

**STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES**  
**February 25, 2014**

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, February 25, 2014, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Dean Larson in the Board of Supervisors Chambers of the George L. Gordon, Jr., Government Center.

Members Present: Dean Larson, Danny Kim, Robert Grimes, Gregory Poss, Ernest Ackermann, Steven Apicella, and Heather Stefl

Members Absent: Larry Ingalls and Ray Davis

Staff Present: Melody Musante, Evelyn Keith, and Denise Knighting

DETERMINATION OF QUORUM

Dr. Larson: Good evening ladies and gentleman, 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 requests for Variance from the Zoning Ordinance, when a literal enforcement of the ordinance would result in an 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 7 regular members and 2 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 7 members present tonight and participating. Just by way of introduction, on my far left, Steven Apicella, then Mr. Gregory Poss, Mr. Danny Kim, then to my right Mr. Robert Grimes, then Dr. Ernest Ackermann, and Mrs. Heather Stefl. And I'm Dean Larson. Welcome. Oh, and the County is represented by Ms. Melody Musante, our Zoning Manager, Ms. Denise Knighting, our Administrative Manager, and Ms. Evelyn Keith, Zoning Technician. The hearings will be conducted in the following order: the Chair will ask the staff to read the case and the 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 10 minutes unless additional time is granted by the Board. Members of the Board may ask questions of the applicant to clarify or better understand the case. 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 3 minute time limit for each individual speaker and a 5 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 in opposition to the application to come forward and speak. After all public comments have been received the applicant shall have 3 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 hearing. 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 the discussion of the motion the Chair shall call for a vote. In order for any motion to be approved, 4 members of the Board must vote for approval. In order to allow the Board time for appropriate review, the applicant or applicant's representative is required to submit relevant material to the Department of Zoning and Planning 10 business days prior to this hearing to be included in the staff report. The Board may accept additional relevant material from the applicant or the applicant's representative during the hearing. However, large amounts of additional material may require a deferral at the Board's option on behalf of the applicant to allow the Board to consider that additional material. All members of the public and/or staff may also submit relevant material during the hearing.

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The applicant should be aware that we actually have 7 members present so that's the maximum we have on the Board. You must have 4 affirmative votes to approve an application. Well, the rest of that's pretty much not applicable. You may defer this hearing... I'm sorry. I'm going to skip because we have 7 members. The applicant may withdraw his or her application for any time prior to a vote to approve or deny the application provided the applicant has not withdrawn a substantially similar application with the last 12 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 a variance or special exception that is substantially the same request for at least 1 year from the date of our decision. I now ask that anyone who has a cell phone or pager, or other electronic device, to please silence it. 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 that anyone who wishes to speak tonight stand and raise your right hand. Do you hereby swear or affirm that all the testimony before this Board shall be nothing but the truth?

Douglas Bergner: Yes.

Mrs. Bergner: Yes

Susan Furtado: Yes.

Dr. Larson: Thank you; you may be seated. The Chair asks that when you come down to the podium to speak, first give your name and address clearly into the microphone so that our recording secretary can have an accurate record of all 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: Yes sir. We are going to conduct the Election of Officers after the Zoning Administrator's Report instead of before the public hearings.

**DECLARATIONS OF DISQUALIFICATIONS**

Dr. Larson: Okay, thank you. 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? Heather?

Ms. Stefl: I'd like to state that I did speak to Mr. Bergner. I did go out to the property and look at it last Saturday and we did have a discussion of about an hour.

Dr. Larson: Thank you. Any others?

Mr. Kim: I too talked to Mr. Bergner for about an hour on the phone, but did not go out to the location.

Dr. Larson: Thank you. Any others? I'll now ask the Secretary to read the first case.

**ELECTION OF OFFICERS**

*Discussed after Zoning Administrator's Report.*

**PUBLIC HEARINGS**

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1. **SE13-04/1300503 – Douglas W. Bergner** - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards," A-1, Agricultural, to allow firearm sales as a rural home business on Assessor's Parcels 40-46A & 40-46B. The property is A-1, Agricultural, located at 165 Aquia Creek Road.

Mrs. Musante: Mr. Chair, before we get started, I would like to introduce Susan Furtado. She is with the ATF and will be answering any questions that you all have regarding the FFL license process. I also would like to give a little bit of a background on how we got here and why Mr. Bergner is requesting a Special Exception. The County, over the last probably 10 years, have been issuing Home Occupation permits for firearm sales, gunsmithing, etcetera, anything to do with guns. The ATF gave a presentation back in November of 2012 and we learned at that presentation that even though the applicants were coming in and telling us that they were strictly retail sales, that they actually have to have a premise address to where the customers can come to the home and pick up the merchandise, guns, whatever. Our Home Occupation permit, as you all know, does not allow for foot traffic. So, after that, fortunately or unfortunately for Mr. Bergner, we have not had any applications come into us or inquiries regarding home occupations, home business permits. So that's basically how we got here tonight. Staff thought that it would be a good idea to bring him to you all to discuss the gun sales, the FFL license, and the issue of the retail sales which I will remind you that retail sales is not an allowed use on a home occupation, a home business, or a rural home business. When it's silent in the code, it means it's not allowed. So any questions regarding that before I get started with the case?

Mrs. Stefl: I have one question. There are ladies and gentlemen in the County who do have home based businesses, for instance Pampered Chef, Mary Kay, but we do not require them to have a home business license even though customers do come to their home, they purchased items, and they will have supplies or inventory if not on a permanent basis but on a temporary basis when an order comes in and then it is then given to the customer. Is that correct?

Mrs. Musante: When we get an inquiry for Pampered Chef, Avon, or anything like that, what we recommend that they do is come in and apply for a Home Occupation permit.

Mrs. Stefl: Okay.

Mrs. Musante: It allows them to have the deliveries; it does not allow them to have in-home parties, it does not allow for the customers to come to them to pick up the merchandise. They have to deliver it to the customer.

Mrs. Stefl: But what... has there... is there any... have there been any instances where there has been an enforcement issue or when zoning has been called in because neighbors say, see the customers are coming to a home whether they have a license or they don't have the license?

Mrs. Musante: Not to my knowledge.

Mrs. Stefl: Okay, thank you.

Mr. Kim: I have a question. I still... after reviewing everything, I still don't see... I don't see Mr. Bergner actually having sales. I see it more of a transaction.

Mrs. Musante: It is because of the way the FFL Regulations are written. It says that you have to have a premise address.

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Mr. Kim: Yes.

Mrs. Musante: And Ms. Furtado can probably talk a little bit more on that. I am not as familiar with their regulations, but because of that and because it talks about retail sales, that is where we are having the problem. If the FFL Regulations did not have those simple two words in it, we would be fine.

Mr. Kim: Okay, thank you.

Mr. Poss: I have a question. You said in the code there was a prohibition against foot traffic. Would you elaborate a little bit on the foot traffic?

Mrs. Musante: Home occupations do not allow for customers to come to the home. Home occupation only allows for you to have an office, computer work, it does allow you to have deliveries, and then you would have to take the product to the customer off site. Home businesses in all zoning districts with the exception of A-1 will allow for the foot traffic but they do have to come to you all for the special exception and you can put the conditions on them, how many they can have each day and the hours of operation, the same thing with a rural home business.

Mr. Poss: Thank you.

Mr. Grimes: Melody, as I understand the FFL process, the guns are purchased online and it is simply a transfer mechanism. It is not a sale.

Mrs. Musante: That is correct, but because of the way their regulations are written, and it talks about retail sales, our Ordinance does not allow for retail sales out of the home.

Mr. Apicella: Can I offer an alternative scenario? Let's just say the person sells vacuums.

Mrs. Musante: Okay.

Mr. Apicella: And they sell them online, okay. But at the end of the day money is being transferred, either electronically or at the door. Would that be considered a retail sale of the vacuum cleaner if that is what the person was doing out of their home?

Mrs. Musante: If they have purchased it online for vacuums, not it would not and we have issued permits for that type of business. We have also issued home occupation permits for these gun sales and it states right on the permit internet sales only. But after the presentation from the ATF and we understand that they have to have a business premise and it can be in the home, that's where they are getting the foot traffic. So that's where the problem lies, where if you have got the vacuums, the vacuums they can take to somewhere else...

Mr. Apicella: What I mean is the person is coming to the individual.

Mrs. Musante: They can't do that.

Mr. Apicella: The person who has this business, a vacuum business, is selling vacuums out of their house.

Mrs. Musante: Correct.

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Mr. Apicella: And they are not delivering the vacuum to the individual, the customer is either buying the vacuum online or buying it at the door, but they have to actually go to that person's house...

Mrs. Musante: They would not be able to do that.

Mr. Apicella: Okay. What... I guess my other question would be, what alternatives would an applicant have if they were not allowed to sell products out of their house.

Mrs. Musante: They can do the internet sales and... I am sorry, go ahead.

Mrs. Stefl: (Inaudible, microphone not on) then ship it to them.

Mrs. Musante: Yes they can. And we do have that in the County. And that is where I am grey when we start talking about the FFL license. The part I do know is they have to have the business premise. If I purchased a gun from Evelyn, I would have to go to her home and make that transaction. That is where the retail sales part is coming in and if, I don't know if you all had a chance to look over the home business that I sent you. That unfortunately is not in an A-1 district, it is in a PD-1, but they did approve that one with conditions and I believe one of them was no retail sales. And that was one of the recommendations that our prior County Attorney had given if we issued these.

Dr. Larson: Melody, let me just be clear when we are talking about foot traffic.

Mrs. Musante: Yes.

Dr. Larson: That is the difference between a home occupancy permit and special exception.

Mrs. Musante: That is correct.

Dr. Larson: So since we are considering a special exception here, foot traffic is allowable.

Mrs. Musante: It would be allowed, but we still have the simple retail sales issue.

Dr. Larson: The next question is, has it been the County's interpretation that internet sales are not retail sales?

Mrs. Musante: Yes.

Dr. Larson: Historically?

Mrs. Musante: Yes.

Dr. Larson: Thank you.

