.

Mr. Grimes: ... 2358, 2364

Dr. Ackermann: Mr. Gibbons, there you go.

Mr. Grimes: And it was only momentarily, it was an out of body experience.

Dr. Larson: Actually are you on 569 and 574? Is that also you?

Mr. Grimes: That must be the second set of minutes.

Dr. Larson: No.

Mr. Grimes: Oh, I am sorry.

Dr. Larson: 569 and 574.

Dr. Ackermann: Yes, there he is, Mr. Gibbons.

Dr. Larson: Is that you?

Mr. Grimes: Yes.

Dr. Larson: Okay.

Dr. Ackermann: Very good.

Dr. Larson: Do you have other corrections Mr. Grimes?

Mr. Grimes: I do not.

Dr. Larson: Any other corrections to the first set of minutes?

Dr. Ackermann: Somewhere, I don't know where it starts, but the last 'n' is dropped from my name. A small thing, it starts with 2 n's in the beginning and then it goes to 1 n at least on line 1102, I see it. I don't know if it occurred before that. So that is just a...

Dr. Larson: It should be an easy fix. Okay, any others? I have a couple. Line 90, is just a typo, the second line beginning of the sentence there where it says the number 4 and then the word four, can you delete the number 4? And just for clarification I would like the dates, even though we say, for example, '91 for 1991. If we could just say... put in 1991 in the minutes so there is one on line 641 and I guess I am the guilty party for that.

Mr. Davis: I know there is one on mine where I have "89.

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Dr. Larson: I think I might have circled that. Let me know if you want me to slow down. Line 913, in the middle of the second sentence there, a good step in this regard it should be singular. Line 1111 is important to you answer, it should be your answer. Line 1472, second or the first complete sentence, another one was, there should be an in there, it should not be self-imposed. So another one was it should be not self-imposed. Line 1612, the last word in the line, that we should be an I. I will take responsibility for that. Line 1843, the '09 please change to 2009. And line 2631, begin the first complete sentence with if, so if nobody has objections... Any other corrections to the June 25th minutes? Is there a motion to approve?

Mr. Grimes: I move to approve the June 25th minutes.

Dr. Larson: Is there a second?

Dr. Ackermann: Second.

Dr. Larson: Those in favor say aye.

Dr. Ackermann: Aye.

Mr. Davis: Aye.

Mr. Grimes: Aye.

Mr. Ingalls: Aye.

Mr. Kim: Aye.

Mr. Poss: Aye.

Dr. Larson: Aye. Any opposed? On to the July 23rd minutes. Any corrections?

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Dr. Ackermann: Once again the spelling of my last name, it occurs in some places with 1 n.

Mr. Davis: Are you sure it has 2 ns?

Dr. Ackermann: Let me look at my voter registration card. Wait a minute, here it is. Yes it's got 2 ns.

Dr. Larson: Any other corrections to the July 23rd minutes? Is there a motion to approve the July 23rd minutes?

Mr. Kim: Motion to approve the July 23rd minutes.

Dr. Larson: Is there a second?

Mr. Grimes: Second.

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Dr. Larson: Those in favor say aye.

Dr. Ackermann: Aye.

Mr. Grimes: Aye.

Mr. Ingalls: Aye.

Mr. Kim: Aye.

Mr. Poss: Aye.

Dr. Larson: Aye. Any opposed?

Mr. Davis: I abstain.

Dr. Larson: One abstention, Mr. Davis.

ZONING ADMINISTRATOR'S REPORT

Mrs. Blackburn: Mr. Chairman and Board members. It is very nice to be here this evening.

Dr. Larson: Nice to have you here.

Mrs. Blackburn: (Inaudible) for a long time. As you can see you have a Board of Supervisors agenda item. On September 3rd they approved and Ordinance, which should be in back of the package, O13-36 for microbreweries in the county. And one of the requirements or regulations is that is a microbrewery wants to be in a B-2 zone, they must first get approval of a Special Exception. And so that falls on you all's venue. We have provided all the background information for the Ordinance, how we got there, what we thought of, various information from local citizens, operators of microbreweries in the area and it is for you to digest because in October you will be hearing one. We already have one applied for and if you have any questions about any of it please call myself or Melody. We will be more than glad to answer questions, find information for you, whatever you desire. And other than that we have a variance application but it is not complete as of this moment. So we do not know if it will be heard at the next meeting. And I know Melody did talk about, at the last meeting, the VAZO Regional meeting we are having and it is going to be a discussion on vesting and you have more information on that.

Mrs. Musante: The Virginia Association of Zoning Officials Region 5, we are hosting a vesting seminar. The date has been moved to Thursday, November the 14th due to a scheduling conflict. It is going to be held down at the Rowser Building from 9 to 12 and Andrew McRoberts will be giving the presentation from Sans Anderson. As I receive more information I will gladly share that with you all.

Dr. Larson: I am sorry, what was the date again Melody?

