

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
August 26, 2014

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, August 26, 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, Ernest Ackermann, Ray Davis, Larry Ingalls, and Heather Stefl

MEMBERS ABSENT: Gregory Poss and Steven Apicella

STAFF PRESENT: Jeff Harvey, Melody Musante, Evelyn Keith, and Denise Knighting

DETERMINATION OF QUORUM

Dr. Larson: Let the record show tonight that we have seven Board members voting tonight. The members are seated to my extreme left Mr. Larry Ingalls, Dr. Ernest Ackermann, Mr. Danny Kim, and then to my immediate right Mr. Robert Grimes, Mrs. Heather Stefl, Mr. Ray Davis. I'm Dean Larson. Welcome. The County Staff tonight is represented by Mr. Jeff Harvey, the Director of Planning and Zoning, seated down there. We have Ms. Evelyn Keith, Zoning Technician and then Ms. Melody Musante, Zoning Manager and then Ms. Denise Knighting, Administrative Manager, all representing the County. The hearing 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. The applicant should be aware that tonight we have 7 members voting and you must have 4 affirmative votes to approve an application. You should also know that 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 within the previous 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

Board of Zoning Appeals Minutes
August 26, 2014

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

Mrs. Musante: There are no changes.

DECLARATIONS OF DISQUALIFICATION

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

Mr. Davis: I have known Charlie Payne over 40 years but I do not feel it would interfere with making a decision.

Dr. Larson: Any other declarations?

Ms. Stefl: I did go out to the site and I did attempt to contact Westlake to get their perspective (inaudible microphone not on) 45 and 46 Jack Ellington Road.

Dr. Larson: Thank you. Any other Board members? Hearing no further comments, I'll ask the secretary to read the first case.

PUBLIC HEARINGS

1. A14-05/1400213 - Westlake Development LLC c/o Michael J. Coughlin, Walsh, Colucci, Lubeley & Walsh, P.C. - Under Stafford County Code Sec. 28-349, "Appeals to board [of zoning appeals] generally," the applicant, Westlake Development LLC, is appealing the Zoning Administrator's determination, dated April 10, 2014, regarding an outdoor shooting range on Tax Map Parcel 35-22, and the conditional use permit (CUP) application for Tax Map Parcel 35-22 that is currently pending before the Board of Supervisors. The CUP application seeks approval of an industrial school on the property, including outdoor shooting ranges, an outdoor driving course, and outdoor explosives training. The Zoning Administrator determined that the outdoor shooting range on the property is an approved use. The Zoning Administrator also determined that under Stafford County Code Sec. 28-185, the Board of Supervisors, not the Zoning Administrator, decides whether a CUP application is appropriate and approvable. The property involved is owned by Crucible Properties, II, LLC; zoned M-1, Light Industrial; addressed as 45 and 60 Jack Ellington Road; and located in the Hartwood Election District. Team Crucible, LLC, operates the training facility on the property.

Mrs. Musante: You have the application, the owner's consent form, the Zoning Administrator's determination, dated April 10th, 2014, copy of the Code sections addressed within the staff report, letter from Hirschler Fleischer dated June 5th, 2014. The applicant submitted a request on January 14, 2014, for a determination by the Zoning Administrator, as to whether the uses believed to be

***Board of Zoning Appeals Minutes
August 26, 2014***

occurring on Assessor's Parcel 35- 22 are in violation of Stafford County Zoning Ordinance. The uses included were the following: the use of outdoor weapons training using live ammunition; the detonation of explosives outdoors as a simulation of improvised explosive devices (IED); and outdoor vehicle defense training. The applicant also requested a determination on whether a conditional use permit application submitted by The Crucible II, LLC (Crucible), is approvable by the Zoning Administrator. The Zoning Administrator's determination, dated April 10, 2014, stated the outdoor shooting range was permitted, the use of explosives outdoors and the outdoor defensive driving were not in compliance with the Zoning Ordinance, and the Board of Supervisors, not the Zoning Administrator, determines the appropriateness of a conditional use permit application. The applicant appealed two of the Zoning Administrator's determinations: (1) the shooting range is an approved use, and (2) that the Board of Supervisors, not the Zoning Administrator, determines whether a CUP is appropriate and approvable. The Zoning Administrator's determination that the Board of Supervisors, not the Zoning Administrator, determines whether the CUP is appropriate and approvable is correct. The second portion of this appeal is the erroneous claim that the Zoning Administrator should have determined that the pending CUP application cannot be approved unless all uses are included within enclosed buildings. Under Virginia law and the County Code, the approval of Crucible's proposed CUP is a purely legislative decision for the Board of Supervisors to make. Inherent in the Board of Supervisor's legislative decision whether to issue the proposed CUP is whether the CUP is appropriate and approvable. The Zoning Administrator has no authority to make this legislative determination on behalf of the Board of Supervisors. County Code Sec. 28-185 states the procedure for submittal and review of a conditional use permit application in addition to the standards of issuance. The review of a CUP application includes comments from all applicable County departments, including the Zoning Administrator or her designee. The Board carefully considers these review comments when rendering its decision, but the Board is charged with the authority to render a final decision on the appropriateness of an application, not the Zoning Administrator. Therefore, the Zoning Administrator does not have the legal authority to determine whether or not a CUP application is appropriate and approvable.

Dr. Larson: Okay, at this point I would like to point out an administrative decision that was made earlier, actually yesterday I guess, maybe today. The appeal actually deals with two separate and certainly separable issues. One is the Zoning Administrator's authority to approve or determine the appropriateness of a conditional use permit, and the other deals with whether firing ranges on The Crucible property are within Code, or, are legal by the Zoning coordinates. So the Board is going to split those two decisions, excuse me, split those two issues, so that the first one that we intend to consider is the conditional use permit question. So when I open the public hearing, we'll be opening the public hearing for that issue. We will then hear all the evidence, ask questions of staff, go through our normal procedure for that issue. We'll close the public hearing for that issue and take a vote. Then I'll reopen a public hearing for the next issue, which is the firing range. Are there any questions on that from the Board? Procedure? Okay. So I'll now open the public hearing for the conditional use permit issue. Will the applicant or his/or her representative please come forward and present their case?

Mr. Coughlin: Good evening, Mr. Chairman, members of the Board. My name is Michael Coughlin. I'm here representing Westlake Development, LLC. I'm going to focus, obviously, this part of my presentation on the Zoning Administrator's determination that she could not render a decision whether the CUP as submitted to county staff was approvable, in light of the fact that it actually includes outside uses. Our position on this is that the Zoning Administrator is absolutely empowered to pass upon this question. They're empowered to issue determinations when asked. That's expressly stated in Virginia Code Sec. 15.2-22-86, which has been adopted by the Board of Supervisors in Zoning Ordinance Sec. 28-295. Give a little bit of background that'll apply to both components of this appeal. First of all, Westlake development owns the adjacent property shown on your screens. It's the property outlined in

Board of Zoning Appeals Minutes
August 26, 2014

white. We've interlaid the approved preliminary plan on this aerial. The Crucible property is next to our property, shown in red. Westlake is approved for 701 single family homes, based on the rezoning that occurred in 1989 and they have an approved preliminary plan moving through the final entitlement process. Crucible is operating on 45 and 60 Jack Ellington Road. And what precipitated our investigation into this matter and the approvals that The Crucible had in the past, was its CUP application which we obviously received notice of as an adjacent property owner. That application includes the request to have outdoor shooting ranges and some improvements put in place to its existing ranges and some modifications to those ranges, outdoor IED, improvised explosive device detonations, and an outdoor driving course, amongst other things. The CUP is a request for an industrial school, which is now a use where in the M-1 district, if you want that, you have to get a CUP. And during the application process and the application materials and at public hearings the representation by council for The Crucible was that The Crucible's operations were grandfathered, if you will. It was actually a term adopted, if you will, by county staff as well. Grandfathering is an act of legislative grace, where the Board of Supervisors says, you have a use that may have been permitted before, we're now deeming that it's not permitted, but we're going to allow you to continue to operate. Our investigation reveals, that's not at all what we're dealing with here and in fact there's never been a valid permit issued by the Zoning Administrator or certainly the Board of Supervisors for The Crucible's operations. So, turning now to the Zoning Ordinance itself, the Zoning Ordinance says in the performance standards for the M-1 district, that within the M-1 district all uses shall be conducted within enclosed buildings. We found this provision and it struck us, that both, what The Crucible was doing and what they're proposing to do, seemed to be in direct conflict with this. So we requested a determination, after getting a lot of documents from the County. And ultimately what the Zoning Administrator determined, as stated by Ms. Musante, is that the use of explosives outdoors would not be in compliance with the Zoning Ordinance. This was something that was proposed with a CUP application. In addition the Zoning Administrator determined that outdoor vehicle defensive training was not in compliance with the Zoning Ordinance, because those uses would be conducted outdoors. And those two determinations by the Zoning Administrator were not appealed by The Crucible. They are things decided and therefore decisions that must stand and can justify an enforcement action, should The Crucible conduct those operations. I think it also would preclude the Board from approving those types of uses in connection with a CUP application. So, one of the other components of our request was this, and I'll read it verbatim. We also request that you determine that the currently pending Conditional Use Permit Application cannot be approved unless all uses are included in enclosed buildings. We were not asking the Zoning Administrator to approve the CUP, or deny it, but instead to render a decision and an interpretation of the Zoning Ordinance. Virginia Code annotated, 15.2 2286-A4 is the provision that gives certain powers to the Zoning Administrator. And it says: The Zoning Administrator shall have all necessary authority on behalf of the governing body to administer and enforce the Zoning Ordinance. His authority shall include ensuring compliance with the Ordinance. That's all that we were asking ultimately and in fact the Board of Supervisors has decided to appoint a Zoning Administrator and expressly delegate the authority and powers granted by the Virginia General Assembly in the Code provision I just cited, to the Zoning Administrator. That Zoning Ordinance Sec. 28-295. What has occurred is a delegation of authority by Stafford County's legislative body, and in light of that, we think that it's absolutely appropriate for the Zoning Administrator to respond to our request. And ultimately we think that the BZA should determine that the Zoning Administrator should have responded to our request and has the power to do so. We've submitted proposed findings that we would ask that you adopt ultimately. And our finding number 8, and those are in the binder that we submitted to staff, it's kind of in the middle, and finding number 8 deals with this particular issue. I'm available to answer any questions at this point and would reserve some time for rebuttal if necessary in this point as well.

Dr. Larson: Are there any questions?

***Board of Zoning Appeals Minutes
August 26, 2014***

Dr. Ackermann: You obviously, I guess, deal with issues like this. Do you find it normal for a Zoning Administrator to make some determination about dealing with a pending CUP?

Mr. Coughlin: I do. And...

Dr. Ackermann: And do you have an example of that, that you can give us?

Mr. Coughlin: I can't think of a specific example. What I can tell you is that it's routine in our practice when we are unsure of a particular Zoning Ordinance provision, whether that's because we're about to file a zoning application, or somebody wants to conduct a by-right use, is that we will ask for a binding zoning determination before going any further in the process. And most jurisdictions have a process for a pre-application meeting, conducted with staff. And in that context, that's where you'll find out, well, if you look at this particular Code provision, you can't do what you're proposing to do and if that's staff's initial determination and you don't agree, you'll ask for a zoning determination, so that you can then go through the process. So, absolutely, finding out what the Zoning Ordinance means and says in the context of a pending or proposed CUP application or by-right application is absolutely something that we've seen before.

Dr. Ackermann: But you...I'm trying to get it clear...you ask the Zoning Administrator to comment on the appropriateness of the CUP, not on a zoning issue per se?

Mr. Coughlin: No, it was on a specific zoning issue. It was in light of the fact that many of the uses that were being proposed in the CUP were outdoors. And in light of the M-1 district standard, it requires all uses to be within enclosed buildings. We thought that that was an issue that was in direct conflict with the application, thus the request.

Dr. Ackermann: And she's made some determinations on some of those that you asked, in fact on all of them that you asked about. I mean, I don't know exactly what you asked, but what's in the letter here, there's essentially three questions of the shooting range, the auto training outdoors and the explosives outdoors and she's made a decision on that and you feel she should also make a formal statement about the appropriateness of the CUP. That's what you feel?

Mr. Coughlin: Correct, yes.

Dr. Ackermann: And you think she has a legal responsibility to do that?

Mr. Coughlin: I do. You know, there's a provision in 15.2-2286 that expressly allows parties to ask for determinations and a determination must be rendered within 90 days and therefore I'm thinking, in light of that, that...she has responded. We don't think that she's addressed the issue though and we think that she does have that obligation, yes.

Dr. Ackermann: Thank you.

Dr. Larson: Any other questions to this witness?

Mr. Ingalls: I have a question. I guess taking along my colleague's line, do you not believe that she's more in this...up to this part of the process in a CUP, she's more of an advisory...just like when you say, these preliminary conferences, which I imagine they had on for this CUP also, that everybody says, you know, this is good, this doesn't meet it, this doesn't meet it, but yet she's told the Board, or told...

***Board of Zoning Appeals Minutes
August 26, 2014***

everybody knows, it's probably in the staff report or some place, she certainly told you in your letter, what things that she thinks do not meet the Code in The Crucibles CUP and she's done her duty up to now. Do you believe that the Board now can go ahead and decide whether they're going to approve or disapprove the CUP?

Mr. Coughlin: I presume that the Board could ultimately pass on this matter, but what we're looking for is a specific determination that the application as submitted is in direct conflict with the Ordinance. And that connection has not yet been made.

Mr. Ingalls: If the Board were to approve the CUP, whatever is in that comes back to Zoning, I'm assuming she's going to say, this doesn't meet it, I can't approve it. I can't approve what's now being proposed, because it's in conflict with the Ordinance. So that's where she's going to...you know...the Board has delegated trying to figure out whether this is appropriate or not and they should have taken this into consideration, but I probably know some Boards that probably have approved things that did not meet the Zoning Ordinance. In fact we've had cases where they've done that and guess where they had to come to get a variance or whatever, after the fact, but they did approve something and then came... the zoning said that's not going to work, you have to get a variance. And they came and asked. Whether they got it or not, you know, was a subject of us deliberating.