Mr. Apicella: But I am still caught up with internet sales, would presume that somehow the person selling the item is getting it to the customer. That customer is not coming to the individual's home. It's just a mechanism by which the person is buying the product, but the delivery of the product is actually mailed or at a retail location.

Mrs. Musante: Right.

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Mr. Apicella: It's not... the pick-up is not at the provider's home.

Mrs. Musante: Correct. And the only thing I can tell you is how we have previously done it which we have allowed internet sales on the Pampered Chef, I mean we have had people make jewelry and they have put it online, like on eBay and stuff like that to sell it. As long as it is through the internet there is no physical transaction from person to person, face to face, coming to the home we have allowed that.

Mr. Kim: The question that I have is, okay, so we have been allowing other Stafford residents to have a FFL license until we had... until you guys had a meeting with the ATF and figured out oops, we have been doing it incorrectly, if I am correct. Now I am just... what is going to... maybe this might be for the ATF agent. But I was just wondering what would happen to the many, I don't know the numbers of actually how many people we approved to have FFL licenses in Stafford. So what will happen to them? Because I mean... Sorry.

Mrs. Musante: We allow... we have been issuing these home occupation permits until the memo came out from the Zoning Administrator on December 1, 2012. So for as long as I can remember we have been issuing home occupation permits and I would guess that we have probably issued 30. Sue do you know how many Stafford Count FFL licensees we have?

Ms. Furtado: I don't know off hand, but I can find out and get back to you.

Mrs. Musante: Okay.

Mr. Kim: But whatever the number is... I am kind of wondering... I mean I just would hate for... what would happen if for some reason we denied Mr. Bergner? And then what would... I mean would that... I mean is there anything we could...

Mrs. Musante: We cannot go back on the ones we have already issued.

Mr. Kim: Alright, so... okay, I just wanted to know. So there is nothing we can do with them?

Mrs. Musante: No.

Mr. Grimes: And I think one thing that Mr. Bergner will probably clarify for us is that he is transferring the ownership of a weapon that is purchased from someone else.

Mrs. Musante: Correct.

Mr. Grimes: He is not making the sale I am guessing, because that is how it has worked in the past. So if he is not actually selling this merchandise, he is simply transferring the ownership and that is what the FFL does. Is it then not covered... it would not be covered by the retail sales then. It is a transfer of ownership. That is what he is being paid to do.

Mrs. Musante: I think at this point, unless you want to start with the public hearing, is have Sue come up and explain to you how the FFL license process works, and...

Dr. Larson: Why don't we go ahead and do that.

Mrs. Musante: Okay.

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Dr. Larson: And then we can press on with the case.

Mrs. Musante: Okay.

Dr. Larson: Thank you for coming for this.

Susan Furtado: Good evening sir, my name is Susan Furtado and I am an ATF Industry Operations Investigator. We conduct qualification of applicants who submit their FFL applications through ATF. In their application they have to list a business premises. Their business premise has to allow... if it is a private dwelling it has to allow foot traffic. Transferring a firearm can be several ways, it can be online or it can be via shipments. But ATF specifically does not issue a license for online sales only. We issue a license to the business premises to conduct firearm transfers. It can be a transfer gunsmithing, repair of fire arms. Customers will have to come on to the location... they have to come on the location to do the background check and fill out the paperwork, whether or not they qualify to even possess a firearm. So the whole process of transferring/obtaining a firearm has to be done on location. And the business premise has to comply with local county ordinances. If the applicant cannot obtain compliance with local/county, AFT cannot issue a federal license. It basically depends on localities (inaudible).

Mrs. Musante: Sue can I ask a quick question.

Ms. Furtado: Sure.

Mrs. Musante: When you say premise and the FFL license does not regulate whether it is transfers, so you are saying when you issue a license that gives the applicant the right to conduct transfers, retail sales, internet sales?

Ms. Furtado: Correct.

Mrs. Musante: Gun shows, that license... so you cannot restrict, like if Mr. Bergner came to you and said I strictly want an internet license you cannot do that knowing that the county is not going to give him a retail sales license, is that the way I understand it?

Ms. Furtado: Correct.

Mrs. Musante: Okay.

Ms. Furtado: I brought with me some information, an application that has to be submitted by an applicant who wants to obtain a Federal Firearms License and on the third page it lists several certification where the applicant states or initials certifying that they are in compliance with local ordinances for the business premises. They must be engaged in the business of transferring firearms, buying, selling online or on site. We specifically don't issue a license for online sales. Our Federal Firearms License (FFL) basically on premises gun transfers, the customer will have to come in to do the background check, all the paperwork has to be done on the premises.

Mr. Grimes: So for clarification, I pictured that this was a transfer of ownership only. But it could be sales.

Ms. Furtado: Right.

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Mr. Grimes: The license allows you to...

Ms. Furtado: Yes sir.

Mr. Grimes: ... the owner to take possession of a firearm and then retail it to someone.

Ms. Furtado: Correct, correct.

Mr. Grimes: Okay. Thank you.

Ms. Furtado: A gun dealer can also engage in the activity of gunsmithing. If somebody comes in and says hey something is wrong with my gun, can you fix it or something like that, that causes foot traffic. You might have a next door neighbor or someone in the neighborhood that wants to buy a firearm, they will have to come in to do the background check through the Virginia State Police, do the paperwork, firearms transaction record to obtain possession of that firearm.

Dr. Larson: Now Ms. Furtado, we typically do put some restrictions on special exceptions as a routine thing. I guess my question is would it affect his license if our restrictions were more restrictive than what the license is?

Ms. Furtado: It would, it would affect... we can't issue a license if the restrictions are just online sales. If the restrictions are basically the County issuing a license to... a permit, a zoning permit to an applicant just for online sales, no customers on site, we can't issue a license for just online sales.

Mr. Apicella: Can I offer a more specific question? Could we restrict it such that only transfers are allowed on premises, however the individual could sell off property, they could deliver it, they could mail it what have you.

Ms. Furtado: Again, our definition of business premises which the applicant must comply, the definition under the Gun Control Act states if it is a private dwelling no part of which is open to the public shall not be recognized as coming within means of the term. So if no part of that private dwelling will allow any foot traffic, any retail sales, they don't qualify for a federal license.

Mr. Apicella: We are not restricting them from retail sales, we are only restricting them potentially from retail sales out of their premise. They could do retail sales... they could, you know, rent a structure somewhere, a lock up somewhere. I don't know if there are any restrictions on that from the County's perspective, but just to make sure it is in compliance, the problem we have is a policy issue here in Stafford County that we don't, from what I gather, allow retail sales as a rural home business. That is the policy and in the absence of getting the Board of Supervisors to revisit that definition we are kind of in a box here. We might want to allow this individual to have some kind of ability to transfer firearms or sell firearms, but not retail sales out of a home, because it is not in compliance from my vantage point, with our current County policy.

Ms. Furtado: Right, right.

Mr. Apicella: So is that...

Ms. Furtado: Again, if the County restricts only online sales...

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Mr. Apicella: It's not only online sales. They can do whatever they want.

Ms. Furtado: Right.

Mr. Apicella: I am just saying within the confines of their own residence they would not be able to sell directly out of their home, potentially that might be a condition that we might put on the result here if we try to make it in compliance with our county policy.

Ms. Furtado: The Gun Control Act requires all transaction to be conducted on location. He can deliver the guns, but the customer still has to come on the location to do the background check... to fill out the paperwork.

Mr. Apicella: That is fine.

Ms. Furtado: But the gun could be delivered some other way.

Dr. Larson: Let me ask this, the license... does the license apply to the premises or to the individual?

Ms. Furtado: The premises. To the location. To the address listed on the Federal Firearms Licensee Application.

Dr. Larson: Okay.

Mr. Kim: Can you... I am sorry. Can you explain how these gun shows, how people have booths in gun shows. How do they get their license? Is that an FFL license or is that a...

Ms. Furtado: Well there is no law that... anybody can actually open up a table at a gun show. Anybody can have a gun show table, they can sell popcorn, holsters, ammunition, bolt carriers. If they sell guns it has to be their personal collection. If they engaged in the business, meaning they are dedicating a lot of time buying and selling guns they have to be licensed with ATF.

Mr. Kim: Is that an FFL license or is that different classification?

Ms. Furtado: Yes, FFL. They have to obtain an FFL license if they are engaged in the business. But anybody can get a table at a gun show. And FFL... their business premises is basically where they are licensed at, their address on their application. The gun show is an extension to their business premises. Those are the two locations that they can actually do transfers. But their primary license business premise is what is on their application and what is on their FFL. When they get issued an FFL it is actually an 8 by 11 sheet and it says Federal Firearms License, their name or their business name and then their address. That address has to comply with local/county with applicable ordinances to conduct a business from that location. And if it is a private dwelling they have to comply with local/county whether or not that location would allow any sort of customer on site.

Mrs. Musante: Sue, how hard is it to get the FFL requirements changed? Like if we wanted to have... if something happens and we are having this issue with the retail sales from our end. How difficult is it to get the definition changed on the FFL end?

Ms. Furtado: That would have to go through Congress.

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Mrs. Musante: Okay. Just a question.

Ms. Furtado: It's a federal regulation. Federal laws and regulations are set by Congress.

Mrs. Musante: Okay.

Ms. Furtado: I am just the middle man, I go out there, I do my qualification investigation and if the applicant cannot produce compliance or some sort of permit from the zoning officials, my hands are tied. I can't recommend issuance of a license. My chain of command won't allow me to. The FFLs that were issued in the past, they were issued incorrectly. We also conduct unannounced compliance investigations where we come into the licensed premises and we do our compliance investigation. During that compliance investigation we contact the local zoning department to make sure that they are in compliance with local/county. If they are not in compliance with local/county we will submit a referral. Basically it is just hey for your information we are out there, we have noticed that they are having foot traffic and it is violation of local authorities. Therefore, it would be a violation in federal regulations and they would be cited for it. Repeat violations, federal violations, can basically lead to revocation of their license or we can recommend non-renewal of their license. So that is basically... it is a long process but that is basically what would happen.

Mr. Kim: Can you actually define foot traffic real quick? I mean is it... foot traffic, could that be considered hey make an appointment and, you know make an appointment, is that considered foot traffic?