Mrs. Musante: It will be Thursday, November the 14, 2013 from 9 to 12.

Dr. Larson: And what was the building?

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Mrs. Musante: It's at the Rowser Building next to the Log Cabin restaurant.

Mr. Kim: There is a building next to the Log Cabin?

Dr. Ackermann: Yes, back...

Mr. Kim: I thought that was the jail.

Dr. Larson: Thank you Melody.

Mrs. Musante: Thank you.

Dr. Larson: Thank you Susan.

Mrs. Blackburn: You are welcome.

Dr. Larson: We appreciate that.

Mr. Grimes: Another weekend retreat.

Dr. Ackermann: It used to be the School Board Office.

Dr. Larson: Okay, any question for staff before we adjourn?

Mr. Davis: I have a comment. Other Boards, when there's motions to be made, generally the member of that Board from that area makes the motion. That makes us liable to study the issue more clearly, even make a visit. But it seems like when you call for a motion, like the second one, it was a long time before we made a motion. I think that would take care of that problem.

Dr. Larson: I don't know, I think it is customary for some Board like maybe the Board of Supervisors, I am not sure but...

Mr. Davis: The Planning Commission.

Dr. Larson: I think it is customary for some Boards to do that. I don't know if we have ever actually talked about that in this Board. What is the sense of the Board? I don't think it is anything we need to officially adopt in the by-laws, but it might be a gentlemen's agreement if we are so inclined.

Dr. Ackermann: You know, if somebody makes something from my district and I am opposed to it... I mean it just seems a little forced or if I am in favor of it and it is obvious everyone else is opposed to it... I mean it just seems. I don't know what I am supposed to do as somebody from my district. I probably should... I think it is a great idea if... I am definitely responsible for visiting the site and knowing something about it but I don't know if I could always... you know, I don't know what I would say it if was necessarily in my district and why my voice would be, in some cases, stronger or more authoritative than others. And I certainly, you know... if it's something in your district and something you know about I think that usually gives me a lot of information and I appreciate that a lot. But I don't know how I could necessarily... I don't know what flag to carry on these motions is the thing. I mean, you know special exceptions usually are pretty straight forward if someone wants to remodel something

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on their house and the house is nonconforming and you know that's something I think I can deal with pretty easily. Some more intricate matters, I have a... I don't know where I can go with that. What were you... I mean, what do you think about...

Mr. Davis: It is definitely up to you if you are not comfortable making a motion, don't.

Dr. Ackermann: Okay, right, right, right. But do you think we should defer to the person from that district to make the motion?

Mr. Kim: I am indifferent, I can go either way.

Dr. Larson: I don't think it matters to me.

Mr. Ingalls: My thinking most of the time, if it is in my district and I know it's in my district, usually when I get here I will try to make a motion if it's in my district. But I don't... to be honest with you, I don't where the George Washington District is all the time. Now, I can read the thing and it says what voting... maybe, does it say what voting district it in?

Mrs. Musante: Yes it does.

Mr. Ingalls: It does tell me, okay. Well if it is I pay more attention and of course it is closer to visit, so I may have done a little more in visiting it just because it is in my district. But I don't care if somebody else made a motion. I am still going to voice my opinion one way or the other.

Mr. Kim: Yes, I didn't do the motion in today... what we heard today was in my district and I did that because I had a, I don't know if I can say this, I had an opinion coming in already. So I just tried to stay even and try to be fair and listen.

Mr. Ingalls: Right, and I think that's... there are times when you want to do that on issues.

Mr. Kim: Because I was a lot quieter (inaudible).

Mr. Davis: Just a thought.

Dr. Larson: Yes, I think that if something is in your district you should probably consider making the motion but I also like the idea of people that make the motions feel fairly strongly about their opinion one way or another so they can defend why they are moving the way they are moving. And that's why they make the motion, they have a definite opinion.

Mr. Ingalls: Maybe when one of us isn't here maybe... some districts have 2 representatives sitting on this Board when we have alternates and there is one missing. I am not sure where Heather or Steve is from.

Dr. Larson: Well, I think it's a valid suggestion for us to keep an eye on for things that are in our district and take a particular interest in that so, visit the site, be well informed and consider making the motion first. Please if there is a real pregnant pause without a motion, feel free to jump in if you feel strongly about it and make a motion. Okay, is there a motion to adjourn?

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ADJOURNMENT

Mr. Kim: Motion to adjourn.

Dr. Larson: Second?

Mr. Ingalls: Second.

Dr. Larson: All those in favor say aye.

Dr. Ackermann: Aye.

Mr. Davis: Aye.

Mr. Grimes: Aye.

Mr. Ingalls: Aye.

Mr. Kim: Aye.

Mr. Poss: Aye.

Dr. Larson: Aye. Thank you very much gentlemen.

With no further business to discuss, the meeting adjourned at 9:22 p.m.