Mr. Coughlin: I think the logical way to approach it though, is to have the Zoning Administrator render a binding determination before it even gets to the Board. And she's rendered determinations on all the points essentially, but she hasn't put that then in the context of the CUP application. And that's the connection again that we're looking for the Zoning Administrator to make. And once that happens, presumably, it would not get to the Board. That would end the CUP application process, because I don't believe that the Board is empowered to adopt something that's in direct conflict with the Zoning Ordinance.

Mr. Ingalls: I would agree with that statement.

Mr. Coughlin: So what we've done is essentially, in our view, put this in the proper order.

Dr. Larson: If I may. You've asked for a binding determination by the Zoning Administrator on the CUP and as I look through the Zoning Ordinance, Sec. 28-185 under Conditional Use Permits, item 2 says: An application for a conditional use permit...it sort of delineates the steps that are required for a conditional use permit...it says: an application... on step 2...for a conditional use permit shall be reviewed by the staff. Step 3 says: After receiving the report and recommendation of the staff, the Planning Commission shall pursuant to notice and public hearing of Virginia Code, and hold a public hearing etc., etc., etc. It sounds to me like what the current Zoning Ordinance calls for the Zoning Administrator to do is give a recommendation to...as part of the staff of the County, of Stafford County, give a recommendation on the CUP and then allow it to go forward.

Mr. Coughlin: And I think in a traditional setting where what you're dealing with is something that is in compliance with the Ordinance, but yet still needs legislative approval, that's the typical process. Here, what we believe, is being proposed, I in direct conflict with the Ordinance, because it's proposing outdoor uses and the co-provision I cited specifically, it numerates one of the powers of the Zoning Administrator is to ensure compliance with the Zoning Ordinance. We think now is the right time to do that, before it even goes any farther through the CUP permit process. And ensuring compliance here would mean rendering a decision that says the conditional use permit, as proposed, because it has outdoor uses, cannot be approved, that it's expressly in conflict with the Zoning Ordinance. And that

***Board of Zoning Appeals Minutes
August 26, 2014***

would compel the applicant then, in order to move forward, to propose something that had their uses within enclosed buildings.

Dr. Larson: Any other questions for this witness?

Mr. Kim: Okay, so the grandfather clause that you had mentioned, so when they determined M-1 districts, all uses shall be conducted within closed buildings, when was this Ordinance written up? When was this written up?

Mr. Coughlin: I want to say 1978, but don't hold me to that. What I will tell you is that since The Crucible's operations began in 1999 that provision, requiring them within enclosed buildings, has been in place.

Mr. Kim: So I guess I'm kind of confused how they have a shooting range if this was adopted, if this was written in 78 and they have a firing range now.

Mr. Coughlin: Well, that was our confusion as well, which led us to do some additional investigations into the County records. We submitted several FOIA requests and staff was very cooperative with us, thankfully. And our conclusion is that, there has never been...that when they started, that provision was in place and therefore they were never a lawful use in the Zoning Ordinance. And the reason why I mentioned grandfathering, was simply because that was a term that was put out there and it was our position that that was not being appropriately used by the "then"-applicant in the conditional use permit process or County staff, that in fact this is not a grandfathered used, because it was never permitted in the first place.

Mr. Kim: Because it was after...okay. Thank you.

Mr. Coughlin: We'll touch upon that a little bit more in the second component.

Mr. Kim: Yes, I kind of figured, but I was trying to catch up to what we're doing here. Thanks.

Mr. Coughlin: Sure.

Mr. Grimes: Alright. Coming back to the CUP issue. The County referenced the Code where we talk about what the Zoning Administrator's responsibilities are. They also published a document that says this is the process for applying for a CUP and it does not mention that the Zoning Administrator provides any ruling on that. It simply provides recommendations, a report which goes to the Planning Commission and the Planning Commission recommends to the Board of Supervisors. So what you're really trying to do is change that process that is published and established by staff.

Mr. Coughlin: I disagree with the characterization, respectfully. What the Code of Virginia and Stafford's Codes allow a party to do, is to request a binding zoning determination at any time. So whether they had a CUP pending or not, Westlake had the ability to ask for a binding zoning determination. Here it was certainly precipitated by the fact that the CUP was pending, but I don't think the fact that a CUP was pending and that that process was moving forward, basically closed the door on us asking for a binding zoning determination.

Mr. Grimes: Okay.

***Board of Zoning Appeals Minutes
August 26, 2014***

Dr. Larson: Any other questions for the witness. Thank you, Mr. Coughlin.

Mr. Coughlin: Thank you.

Dr. Larson: Does any member of the public wish to speak in support of the application, please come forward.

Mr. Rinker: My name is Leroy Rinker and now if I knew how to work this thing I'd show you my house on the map, but I don't. But, I've talked to the County, the Sheriff's Department, Zoning about The Crucible for many years. And I really didn't think it was appropriate for me to speak now, except, I want to have you consider the noise ordinance as a County. Everybody's talking about the Zoning Ordinance. How about the noise ordinance in the County. If the map was up, I would show my house. I'd show you the 5 acres that I bought 29 years ago to build my Shangri-La. I got tired of living in subdivisions. The neighbor's kids, the neighbor's dogs, you know, the politics, I was tired of it. I wanted to have my own piece of heaven right there in Hartwood, a beautiful area. I built it. I cleared the trees. I dug the basement. I dug the footers. I built my house. And everything was beautiful. The birds sing, the wind blows in the trees. It's wonderful out there. I raise blackberries. I have a tremendous time until The Crucible moves to town. The Crucible comes to town and then you hear...(imitation of gunfire and explosions)... It drives me crazy sometimes. I'm honest. I have sat in my living room watching the television and I can hear The Crucible. Now what is that? I'm living three quarters, a mile away from this. How do they address the noise ordinance? How do they comply with the noise ordinance of the County? I don't see how. And I don't see how the County considers an outdoor firing range in an area that's bound to turn residential. Not unless you turn the whole area into a commercial zone. I mean, it's absolutely incompatible. Stafford County is one of the fastest growing counties in the state and the state is one of the fastest growing states in the country. What does the County want to do with this real estate? Are they going to open up all firing ranges? I have neighbors that established their own private shooting range. You can come out there on a Sunday evening, or Saturday evening, right when you want to relax on the back porch and you will hear the neighbors shooting. And if I talk to the neighbors, the neighbors say: Well, Crucible does it all the time, why can't we? There has actually been incidents at dark, late at night, mothers are putting kids to bed and The Crucible is over there firing. Now what is that? How does that comply with the noise ordinance?

Dr. Larson: Sir? That flashing light I think...

Mr. Rinker: Okay, good.

Dr. Larson: Thank you.

Mr. Rinker: I'm well done. Thank you. Just consider.

Dr. Larson: Yes, Sir. Would anybody else, any other member of the public like to speak in favor of the applicant? Okay, seeing none, would any member of the public wish to speak in opposition to the application, please come forward.

Mr. Walk: Chairman Larson, I'm John Walk with the law firm of Hirschler Fleischer here representing Crucible. My comments on this issue can be extremely brief. First of all, what Westlake is trying to do here is to subvert the process by employing a preemptive strike tactic to take our conditional use permit application out of the hands of the Board. Mr. Coughlin admitted as much in response to one of the questions from a board member. What they were really looking to do here was to have the Zoning

***Board of Zoning Appeals Minutes
August 26, 2014***

Administrator rules that the Board could not grant our conditional use permit application and thus to end it right there, such that the Board would literally never vote on it. That is completely unprecedented. I believe it was Mr. Ancella [Ackermann] asked a great question, as to, can you cite any example where this has ever been done before. And notwithstanding that Mr. Coughlin claimed that it was: Oh this is routine. He couldn't cite a single example where it had been done. The important point here is that the jurisdiction of this Board is to review any ruling, decision, determination or requirement imposed by the Zoning Administrator. Here, in this case, what the Zoning Administrator did was expressly decline to rule. The ruling was read earlier, but the concluding sentence was therefore whether or not a conditional use permit is approvable will not be addressed in this response. So there literally was no decision rendered. The Zoning Administrator said: I don't think this is a proper request. Now if Westlake doesn't like that answer its remedy is to file a case in Circuit Court for mandamus. If they feel like the Zoning Administrator is not doing her duty in this case by not rendering a decision, there is a judicial remedy for that. I guarantee it, they're not going to try it because no judge would ever sanction this type of process. Also a great question, a number of them were asked, is to the logical process here. The logical process is exactly what's laid out in this County Code and that is that you have a staff recommendation, you have a Planning Commission process, then it goes to the Board of Supervisor, and oh by the way, depending upon how the Board votes, there is judicial review available at that process, if Westlake thinks that the Board approved an illegal application, they can go to Court and seek to overturn it. For all of these reasons I would urge you to support the decision of the Zoning Administrator that this was an improper request and shouldn't be considered further by this Board. Thanks.

Dr. Larson: Wait, Sir.

Mr. Walk: Oh, I'm sorry.

Dr. Larson: Any questions for this witness?

Mr. Ackermann: You just said, she made a decision, not that we shouldn't consider this. So I think there is a decision by the Zoning Administrator to make a statement about the appropriateness of the CUP.

Mr. Walk: Well, I learned a long time ago never to argue with a Board member, so I'm not going to argue with you, except I will point out that there is nothing for the Board to interpret. The function of the Board is to interpret the Zoning Ordinance and to sit in an appellate capacity when the Zoning Administrator has rendered an interpretation. Here, there isn't such a thing. That's my assertion. And that there is judicial review available if Westlake disagrees with that.

Dr. Larson: If I may.

Mr. Walk: Yes, Sir, Chairman.

Dr. Larson: The Zoning Administrator determination letter dated April 10th, 2014, she correctly cites Sec 28-185 of the Zoning Ordinance, further procedure, further review of conditional use permits. And she also says correctly that the Board of Supervisors is charged with the authority to render that decision. I would agree with my colleague that the Zoning Administrator actually did make a decision not to determine that this application was inappropriate. So I think she actually did make a decision there and she did it in support of the Zoning Ordinance, so I think the BZA is the right place to be for this question.

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Walk: Well, in response to that, again, not to argue with you, Mr. Chairman, but the decision was a correct one and that is the granting or denial of conditional use permits as a legislative function that is reserved to the Board of Supervisor and at least, as an initial matter, they should be the ones to have the first bite at it, rather than having the Zoning Administrator or this Board tell them how to vote on a legislative matter.

Dr. Larson: Thank you, any other questions? Mr. Ingalls?

Mr. Ingalls: Mr. Wall, is it?

Mr. Walk: Walk. W – A – L – K.

Mr. Ingalls: I assume your firm does land use, or providing to developers and builders. Do you handle CUPs, rezonings for clients?

Mr. Walk: Our firm certainly does and I get involved when the matters get before Boards, such as this, or perhaps in court. Yes, Sir.

Mr. Ingalls: When you're involved in...whether it's a rezoning or CUP, and you come up on a situation where what is in the CUP is in conflict with the Zoning Ordinance, you know that, you been advised that by the Zoning Administrator, how do you tell your client to proceed.

Mr. Walk: Well, your honor, first of all, as the council for the applicant, if we have a question about what's permitted or not, there's a staff review process and in fact this application went through the staff review process. It's gone through the Planning Commission process. It's now before the Board. So there is abundant opportunity to get a feedback from staff as to what's going to fly, what's not going to fly, how we should proceed. I hope I'm answering your question here. What's different about this case though is, we have, not the applicant seeking guidance from the staff. We have an opponent of the application just trying to score a preemptive strike and take the matter out of the hands of the Board of Supervisors. And that's what we object to and that's what I'm saying is completely unprecedented.

Mr. Ingalls: When did you know that the Zoning Administrator would not rule that you couldn't put these certain things out. You had to put everything in a building. When did you learn of that? You didn't learn of that any time during the review process of the CUP and the public hearing and none of that? You didn't discover that until this happened?

Mr. Walk: Well, Mr. Ingalls, in response to that question, first of all, we're well apprised of the requirements of the ordinance. The answer to your question is considerably more nuanced than that, because the use of this property substantially predates the requirement of enclosed building. In fact, one of the contentions that we briefed in our submission to the Board was that the use of the property dates to 1966, where our predecessor entitled NTS and its predecessor in title has been out there doing essentially similar if not more intense activities than anything Crucible is doing since well before the requirement of enclosed buildings and so to fully get into this gets into the question of vested rights, grandfathering, and alike. So nobody's claiming we're ignorant of the requirements of the ordinance.

Mr. Ingalls: But it sounds like what you're saying is; I'm going to throw in all these vested rights and other issues and try to overcome what the Zoning Administrator has said. You've advised your client to go forward with the CUP, don't correct what the Zoning Administrator has said that she cannot approve, because you're going to try to overcome it with something with vested rights, sounds to me like.

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Walk: Here again, Mr. Ingalls, there are further proceedings to be had in the case but those proceedings should be had before the Board of Supervisors and not play out in this administrative process. That's the knot of it right there. Yes, Sir.

Dr. Larson: Any other questions for this witness? Thank you, Sir.

Mr. Walk: Thank you.

Dr. Larson: Does any other member of the public wish to speak in opposition to the application, if so, please come forward.

Mr. Meyers: How ya'll doing today. I'm not lawyer so I'm not going to be citing a lot of numbers.

Dr. Larson: Sir, could you state your name and address please.