Ms. Furtado: People interpret foot traffic in so many different ways.

Mr. Kim: Yes, that is why...

Ms. Furtado: Foot traffic can be, you know, just by appointment. Someone emails the gun dealer, hey can I come by and look at this 9MM gun that you have on the website? Can I see if it fits my hand? That could be foot traffic. I mean, it could just be just about anything, someone bringing in a gun for repair.

Dr. Larson: Okay, so if I can just sort of tie this up unless there are other questions. The way I understand it the applicant is here tonight to try to obtain a special exception for his business. That is one step. And then the next step apparently would be apply to ATF for a license, that is a separate step. That does not really have a lot to do with us. We are looking at our ordinances and rules and regulations and we will decide tonight whether or not the applicant gets a special exception.

Ms. Furtado: Right.

Dr. Larson: Then I think it is on the applicant to go apply for a license. Isn't that the right...

Ms. Furtado: Yes sir, yes sir. We as a federal law enforcement agency, we cannot tell the localities whether or not you can issue them a home occupation permit for retail sales or to conduct any sort of transfers on site. You know we can't tell you what to do as far as that. But we can just explain to you our definition under the Gun Control Act. The qualifications an applicant must meet in order to obtain a Federal Firearms License. They must provide a business premises and if that business premises is a private dwelling then that private dwelling... any portion of that dwelling would have to allow foot traffic to conduct the background checks, the paperwork and so forth.

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Dr. Ackermann: Can I ask one more question?

Dr. Larson: Of course.

Dr. Ackermann: How often do these licenses need to be reviewed or renewed?

Ms. Furtado: The duration of the license is good for three years. We typically like to visit them to conduct their unannounced compliance investigation 12 months after they have been issued or a year or two after they have been issued, but their license is good for three years.

Dr. Ackermann: And what is the renewal process?

Ms. Furtado: The renewal process, they get mailed a renewal letter from ATF saying whether or not the licensee wants to renew or discontinue their license, they have an option. If they choose to renew their license, they have to submit \$90 to ATF and depending on my area supervisor, my chain of command, whether or not we go out there to conduct a compliance investigation. And we determine whether or not they are in compliance, then we would permit... allow them to renew.

Dr. Ackermann: Thank you.

Ms. Furtado: You're welcome.

Dr. Larson: Any other question for Ms. Furtado?

Mr. Poss: I do have a question. In the 30 or so cases that we have approved here in Stafford County, when you go back to do your compliance investigation, how will that change things for those people from your perspective?

Ms. Furtado: Well during the compliance investigation we will contact local/county and if we determine that the licensee is not in compliance with local/county to operate, to have any sort of foot traffic, if it is in fact a private dwelling we will notify the county officials with a referral of information and we will suggest to the applicant, hey you are in violation of both federal and local laws and regulations. You have a choice either find a suitable location to conduct firearm transfer... transactions to deal in firearms or surrender your license or we can recommend nonrenewal. So they will have options during the compliance investigation. It is not just we are going to go there and pull their license, we will give them reasonable time. That is pretty much it.

Mr. Kim: I have one last question.

Ms. Furtado: Okay.

Mr. Kim: With an FFL... if I had an FFL and I wanted to start selling Glock's and I got in touch with Glock or Smith & Wesson or whoever and said, hey look, I have a store front, I am going to buy weapons and I am going to sell your guns. Is an FFL all you need to sell those guns or will... I am sure they have their own set of rules that they have that you need... special qualifications you would have to sell their product. But federally, with the ATF, all you would need is an FFL.

Ms. Furtado: Correct.

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Mr. Kim: Okay, great. Thank you.

Ms. Furtado: You are welcome.

Mrs. Stefl: Question, you mentioned the inspections. You probably said this and I probably didn't hear you, but these are announced inspections or unannounced?

Ms. Furtado: Typically they are unannounced.

Mrs. Stefl: So if a business is by appointment only and the applicant is not there, is then he in violation of the FFL license because you were not able to inspect the premises at that time?

Ms. Furtado: Well ma'am, on their application they have to provide us with business of operation...

Mrs. Stefl: Okay.

Ms. Furtado: ... hours of operation for their business. During that normal business hours that is our window of opportunity. We will show up during those hours that they put on their application.

Mrs. Stefl: Okay.

Ms. Furtado: It could be one hour a day, that's when we will show up unannounced. I have had situations where they are not home. They are simply on vacation, they are at a school rehearsal or something like that. We leave a business card on the door with a little sticky, we will try to call them, we will make some attempts to contact them to conduct an investigation that evening or if not we will just make an appointment to come back.

Mrs. Stefl: Okay, alright, thank you.

Ms. Furtado: Sure.

Dr. Larson: Any other questions? Thank you Ms. Furtado.

Ms. Furtado: You are welcome.

Dr. Larson: Shall we proceed?

Mrs. Musante: Case SE13-04/1300503, Douglas W. Bergner, Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards," for the A-1, Agricultural, to allow firearm sales as a rural home business on Assessor's Parcels 40-46A and 40-46B. The property is zoned Agricultural, located at 165 Aquia Creek Road. You have the application, the application affidavit, plat of property, diagram of area for business, Rural Home Business Standards, memo from former Deputy County Attorney, memo from Zoning Administrator, excerpt from FFL newsletter, and definition of retail sales from Merriam-Webster Dictionary. The applicant is requesting a Special Exception to conduct internet/mail order sales, gun show sales and government sales of firearms as a rural home business. Requested days and hours of operation are by prearranged appointment only for background check and transfer of ownership of the weapon, Monday through Friday from 7:00 PM to 9:00 PM, Saturday 10:00 AM to 3:00 PM with no Sunday hours. The applicant indicates he will provide four off street parking spaces but only anticipates one customer per

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day. He currently owns one gun safe and will be purchasing another as well as purchasing lockable storage cabinets for storage of ammunition and non-weapon items. The applicant has also stated he will be adding a home security system and will attend the occasional gun show and will only have merchandise on hand that he has orders for. Rural Home Business standards allow for twenty-five percent of the gross floor area to be utilized for the business. The applicant has indicated 100 square feet will be used for the business which meets this requirement as the gross floor area of the dwelling is 1,234 square feet. In 2012, the ATF gave a presentation to local zoning officials explaining their permit process. According to their regulations “an applicant must have a premise from which he conducts business or from which he intends to conduct business”. This business may be out of a private residence as long as it is open to the public and the actual sale transaction must be conducted in person in order to validate identification. Staff was unaware of these regulations and had issued home occupation permits for what was called “internet” gun sales, believing that the sale transaction did not occur at the home but over the internet and did not represent a retail sale. This was critical since the Zoning Ordinance does not allow retail sales as a home occupation, home business or rural home business. Neither the Gun Control Act nor the Zoning Ordinance provides a definition for retail sales. The Merriam-Webster Dictionary defines retail as “the business of selling things directly to customers for their own use.” Per this definition, it appears that the requirements of the ATF gun sale permit is in conflict with the regulations for a home occupation concerning retail sales and such businesses cannot be conducted within a single-family home. This type of business could be considered a retail by-right use in the Commercial Districts.

Dr. Larson: Thank you. Any questions for staff? Okay, hearing none, will the applicant come forward and present their case?

Mr. Bergner: I am Douglas William Bergner, II. I just want to thank the Board for convening tonight to hear my case. As was stated before I know foot traffic is an issue, I don't plan on having customers waiting for me per se, like a normal store would. My plan is only to have one person at a time to do the transactions. I know a traditional gun store would have customers coming and going constantly, and that is not what my plan is. This is my residence, my wife... I would not do that at my house with a bunch of people, just one on one type stuff to conduct the background check, the paperwork and verify everything. We will have set house at night time because I do have full time employment. Sir like you said about having another store front, it comes to a cost issue. I work for the government full time so I can't have a full time job on the side and it would get expensive to have two... to pay for a full time location working part-time through it. Like I say before I plan on having an alarm installed at my residence, if it is approved. An additional gun safe, I have a gun safe now and I keep everything locked up. Just my background, I don't know if everybody knows, I have spent 23 plus years in law enforcement, 13 and change in active duty time in the military and it has all been law enforce. I am currently federal law enforcement offices with U. S. Department of Labor.

Dr. Larson: Thank you. Any questions for the applicant?

Dr. Ackermann: Do you have previous experience selling firearms?

Mr. Bergner: No sir, I don't. You have to have a license to do that.

Dr. Ackermann: I understand,

Mr. Bergner: I have bought weapons myself, I have never actually sold. I have always bought and kept them sir.

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Dr. Ackermann: Alright. How is the background check done? I am ignorant of that.

Mr. Bergner: It's Virginia State Police. You do it online or by telephone. I plan on having a stand-alone computer that is just for this business for electronically doing the background checks.

Dr. Ackermann: And so it says a hundred square feet will be used for the business.

Mr. Bergner: Yes sir.

Dr. Ackermann: How is that used? Is that a 10 by 10 room?

Mr. Bergner: The room is actually larger than that. It is going to have a desk, I am not sure of the placement of the gun safe as well as a lockable cabinet for any non-weapons, ammunition that needs to be secured.

Dr. Ackermann: And that is sufficient space for what you plan on doing?

Mr. Bergner: Yes sir.

Dr. Ackermann: And what type of security system are you going to have installed?

Mr. Bergner: My wife's house right now has one that has cameras where you can monitor it online via an app, its ADT. We are going to have the same thing with interior and exterior cameras. And when it goes off it alerts you. Which both me and my wife both have access to, like the one at her house now.

Dr. Ackermann: Okay. And that is a different property than you are talking about here?

Mr. Bergner: Yes sir. I am going to get the same system.

Dr. Ackermann: I see, I see. Okay, thanks. Those are my questions.

Dr. Larson: Other questions for the applicant?

Mr. Grimes: We were speaking earlier, are you proposing to do any actual sales, obtaining weapons wholesale and then retail?

Mr. Bergner: Yes sir, but what it is... it depends if... let's say I purchase a weapon from Glock and I advertise it on gunbroker.com or some website. If somebody in Wisconsin purchases it, I transfer it to a FFL in that state. I don't... and they handle the background check. The only time this would come in play where I have foot traffic is for local people. Anybody out of state, you ship it to another FFL, they handle the transfer paperwork, you are just the middle man.

Mr. Grimes: And where I am kind of going down the road here is you're not planning on having a store front. There is not going to be a sign out front that says gun sales here.

Mr. Bergner: No sir.

Mr. Grimes: Everything is going to be conducted via gun broker web site or maybe your own web site at some point.

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Mr. Bergner: Correct.

Mr. Grimes: But the sale is going to be made on the internet site, correct?

Mr. Bergner: It depends on your definition of sale, sir. You have to do the transfer, the paperwork, you have to have it in person. Like gun broker...

Mr. Grimes: Right.

Mr. Bergner: ... to me when you click it buy, to me that is the sale.

Mr. Grimes: And that is why I am asking the question.

Mr. Bergner: And then the other part is transfer, the transfer of the weapon which is the paperwork.

Mr. Grimes: Right, you are facilitating and taking the ownership from the manufacturer or the wholesaler and giving that ownership to a private individual.

Mr. Bergner: Yes sir.

Mr. Grimes: You are simply transferring the ownership, you are not selling the gun in person.

Mr. Bergner: Right, if you are online that's... my definition would be when that person clicks buy now on eBay, you bought it and you have to pay for it and it gets shipped to you.

Mr. Grimes: Okay.

Dr. Larson: Okay, so let me see if I get this straight. So let's say you have a Glock in your house and... can a customer come by and look at the gun?

Mr. Bergner: Yes they could, but I don't plan on... I plan on being online. If the people... I guess it's like a car, if it's a brand new Glock, a brand new Glock is a brand new Glock. You know if somebody wants to go look at a Glock because they are not sure what kind of weapon they want, they can go to a store front gun store to look at different weapons. I am not going to have a bunch of inventory online... or on premises. One I can't afford it and that's bad business to have stock that you can't sell. So it going to basically be if somebody says hey I want a certain weapon or if I find a good deal on a weapon then I would purchase it and resell it.

Dr. Larson: Okay, so you have a website. They go to your website and see lots of pictures of weapons and they decide I want that one.

Mr. Bergner: Yes.

Dr. Larson: What is the next step for them then at that point?

Mr. Bergner: It depends where they live, sir.

Dr. Larson: Okay.

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Mr. Bergner: If they live local... they would have to pay for it. The weapon gets shipped to me and then they would have to come in to handle the transfer paperwork and the background check to make sure everything is good and they would depart with the weapon. If it was out of state, I would get paid for it and then it would be transferred to a FFL in their perspective state.

Dr. Larson: Okay, so the first thing you said was the first thing they do is they pay for the weapon. Who do they pay?

Mr. Bergner: It would be me.

Dr. Larson: Okay, so you would take payment and then go to the manufacturer and say hey I need a wholesale gun.

Mr. Bergner: Right.

Dr. Larson: And then they would ship it to you.

Mr. Bergner: Right, that is one way to do it, yes sir. Correct. I purchased a weapon in Pennsylvania that a dealer had and I paid for it and then he shipped it an FFL here.

Dr. Larson: So you are doing the purchase online.

Mr. Bergner: Yes.

Dr. Larson: You buy the weapon somehow.

Mr. Bergner: That is one way to do it, yes sir.

Dr. Larson: They ship it to you and now you have the weapon that this other guy purchased from you online.

Mr. Bergner: Correct.

Dr. Larson: Then what happens?

Mr. Bergner: Then they have to come in to do the background check and to do the transfer paperwork to transfer it to them.

Dr. Larson: Is there any provision for testing the weapon?

Mr. Bergner: I am not going to do it. Liability.

Dr. Larson: Thank you. Those are all of my questions.

Mr. Kim: Okay, so... but I want to be clear. So let's say I have a Glock and I want to sell it and I put it on gunbroker.com. And let's say someone from Florida wanted to buy it. I can... I that does not have a FFL could put it on gunbroker but then I would have to let's say, find someone around the area that I could get it to.

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Mr. Bergner: A FFL.

Mr. Kim: So let's say I looked up online, I said oh look at this Mr. Bergner has a FFL, so I would come to you and drop the gun off and you would ship it.

Mr. Bergner: If I am correct, isn't they would give it to me and I would ship it...

Ms. Furtado: Yes.

Mr. Bergner: ... with my copy to the other.

Mr. Kim: To the other, so I guess the point that... so anyone could do what you are doing, but you're just cutting out going to a FFL person. So like you can still do the purchase guns at a gun show...

Mr. Bergner: Correct.

Mr. Kim: ... for a good price and then... so you don't need a license to you know... if I wanted to, let's say I went to a gun show and I saw an \$800 gun for like 200 bucks. I can get the gun and sell it or is that illegal? Like, but I don't have an FFL.

Mr. Bergner: Right, you don't pay the fees... correct.

Mr. Kim: Oh, what you are trying to accomplish...

Mr. Bergner: Anybody can buy and sell weapons.

Mr. Kim: Yes, and what you are trying to accomplish is just you are going to be the one that ships it because you want the license.

Mr. Bergner: To be licensed, correct.

Mr. Kim: Okay.

Mr. Apicella: Mr. Kim what I heard was that is one of the ways that he might conduct his business, but what I also heard is he is going to sell guns as well out of his home. Right? At the end of the day you may serve as an intermediary by transferring guns, but you also might purchase guns that you get some enumeration for and provide to some individual, potentially locally. I am not really concerned about what happens across state lines.

Mr. Bergner: Right.

Mr. Apicella: But within the confines of Stafford County, somebody will be able to knock on your door and say Mr. Bergner I understand you have a Glock or you might have had some communication one way or another. You have made an appointment that person shows up at your home, sees the Glock and potentially buys it from you. They go through the transfer process, they fill out the paperwork, they do the background check and money is changing hands. So you are taking some money from them for the gun.

Mr. Bergner: Right.

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Mr. Apicella: And you are giving them the gun in return.

Mr. Bergner: Right. That is possible.

Mr. Apicella: That's possible.

Mr. Bergner: Sure.

Mr. Apicella: In addition to being an intermediary transferor of guns from another person.

Mr. Kim: But anybody can do that, any citizen. Like I can do that without... like I can say hey, look I am going to put this gun... Okay let's say I want to sell you a gun and we are both Virginia residents. I mean you can still come to my house and I can show you my gun right? And say, hey look this is what I am selling, this Glock and I want this much for it.

Mr. Bergner: Correct.

Mr. Kim: So I am not in... am I doing anything against the law by doing that? No, right?

Mr. Bergner: No.

Mr. Apicella: You are talking about FFL and I am talking about the County's requirements...

Mr. Kim: I know, I know.

Mr. Apicella: ... about what is or is not a retail business.

Mr. Kim: What I am trying to do, I don't want to put that regulation if everyone in the county can already do that.

Dr. Larson: Can I ask for clarification from our...

Mr. Kim: Unless I am misunderstanding. Yes

Dr. Larson: ... ATF representative. Ms. Furtado it is... can a private individual sell a personal gun just like a car or a piano or something like that.

Ms. Furtado: Private sales are allowed. It is not against the law, anybody can sell their personal collection. I can sell, you know Mr. Bergner, my gun, my personal collection. But if I am engaged in the business, if I dedicating time, making money, engaged in the business, you know, that requires a license, Federal Firearms License by ATF.

Dr. Larson: Right, so if I went to a gun show and bought a half a dozen guns and then came back and started selling them to my neighbors, that probably crosses the line.

Ms. Furtado: That is illegal and it could be a felony. That could be time in federal prison if you are engaged in the business. Private sales, we try to facilitate private sales through a FFL, we try to encourage FFLs to do private sales through them because that would prevent prohibited people from obtaining guns. Because private sales, you are not doing background checks, you are not running their

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background whether or not they are prohibited, adjudicated mentally defective, restraining orders, there are numerous... there are about nine prohibitive factors. So going through a gun dealer will help prevent illegal transfers, possibly.

Mrs. Stefl: Alright, I have a scenario that for me... what... I own a hand gun and times are tight and I want to go to Mr. Bergner and say, listen would you be interested in purchasing my gun from me. So now I am engaging in a retail type situation with him. It's my initiative to now go to him and he will either want to purchase my weapon and sell it possibly at a profit or he could act as an intermediary and say I will put it on, what was the website you...

Mr. Bergner: Gunbroker.

Mrs. Stefl: ... yes gunbroker, for me. So now I have engaged in a retail scenario with him. Is that correct?

Ms. Furtado: It would require a federal license if you were doing it repeatedly. If you were buying and selling guns, going to Mr. Bergner, constantly hey I am selling you my gun. Let's make some money, you are engaged in the business. But if you are just going to go as a one time, sell him a gun from your personal collection, it happens. I personally do it, you know, hey I am selling a gun dealer my gun. I would rather go through a gun dealer to relinquish my liability of that firearm and do it properly through the paperwork. But if it is a onetime deal it's not required a federal firearms license.

Mrs. Stefl: Okay. Alright, but I guess in the County's eyes it's now considered a retail transaction because he is purchasing my gun and possibly selling it now at some type of a profit.

Mrs. Musante: That is correct.

Mr. Kim: But for craigslist, like that is essentially what happens all the time is, you know, and people do it for a business where they'll go to flea markets or whatever, get something cheap and try to make money on it. And people do that all the time, because I do browse Craigslist and I am like, good God, this person is always on it, so obviously they are trying to make a profit.

Mrs. Stefl: Right, the County... they don't always go and get a home business or occupancy.

Mr. Kim: I can probably tell you they don't at all.

Mrs. Stefl: Right.

Dr. Larson: Well they do sometimes.

Mr. Kim: Oh do they sometimes?

Dr. Larson: Yes.

Mr. Kim: Do they?

Mrs. Musante: They do.

Mr. Kim: Oh really?

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Mrs. Musante: Yes.

Mr. Kim: Oh, okay.

Mrs. Musante: As you know we work on a complaint basis only, and if we do not receive a complaint regarding that, we don't go visit them.

Mr. Kim: But we have issued people that want to do Craigslist, like...