Mr. Meyers: Jeff Meyers, 120 Hartwood Meadows Drive in Stafford. I live about three quarters of a mile from it. This is a seven day a week operation. I'm appealing to you from a human and environmental sense, not from a jurisdiction, or lawyer, or things of that nature. I'd like to know where all the lead goes to. We're not talking about 50 rounds, 100 rounds; we're talking about fully automatic weapons being shot from 8 o'clock in the morning till 10 o'clock at night as many as 7 days a week. My kids drink that water and I hope you're kids drink that water. I don't know where it goes. They're less than a mile from the Rappahannock River which is protected by the Chesapeake Bay Act. Where does all that lead go? The noise that that gentleman was talking about back there; I bought my 5 acres, thinking I was taking my family to a nice, safe area. There's lots of other people that live on those roads that have to pass these people in 35 miles an hour zones. These are type A people driving down this road 50, 60 miles an hour, tinted out windows going to go shoot these guns. I like these people. They protect our country. There's no doubt we need these facilities. We have Quantico up the road. We have A. P. Hill right down the road. We have bases all over this place. These areas could be rented out to these companies, but they don't need to put in middle of where people live and raise their children. I hope ya'll live somewhere very close to this where you can hear it also. If all of this is already illegal, I think we ought to be pursuing this in a different manner. Why aren't we shutting this place down and stopping them from doing it. I've written to this Board and I can't tell you which one because I was actually out of town on business and when I went out for a jog I saw this up on the end of a stop sign. I was told it was put up 2 weeks before this meeting, which wasn't enough time for me fully prepare, but I was gone, so I had about 2 days to even think about this. To say that I'm emotional is an understatement, because I've written to this Board and never had any answers back. I wanted to know where the led was; how we allow these type of things to happen in our backyards where they explode these things in the middle of the night and that's what I'm going to appeal to. Think about your backyard and would you want your kids in it.

Dr. Larson: Thank you, Sir. Could you stand by just for a second?

Mr. Meyers: Staff, do you know what happened to Mr. Meyers letter?

Mrs. Musante: No, I do not.

Dr. Larson: Have you seen anything?

Mrs. Musante: I have not.

***Board of Zoning Appeals Minutes
August 26, 2014***

Dr. Larson: Sir, where did you send your letter?

Mr. Meyers: I sent it by email to, I'd have to go back and I looked up the direct Supervisor for our area and I emailed it to him.

Dr. Larson: Oh, the Board of Supervisors? I don't think anybody on this Board has seen that.

Mr. Meyers: I never got any reply back and I thought I would start with my local Hartwood district and gotten no responses, and I sent them repeated. I can't be the only person who's complained about this. If you have this in your backyard, basically it's a full on war going on in your backyard. You come home from a hard day work and you want to relax in your backyard where you bought 5 acres or 1 acre, or half an acre, and you just want to sit on your back porch and talk to your kids and you can't because it's that loud. And I'm easily half a mile to three quarters of a mile from them. Jack Ellington Road is off Richards Ferry Road. I hope ya'll have driven down Richards Ferry Road, it's hard enough for school busses, literally school busses will put a tire in a ditch to pass each other. When I say these type A person...and I'm all for them. I support the military. It just doesn't need to be in our backyard.

Dr. Larson: Sir, if I could ask you another question. How long have you owned your property?

Mr. Meyers: I bought it 1998. I built my dream home in 1999. When I first built this home none of this noise was there.

Dr. Larson: I was going to ask, when did you start hearing noise from the property in question.

Mr. Meyers: The serious noise, we've heard some probably about 4 to 5 years after I moved there, but it was very sporadic and it wasn't constant and I'm sure most of it occurred when I wasn't even home. I work just like everybody else, I'm gone most of the day. Over the last 4 to 5 years it has intensified to a point that you can't imagine. The IEDs, or whatever they are blowing up, has been going on for 4 to 5 years now. All of this stuff is transpiring outside. My comment was, where is all this lead going? I guarantee, they're not capturing it. I would venture to guess, and I don't know that this is fact, but I know our neighborhoods and I know the people that live there, I would say 90 percent of us are on well water. I know when I built my house it all had to be tested for led. Let that stuff get that stuff into my home's value and find out what happens when you can't drink that water any more. I don't want city water. We moved to the country because we liked it.

Dr. Larson: Thank you. We understand the water issue. Are there any other questions for this witness.

Mr. Kim: I do have one question. You said at all times of the night?

Mr. Meyers: They start at about 8 o'clock in the morning and they end typically around 10. Sometimes they will go a little later than that and when I say they go later, I'm talking about they're still using full on machine guns. This is not a bang, bang, bang; it's not a 22. I'm not sure what caliber but I would imagine they're going as high as 50 cal. These are not light arms. These are heavy guns being shot at all hours and then explosions. When I say explosions, enough to rattle windows and homes. And this goes on 7 days a week. They don't stop on Sunday. When we come back from church, we're still hearing it. So this isn't something that just happens Monday through Friday while we're at work. And that gentleman said, and he wasn't lying, that it happens at night. It goes from 8 in the morning till 8 o'clock at night. And I talked to parents who've been trying to put kids down to bed. They can't. I

***Board of Zoning Appeals Minutes
August 26, 2014***

really feel sorry for the people on Jack Ellington Road, where you go down to the end of the cul-de-sac there. I don't know how they put their kids to bed.

Dr. Larson: Mrs. Stefl.

Ms. Stefl: I missed your address and I'm also trying to gauge where you are.

Mr. Meyers: Sure. It's 120 Hartwood Meadows Drive and that's Hartwood Meadows Subdivision. If you drive down Richards Ferry Road, we go two miles to the entrance of our subdivision and I go about a half a mile down Richards Ferry Road, where all of us have anywhere from 3 to 10 acres.

Ms. Stefl: You're saying you're a quarter of mile to a mile.

Mr. Meyers: I'm saying as a crow flies.

Ms. Stefl: As a crow flies through the woods.

Mr. Meyers: Right, not by driving down the road. If you went down a road it would be much further than that. Because you would have to go down, turn and then turn back across. I'm just thinking literally I'm probably about half a mile or three quarters of a mile away at least, and it's still like it's in my backyard.

Dr. Larson: Any other questions for this witness? Thank you, Sir.

Mr. Meyers: Thank you for your time.

Dr. Larson: I think there's been some understandable confusion about what we mean by support and opposition to the application, so what I'm going to ask here is, is there any other member of the public that would like to speak out on this issue. Okay, one of you please come forward.

Mr. Dodd: Mr. Chairman, members of the Board, Matthew Dodd. My driveway is about 800 feet from Jack Ellington and as a crow flies, I'm about six tenths of a mile from their nearest shooting range. I moved in probably about a year and a half ago and the first time we set foot on the property I knew that this place was for us, because there was gun fire, not from the shooting range, but from folks elsewhere in the neighborhood and I knew we'd fit right in and I could shoot guns and ride motorcycles and my kids could play outdoors and have a good time. And quite frankly I'm more concerned about the impact of 700 home that look like they're going to be dropping traffic right off onto Richards Ferry than I am about Crucible. And quite frankly I think they're overdramatizing the amount of shooting that's going on. You guys really haven't been shooting much this year from what I've heard last year. Ya'll shot quite a bit more and it never reached a level where it bugged me.

Dr. Larson: Okay, Sir are you affiliated at all with The Crucible?

Mr. Dodd: No I'm not. I never met them, but I'm glad to have them in the neighborhood.

Dr. Larson: Any questions for this witness?

Mr. Kim: Actually I do have one. So you don't have any issue with them firing off, you know, hearing gun shots or any kind of explosives at 10 o'clock at night, or have you ever heard.

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Dodd: I've heard explosions, but they sounded like they were coming from Quantico. And as for the night shoots, it seemed like they were a very rare thing. On a couple of nights, a year ago, we were hearing them, but it was not a regular thing.

Mr. Kim: Okay, thank you.

Dr. Larson: Okay, any other questions for this witness? Thank you, Mr. Dodd.

Mr. Dodd: Thank you, Sir. Is there another member of the public that wishes to speak?

Mr. Roth: Yes, my name is Bill Roth. I have three properties very close to the area that we're talking about.

Dr. Larson: Sir, did you raise your hand when administered the oath?

Mr. Roth: Yes I did. If this is a...if this question is about the authority of the Zoning Administrator, I've heard some of the other comments. I don't feel that any comments that I have would be appropriate to that. If it is in a question to the legitimacy or the effect on the neighborhood of this particular... affiliation with this particular school, as they call it, and I'd like to reserve for the next part, but I've heard the other people comment as to how it affects the neighborhood if you're taking opinions on that at this point, I'd like to speak, otherwise I'll reserve it till the next part.

Dr. Larson: Go ahead, Sir.

Mr. Roth: Okay, we... my name is Bill Roth and I own approximately 18 acres almost immediately adjacent to the current property that we're talking about. Currently I'm paying taxes on assessment of 295,000 dollars on the three properties I own. I've been in real estate and development in this county for almost 40 years. I started in 1975. I have yet to have anyone ask me to please find them or build them a home near a shooting range. Now, I live very close to Quantico. I can assure you that we're not hearing Quantico guns down on Richards Ferry Road and if anybody questions whether or not any of the sounds that come out of this property are really there, I would invite you to come to my property on any given day and we'll have lunch out there and you can make your own determination. With respect to the enclosed buildings, I think it's the intent of the law that the reason that such buildings are enclosed for noise abatement and control. Now noise abatement and control can be a lot of different things. This has very little noise abatement and control. As a matter of fact, in the public record, they're showing that the structures on the property are actually pole buildings, in which case there is usually very little insulation and very little noise abatement and control. We certainly have an impact on the values of the property with any expansion of this, particularly to an outdoor range, would certainly do nothing but increase the noise level that we're dealing with down there. I've been in this county 40 years. And this county is a very different county now than it was 10 years, 20 years, or 30 years ago. We're now talking about an installation that is inside of primarily a residential area now. I can guarantee you that my property is a lot closer than the Sheriff's Office to us right now. My property is closer to this facility and if I walked outside this building right now and pop off 12 rounds from a high powered rifle, one of Charlie Jett's friends is going to come down and pay me a visit. Our properties are much, much closer to this facility than the Sheriff's Office is to this building. We're hearing this on a constant basis. It is not something that's music to anyone's ears and it certainly...I would ask anyone on this Board, if given the choice, you would prefer to buy a property next to an outdoor shooting range. And I would doubt that that would be an affirmative answer in most cases.

***Board of Zoning Appeals Minutes
August 26, 2014***

Dr. Larson: Thank you, Sir. Any questions for this witness? Hearing none. Thank you.

Mr. Roth: Thank you.

Dr. Larson: Any other members of the public want to speak?

Ms. Shalaby: Hi, my name is Catherine Shalaby. I live just up the road from Jeff. He drives past my house every day. I actually was in front of the Planning Commission the first time this came up and discussed the noise issues. Again, I also thought, like my predecessor, that we were on the finer topic of zoning issues right now, but if you open it up, again, we'd like to take advantage and speak about the noise.

Dr. Larson: I think it's been confusing for the public, so we're just hearing public comments now on both cases, but I ask that if you speak now, you don't speak on the next case.

Ms. Shalaby: I would be happy. Okay. Definitely the noise that we hear is real noise from Crucible. We have friends and neighbors who work at Quantico. I actually have close friends that work there and go there. We can very easily distinguish the difference, so I would have to respectfully disagree with the witness who said that. If you come to our houses, I have three children, proud Stafford County students, one at Virginia Tech, yay, trying to put them to bed when the principal and the teachers tell you get your kids to bed early so that they can function well, be good students, and good testers, is impossible with high caliber, automatic weapons fire at 10 o'clock at night. I also repeatedly called the Sheriff's Office, was told that unless it's after 10 it was not disturbing the peace, and even then, by the time they would send somebody, they didn't do anything anyway. I also wrote letters, actually two years in a row, during SOLs, I wrote letters to the manager of The Crucible saying hey, its SOL season! Can you just do anything to minimize the disruption during SOLs, and those were ignored as well. So, if there is a lack of public complaints cited at any point in this process, I would like to say the lack of it is only because after a while you quit reporting things when nothing ever happens. But again, it is noise, it is very audible at our properties. We're not right on top of The Crucible, like this other gentleman is, I would just, given the way the Conditional Use process, the Conditional Use Permit process goes, I guess what I would kind of like to say is that, in my humble opinion Crucible hasn't been a very good neighbor in the 20 years that I've owned my property, I say over 20 years that I've owned my property and I would just urge the Boards, the various Boards that are in the process to consider that as they go forward, that whatever is granted to The Crucible needs to be very specific and laid out in terms of noise ordinances and abatement and procedures and behaviors. I have not...it's miserable to actually hear it, as the other gentlemen said, day and night. And that's about it.

Dr. Larson: Any questions for this witness?

Mr. Kim: How long have you lived at your home?

Ms. Shalaby: I've lived...the house, for 16 years I had the property for, I want to say 4 years before that.

Mr. Kim: So, as long as you've lived there, has it been recent since you started hearing the late night noises?

Ms. Shalaby: I tell you what, the first year, I can't say that I recalled it. I remember having a workman on my property and he was like: What is that sound? So within the first year, I'd say 2001, maybe by

***Board of Zoning Appeals Minutes
August 26, 2014***

2002 I guess, is when I kind of noticed it. Like, oh, you know, I happened to be home during the day and a worker said: That's weapons fire. So I would say, the first 2 years maybe I didn't notice it so much, but within 2 years it was noticeable and certainly in my, again, as my kids have been in school the past few years, it seems to be more noticeable and more of going to the 10 o'clock at night.

Mr. Kim: So in the last few years?

Ms. Shalaby: Yes.

Mr. Kim: Okay, great, thank you.

Dr. Larson: Any other questions for this witness? Please.

Ms. Stefl: You also have the flying H, which does aerial shots and they take off from...

Ms. Shalaby: Yep, they are perfectly familiar with them.

Ms. Stefl: Their noise (inaudible - microphone not on) decibel, so it is only the gun fire (inaudible microphone not on).