Mrs. Musante: They call it internet sales, is what they do. They don't necessarily come in and tell me that it's Craigslist or eBay, but I know what they are doing.

Mr. Kim: Yes, but most likely Craigslist... eBay is more ecommerce, you can ship it but Craigslist is more of a I will come to your house and take a look and they we will see if we can make a deal. But then that would be considered retail right?

Mrs. Musante: It would be, that is correct.

Mr. Kim: Okay.

Mr. Bergner: Sir, just to revisit what you were talking about, I don't plan on having a large inventory. I am just letting you know, I don't... I understand what you were saying...

Mr. Apicella: I appreciate where you are coming from. Again, I feel like I am in a box here. And I have tried to... I asked the AFT agent if there was a way around it.

Mr. Bergner: Right.

Mr. Apicella: And I really did not get a whole lot of joy in the response I was hoping to.

Mr. Bergner: Right...

Mr. Apicella: Whether it is the sale of one gun or fifty guns, it is still, from what I see, retail sales. And that unfortunately, in looking at the policy of the County right now, prohibits retail sales even if it is just one.

Mr. Bergner: Right.

Mr. Apicella: Three days a week you are selling one gun, it is still retail sales.

Mr. Bergner: Right, like my preference would be to ship them out of state, just because it is easier.

Mr. Apicella: Again it is the conflict of what Stafford County's rules and regulations are and what the federal requirements are. And the two aren't mixing right now.

Mr. Bergner: I understand sir.

Mr. Grimes: But I would still like to come back to the definition of retail sales and I think that given the proper approach to development conditions we can look at this potentially more favorably. This

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is... retail sales is defined as the business of selling things directly to customers. That would be a face to face sale.

Mr. Apicella: I don't agree with that definition. Retail sale, you could have an online presence to sell goods and service, not goods, across state lines or within the county. It is still retail sales. It doesn't say that it's got to be direct face to face, the definition. Unfortunately we don't have a definition in the code, but a layperson might say in their mind that it's the selling of good of value from one individual to another individual. I appreciate where you are trying to go and I appreciate our efforts to try and kind of get around the limitations that are in front of us. I am still not there that we can.

Mr. Grimes: Right, well where I was heading is the question that Mrs. Stefl asked earlier, is Avon sales happen online. We give home occupancy businesses to Avon sales. They happen online, the sale takes place on line, the product is then delivered to the customer. That is the difference between these two. Somebody comes to Mr. Bergner's house and picks it up verses him taking it there.

Mrs. Stefl: Not always.

Mr. Grimes: Now, the reality is with the ATF and we can get a correction here, but they have to come to your residence to get the background check completed.

Mr. Apicella: And the paperwork, correct.

Mr. Grimes: The gun does not have to be handed over at that point. They come to your house, they get the background check completed, they go home. You could go to their house and deliver the gun. That is the same thing as Avon except for it's a firearm, literally the same thing as Avon.

Mr. Apicella: And it is more regulated.

Mr. Grimes: Yes, you don't need a license to sell cosmetics.

Mrs. Stefl: (Inaudible, microphone not on) consultant to distribute it out to whoever her or his hostess was or the host will come to the home. There is a give and take. A lot of these home business, it will come to the consultants home and he or she will have it in their possession sometimes (inaudible).

Mr. Grimes: And that's exactly what Mr. Bergner is going to be doing. If a customer goes on to the Glock website, we like using that because.... They go to the Glock website, they purchase a Glock, they picked a FFL to have that gun shipped to. They have paid Glock for that gun, not Mr. Bergner. They paid Glock for that gun. Glock ships that gun to Mr. Bergner's address. The person that purchased online then goes to his house, does the background check. If they are approved you are then allowed to give them that gun, I think they pay you a small fee...

Mr. Bergner: A transfer fee.

Mr. Grimes: ... for that, but they don't have to take possession right there. Most people probably want to.

Mr. Bergner: Sure, absolutely.

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Mr. Grimes: But the reality is that once that background check is approved, you can then deliver the weapon to their house. So they don't have to take ownership within your residence.

Mr. Kim: You know, maybe we can do, and this I am not sure of, I just kind of brainstorming here, when you purchase something, I know sometimes when you purchase stuff online there's taxes added and I think where we can easily define where... if you are doing the sales of it or the transaction of it is if there are taxes involved. What state or what locality actually takes in those taxes, is it just a federal tax and then obviously it does not make any difference, but is there a sales tax or a county tax to that sales? And I know in Virginia there... like, we are not going to tax you because you did not buy anything. You are actually just doing the transfer, right? So, like, I know some states and I don't know the states and if I am wrong, I am wrong. I am just kind of thinking this could be what helps us define sales, are there taxes involved. I mean, are there some place, sometimes when you buy something on, not necessarily guns but on a specific item is there sales tax.

Mr. Grimes: It has been my experience, making several purchases online, that it depends on the person you are buying from. For example, somebody like Cheaper than Dirt, who does sales of weapons, charges you the tax based on the state you live in and then they distribute it out to the states. There are other sites, for example, I think Bud's that does not charge a state tax. So it really depends on who you're buying it from, whether or not they charge a state sales tax.

Mr. Kim: But would it be... I mean, who would get charged that tax? Like would it be the...

Mr. Grimes: The person purchasing the gun. For example, if I go online and buy it...

Mr. Kim: Yes.

Mr. Grimes: ... I pay that sales tax.

Mr. Kim: Yes.

Mr. Grimes: The only thing I would pay Mr. Bergner is a fee to transfer the gun.

Mr. Kim: So there is no sales tax.

Mr. Grimes: That is correct.

Mr. Kim: So, I mean I think by definition, I mean I still can't see... I mean maybe you want...

Dr. Ackermann: But the problem I have is, we are talking about possibilities and it seems that one of the possibilities that we have to allow is for me to go in there and buy a gun from Mr. Bergner. I live in Stafford County, his business is in Stafford County and... can we, if we want to allow this and not have it as retail sales, can we put a restriction in which says that if I go to his place and I buy a gun from him that he is selling that I cannot take possession of it at that point, he has to deliver it to me. Because if I can take possession of it at that point, then that is conducting... in my mind that is conducting a retail sale.

Mr. Grimes: And that's...

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Dr. Ackermann: And that is a gun that he has for sale, it's not from somebody in Florida, it's not anywhere else. You know, if that's... and it seems to me that that's what we are saying would be allowable if we go straight ahead unless we put some sort of restriction on it and if we put a restriction on it, does that conflict with the FFL license?

Mr. Apicella: And that is what I... that's the question that I asked. Maybe I did not do it artfully, but I thought I asked that question, is there a way that the person can in theory, purchase the gun but not have it considered a retail sale because the owner of the gun at that point in time, Mr. Bergner, has another means of getting it to them, not at their house. Either by mailing it to them or meeting them somewhere in the county or delivering it to their home and the answer was no, we have to allow retail sales from the individual's home or that is what the license requirement is, that they have to be able to provide retail sales from their home.

Dr. Ackermann: But they have to provide the background check from their home, right? And whatever transfer... does the FFL require them to hand it over to the person in their home?

Ms. Furtado: No, background checks (inaudible).

Dr. Ackermann: Okay.

Ms. Furtado: (Inaudible) that person has to come in to show identification and valid (inaudible)... identification to the gun dealer.

Dr. Larson: Does it matter to ATF where the point of sale is, where the money is exchanged?

Ms. Furtado: No at all, not at all.

Dr. Larson: See, I think we might be trying to solve too much here. You know, we're examining a special exception. Okay, what happens between Mr. Bergner and the ATF is entirely a different matter. That's not up to us, it's right there.

Mrs. Stelf: Mr. Chairman, so we could put a restriction that no possession of the gun or the actual physical transfer of the gun could not (inaudible) the home so you would either have to meet at a location or have it mailed to the person. That would not be in violation with the ATF?

Ms. Furtado: No, no, as long as the paperwork is done on site. Now would the county allow customers on the residential property to do the background check?

Dr. Larson: We haven't... we still have to sort out something called a retail sale.

Ms. Furtado: Right, right.

Dr. Larson: We still don't... we have a difference of opinion right, already... here. But that's the special exception part and that's our job, that is what we are supposed to do.

Mrs. Stelf: (Inaudible) to understand what we are allowed to do and what we can't (inaudible).

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Dr. Larson: Yes, and that's a valid question too. But I just wanted... I don't want us to try to solve both problems at that same... I don't think it is on us to solve that problem. I think it is worthwhile to understand, but I don't think we have to solve that problem ourselves.

Dr. Ackermann: But it does not do us any good to approve restrictions that would then prohibit him...

Mrs. Stefl: Right.

Dr. Ackermann: ... from getting an ATF, I mean an FFL. We would be doing him a disservice if we did that. Right, if we improve restrictions that said... but those restrictions... you can't...

Dr. Larson: (Inaudible) that don't allow us to do certain things.

Dr. Ackermann: That's right.

Dr. Larson: Okay, so if we try to work within the constraints that we have and give this man a special exception for his business, then it is up to him to talk with the ATF and see if those constraints are acceptable for a license.

Dr. Ackermann: Okay.

Dr. Larson: I agree, it's good to understand what the constraints are, but I don't think we need to solve that tonight.

Mr. Poss: On your internet sales, when does money transfer? When they hit the buy button?

Mr. Bergner: Yes, it would be electronic. Yes sir.

Mr. Poss: So the retail sale is actually consummated on the internet?

Mr. Bergner: Online sales, yes sir.

Mr. Poss: Okay.

Mr. Bergner: That is my definition, yes.

Mr. Poss: Thank you.

Mr. Bergner: When money transfers hands it's the sale.

Dr. Ackermann: That is like me wiring money to you essentially.

Mr. Bergner: Yes sir.

Dr. Ackermann: I mean it's not...

Mr. Bergner: Right, it is not handed off hand to hand.

Dr. Ackermann: It's a transaction between our banks, is what it is. Yes.

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Mr. Poss: So the retail sale actually occurs online.

Mr. Bergner: For online sales, yes sir. If the only time it would if it was face to face.

Mr. Poss: And I do understand that...

Mr. Bergner: If it was local...

Mr. Poss: Right.

Mr. Bergner: Yes sir.