Ms. Shalaby: It is staccato, piercing weapons fire, weapons sounds that no child could possibly fall asleep to. So a small airplane, no, and I'm very familiar with flying H and watched them come up and go down, no, that is not even comparable and certainly in duration and intensity, not even remotely comparable. He doesn't fly all day and all night. He doesn't fly until 10 at night, you know, doesn't fly 7 days a week consistently.

Ms. Stefl: But it is still noise in a area that is residential in nature.

Ms. Shalaby: I agree that it's a noise. I would venture to say if someone measured it, it's not even remotely comparable to the noise experienced by the gunfire, caused by the gunfire.

Dr. Larson: Any other questions for this witness? Thank you.

Ms. Shalaby: Thank you.

Dr. Larson: Any other member of the public want to speak? Sir.

Mr. Hilliard: My name is Vincent Hilliard. I'm a resident of Stafford County. My property is in Hartwood, it's Rappahannock Ridge Estates. It's the nearest crossroad to Jack Ellington, so we're just one street down and as other witnesses have told you, noise is a problem. If it has gotten better over the past year, I can't help but wonder if it's not because of the expansion. The noise is very loud. It affects me. I have multiples sclerosis so I've chosen a job where I work at nights, because during day the heat is so...it's so hot. So it's important to me to get my sleep in during the day and I have to wear earplugs, actually wear earplugs so that I can fall asleep because of the gunfire. This past year has gotten much better, but like I said, I think it's just because they knew this was coming. It's want of more expansion. We're in an agricultural area and I don't have a problem with folks target practicing. We're in an agricultural area. I have horses myself. That has been a problem too. There have been evenings in the winter where we got rain coming down turning to sleet. It's very cold out. The horses are in the center of the lot and they will not go in the building and I have to leave them that way. As this lady mentioned

***Board of Zoning Appeals Minutes
August 26, 2014***

I also feel for mothers who have to put their kids down in the afternoon to get their naps, because that's a very important part of the day. I shared that with my wife when my daughter was young and I know what that's like. This is not target practice. And I remember not so long ago when we had the, was it the Sandy Hill School shootings, and folks were told to talk with their children, trying to give them a routine day, so they'll continue to go to school, trying to make things seem very normal. It was the day after, or two days after, it was right thereafter, The Crucibles opened up on that range. Their range was hot and there was no forethought for our children or our community and I called Gary Snellings, and I hope he remembers this call, but I called him and I also called The Crucibles and I left a message there. So I don't know whether they remember this or not, but that was total disregard for the community and no forethought. Out on the range, right after the fact, range was hot. We're talking about 4-5 assault weapons out there. So the noise is a problem. I know that we all need to coexist and I would suggest that if somehow this permit goes through that there be sound barriers put up on the property, much like sound barriers along 95 or 66, where it's contained and that may help significantly. I don't know whether that's a solution or even possible. That's all I have to say today.

Dr. Larson: Thank you, Sir. Any questions for this witness? Thank you. Could you repeat your name one more time?

Mr. Hilliard: Yes, it's Vincent. V as in Victor and the last name is Hilliard, H-I-L-L-I-A-R-D. We bought in 89, built in 90 and it has been a problem all of these years. Except for this past year. It got much better.

Dr. Larson: Okay, thank you, Sir.

Mr. Hilliard: And I will say that when I did call, she shooting stopped directly after. When I called Gary Snellings. I don't know whether he had anything to do with it, or if they got the message, but it did stop. But it's just the fact that there was no forethought or no thought of the community, just business.

Mr. Kim: Actually I do have one question. So you said you heard this noise in 89, when you were building?

Mr. Hilliard: No, I had a builder. It was after we moved in and it was in the early 90s and it has been a problem of the years down there and I'd say that up until last year the past 5-6 years have really been bad.

Mr. Kim: So you have heard the noise when you were...I mean like in the 90s, like 1990, you heard the noise, or was it like later in the early 2000s or the late 90s?

Mr. Hilliard: It was in the late 90s and the 2000s that...

Mr. Kim: That's when you started hearing it.

Mr. Hilliard: It was loud. It was loud. And like I said...

Mr. Kim: No, basically what I'm trying to establish is, I mean, when you purchased the property, was the noise...I mean, did you hear anything then?

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Hilliard: No, but I only showed up...I lived in Northern Virginia and I always wanted to live in Fredericksburg, because it was good schools, good community and I always wanted to live here, but I only made trips down to be with the builder until the house was built and we had our barn built and we all moved down. Thereafter was the problem and it just increasingly got worse. And I can't help but wonder if it hasn't gotten quieter over the past year because they want to expand. And I might point out, as somebody else did, it wasn't that long ago that this was brought up at Mt. Olive and if not in their backyard, why in ours? And if it is, why can't they put a sound barrier up.

Mr. Kim: Okay thank you.

Dr. Larson: Any other questions for this witness? Thank you, Sir. Any other members of the public would like to speak?

Ms. Powell: Good evening, my name is Linda Powell. We're directly across from where this takes place. As far as where the crow flies, I could not tell you, but I do know that we hear the noise. We've lived on this property since 1975. I was raised, basically, on this road, because I had family members that have lived on this road. My grandfather owned a great deal of property on that road since before I was ever born. We've gone through transitions. We've gone through general testing laboratories. We heard wining engines when they were there. That was the occupant of the property prior to Crucible going in there. On good evenings we can hear the river. We can also hear Route 17 when the tractor trailers come down the hills out there. It depends on the atmosphere of course and how the sound travels. We hear these bullets flying. We hear the guns all the time. I was just doing a little research back there and finding out how far bullets will actually fly and they will go anywhere from a half mile to 5 miles, depending on the size of the weapon and the size of the ammunition. Knowing that I live maybe a half a mile as the crow or the bullet flies, this is a little concerning to me, that something large enough to go 5 miles could be right there in my backyard. My husband was out cutting wood one day on the property next to us. He heard what he thought was bees and it was actually some of the children out there target practicing. So we've had this long before The Crucible ever came out there and it's still not any less frightening now than it was then, when he thought he heard the bees. As far as the led in the water, yes, our water table has decreased. Our water has gotten significantly worse since we have lived there. A lot of this is because of the homes that are going in. They're tapping out the water supply. With the new homes that are going to be produced out there, the 700 or so homes that will be put in there, that will also take out. The picture that you showed earlier of where the subdivision lies and according to where The Crucible actually is, is that going to be within range of a bullet that will be leaving this property. It appears to me that it will be. So I ask you to please reconsider. Consider all of these facts that have been laid out by my neighbors tonight. Thank you.

Dr. Larson: Any questions for this witness. Thank you, ma'am. Any other members of the public wish to speak? Okay. I've allowed comment from the public on both issues tonight. I hope everybody understands that. If you've already talked about your issue in this hearing, please don't do it again on the next hearing. I'd like the Board and council to focus on the issue that I described first, the conditional use permit and I have notes, and I'm sure everybody else does too, on the valuable comments we just heard, which we will address in the hearing that follows this one.

Mr. Ingalls: Mr. Chairman, can we hear from Mr. Harvey?

Dr. Larson: Let me allow the applicant to respond to anything relevant that he'd like to respond to for this particular issue, the conditional use permit.

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Coughlin: Sure. I'll be very brief. Mr. Harvey, if I tap on the left hand side, will that bring up the prior slide? How do I get the first slide up? Oh I see. I was just hoping to be able to pull up the map and so, I'm not able to do it. We're going to leave it right there for now. In regards to some brief rebuttal comments, I'd like to focus the Board on the actual determination that was rendered. I agree with the Board that a determination was rendered. Here's what the Zoning Administrator said: The Board of Supervisors is charged with the authority to render a decision on the appropriateness of an application, not the Zoning Administrator. What we believe the determination should have been is that the Zoning Administrator is empowered to make a binding determination on whether what is proposed in the conditional use permit is in compliance with the Zoning Ordinance and in fact I find that it's not. So that's essentially what we think the Zoning Administrator should have said, contrary to what was actually rendered on this particular issue. And I think what The Crucible is suggesting and their council is suggesting, is that the Zoning Administrator should be handcuffed, because this matter is before the Board of Supervisors. They're going through the conditional use permit process. And I think that that is a dangerous slippery slope. If the Code of Virginia and the Stafford County Code allows parties to request binding zoning determinations, there shouldn't be exceptions as to when that can occur and when it cannot occur. We believe that the Zoning Administrator should have and has the power to render a binding zoning determination that what was proposed in the CUP is in violation with the Zoning Ordinance, and all that we're asking for is that the Zoning Ordinance be enforced by the Zoning Administrator, which is well within our powers. Thank you.

Dr. Larson: Any questions for this witness? Thank you, Sir. Mr. Ingalls, you had a question for Mr. Harvey?

Mr. Ingalls: I was going to ask Mr. Harvey a couple of questions.

Dr. Larson: Sure.

Mr. Harvey: Yes, Sir.

Mr. Ingalls: Thank you for coming out Jeff. Jeff is probably one of the longest serving members of the staff here and he knows more about things that I forgot. Jeff, in this particular project, do you know whether this issue with not conforming to the Zoning Ordinance was discussed by staff any time during the staff review of the CUP?

Mr. Harvey: With regard to the actual CUP application, the discussion about outdoor uses had not occurred between the Zoning Administrator and the Long Range Planning staff. It wasn't until the determination request came forward that we focused on that issue.

Mr. Ingalls: Okay. Let me ask another question. Can the staff override the Zoning Ordinance, approve something that's in the Zoning Ordinance, contrary to the Zoning Ordinance. Can staff approve something like that?

Mr. Harvey: No, Sir.

Mr. Ingalls: Can the Zoning Administrator approve something that's contrary to the Zoning Ordinance?

Mr. Harvey: No, Sir.

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Ingalls: Does the Board of Supervisors, do they normally, I'm going to use normally, approve CUPs, SUPs, whatever, that go contrary to the Zoning Ordinance.

Mr. Harvey: No, Sir. There have been, as you stated earlier tonight, there have been cases where the Board of Supervisors...in the approval there is typically a development plan and at the time the development plan shows the need for additional review, such as a variance for a setback or some other matter, they on occasion had zoning approvals that required an additional step. If they were going to, say, retain an existing building that didn't meet requirements.

Mr. Ingalls: But their normal operation is not to approve something that doesn't meet the ordinance.

Mr. Harvey: Correct.

Mr. Ingalls: Okay. Thank you.

Dr. Larson: Mr. Harvey, does your staff normally give a recommendation to the Board of Supervisors pertaining to the application or not to the Zoning Ordinance of a particular CUP?

Mr. Harvey: Yes, Mr. Chairman, the staff provides a recommendation to both, the Planning Commission and the Board of Supervisors regarding any CUP application.

Dr. Larson: Thank you. Any other questions for this witness? Mr. Davis.

Mr. Davis: (Inaudible microphone not on).

Mr. Harvey: Could possibly have occurred, at least a public hearing probably would have occurred. Since the appeal was filed that stays all action with regard to these matters, so the Board could not take up the hearing.

Dr. Larson: Other questions?

Dr. Ackermann: So there's already been a report provided to the Board?

Mr. Harvey: No, Sir.

Dr. Ackermann: When does that take place?

Mr. Harvey: That'll take place after the Board of Zoning appeals renders its decisions. Then we'll schedule a public hearing.

Dr. Ackermann: And then you'll make a report after that?

Mr. Harvey: Yes, the report to the Board of the Supervisors will be part of the public hearing process. Staff will post a report to the Board typically on the Friday before the Board hearing. Board hearings are on Tuesday.

Mr. Kim: As you advise the Board of Supervisors, how would you advise them with the CUP in this situation?

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Harvey: We'd make the Board of Supervisors known about the current situation and the requirements for indoor activities and the administrator's determination and if the Board of Zoning Appeals has rendered a decision, we will also advise the Board of Supervisors as to the outcome of that action.

Dr. Ackermann: So how does our decision affect the calendar? Does that affect it at all, or just, you know, we give our decision on one or both of these issues, say, tonight and what does that do to the calendar in terms of the consideration of the CUP?

Mr. Harvey: Once the Board of Zoning Appeals takes action on the appeal questions than the stay of all actions is dealt with. So then the County is free to schedule a public hearing with the Board of Supervisors. Typically that's done in conjunction with the County Administrator speaking to the Chairman of the Board and also the district supervisor as far as what public hearing dates are best suited for the Board of Supervisors.

Dr. Ackermann: And does an appeal of our decision come into that?

Mr. Harvey: From our understanding, talking to legal counsel, once the Board of Zoning Appeals has rendered its decision, the stay is lifted. Further appeals to the Circuit Court would not reinstitute the stay.

Dr. Ackermann: Thank you.

Dr. Larson: Any other questions for this witness? Thank you, Mr. Harvey. Does the Board have any questions of any of the witnesses we've heard so far? Any further questions? Okay, I will close the public hearing for this issue and bring the matter back to the Board for motions and a decision. I remind the Board that we're only considering the CUP issue and whether the Zoning Administrator acted...if her decision was proper.

Mr. Ingalls: Mr. Chairman, I'll make a motion. I'll make the motion that we uphold the Zoning Administrator's determination that the Board of Supervisors is charged with the authority to render decision on the appropriateness of an application and not the Zoning Administrator, but I would add to that, because part of our requirements, we can modify, we can approve a part of the determination, but I would like to add after that part, I approve that, but, and the Zoning Administrator shall...I want to make the Zoning Administrator tell somebody. I also think that's her requirement. I think she must...I can't figure what I want to say there to...let me just leave it just like I said it and then if somebody has some discussion, maybe we can figure it out.

Dr. Larson: There is a motion on the table to uphold the Zoning Administrator's determination concerning the CUP. Is there a second? Okay, there's a motion and a second. Is there discussion?

Mr. Ingalls: Mr. Chairman, I made the motion because I think that is correct. I think the Ordinance correct, but also what I struggle with is, if I was on the Board of Supervisors and the Zoning Administrator what I'm about to approve, she can't approve, it's against the Zoning Ordinance, that if I'm sitting as a Board of Supervisors member, I would have to say, well I can't approve the CUP until that is changed, and like this Board knows we've had cases where the Board has approved the CUP, it seems to me there was a variance involved, well the part of the CUP approval was, they were proposing something that needed a variance, I don't remember if it was height variance or some kind of yard variance, and they approved it with a condition that they had to go and get a variance from us, which I

***Board of Zoning Appeals Minutes
August 26, 2014***

always felt like was putting the cart before the horse, because it put us in a little bit of a box with the Supervisors having already expressed their opinion on something, but that has happened. I don't know how this particular Board of Supervisors we have, how they're going to react to it, if they say, well I can't approve this, if the zoning administrator says I can't approve that, even if you pass it. Then you would hope that they would do the right thing. I don't know what the right thing is, but they might do it. I guess there's nothing I can add to the motion that would really satisfy me, or maybe anybody else.

Dr. Larson: I have a question for Mr. Harvey. When I read the Zoning Administrator's determination I read it from the perspective that she was saying she didn't have the authority to do what was being suggested. Did I interpret that correctly?

Mr. Harvey: It is my understanding that she was saying that she didn't have the authority to bar an application from going forward to the Board.

Dr. Larson: That was the impression that I had when I read her determination. So I don't think she was making a statement on whether it was violating or not. I think she just said, I don't have the authority to do this.

Mr. Ingalls: I agree and that's why I just read the...

Dr. Larson: Yes, I know, but your discussion...

Dr. Ackermann: Maybe that is the best end of question. The end of the motion is right there. It's just to say that we approve that she is...that the Board of Supervisors is charged with authority, just as her statement says it.

Dr. Larson: Yes, yes, I was just clarifying the discussion that you just...

Dr. Ackermann: I know.

Dr. Larson: Okay. Is there any other discussion on this?

Dr. Ackermann: But you do have...and I share your concern that the issues do get addressed before the Board of Supervisors. At least the Board of Supervisors know what the zoning issues are, before they consider it. I don't know how we could force that or not.

Mr. Ingalls: If the Board voted on something, I'm not sure that somebody couldn't appeal their decision, because what they approved violated the Ordinance. Nobody can purposely violate the Ordinance. We can't agree to violate the Ordinance. That's what we're supposed to do here, this Board, to grant these little variances and whatever else we grant, but nobody else, no staff, nobody, no Supervisors, they can't ignore the Ordinance. They have to follow the Ordinance. It's their Ordinance. They have to follow it. They can't ignore it. And I'm assuming they won't. And I think all our Zoning Administrator said is, the Board's going to make that decision. I can't stop the CUP process. I think she's just saying, I can't stop it. It's going to go through, but again, I would hope she'd get up in the front right there and tell them straight out what her opinion is. But that's up to her to do that. But I do agree, and that's why I made the motion, that she can't stop the process. That's not her job. That's not her position. She's not been tasked with that. the Ordinance doesn't give her that authority.

Dr. Larson: Basically she's saying she doesn't have the authority.

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Ingalls: No, she does have the authority to say, this CUP can't go forward.

Dr. Larson: But she does have the authority to give a recommendation along with the application, saying maybe what read on how it conforms to the Zoning Ordinance.

Mr. Ingalls: And I assume if they were to take it up and approve it and if she should say, if somebody submits a site plan based on a CUP, she wouldn't approve it. I can't approve this, it violates the Ordinance and then I guess maybe it ends up back here. Let's hope not.

Dr. Larson: Any other discussion?

Mr. Grimes: Just, I have to agree, the ruling that was handed down follows the procedures as they're published by the County and so it just seems like it's following the path that's been set up by the County, to go through this process and it was done correctly.

Dr. Ackermann: I agree, so, I guess I will make the point that she didn't make a decision. I think this is an appealable decision.

Dr. Larson: I agree. She made a conscious decision that she did not have the authority to stop the CUP process. That was her decision. And that's basically the decision that was being appealed. Any other questions or comments? Okay, just for everybody's information, it appears, I mean the Board of Zoning Appeals is considering the other issues which are a little bit more complicated about whether there is a Zoning violation occurring and whether it's vested and those kinds of things and the Board of Supervisors isn't going to do anything until we make that decision. We're just following the process. And it should work.

Dr. Ackermann: There is no violation today on the CUP. If they go forward with the CUP and try to do the things they're asking to do, that's when there's going to be a violation or a potential violation.

Dr. Larson: Right, potential violation. Any other discussion? Okay, motion has been made and seconded. All those in favor say aye.

Mr. Davis: Aye.

Dr. Ackermann: Aye.

Mr. Ingalls: Aye.

Ms. Stefl: Aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Dr. Larson: Aye. Any opposed? Motion passes. I'd like to take a 10 minute recess and reconvene at, looks like, 8:43 on that clock. So 10 minutes please.

(10 MINUTE RECESS)

***Board of Zoning Appeals Minutes
August 26, 2014***

Dr. Larson: I'll bring the meeting back to order. Staff read the next case please.

Mrs. Musante: The Zoning Administrator's determination that the shooting range is a permitted use is correct. The appeal of the permitted shooting range will be responded to first. The applicant alleges that The Crucible does not operate a shooting range and therefore the Zoning Administrator's determination is incorrect that the outdoor weapons training facility is an approved use which is entitled to protection under Virginia Code 15.2-2311(C). In 1999, The Crucible submitted an application for a certificate of approval for a shooting/target range on the property and received zoning approval from the Zoning Administrator. According to County records, renewal of a certificate of approval has been approved for every year to the present except in 2001. To the best of my knowledge all of these approvals were done in accordance with County Code Sec. 26-31 through 34. The Zoning Administrator decision to allow the use of shooting range was not appealed within the 60-day time period under Virginia Code 15.2-2311(C). Therefore, the decision to allow the use of a shooting range and associated discharging of weapons on the range is an approved use on this property, and does not violate the Zoning Ordinance. The applicant claims County Code Sec. 16-8, Shooting Ranges, regulates the type of weapons allowed at such facilities and since The Crucible uses different weapons than those listed, the facility on the property is not a shooting range. Sec. 16 regulates noise, not the certification of a range. Sec. 16-8. Shooting ranges. (b)For purposes of this section, "shooting range" means any area or structure designed for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting. County Code Sec. 26-31, not Sec. 16-8, addresses the certification of a shooting range/gunnery range, but it does not specify the type of weapon allowed. Sec. 26-31. Certificate required. No person shall install, set up, or operate any indoor or outdoor gunnery range or shooting range or area within the county unless he has a current certificate of approval therefor issued by the director of code compliance. Nothing in the County Code expressly limits or conditions the certification of a shooting range based on the type of weapons used. Therefore, the type of weapon used is not a criteria for the County's Director of Code Compliance to consider when issuing a certificate of approval for a shooting range.

Dr. Larson: Any questions for staff? Okay, I'll open the public hearing for this issue. Will the applicant or his representative please come forward and present their case?

Mr. Coughlin: Good evening again, Mr. Chairman, members of the Board, Michael Coughlin here on behalf of Westlake Development LLC. This issue again focuses on the Zoning Administrator's determination that the outdoor shooting ranges operated by The Crucible had become an approved use and the Zoning Administrator is relying on certificates of approval that were issued, not in the context of the Zoning Ordinance, but instead in the context of the County's separate Weapons Ordinance. I want you to keep one thing in perspective, the Zoning Ordinance requires that uses be within enclosed buildings as we talked about before. And therefore these shooting ranges, because they're outdoors and they exist today, are not permitted by the Zoning Ordinance and haven't been permitted ever. The burden on the property owner to...the burden is on the property owner, in this case as well staff, to convince this Board that The Crucible can operate an illegal use. And frankly I don't think that they can at all. I don't think that there is any burden that they could meet that would allow them to operate what is an illegal use. In light of that one point, there are three reasons why you should reverse the Zoning Administrator's determination. The first is that the M-1 regulations, again, require that uses be within enclosed buildings. (2) the certificates that were issued here are not zoning determinations or decisions pursuant to 15.2-2211(C), instead they are decisions rendered by the Director of Code Compliance, pursuant to the Weapons Ordinance. Therefore no vesting or protections are afforded. The third reason is, The Crucible is not even operating shooting ranges today, as defined by the Stafford County Code. Little bit of background on The Crucible. As it was stated, these certificates of approval been issued

Board of Zoning Appeals Minutes
August 26, 2014

since 1999. There were none issued prior to that and they were first issued for one range and then there was a year where two ranges were approved. There was a year, in 2001, it might have been 2002, where no certificates were issued, but yet, now there are five ranges in operation. In terms of the type of weapons that are being used on the property, they're shown up here, that's exhibit 7 of our materials, and I can't get the presentation to work. Those weapons that are shown on that display are weapons that are actually articulated in their course materials. So if you look at our exhibit 1, Page 24, those are course offerings of The Crucible where they advertise that they train people on these weapons. And the weapons we're talking about in part are an M203 grenade launcher, an M60 medium machine gun, and other very heavy pieces of weapons. If you look at the description of their current activities provided to the County in connection with the Conditional Use Permit application, this is our exhibit 1, page 14, you see they're describing themselves not as a shooting range, but is providing to various federal agencies, weapons training, training scenarios, personal security measures training. In terms of the proximity of these operations to our client's operation, next slide please. We an aerial display that will show you the proximity between the two, if you can go to the next slide. You'll see, this is the Westlake development overlaid on an aerial. The firing position of one of the ranges is 300 feet from the closest house. So, the operations that I described, well, what they were describing to the County and staff in connection with their CUP, but now we've learned, and this is in our exhibit 19, that they've actually opened their operations to the public. So that presumably intensifies the nature of their operations. Going to the legal points again, our point 1, the M-1 district regulations prohibit outdoor ranges. The performance standards that we've cited before, that Zoning Ordinance sec. 28-39, B-1 that had been in place since 1999 require all uses within enclosed buildings. The only type of outdoor uses that are allowed in M-1, and looking at the permitted uses, are essentially outdoor storage. And that's not what's occurring here. They're actually engaging in activities outdoors, firing weapons. So there's a separate provision of the Code that allows for shooting ranges in the County in some locations, but that doesn't mean that the Zoning Ordinance is ignored, because the Zoning Ordinance states, and this is in Sec. 28-6, if any portion of this chapter is in conflict with another portion of this chapter, or with another section of the Stafford County Code, the more restrictive shall apply. So if you can have a shooting range on this property, because it's not permitted under the shooting range ordinance, you still have to have your shooting range in enclosed buildings in the M-1 district, because that's what the M-1 district requires and that's the most restrictive provision. And in light of these provisions, we submit that The Crucible cannot be operating in good faith reliance on anything that they have received from the County, because these are black and white provisions in the Zoning Ordinance. Going on to point 2. These are not zoning determinations, these certificates of approval. Again, it's Stafford County Code, Sec. 26-31, the Weapons Ordinance, that defines how you get a shooting range approved. It's the Director of Code Compliance, not the Zoning Administrator that issues these approvals. They're not zoning certificates that are issued. They're called certificates of approval. And if you look at our timeline, that's all that they've ever received. If you look at what they applied for...next slide, if we can get to it...what they applied for...you can hit the button again...was a certificate of approval under the Weapons Ordinance for small arms, not for a zoning approval. If you then look at the certificates themselves...next slide please...we've got two certificates that were issued in 2009 and another example is 2013, the most recent one. Press the button. You have the Director of Public Works issuing these certificates, not the Zoning Administrator. Next button please. That's the same in 2013. So what does all this mean? Well, the Virginia Supreme Court has said in the case Norfolk 102 LLC versus City of Norfolk, that's 285 Virginia 340 and I can hand up copies of that case at the end of our presentation, that the burden is on the landowner to convince a Board like this, or a court, that they're entitled to operate their property as an illegal use. In this particular case, there was a cash receipt signed by the Zoning Administrator for this use at issue. It said "zoning clearance for business license" and listed the license category as an eating place and the Supreme Court said that that was not a specific determination by the Zoning Administrator. So how can what we have here be a specific determination by the Zoning Administrator,

***Board of Zoning Appeals Minutes
August 26, 2014***

when in fact in 2009, 10, 11, 12, 13 it was actually issued by the Director of Code Compliance or the Director of Public Works? In addition, what we're dealing with here is an annual permit that must be renewed. Certificates of use for zoning matters aren't renewed annually. If you get a certificate of use for your house or some other zoning approval, that's generally good. You don't have to renew it annually, but the Weapons Ordinance requires an annual renewal. And The Crucible acknowledges in foot note 5 of their brief, that The Crucible may not have a vested right to re-issuance of its certificate of approval. So in light of that we believe that these are not binding zoning determinations that compelled the Zoning Administrator to say "These are approved uses and therefore I can't do anything about it". In fact, she should have determined that because they're outdoors, they're in violation of the ordinance. This Board has faced a similar issue before. If you look at our exhibit 27. You dealt with a crusher case and that was a case where there was a letter from the Zoning Administrator to DMV that basically suggested that the Zoning Administrator...that as a matter of zoning, this crusher could operate. The Board of Zoning Appeals ultimately determined that that was not a binding determination, that that crusher was in violation of the Zoning Ordinance, upheld the Zoning Administrator's determination in that case, because that crusher was outdoors. And on to our third point, regarding "this is not a shooting range". The Stafford County Code and the noise ordinance, Sec. 16-8 is the only provision in the Code that defines what a shooting range is. And it says: Any area or structure designated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting. We submit that that's the definition that the County should follow. Not an Alabama definition or a Texas definition, as submitted by The Crucible in its papers. And what they're operating there is not sport shooting. They're doing advanced weapons training. So, if we could go to the next slide and I'm almost at the end of my presentation, and I appreciate the Chair's indulgence here, this is a picture of an indoor shooting range that's not what you're about to see. We have a 30 minute video that I'd like to play for you that actually shows what The Crucible...I'm sorry...30 second video, 30 second video, yes. I wouldn't go very far if I said 30 minutes, so if we can go to the next slide and I'll try and do this. There's a button that needs to be pressed right there.