Mr. Grimes: Have you estimated the number of transfers that you are going to conduct every month?

Mr. Bergner: No sir. It's just depends on the sales volume for the county and the number of FFLs, which I am not... I know of a couple. And it comes down to cost to whoever is lowest wins I guess, for the transfer fee, to be honest with you.

Mr. Grimes: Right.

Mr. Bergner: And convenience and hours. So you can meet somebody on off hours because they work in the day. You will get the business verses somebody who is 9 to 5 storefront.

Mr. Apicella: But just to be clear, I am sorry to belabor the point, transfers are different than sales and the current code does not prohibit transfers. So they are 2 different kinds of transactions.

Dr. Larson: Are there any other questions for the applicant?

Mr. Bergner: Sir if I can, this is a letter from my next door neighbor just saying that he understands about me applying for an exemption and him and his wife have no problems if I give it to you guys to look at.

Dr. Larson: Bring it up please.

Mr. Kim: I do have a couple of...

Dr. Larson: I think Melody was on her way to... She might make a copy of it for you.

Mr. Bergner: Bob Marshall, the one on the left, if you are facing my house from the road.

Mrs. Stefl: (Inaudible, microphone not on) looking at your house on the left.

Mr. Bergner: Correct.

Mr. Apicella: So if the Board of Zoning Appeals finds a way to make this workable within the confines of the County's Ordinances, under the development conditions would you be amenable to a couple of additions. The first would be under... I don't know if you have a copy of the conditions that are on page...

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Mr. Bergner: Actually I left it at home by accident.

Mr. Grimes: Before we go down that road Mr. Apicella, I do have one more question for the applicant.

Mr. Apicella: Okay.

Mr. Grimes: Mr. Bergner, it has been my experience with other dealers that whether they are licensed to do business from their home or not, I am not sure. When I went there they often offered ammo, accessories, for sale. Are you planning on doing any of that?

Mr. Bergner: I am not going to have inventory. I mean... like I said if I found a good deal on something, naturally I am going to buy it to make money. But I am not going to have... hey guess what, here's a gun and here is a sling... I am not doing that. If they want to purchase it ahead of time, that is different. But I am not going to have, hey here is all the add-ons that I have in stock to sell you. I don't plan on doing that.

Mr. Grimes: Okay, thank you.

Mr. Bergner: You are welcome sir.

Dr. Larson: Oh, go ahead, I think you are...

Mr. Apicella: That goes to some of my potential conditions. So under number 4, under proposed development conditions it talks about the applicant must have a safe or container for his weapons. I would just like to add the words security container. A container could just be a piece of plastic. So would you be amenable to adding the word security?

Mr. Bergner: Oh no, that is fine. I... That is fine.

Mr. Apicella: And you mentioned that you have ADT. You know times have changed, today someone can actually do their own self-monitoring, their own self security by putting up a camera and just having a system tell you...

Mr. Bergner: Right, not... not...

Mr. Apicella: So I would like to add the word professional monitoring...

Mr. Bergner: That is fine sir.

Mr. Apicella: ... under...

Mr. Bergner: Just to let you know it would be anyways. I have a daughter and two dogs home alone, so I don't know if anybody has... I am out in the county, so...

Mr. Apicella: So you, again you would be amenable to adding that you would maintain a professionally monitored security system.

Mr. Bergner: Yes I would.

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Mr. Apicella: Signage, my concern would be, hey it's, you know, Joe's gun shop here. That is probably not something you would want to necessarily advertise, so a restriction on any signage related to the sale of firearms. One of the previous... one of the documents that Melody provided us was a previous approval under the home occupation category speak to disallowing the discharge of firearms. Now I don't know if you do hunting on your property or not, and I am not sure how to balance what you might do on your property on a personal basis verses the discharge of firearms for the sale of guns.

Mr. Bergner: I am not going to do it... myself, yes. I have enough property I shoot them on my property for myself. I will not do it with customers due to liability.

Mr. Apicella: Okay. And the last issue is with regard to what Mr. Grimes asked about ammunition or powder. I don't know what kind of measures would need to be put into a home to insure that, you know, those things could be combustible if there was a fire in the house, some kind of means to keep that safe and secure.

Mr. Bergner: Well all the ammo I have is in ammo cans, and they are separate from the weapons. The weapons are locked up in the gun safe. I mean if you have any house fire, if you have a gas can in the garage it's...

Mr. Apicella: Right, but your plan is not to sell ammunition or powder and I am not sure of a way to define this but in bulk. You are not going to sell bulk purchases or ammunition or powder...

Mr. Bergner: I am not... if somebody orders it, yes. But I am not going to have 10,000 rounds in my garage for sale, no.

Mr. Apicella: But if somebody orders it, you are going to do it as a transfer, you are going to accept it and then store it at your house and then provide it to a customer?

Mr. Bergner: Yes, as soon as I could. But I would...

Mr. Apicella: But what would be the maximum amount that you would potentially have in your house? I mean if somebody wanted to... crates full of ammo...

Mr. Bergner: It comes down to economics, sir. So if somebody wanted 10,000 rounds I don't have the money to front that and I would not do that.

Mr. Apicella: Well I guess I am asking for some give and take on a restriction on the maximum amount that you might be willing to put in your house.

Mr. Bergner: I understand, 5,000 rounds. I mean for... I mean if you are talking about just business wise.

Mr. Apicella: Right.

Mr. Bergner: I mean 5,000 rounds. I mean I don't foresee anybody buying more than... that is a large amount of rounds.

Mr. Apicella: Okay.

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Mr. Bergner: I mean I have... I buy rounds myself and I have never bought more than a thousand at a time.

Mr. Apicella: Okay.

Mr. Bergner: Because that would be... I mean it's bulky and expensive.

Mr. Apicella: Alright, thanks.

Mrs. Stefl: Mr. Chairman, one question I am trying to get and I am glad Steven eluded to this, but in professional monitoring he mentioned that (inaudible, microphone not on).

Mr. Bergner: Correct.

Mrs. Stefl: Would you be amenable and I don't know if the Board is willing to entertain this, the video recording type of monitoring...

Mr. Bergner: That is what it is.

Mrs. Stefl: ... since that you would not be on the premises so if there was an issue, if word got out that you've got guns or whatever, you know (inaudible, microphone not on) hears whatever in the county, that the Sheriff's Office could have a tape...

Mr. Bergner: Sure.

Mrs. Stefl: ... to see who has been on your property (inaudible).

Mr. Bergner: The system that we have... that she has now that we are going to get does record.

Mrs. Stefl: But I am saying you are amenable to having that added to (inaudible) recorded.

Mr. Bergner: It goes by motion, correct. It's for... what it is the camera's when motion, they... I don't know how long...

Mrs. Bergner: It kind of goes like this, once you turn the alarm on, anytime one of the sensors... the house that I currently own with my ex-husband has motion sensors. And once the alarm is on and the motion sensor is tripped the alarm automatically goes off after 10 seconds. At that point they call me, they call my neighbor and they call Spotsylvania County Sheriff's Department who then calls me. The camera starts recording on a DVR that is connected to the camera monitoring system which is in one of the upstairs bedrooms. It catches everything, there are six cameras in my house currently, there is one over the front porch or one on the driveway that catches anyone coming or going through the front door. There is one on the back corner of the house that catches anyone going in and out of the back door. There is one in the basement and there is one in the family room. The windows are also pressure sensed so if you press on them they automatically set off the alarm which connects the DVR, which then records everything.

Mrs. Stefl: Great, but this is only if it is tripped.

Mrs. Bergner: Yes and if...

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Mrs. Stefl: That is not something that even while you are conducting business, if it should somehow go haywire, there is not recording.

Mr. Bergner: Well it's not... it doesn't record constantly, it's only when it's alarmed.

Mrs. Stefl: Only when it's alarmed.

Mr. Bergner: Correct.

Mrs. Stefl: So it's not a case where it's 27/7, like in a regular business...

Mr. Bergner: Right.

Mrs. Stefl: ... where the...

Mr. Bergner: No.

Mrs. Stefl: Okay.

Mrs. Bergner: I am not even sure if that is an option with ADT. That is not something that they discussed with me when we put the system in, but when we are in the home you can also set the alarm to stay so that the motion sensors don't pick up but if a door is opened and the alarm is tripped, it starts to record.

Mrs. Stefl: Right, because that is an option of a residence, but the ADT business side of the house does have a 24/7 type monitoring. So that is where I am also (inaudible) yes it is your home but it is also going to be your business.

Mr. Bergner: Sure. Yes, it kind of a privacy thing.

Mrs. Stefl: I am trying to help you here.

Mr. Bergner: No, I understand. I mean I am not worried about somebody coming in and robbing me while I am there.

Mrs. Stefl: Huh?

Mr. Bergner: I said I am not too concerned about somebody trying to... I am more concerned about somebody trying to break in when I am not there then somebody face to face during broad daylight.

Mrs. Stefl: Right, but it is a case that if something maybe goes awry during a transfer, you could say...

Mr. Bergner: There is evidence.

Mrs. Stefl: ... Charlie, hey I got it on tape. His car, his license plate...

Mr. Bergner: Sure. I understand, absolutely.

Mrs. Stefl: ... whatever.

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Mr. Bergner: Okay.

Mrs. Stefl: That is my concern.

Dr. Larson: Mr. Bergner, I am willing to consider arguments about the possibility that sales over the internet don't constitute a retail sale on your premises. But what I don't think I can get around is retail sales on your premises.

Mr. Bergner: Yes.

Dr. Larson: And that means to me the point of sale is your premises. Somebody comes in and says I want to buy this and you say okay, here it is. You get the money and off they go. That is a retail sale in my book.

Mr. Bergner: Okay.

Dr. Larson: I assume it also satisfies Webster's definition, but that is a sale.

Mr. Bergner: I understand.

Dr. Larson: So that is something that I would have a problem with based on what our laws currently say. Again, I am willing to talk about the internet portion, so the question is could you live with a special exception that did not allow transactions, money being exchanged on your premises?