(1:59:35 - 2:00:06 video playing)

Mr. Coughlin: That was a video that we compiled from videos that you can purchase online of Crucible's training that occurs at the property. We're going to reserve for rebuttal other arguments that The Crucible has raised and ultimately we're requesting that the BZA adopt our proposed findings and reverse the Zoning Administrator on this particular issue.

Dr. Larson: Thank you, Sir. Are there any questions for the applicant's representative?

Mr. Ingalls: Is it your contention that these certificates that have been issued since 1999, they're just certificates of approval to be able to operate and that if the County was probably doing a better job, they were going out there inspecting this thing and at some point they could have said no. Could they have said this is not right? You either have to fix it or shut it down.

Mr. Coughlin: Yes.

Mr. Ingalls: They're not just...every year...renew it, every year renew it, because if you read the cover letters, that's what the guy always asks, they always said renew my certificate, reissue, it said reissue sometimes...reissue my certificate and it's really not just reissuing. It's somebody going out, looking at it, deciding is it still appropriate, is it violating any Codes that they know of and then maybe reissuing or issuing it. Is that how you feel?

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Coughlin: The Weapons Ordinance, which is outside of the Zoning Ordinance, specifically gives the Director of Code Compliance the ability to deny a permit. There is an annual process and there are certain, I'll say modest criteria that need to be met in order to get your shooting range approved, but what appears to just have been overlooked or ignored is the Zoning Ordinance provision that requires these uses to be within enclosed buildings and in fact, if you look at the notes, you know, there is at least one year where there was no sort of zoning involvement at all in the whole process. I mean, but our point is that these certificates are not zoning decisions at all, the only thing that The Crucible applied for was a certificate for a shooting range under the Weapons Ordinance. That's chapter 26 of the County Code and only the Director of Code Compliance could issue those and that's all he did over the course of the years. Certainly as it relates to the most recent years and the most recent certificates.

Mr. Ingalls: I guess I read, you know, like I said, if you read the cover letters that were included and even in the certificates themselves, it always said shooting range and it always bothered me, is that 1, 2, 5, you know, I belong to a gun club and we have, you know, I have a skeet range, I have trap range, I have a pistol range, I have a rifle range. I don't know, are we a range? Is that a range or is it 5 different ranges? I don't know. So I got a little confused, but there was, like you said, there was one year they asked for approval for 2 and then the next year they went back just to the word shooting range. They seemed to flop back and forth in those couple of years and now you're telling me there are 5 out there. How did it go from 1 to 2 to 5?

Mr. Coughlin: We don't know and that's a question that we're concerned about and if you look at the materials that were submitted with the Conditional Use Permit, and their existing conditions exhibit...it does indicate that there are 5 ranges on the property today.

Dr. Larson: I have a comment on something you said, Mr. Coughlin, just kind of the rest of the story. I was on that Board of Zoning Appeals, as was a few of my colleagues here for the car crushing operation and we did indeed that the car crushing operation was a processing operation and had to be conducted indoors. The Circuit Court disagreed with us. They said that we had not used the definition correctly and that it wasn't a processing operation, therefore could be held outdoors. That was the hook in that particular case. Not that that case has that much to do with this, because the Court didn't give us a definition of processing or anything else, so it doesn't...that case and their statements on it don't help us here, is what I'm saying. But you're right to recall that, because I had the same recollection. That's why I checked on it. Any other questions for the applicant's representative? Okay. Thank you, Mr. Coughlin.

Mr. Coughlin: Thank you.

Mr. Ingalls: So your statements are based on the issue that this is not correct in terms of zoning as a shooting range, as an outdoor activity? It has nothing to do with the Noise Ordinance or anything?

Mr. Coughlin: That's a concern as well. I'm not sure that it's something that this BZA has to pass on tonight, but I will submit that their own readings from their... at least IED explosions, violate the Noise Ordinance. The Noise Ordinance is 55 decibels during the daytime and 60 decibels because it's as measured on the adjacent property and because we're residential, those are the controlling measurements. Our own noise expert has readings that exceed those levels as well for shooting activities that have occurred and so did the Sheriff's Department. So that's certainly a concern. We think that they're way too loud or else, really, we wouldn't be going through this process. It's not just an academic exercise. It's a legitimate concern that they're too loud and will interfere with our client's plans and existing residences as well.

***Board of Zoning Appeals Minutes
August 26, 2014***

Ms. Stefl: Mr. Chairman, could you tell me where in the presentation you gave us that report from the Sheriff's Office (inaudible, microphone not on).

Mr. Coughlin: Sure, if I may have the brief indulgence to find that. It was in our supplement which is toward the middle. And let me just find the exhibit. So exhibit 12 is a copy of the Noise Ordinance and exhibit 13 is a copy of the August 20th, 2013 report entitled Crucible noise measurements that was created by Deputy J. L. Hamilton on behalf of the Stafford County Sheriff's Office.

Dr. Larson: Any other questions for this witness?

Mr. Ingalls: Let me just clarify what you're asking us to do. So you're asking us to overturn the Administrator's statement, a decision to allow the use of a shooting range and associated discharging of weapons on the range is determined to be an approved use on this property and not in violation of the Zoning Ordinance? Is that the statement you want us to overturn?

Mr. Coughlin: Correct. We think it's incorrect because it states that they've become an approved use. We don't think that they have, because they've only been issued these certificates of approval outside of the Zoning Ordinance. And the Code section cited by the Zoning Administrator 15.2-2311(C), which creates a form of vesting. But that form of vesting can only arise in the context of a zoning decision. It's in a zoning enabling legislation and the chapter titled Subdivision and Zoning. And here we have decisions that have been rendered in the context of the County's Weapons Ordinance. And since there has been no zoning determination made, is our position, until we submitted our request. I'm sure The Crucible will bring up a zoning verification that they received in 2010. I'll address more fully in our rebuttal. We believe that that as well is not a binding zoning determination in essence the Supreme Court said as much in the case involving The Crucible.

Dr. Larson: Any other questions?

Mr. Ingalls: One more. How do you respond then to the zoning verification issued March 10, 2010, saying that...a copy of Sec 28-35 Table 3.1 District Uses, M-1 Light Industrial is enclosed for you...the parcel was part of the 1978 Comprehensive Rezoning. The training facility that exists has become non-conforming with the definition changes for schools in the Stafford County Code, Sec 28-25, Definition of Specific Terms.

Mr. Coughlin: Our position is that the Supreme Court addressed this issue already in a case involving The Crucible. That's Board of Supervisors versus Crucible 278 VA 152. The Crucible asked for a zoning verification as related to other property they were looking to move to. And in that case, all that was issued there was a zoning verification which just verifies essentially what you have and it specifically also stated that it was subject to change. And the Virginia Supreme Court highlighting the "subject to change" language, said that that zoning verification does not create a vested right under 15.2-22307 or 15.2-2311(C). In addition it's a pretty vague interpretation in that it uses the term training facility and doesn't address the shooting range. And here we focused very narrowly on the outdoor shooting ranges and that verification we submit does not touch on that particular issue and therefore didn't bind the Zoning Administrator to not rely on that verification in rendering her decision and we think it also shouldn't stand in the way of this Board rendering a decision either.

Dr. Larson: Other questions for this witness? Thank you, Mr. Coughlin.

Mr. Coughlin: Thank you.

***Board of Zoning Appeals Minutes
August 26, 2014***

Dr. Larson: Most of the public have had a chance to speak. Is there any member that has not had a chance to speak yet that would still like to speak? Sir, were you here to take the oath. Step forward please. Before we start, do you hereby swear or affirm that all the testimony before this Board shall be nothing but the truth.

Mr. Chang: Yes, Sir.

Dr. Larson: Please state your name and address.

Mr. Chang: Michael Chang, 40 Jack Ellington Road.

Dr. Larson: Please continue.

Mr. Chang: If you can't tell by the address, I'm really near The Crucible, so basically a couple of steps away. Basically, when I came here, I believe 9 years ago, it was for the past few years it was just troublesome for me to sleep and somehow I was a little bit jumpy when I woke up. I think it was the first 2 or 3 years and it was just troublesome and here is the other problem. When I came to this neighborhood my dad actually taught me on how to ride a lawnmower and I finally got to cut the lawn. All I saw was trash. I mean cans and plastic which was troublesome to pick up and especially I seen that everywhere when years ago when I came down, when I went to Hartwood Elementary School, just came up and down and seeing all this trash that I had seen. Now, I thought it might be the neighbors as well, but my parents convinced me that it was the people who went to The Crucible. But until we got the trashcans, then I was really sure that was people from The Crucible that was coming down just littering everywhere on my property...well, me and my parents property. And that was also troublesome too. So not only the noise complaints are true, but there has also been some littering as well.

Dr. Larson: Okay. Thank you. Any questions for this witness. Thank you, Sir. Any other members of the public wish to speak? Mr. Walk, did you wish to speak?

Mr. Walk: Thank you. I just wanted to be sure everybody had the chance. Mr. Chairman, first of all, we did make a written submission. I want to be sure that it's been received and into the record. I have a spare copy here, if it has not been received. This is our...we sent it in by email to the staff and then mailed it in to each of the members. Can I just verify that it's been received and in the record?

Dr. Larson: Got it.

Mr. Walk: Very well. Thank you. I do have a couple of additional exhibits that I would like to hand up, but only a couple. Could I clear the screen please? First of all, by references to the documents appended to our submission, our use dates back to 1966. We have been on the property ourselves as Crucible since 1999, but I want to be sure that you understand that our predecessors in title were doing things far more intense than anything Crucible is doing. And I have previously submitted an affidavit from Mr. Garman. I have actually a revised affidavit from him that adds a couple of paragraphs and I also have an affidavit from Mr. Ken Malloy, who is with National Testing Service, or was with National Testing Service. Both, the testing to the historical use of this property involving things like lighting of jet fuel, crashing vehicles into each other, shooting bullets at things to see if they would blow up and alike, and so the idea is, we're not here asking to be permitted to do something that hasn't been going on at this property since 1966. I do also want to correct a couple of statements about Westlake. They keep seeing that their use dates to 1989 in an effort to try to say that they somehow predate Crucible. In fact, Westlake Development LLC was not even formed until 2002 and I have the printout from the State

Board of Zoning Appeals Minutes
August 26, 2014

Corporation Commission attesting to that fact. So when I'm done, I'd like to hand up those three exhibits, the revised affidavit from Mr. Garman, the affidavit from Mr. Malloy and also the printout from the State Corporation Commission about the existence of Crucible Development. Now addressing the specifics of the arguments made by Westlake. First of all that somehow the permits that the Zoning Administrator based her determination on didn't intel a zoning determination, and thus they can't possibly be the basis of a vested right under Sec. 15.2-2311. In that regard I just want to point out to the Board Sec. 26-31 of the Stafford Code, specifically requires a certification of Code Compliance in order for these permits to be issued and Westlake conveniently pointed to some recently issued permits since 2009, where that function was delegated over to the Department of Public Works, conveniently omitting to disclose to the Board that the permits in 2000, 2001, 2002, 2003, 2004, 2005, 2006, and 2007 were all signed by the Zoning Administrator or the Director of Planning and so the idea that somehow these permits don't constitute an interpretation of the Zoning Ordinance is just ludicrous. Now what's before this Board is a decision by the Zoning Administrator that based upon the annual issuance of these permits, that a vested right arose under Sec. 15.2-2311, because they were not appealed within 60 days and thus we are now entitled to rely upon those permits. Westlake has intimated that those permits were issued in blatant illegality and in total disregard of the requirements of the Zoning Ordinance. We don't have to present to this Board tonight the exact rationale under which those permits were issued. In fact, the Zoning Administrator has said, I can't tell precisely the rationale under which the permits were issued. All I know is that these permits were issued, they had been relied upon and Crucible has been operating under these permits since 1999. We have set forth in our filing two alternative rationales under which these permits could be issued. First the rationale that it's a vested use dating back to what NTS was doing on the property dating back to 1966. They were shooting at things. We are shooting at things. The Zoning Administrator back in 99 could easily have determined we're just a continuation of a preexisting use, remembering that the Zoning Ordinance in effect at the time simply required us to be adequately screened, not enclosed in a building. And if you look at exhibit C to our submission, you will see that we have demonstrated photos of exactly what we look like from the property line all the way around. And if you look at those photos, you can't even discern where our firing range is. So measured against the requirements of M-1 in place at the time, our use commenced our predecessor in title. We are unquestionably, adequately screened and in fact there is not even a suggestion to the contrary. The complaints that had been made have nothing to do with visual intrusion. The complaints have to do with noise, which the M-1 requirements, you know, did not speak to. We also talked about accessory use. It could have easily have been a determination that the firing range was and accessory to the primary use of the property, which was an indoor security training facility, but the most important that I hope that I'll leave with you with my comments tonight, is that it's not up to us to demonstrate what the Zoning Administrator's thinking was. All we have to demonstrate is that the permits were issued. They did intel a determination, a purposeful determination, that they were permitted under the Ordinance and we have relied on those permits since that time and that was the basis of the Zoning Administrator's interpretation and that is what we're asking you to affirm here tonight. I do want to address very briefly the issue of noise. Most of the public commentary has been about noise. I was very glad to hear Mr. Coughlin admit, that that's not really an issue before the Board. That's an issue that might come up in the legislative process perhaps, but the decision that's before this Board has to do with a technical interpretation of vested rights to continue the existing use of our firing range that has been in place since 1999 and it doesn't enter in to the equation, the subject of noise, except I do want to say that the County has a Noise Ordinance. We absolutely are subject to that Noise Ordinance and with all the attention that has been focused on Crucible, if we were in violation of the Zoning Ordinance, you would think somebody at some point would have cited us for it. Crucible has never received a first citation for any violation of the County's Noise Ordinance. We have submitted in our written materials the reports by our noise expert, Mr. Eric Thalhimier. Mr. Thalhimier is in fact here tonight, in case the Board has any questions about his reports and he has been sworn in and is available to answer your questions. I

***Board of Zoning Appeals Minutes
August 26, 2014***

also want to address a couple of other arguments made by Westlake. First the idea that this is not a shooting range. We're permitted to do a shooting range, yet what we're doing is somehow not a shooting range. What they're leveraging this argument off of is Sec. 16-8 of the County Code, which is part of the Noise Ordinance. And as you heard the Zoning Administrator say, that section is not applicable here. If you read the section, it's in the Noise Ordinance, and it says "for purposes of this section shooting range shall mean X". These permits were issued under a different section of the Code, Sec. 26-31, which contains no definitions and it also talks about gunnery ranges as well as shooting ranges. So the idea that somehow we don't fall within the statutory definition, again, I would ask you to uphold the decision of the Zoning Administrator, that the definition that Westlake is citing is simply not applicable. I also want to respond briefly to the suggestion that we're out there firing grenade launchers. Westlake knows that this is not true. They have deliberately presented pictures of weapons and referred to grenade launchers. One of the specific findings that the Zoning Administrator made, that we have not appealed, is that we cannot engage in firing off explosives on this property. We have not appealed that determination for the simple reason that we are not out there firing off explosives. We are shooting rifles, we are shooting handguns, and these things are expressly permitted under the terms of the applicable section as well as the Zoning Ordinance. Now, in respect to our marketing materials that talk about providing training involving these weapons, we use chalk balls in the place of live grenades and people practice shooting the grenade launcher. What they're launching is a chalk ball that simulates the firing of a grenade. I'm sorry, I thought you had a question. I'll continue on. So again, the idea, the implication that we're out there firing grenades is just not true. I see the red light is on, may I have a short moment to conclude? Thank you very much. I want to address the zoning conformance letter in my little extra time here. This is the March 10, 2010 zoning conformance letter and the suggestions was made by Westlake that somehow we don't have a zoning determination, because these permits that we've been relying on since 1999 are not zoning determinations. Now I've already addressed why that's not true, but if you have any doubt about that, can there be any doubt that this March 10, 2010 letter is not a zoning determination? If that's not what it is, I don't know what it could be. It plainly says that are existing uses are vested, nonconforming uses and we're permitted to continue them. And that decision was not appealed within 60 days and is now itself vested under Sec. 15.2-2311. Mr. Coughlin implied that the Supreme Court decision in the prior Crucible litigation somehow forecloses us from relying upon that letter. Let me just say why that's not true and then I'll sit down. The prior litigation involved an amendment to the Zoning Ordinance. 2311 does not relate to amendments to the Zoning Ordinance. If a landowner is going to try to claim that they're vested against an amendment to the Zoning Ordinance, they have to rely on a different Code section, 15.2-2307, which has different requirements and it is that section, 2307, that was in play in the Supreme Court appeal. Section 15.2-2311 didn't even enter into the equation, because it cannot possibly trump a Zoning Ordinance amendment. Here we don't have an amendment. We have an interpretation, which is what 15.2-2311(C) relates to, and that is the familiar 60 day rule that says, once there is an interpretation, if it's not appealed in 60 days, it's final and it can't be changed. And that is the reason why we're entitled to rely upon our zoning conformance letter, notwithstanding the prior Supreme Court decision. With that I thank you for your time. I understand I need to stick around for some questions, but I do want to tender up the three documents and I have provided copies to Mr. Coughlin of each of these three. There should be a copy there for all members of the Board.

Dr. Larson: Thank you, Sir. Any questions for this witness?

Dr. Ackermann: So, basing your belief that the current use is vested, do you feel that you could for example expand that use on the property, I mean increase the number of firing ranges?

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Walk: Well, you're getting into the question of what is a firing range and do we have more than one firing range and do we have them physically located in more than one place. The direct answer to your question is, we are not entitled to expand beyond the use that is vested. So if we wanted to go out there and expand what we're currently doing, we would need to get permitted to do that. And in fact there was a question earlier from Mr. Ingalls about our pending CUP application. I want to be very clear on that one and that is, we're not looking to expand the number or size of our ranges under that CUP application. What that CUP application has to do with is building some new buildings on the property which requires us to now come under current Ordinance, as opposed to being non-conforming use under a prior version of the Ordinance and absolutely no new outdoor anything. So again, I agree with you Mr. Ackermann that when you're talking about vested rights in a non-conforming use you are limited to continuing what you have in place and that's all we're seeking to do.

Dr. Ackermann: And this is what was in place when? What we have now was in place when?

Mr. Walk: We have gotten permits right up to the current year. So the Zoning Administrator's interpretation is that we are entitled to rely upon those permits as they have been issued and they have been issued every year right up to the present time. So my answer would be, and again, this is not my contention, this is the Zoning Administrator's ruling and that is that the current permits vest us in our existing firing ranges.

Dr. Ackermann: Even though the current permits are not offered by the Zoning Department, but by the Department of Public Works.

Mr. Walk: Well again, that was a mistake by Mr. Coughlin and I'm not going to buy into that. The permits for the last couple of years were issued or were physically signed by the Director of Public Works under direction presumably of the Director of Code Compliance. The permits prior to that time, right up through, I believe it was 2008, were actually signed by the Zoning Administrator or the Director of Planning. So I guess your point is, is it 2008 versus 2013.

Dr. Ackermann: I mean you're talking about what the Zoning Administrator, what her thought process was and she's not here and so I can only just follow up with what you're saying, trying to get...even though the more recent did not come out of the Zoning Office.

Mr. Walk: But let me also supplement my prior answer by pointing out our zoning conformance letter in 2010 and so clearly that was issued through the Zoning Office and we would unquestionably be vested in the ranges that were in place as of March of 2010 and there is no suggestion that we have expanded since that time.

Dr. Ackermann: Thank you.

Mr. Walk: Other questions?

Mr. Ingalls: I have one, two.

Mr. Walk: Oh, yes, Sir.

Mr. Ingalls: It seems, just from listening to testimony and what you're saying, 1999 is that when The Crucible took over this property.

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Walk: Yes, we were lessee of NTS...

Mr. Ingalls: And how many shooting ranges were there at that particular time?

Mr. Walk: Mr. Garman is here, he can probably answer that question. I'm afraid I can't react to that.
Mr. Ingalls, would you like Mr. Garman to address that for you?

Mr. Ingalls: Yes, just the number that were there in 1999.

Mr. Garman: It's important to understand, thank you for asking the question, Mr. Ingalls, it's important to understand that entire bit of property had been developed since 1966, so they had built an impact area, or there is an impact area that has a higher elevation than the remainder of the property and they focused all of their firing into that higher impact area. So they used an area to fire from. Because we ask our students to be a little bit more controlled, we have confined them to a left and right lateral limit in 5 different places. So your comment earlier was somewhat appropriate. When NTS was out there, they would fire at grid coordinate X on day one and a month later on grid coordinate Y, based on the testing that they had to do and the ranges that they needed. For our purposes of student safety and neighbor safety, we've now established left and right lateral limits so that we don't allow people to shoot anywhere, but in only very prescribed and controlled areas. So we're shooting in the same area that they were shooting on.

Mr. Ingalls: You didn't create any more shooting ranges? Did you create anything?

Mr. Garman: We created a business out of nothing since 1993.

Mr. Ingalls: Okay. Did, since you've had the property, have you built anything? Done grading on it?

Mr. Garman: Absolutely. We had to clear a lot of trees, because there is a lot of new growth there that we had to get rid of. We had to add gravel so that our students could walk back and forth there. Being conscious and considerate of the square footage allowances that were there, we were able to grade it and make it a safer shooting environment for all of our students.

Mr. Ingalls: I assume you had County permits for grading.

Mr. Garman: We got permits for some and for others we did not, because there is a service area that's required and we stuck to those using permitted providers. So in other words on our M-1 property, and you guys jump in, on an M-1 property there is an amount that you're allowed to clear or disturb without a permit and then there is an amount that you are not...when you exceed that square surface, you need to get a permit. We always operated within those requirements.

Mr. Ingalls: E&S control, which I assume controls everything, if you disturb more than 2,500 square feet, which is a 50 by 50 area, you need a permit.

Mr. Garman: Okay.

Mr. Ingalls: I assume you got a permit for every time you were out there grading, building, re-building these berms and working them, so you ended up with...

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Garman: Well bear in mind, it didn't require grading for the berms, what it required was stations so that we could see and look around.

Mr. Ingalls: Oh, okay.

Mr. Garman: Again, they were already there. We have constructed some ballistic walls to go around range 3. I mean there's things we've done to improve the safety there.

Mr. Ingalls: Have you...from looking at some of the pictures that were shown, it looks like that some of the shooting range may have canopies over where the shooter is and all that.

Mr. Garman: Correct?

Mr. Ingalls: You get permits for building those?

Mr. Garman: For the pole barns we have to look back at the records to see.

Mr. Ingalls: You don't know?

Mr. Garman: That's correct. I mean, I've been there since 99, but...

Mr. Ingalls: You don't know whether you got permits for...all the buildings that are out there, are of them have been built by permit and everything else?

Mr. Garman: I went to the County and pulled all the permits since 1966 that I could find. So I can't talk to building 1 through 5 and their permits. I got some, but not others. If you look at the building permit codes, one year the tax assessment is more accurate with the number of buildings than the building permits that are there. So I can't speak to the permits that had been pulled.

Mr. Ingalls: So there is possibly some construction out there that was not built with permit?

Mr. Garman: From 1966 till today, I can't comment on that.

Mr. Ingalls: I'm talking about since you had it.

Mr. Garman: No. No new buildings have gone up there since.

Mr. Ingalls: Like I said, you got permits when you built those shelters and we could go to the County...some of them look fairly new, so you should remember those.

Mr. Garman: Correct. I don't remember them, because I wasn't in charge of that construction, number 1 and number 2, whether they required permits or not, I don't know.

Mr. Ingalls: They probably were structures, so...a gazebo, you build a gazebo in my yard, I need a permit. I'd assume that what I saw there is a pretty structural integrity. They would not need somebody to approve that it's structurally sound.

Mr. Garman: Okay, understood.

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Ingalls: So you just don't know whether you have or haven't.

Mr. Garman: That's correct.

Mr. Ingalls: Okay. I guess...

Mrs. Musante: Mr. Ingalls, can I stop you for a minute? Mr. Garman, can you state your name and address for the record, so I'll have it?

Mr. Garman: John Garman, 60 Jack Ellington is the business address. My home address is 1910 Elmhurst, Fredericksburg, 22401. Thank you.

Dr. Larson: And Mr. Garman, were you standing when we swore everybody in?

Mr. Garman: I in fact was, yes Sir.

Dr. Larson: Okay, thank you. I actually have a clarification question. Just bear with me. So I think what I heard you say was that the 5 ranges down there that are in existence now are in the same location as the one range was originally. Or something like that.

Mr. Garman: You can call it a range or a firing area. However you want to go, the place that we are shooting now are the same places that they were shooting before. We have limited it though, I think, more than NTS had in the past.

Dr. Larson: Alright, thank you. Any other questions for Mr. Garman?

Mr. Ingalls: I guess what you're saying then, if I went back and looked at the County aerial photograph starting whenever they had them, if I look at your property from an aerial view looking down on it, it would look like today what it did back 10 years ago?

Mr. Garman: I doubt it would, Sir, because all the trees that have grown in since 66.

Mr. Ingalls: Well the trees, but the buildings, the firing ranges and all that would be the same as it was back 10 years ago or more?

Mr. Garman: Yes, Sir.

Mr. Ingalls: Okay, so if I pull back 2004 topo then I would change from what I see today?

Mr. Garman: Again, you would see a change in trees.

Mr. Ingalls: Yes, vegetation, that's not... talking about no structural, grading, things like that.

Mr. Garman: Yes, Sir.

Mr. Ingalls: Okay. Thank you.

Dr. Larson: Any other questions.

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Kim: Heather do you have one and then I will ask.

Ms. Stefl: I did have a clarification question (inaudible, microphone not on) a previous speaker (inaudible, microphone not on) spoke of live fire was a concern (inaudible, microphone not on). Could you go into a little but more elaboration (inaudible, microphone not on) use live fire, is it in a same direction (inaudible, microphone not on) same everything, so it is not like you are (inaudible, microphone not on).

Mr. Garman: Absolutely. So when you conduct firearms instruction it's required that you identify left and right and vertical limits to all of your shooters. So while, even in the video that you saw there, I can get out of a car and fire my weapon, but then every time as an instructor I have to position that car such that when they get out they understand that one of the four rules of marksmanship, which is, know your target and consider its background. So as the shooters deploy from the vehicle, we set up the drill such that there are targets that are visually aware to them as they begin the drill. And on the command of fire they get out and they conduct the training in that direction. In the photographs that you see of the Westlake development, it really does help kind of drive that point home. The Westlake development is 180 degrees from our impact areas and so what you'll find is while they're close to us, we're shooting toward the Vulcan area. Their graphic doesn't demonstrate it, but it's important to understand that. My ranges and the impact area are much higher than the shooters and that impact area is away from the residences that are behind the impact area.

Mr. Kim: I did have a question.

Mr. Garman: Please.

Mr. Kim: So, when you purchased Crucible, or from the NTS in 1999...

Mr. Garman: No, Sir. We were lessees from 99 to 09. Got a slight extension and purchased it in 2010.

Mr. Kim: You were lessees, okay. So I assume when the NTS had it, and I know you're not involved with it, but they probably had less business than you have right now, is maybe why all these complaints came about, or...