Mr. Bergner: Well sir that would not be in compliance with ATF. I mean, that is why I am requesting the exception to what your policy is now or the rule or the statute for the County. I am requesting an exception for the reason because of having retail sales. And I understand what you are saying about the retail sales sir, totally. But like I said it is not going to be high traffic. I would not want that in my home, I would not want high traffic, because it is a home. But I understand where you are coming from about retail sale.

Dr. Larson: Okay.

Mr. Bergner: If you put stipulations like that then I am not in compliance with ATF and then I will just get denied.

Dr. Larson: Just to confirm, I believe I heard you say that Ms. Furtado. I just want you to confirm that. Is that the case?

Ms. Furtado: Sir if the applicant approaches... applies for an FFL with ATF and the restriction on their permit does not allow foot traffic, does not allow any part of the dwelling to customers on site, we can't approve the license.

Dr. Larson: But that is not what I said. He would be allowed to have customers on site.

Ms. Furtado: Okay.

Dr. Larson: He would be allowed foot traffic. That is what the special exception allows him to do.

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Ms. Furtado: Okay.

Dr. Larson: What he would not be allowed to do is actually accept money on site.

Ms. Furtado: That has nothing to do with us.

Dr. Larson: Okay, now I am glad to clarify that...

Ms. Furtado: Money, funds exchange has nothing to do with us.

Mr. Bergner: I misunderstood... I understand...

Dr. Larson: I misunderstood what she said as well, so okay. Now my understanding is that if he is not allowed to take money on site or take a credit card on site, he does all that on the internet that is still okay...

Ms. Furtado: Correct.

Dr. Larson: ... for the licensing requirement.

Ms. Furtado: Correct.

Dr. Larson: Thank you.

Ms. Furtado: You are welcome.

Dr. Larson: Now will you accept the special exception?

Mr. Bergner: I did not understand, now after her talking I understand what you are saying sir. Yes sir.

Dr. Larson: Any questions for the applicant? Thank you Mr. Bergner.

Mr. Bergner: Thank you sir.

Dr. Larson: Okay, would any member of the public like to come forward and speak in support of the applicant?

Lance Gillis: Thank you again for having this meeting tonight. Mr. Bergner's aspirations are probably a lot higher than mine are in as much as I had come to the zoning office and... after Mr. Bergner had visited and I asked if I could have a home business as well. But my model didn't include retail sales. I had intended to conduct transfers and not the sale of inventory. The nice folks at the administration office said to come to the meeting this evening and clarify this. So my question again to the ATF agent is probably more so, is it okay if Stafford allows the transfer of sale, the transfer of these firearms within your residence and we are not talking about retail sales?

Dr. Larson: Okay, actually you are not supposed to address her, you are just supposed to address us.

Mr. Gillis: Okay, I am sorry.

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Dr. Larson: I think that the answer to your questions may be more obvious after we go through our deliberations tonight and find out what happens here.

Mr. Gillis: Okay, thank you. Again I think the people that go through this process, Mr. Bergner, they are jumping through some hoops to have safes installed and things like that in trying to meet the ATF requirements. So I think we are all trying to do something the right way verse the wrong way. I appreciate it.

Dr. Larson: Thank you Mr. Gillis. Anybody else want to speak in favor of the applicant? Would anybody like to speak in opposition to the applicant? Does the applicant wish to respond or add anything to what he said?

Mr. Bergner: Yes sir, just... I am actually going beyond what ATFs requirements are for the safety and security of the weapons and my residence. So I am not just meeting it, I am going above with the alarm. It says a way to secure a weapon, it does not specifically say you have to have a safe. Thank you sir.

Dr. Larson: Thank you. Alright I will now close the public hearing for this application and bring the matter back to the Board for motions.

Mr. Ackermann: Mr. Chairman, I would like to make the motion that we approve this special exception SE13-04/1300503 with the development conditions that were stated previously, that I could read if we want to.

Dr. Larson: I think you are going to have to read them because I have a few here that I want to make sure get in there as well.

Dr. Ackermann: Okay so the ones that I have noted are: Days and hours of operation are Monday through Friday 7:00 PM to 9:00 PM and Saturday 10:00 AM to 3:00 PM, no Sunday hours, will provide 4 off street parking spaces for clients, customers by appointment only, the applicant must have a safe or security container for his weapons, a professionally monitored security system, the business cannot engage in the retail sales of firearms, meaning the transfer of firearms for money... where the point of... where the transfer is done on the premises, when money is exchanged on the premises. Firearms can only be purchased by special order, must comply with all State, Federal and local codes, no signage. No discharge of firearms by customers. Ammunition will be stored in ammunition cans, no more than 5,000 rounds and this approval may be revoked for noncompliance of the conditions imposed by the Board of Zoning Appeals. I think we've discussed this, of course, a lot this evening with lots of questions trying to get our... a way to allow the special exception and still meet the zoning code about retail sales, whereas I take retail sales to be a transfer of property of some type for money at the premises. That is why I move that we approve the special exception. Thank you.

Dr. Larson: Is there a second?

Mr. Kim: I second that.

Dr. Larson: Would you mind reading your condition on the sale on premises again please?

Dr. Ackermann: Well I had, business cannot engage in retail sales of firearms, meaning delivery of firearms for money on the premises.

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Dr. Larson: Okay. I would like to offer a substitute.

Dr. Ackermann: I think that would be great.

Dr. Larson: Well, you are restricting it to firearms and the code actually says no retail sales, okay so I would suggest we strike the word firearms and put anything, any item, any merchandise, anything. Merchandise is a good word because you can provide services. So that would be my substitute motion that I would offer.

Mr. Apicella: Mr. Chairman, there was a long list and I just wanted to clarify. Was there a condition on signage?

Dr. Ackermann: Yes.

Mr. Apicella: Okay. And what about the discharge of firearms also?

Dr. Ackermann: I said no discharge of firearms by customers.

Mr. Apicella: Okay, thanks.

Dr. Ackermann: Or potential customers.

Dr. Larson: Okay, any other discussion?

Mr. Apicella: I am going to support this motion. I appreciate my colleagues...

Dr. Larson: I actually offered a substitute motion...

Mr. Apicella: Oh.

Dr. Larson: ... for a one word change.

Mr. Apicella: Okay, so we are going to vote on the substitute motion first.

Dr. Larson: We have to have a second and then vote which motion we are actually talking about.

Mr. Grimes: I would second the substitute.

Mr. Kim: For merchandise?

Mr. Grimes: For merchandising for firearms.

Dr. Larson: Okay, we have a main motion and a substitute. We need to... okay but... let's vote on the substitute. If shall consider the substitute, should we consider the substitute rather than the main motion? All those in favor say aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

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Mr. Poss: Aye.

Mr. Apicella: Aye.

Dr. Ackermann: Aye.

Mrs. Stefl: Aye.

Dr. Larson: Aye. Any opposed? Okay, now we have the substitute motion, please continue the discussion.

Mr. Apicella: Again Mr. Chairman, I appreciate my colleagues having this discussion. I think it was not easy to get there and the code clearly provides some limiting factors and confines that we had to work through. And I think we found a good compromise to get there that works to the advantage of both the applicant and maintaining the sanctity of Stafford County Zoning Ordinance.

Dr. Larson: Any other comments? Well I... obviously I agree, because I offered the substitute motion. But just to clarify I'm agreeing with the historical interpretation by the County, that internet sales don't constitute retail sales at a particular residence, because they are off in the internet and they are not at the residence. So I concur with the historic interpretation. Any other discussion? Okay there is a motion and second on the floor. Those in favor say aye. Oh wait.

Mr. Kim: Before we do that can I... just so, and this is more for me. Can we ask the ATF agent one more... I mean does that comply with ATF rules or do we just... are we allowed to ask that or...

Dr. Larson: Sure.

Mr. Kim: What we discussed in our special... Sorry, what we discussed in our special exception, does that still comply with you to have Mr. Bergner get his FFL?

Ms. Furtado: Yes sir. As long as the customer can come on site we are good.

Mr. Kim: Oh great. Okay, thank you.

Dr. Larson: Those in favor say aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Poss: Aye.

Mr. Apicella: Aye.

Dr. Ackermann: Aye.

Mrs. Stefl: Aye.

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Dr. Larson: Aye. Any opposed? Okay motion carries. Okay the next item appears to be the annual report.

UNFINISHED BUSINESS

None

OTHER BUSINESS

Annual Report

Dr. Larson: Any comments on the annual report? I just have one on page 2 Melody, under description of cases and outcomes. The one, two, three, four, the fifth bullet, after the word determination I had slipped in there pertaining to what.

Mrs. Musante: I will fix it.

Dr. Larson: Okay, thank you. Any other comments? Questions? Is there a motion to approve the annual report with the correction?

Mr. Apicella: So moved.

Dr. Larson: Second?

Dr. Ackermann: Second.

Dr. Larson: Discussion? Those in favor say aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Poss: Aye.

Mr. Apicella: Aye.

Dr. Ackermann: Aye.

Mrs. Stefl: Aye.

Dr. Larson: Aye. Any opposed? Motion carries.

Discussion regarding meeting with County Attorney

Dr. Larson: Okay I wanted to talk about a meeting I had with the County Attorney and Melody came with me. I set up this meeting earlier this month because I wasn't there to argue for anything. What I went there for was to try understand if this Board had an Attorney to give us information relevant to cases we are considering and if that were to cut down on cases that were challenged in the court system. If that meant anything monetarily to the County, did that save anybody any money if we

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became more efficient and had fewer cases challenged. And we had a good discussion for over an hour. Basically consisting of me probing one way and him making comments, and then me probing another way and him making comments. Okay, one thing we should all know is that the County Attorney doesn't really bother with representing us because we're not liable in that way. When we make a decision, somebody challenges it in court, they're challenging the decision, not the individuals on the BZA. So that said, when somebody challenges a BZA decision, the County may or may not decide to participate. They may decide that they don't really care. They may decide that that they agree with the challenge to the BZA. They might even participate against us. I mean they can do that. We are independent of the County Attorney's Office and they will tell Melody that, which is fine and it should be that way because we're appointed by the court and they're not beholden to us, nor us to them and that's the way it should be. But my question still stood. Is there a monetary argument for having somebody knowledgeable present the Board with facts that could find useful in making more efficient use of the law in our decisions. And what it came down to is, well, okay, if the County has to go defend a position, and I estimated that that might happen once a year-ish, for lack of a better number, how much does it cost. Well, these people are salaried. So the cost would be, if they had to hire somebody else to come in and either go to court for our decision or to fill in for somebody that had to go to court for other duties that that person couldn't perform, because they were in court because of our decision. And the short answer is: No. At that level there is no monetary reason to justify us having legal expertise involved in our decision making. So, many details are not worthwhile, the bottom line, I think, is that if we argue this, and I still think we can, it's from a good governance standpoint and not from any monetary savings that we might save the County. Which I thought would be a more powerful argument, but apparently it fails. So, does anybody have any suggestions on how we proceed with this?

Mr. Apicella: Mr. Chairman, I think that we ought to write a letter to the Chairman of the Board of Supervisors requesting counsel under limited circumstances and what I mean is, I think that the BZA rightly adjudicates variance decisions on its own, but there are other things that we do, especially legislative activities, that I think not only do we as a body benefit from but the County and the citizens reap benefit from as well, especially if we make an erroneous decision. Tonight's case before us is a good example. It could have far reaching implications because the next person who comes in for fire arm sales, or vacuum cleaner sales, or beanie baby sales will use this as to why they should be able to do the same, under the same conditions and circumstances that we provided, which may or may not be, at the end of the day, in concert with the Zoning Ordinance. We think it is, but it may not and I also think there are circumstances by which there's an issue before us where the interested party has legal counsel absent a variance where we are just not knowledgeable enough to understand potentially what's in front of us or all the potential case law that might go on both sides of the issue and again, at the end of the day, we do this not just for the courts, but for the benefit of Stafford County and its residents and I appreciate where the County Attorney is coming from, but the Board represents everybody here and when we do something that has an impact on policy, we need to be able to make the right decision for all parties concerned, so I would ask that maybe you draft something up and circulate it along those lines. I'd be happy to help. It's worth another bite at the apple, again, just to kind of specify that it's not open ended and for everything in front of us, but under those limited circumstances where I think making the best informed decision benefits everybody.

Dr. Larson: Yes, in fact I agree with all that and I agree with the arguments. I was thinking, I mean they're going to want to know a number, and I was just doing some rough estimations in my mind and I figured we normally meet 8 to 10 times a year, maybe half of those meetings we might have something that we might want some help on, so 4 to 5 times. So, you know, let's call it 5 times and figuring an attorney to, well that was...let me finish that thought and then I'll come back to something

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else that was discussed that I think is interesting. So let's assume that an attorney takes maybe 8 hours a meeting, 2 or 3 hours to prepare, drive here, come here present...maybe 10 hours. So you got 5 meetings, 10 hours a meeting, 200 dollars an hour-ish, 10,000 dollars. I'm thinking that we could probably do something reasonable for 10,000 dollars. Okay, now one thing that the County Attorney...so that's probably a number that I'd put on there. We request 10,000 dollars for episodic support. So it wouldn't be every time like we had before. It would be when, well, I mean, depends on how it goes, maybe sometimes as a Board we can discuss it, sometimes it's probably just going to come down to the Chairman, but when we decide that we need to have support, we just call up and bring them in. One thing though that was brought up by the County Attorney's Office was that they felt that the legal support should not be voicing their opinions during the open BZA meeting. They thought that it was best, from a legal standpoint, that they would get the information...that we would get any information he or she considers applicable in, say, the package. So the lawyer would do their search, we would get the stuff and then we would use the information as we see fit. That's another thing by the way, which is kind of humorous, because I told, you know, I was talking to one of the attorneys for the County and I said that I had been in a Home Owners Association and we had, in the past, used attorneys for advice, but it's advice, so in the end sometimes we took it, sometimes we didn't and he couldn't understand that. He asked why have a lawyer there if you're not going to take his advice? My response was, well, why have a BZA if you're going to have the lawyer decide everything. So, he still had a hard time with that, but in any case, I think as a Board we should keep in mind, if we can do this, that it is advice. That we're still getting another person's opinion on what we should consider and we should consider it, but in the end it's still our decision. That's my opinion. Any other discussion on this? Anybody want to add anything to that?

Dr. Ackerman: I mean I agree it is our opinion, but I think for myself, sometimes it's very easy for me to be swayed by someone who appears to be arguing from a learned position.

Dr. Larson: Well and that's, I think, the point that our colleague down here, Mr. Apicella, was referring to, is many times the only learned opinion in the room is for the applicant and you know how law is. You can find cases to support your position. You're not compelled to show all the cases that are applicable, so maybe just the ones that support your position and then that's all we have so it would be nice to get two sides to the story. So any other thought on that?

Mr. Grimes: Is the County...approaching the County with this, I think it's a great idea, but I can also understand the County's almost apprehension in providing that support, because even if they provided us advise, it's still being provided by the County out of County funds and could that be seen as influencing how they approach it one way or another.

Dr. Larson: Not at all. If the attorney is an independent attorney, not a County attorney...see, here is another rub. And this is another thing that they drove home to us while we were there. They can't do this, because they directly, ultimately work for the Board. I pointed out that it also says Boards and Committees of Stafford County, but their ultimate clients are the Board of Supervisors, so it can't be somebody from the County, but it can be somebody that's not a County attorney, as long as it's understood they're independent. So, I'll be happy to draft some words and a letter to the Chairman of the Board for everybody's perusal and critics and we can send it off and see where it goes. I think this is pretty much the right timing, isn't it? Aren't they still working on the budget? So the timing's okay. When does the timing not become okay?

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Mr. Apicella: I would say that we probably have to get it to them in the next couple of weeks. They are going to set the tax rate fairly soon and already there's more request for money than there is money, so we are competing with all the other demands.

Dr. Larson: As there always is.

**ADOPTION OF MINUTES**

Dr. Larson: Adoption of the September 2013 minutes; are there any corrections to the September 2013 minutes? I just have one for whoever is taking notes on this. On line 947, between the words "not" and "citation" if you could insert the letter "a", "not a citation". Any other corrections?

Mr. Grimes: On 1443 I stated "I won't speak for you", but I don't reference who I was speaking for. That was Mr. Leming.

Dr. Larson: Okay. Any other corrections? Hearing none, is there a motion to approve the minutes September 2013?

Dr. Ackerman: I move we approve the minutes September 23.

Mr. Grimes: I would second that.

Dr. Larson: Those in favor say aye.

Mr. Kim: Aye

Mr. Grimes: Aye.

Mr. Poss: Aye.

Dr. Ackerman: Aye.

Dr. Larson: Aye. Opposed?

Mr. Apicella: I abstain.

Dr. Larson: Oh, I'm sorry. Abstain?

Ms. Stefl: Abstain.

Mr. Apicella: I abstain as well.

Dr. Larson: Okay. October 2013 minutes. Any corrections there? Again, I just found one on line 510. Change the word "sail" to "sell", s - e - l - l. Any other corrections to the October minutes? Hearing none, is there a motion to pass the October minutes?

Mr. Kim: (inaudible)

Dr. Larson: Is there a second?

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Mr. Poss: Second.

Dr. Larson: Those in favor say aye.

Mr. Kim: Aye

Mr. Grimes: Aye.

Mr. Poss: Aye.

Mr. Apicella: Aye.

Dr. Larson: Aye. Opposed? Abstentions?

Ms. Stefl: Abstain.

Dr. Ackerman: I abstain too.

Dr. Larson: Okay. Two abstentions.

**ZONING ADMINISTRATOR'S REPORT**

Dr. Larson: Zoning administrator's report?

Ms. Musante: No report.

Dr. Larson: Okay.

**ELECTION OF OFFICERS**

Dr. Larson: Is there a nomination for Chairman of the Board?

Mr. Kim: I nominate Dr. Larson.

Mr. Grimes: I would second that nomination.

Dr. Larson: Okay. There's a nomination and a second. Any other nominations? Okay, nominations are closed for that. Nominations for Vice-Chairman?

Mr. Grimes: I would nominate Mr. Kim for Vice-Chair.

Dr. Larson: I'll second that. Any other nominations for Vice-Chair? Okay, those nominations are closed. Nominations for secretary? I'd like to nominate Mr. Grimes.

Mr. Kim: I second that.

Dr. Larson: Any other nominations for secretary? Those in favor? Well, okay, those nominations are closed. Okay. Chairman, one nominee. Those in favor say aye.

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Mr. Kim: Aye

Mr. Grimes: Aye.

Mr. Poss: Aye.

Mr. Apicella: Aye.

Ms. Stefl: Aye.

Dr. Ackerman: Aye.

Dr. Larson: Aye. Vice-Chairman. Those in favor say aye.

Mr. Kim: Aye

Mr. Grimes: Aye.

Mr. Poss: Aye.

Mr. Apicella: Aye.

Ms. Stefl: Aye.

Dr. Ackerman: Aye.

Dr. Larson: Aye. I'm sorry, any nays? And Secretary, one nominee. All those in favor say aye.

Mr. Kim: Aye

Mr. Grimes: Aye.

Mr. Poss: Aye.

Mr. Apicella: Aye.

Ms. Stefl: Aye.

Dr. Ackerman: Aye.

Dr. Larson: Aye. Any nays? Okay, so we have our officers for next year.

Dr. Ackerman: I would just like to say that I think our officers for the past year have done an outstanding job.

Dr. Larson: Well thank you, Dr. Ackerman.

Dr. Ackerman: Which is why we elect them again and again.

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Dr. Larson: Outstanding.

Mr. Apicella: Check's in the mail.

**ADJOURNMENT**

Dr. Larson: Is there a motion to adjourn?

Mr. Apicella: Motion to adjourn.

Dr. Larson: Second?

Mr. Poss: Second.

Dr. Larson: Those in favor say aye.

Mr. Kim: Aye

Mr. Grimes: Aye.

Mr. Poss: Aye.

Mr. Apicella: Aye.

Ms. Stefl: Aye.

Dr. Ackerman: Aye.

Dr. Larson: Aye. Thank you gentlemen.

With no further business to discuss, the meeting adjourned at 8:53 p.m.