Mr. Garman: You know, when you talk to NTS, they talk about wrapping dead cord around motors to cut them in half to destroy them because its government furnished property. I would assume that they made more noise than us. I wasn't here in 66. I wasn't here in 75 like the other speaker that heard the noise. I started in 1999 sweeping floors.

Dr. Larson: Question?

Mr. Garman: Yes, Sir. Mr. Ingalls?

Mr. Ingalls: Back in August of last year you all were trying to get the 2000...the next permit...certificate.

Mr. Garman: Yes, Sir. Conditional Use Permit...

Mr. Ingalls: Correspondence going on between the inspectors, and Keith Dayton, and Mike Smith, or whoever, and Mr. Payne back and forth about...they had asked...went out and did some inspections. By

***Board of Zoning Appeals Minutes
August 26, 2014***

then complaints were coming in and they asked for some report. And then you all said, oh yeah, we got that, we'll give it to you. And here it says, well it's been a couple of month, but we haven't got it. The County said "We haven't got it".

Mr. Garman: Yes, another convenient omission. We provided it. It's just not in your documentation there.

Mr. Ingalls: Does that state that document...what is that...does that state what your shooting hours are? Does it state anything?

Mr. Garman: It's interesting. This County individual is there to approve our firing ranges and asked about our policies on speed and so it was that misuse of purpose that raised the red flag on our office at the same time the CUP comes up, my range inspector is asking me about my traffic policy. And so it's at that point that we slowed the process and made sure that our lawyers approved our providing this information. That took a while for them to provide, or I'm sorry, took a while for them to tell us to do it, then we provided the information and the application was approved and the permit was given. Unfortunately the response isn't in there, but it doesn't look as good with our response in it.

Mr. Ingalls: Do you have a policy that says, we're going to shoot from 8 in the morning till 10 at night?

Mr. Garman: Yes, Sir. Now that's the other part that's, again, been a little bit misrepresented. The restriction on us as a facility is as a range facility. Has to do with noise. And the noise level technically I'll have...if you like, we can have someone else to speak, but the controls in place there are from 08 to 10 PM you're required to keep a certain level. From 10 until, again, 06, I apologize.

Mr. Ingalls: I saw that in there. I read that.

Mr. Garman: What we did is we imposed on our own a life fire limitation of 8:00 AM to 10:00 PM.

Mr. Ingalls: Oh the limit is 10:00 PM.

Mr. Garman: Yes, Sir. Because in the summer time that allows us only about an hour to 90 minutes to provide our contract requirements for night shooting that we have on several of our government contracts. In the wintertime we're able to stop much earlier, because if we can stop shooting earlier we get to go home earlier as well. So in the winter time we shoot into darkness and in the summertime we shoot into darkness to meet the contract requirements. Again that's self-imposed moratorium on our shooting at 8 AM and 10 PM. We've agreed in the Conditional Use Permit to put that such that it is now limiting and binding to us, but 2 years of paying lawyers and discussing things haven't allowed us to get to that process to be denied or accepted.

Mr. Ingalls: It appears, again, from what we've heard from the public. The testimony is that there's been maybe an escalation from 5 to 10 years ago till now. Is there a reason why they think that way?

Mr. Garman: And a drop off in the last...

Mr. Ingalls: Well, they had a good reason for that, but anyway, tell me why it went up.

Mr. Garman: They had one, but it may or may not be accurate.

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Ingalls: Tell me why it went up.

Mr. Garman: If we have more business, one of the things it can increase is shooting, so if over the past couple of years we've shot more, then maybe they heard me. If we shot less or we've shot when they're at home then its increase to that person. So the folks that are here, of the 8 or 9 that have complained, I can't speak to why they complained. I can't speak to why it was more noise. When my daughter talks to me and I ask her to wait till I'm finished, the third time it sounds like she's talking louder than the first time. So I can't get into the heads of the folks that complain. Our business goes up and down. One aspect of that is life fire. I will say that the firing that we do doesn't necessarily go up and down with the business. It goes up and down with the types of business that we do. But I can't comment on why they've been more up to a certain point, without us pointing on the map. I can tell you what business we've done over the years, not today, but I can provide that information.

Mr. Ingalls: Thank you.

Mr. Garman: Thank you for the question.

Dr. Larson: Any other questions for this witness? Thank you, Sir.

Mr. Walk: And are you done with me as well?

Dr. Larson: That's a good question. Are there any other questions for this witness? It appears we're finished as well.

Mr. Walk: Thank you, Mr. Chairman.

Dr. Larson: Would the applicant like to respond to anything that he's heard?

Mr. Coughlin: Mr. Chairman, members of the Board. I start from this position again. The burden is actually on the property owner, who's claiming they have a vested right to an illegal use, to establish that they have that vested right. And I submit to you that that burden has not been met here and that's not my burden. That's the burden that the Supreme Court of Virginia established in the Norfolk 102 case that I'll be handing out to you. What you've heard related to NTS's use is that they tested things. There is an article that's been submitted in their submission that indicates that the only outdoor use that they were actually engaged in was Diesel compressor testing. Anything else was done in enclosed sheds and the affidavit is not very clear on whether some of the firing that occurred was in enclosed shed, but they were not a weapons training facility. NTS was not a shooting range. They were a testing operation. So it's disingenuous to say that this is just a continuation as to what was there before. Alright, well then go do what NTS does. That's not what the Crucible is doing. Instead what we hear about are the outdoor shooting ranges. And if you look at the submittal that they've provided, they have exhibit C in their materials, it's a diagram of their operations. There is an area that is kind of in the lower half of the exhibit, that is the shooting range that at least I believe I've observed on the property. But there's two other ranges that you can kind of see the perimeter of. So there is separate areas on the property. There's not just one giant range that has been converted into separate ranges and that's consistent with their CUP submission that showed their existing uses and counted up the five separate ranges. So it would appear to me, based on the record, that modifications have been made. The first approval was for one range. They then got an approval for two shooting ranges and then the term used after that was just shooting range, but we would submit that it would appear that, given that they have five now, that they have expanded, at least their shooting range operations. So, on to the claim that they

***Board of Zoning Appeals Minutes
August 26, 2014***

have a vested right, because of the certificates of approval that had been issued. If you look at our exhibit 17, we didn't try and hide the ball from the Board. Our exhibit 17 is a chart of who issued all of those approvals and what capacity that employee had when they were issuing the approvals. And Dan Schardein, I think, maybe signed one of them, was both the Director of Code Compliance and the Zoning Administrator for a period of time. Those are two separate roles. Remember, it's the Director of Code Compliance that issues the certificate of approval for a shooting range. But Ms. Hudson actually was the one who issued some of the certificates of approval and it's just frankly unclear whether she was doing that in her capacity, in a zoning context or as a delegate of Mr. Schardein, as the Director of Code Compliance. But what we know is that starting in 2008 when essentially the Planning Office reorganized itself, that starting in 2008, you have the Director of Code Compliance, the Director of Public Works issuing these certificates, and the most recent one was issued by the Director of Public Works as well, not the Zoning Administrator. That's clear. So, in light of that we believe that, again, these are not zoning decisions that have been rendered and therefore there's no protections under the zoning enabling legislation, specifically 15.2-2311(C). The other thing I'd like to address is just briefly their claim that they are an accessory use. The accessory use provisions require that an accessory use be subordinate in area. And I suggest if you just look at their materials submitted with the CUP which I don't believe are in your materials, but also their aerial and their sketch that they provided, exhibit C, these shooting ranges take up a large portion of the property. I submit their not subordinate in area. In addition, an accessory use cannot be prohibited. And let's go back to the one thing I wanted you all to focus on, what we're talking about is a use that is definitely not permitted in the M-1 district. We've already had the Zoning Administrator determine that the explosion of IEDs is not permitted because it's not in an enclosed building, that the outdoor driver course is not permitted, because it's not in an enclosed building. Logically she would conclude that this use, but for the supposed past history, that the shooting ranges could not exist on M-1 property. But she didn't render that decision, because she thought her hands were tied and as we've argued, we don't think her hands are tied, because no binding zoning determination has been issued. And back very briefly to the claim that the zoning verification issued in 2010 is a binding zoning determination that prohibits the Zoning Administrator from rendering the shooting ranges illegal. We don't know really what existed on that date. There's not much that preceded that determination being rendered and the only phrase that the Zoning Administrator used, or actually Ms. Musante used at the time was the training facilities. They did not use the term shooting range or shooting ranges, that those have become lawful nonconforming uses. What I'd like to do is hand up the two cases I've referenced. These were not in your materials. We did cite the Crucible case in our brief and then I'd mentioned to you a couple of times the Norfolk 102 case. I think I have plenty of copies for the Board. So we've submitted proposed findings as well. Those are in the middle of your materials and points 1 through 7 are what are germane to this particular issue and we would request that the Board of Zoning Appeals reverse the Zoning Administrator's determination that the shooting ranges have become an approved use and therefore are not in violation of Zoning Ordinance for the reasons we've stated and adopt these proposed findings. I'm available for any further questions.

Dr. Larson: Questions for this witness? Stand by please.

Dr. Ackermann: I have a question for the Chair.

Dr. Larson: Yes.

Dr. Ackermann: There's an awful lot of material here. If we continue this meeting would we be able to bring folks back to ask questions.

***Board of Zoning Appeals Minutes
August 26, 2014***

Dr. Larson: I would say yes. I do have a question for you, Sir. When exactly did Westlake acquire the property in question?

Mr. Coughlin: Let me confirm with my client just very briefly. I don't have that information. The project itself was approved in 1989 as Westlake and then our client acquired title to the property in 2003.

Dr. Larson: Thank you. Are there any other questions for this witness? Thank you, Sir.

Mr. Coughlin: Thank you, Mr. Chair. Thank you, members of the Board.

Dr. Larson: I'm going to leave the public hearing open for now. I have a question for the staff, if I can find it. Could somebody define for me what exactly a zoning verification is?

Mrs. Musante: Basically what we do when we get the request for a verification is give all of the history on the property, whether there were any rezonings or conditional use permits. It's the history of the property.

Dr. Larson: Okay and it does say at the bottom, it's subject to change. What does that mean?

Mrs. Musante: It means if we find additional information, we can change our zoning verification.

Dr. Larson: Okay. Thank you.

Dr. Ackermann: Is there a time limit for finding that additional information?

Mrs. Musante: We...at that time you could appeal a zoning verification within 30 days.

Dr. Ackermann: But the County could change their mind.

Mrs. Musante: Yes.

Mr. Harvey: Mr. Ackermann, if there was additional information that could be found, the County could reissue the verification also too there are changes to the County Code, so that would potentially affect the findings of that verification if there were future Ordinance amendments.

Dr. Ackermann: Thank you.

Dr. Larson: While you're there Mr. Harvey, the Zoning Ordinance says, I quote, you probably know the section better than I do, "within the M-1 district all uses shall be conducted within enclosed buildings". Then under Conditional Use Permit one of the uses allowed is airport, private. How does that work?

Mr. Harvey: Mr. Chairman, we would have to take a look at the proposal. Any buildings associated with the airport and activities like repair planes, those types of things would have to be conducted indoors, but the actual takeoff or landing of aircraft obviously has to be outside.

Dr. Larson: Okay. So that would be some sort of accessory use argument then? Would that be applicable here?

***Board of Zoning Appeals Minutes
August 26, 2014***

Mr. Harvey: I think probably in this case we'd say that the takeoff and landing of aircraft is a normal and accepted activity associated with an airport. By virtue it's got to be conducted outdoors.

Dr. Larson: And then the accessory use would be things that are in the buildings.

Mr. Harvey: Could possibly be. Yes.

Dr. Larson: Something like that. I don't know. Thank you. Any other questions?

Ms. Stefl: In M-1 zoning, ranges are supposed to be only indoors (inaudible, microphone not on).

Mr. Harvey: Ms. Stefl, the way the Code is written, any activity would have to be conducted indoors, whether it's a firing range or some other use.

Ms. Stefl: (Inaudible, microphone not on) Stafford County Landfill that is owned by the R-Board (inaudible, microphone not on) zoning on that?

Mr. Harvey: There is two different zonings on that property. A portion of the property, where most of the administrative functions occur, is zoned M-2, heavy industrial. The remainder of the property is zoned A-1, agricultural.

Ms. Stefl: A-1, is A-1 an outside (inaudible, microphone not on).

Mr. Harvey: I don't believe there's any limitation on outdoor activities in the agricultural zone.

Ms. Stefl: Because there is an open air firing range (inaudible, microphone not on).

Mr. Harvey: That is correct. It's operated by the Sherriff's Department.

Ms. Stefl: So that is not in violation because it is A-1 (inaudible, microphone not on)

Mr. Harvey: Correct.

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

Mr. Kim: I don't know if it's for Mr. Harvey, but I definitely have a question. Can someone elaborate what NTS did to what The Crucible does now, training, whatever you guys want to call it. Is there a big difference between what NTS did to what The Crucible does and whoever could answer that would be... I mean that's kind of...because hearing both sides I hear a little discrepancy between, you know, what NTS did to what The Crucible does now, and that's why the questions that I had before was, you know, was there was there more business now from when it went to The Crucible to when it was NTS?

Dr. Larson: For the record, you're going to have to speak into a microphone.

Mr. Meyers: Again, my name is Jeff Meyers, I did not work there, but one of my neighbors did work there. He said it was a testing facility where routinely they would crash cars into each other and they would also blow up, I think it was small ammunitions and things of that nature. I don't think it was routinely used as a shooting range. They may have done some of that, but that's not what it was. And it also had strict business hours. So I think the use has really spread way out. Sort of like, I park cars in a

***Board of Zoning Appeals Minutes
August 26, 2014***

parking lot and now I want to run a car dealer ship. That's two different things. I think there's a wide gap between these two things. I personally never went there, but I have talked to someone who did.

Mr. Kim: Well I mean it would seem to me, if there was a shooting range there, when NTS was there from 1966 that they would have done some kind of shooting.

Mr. Meyers: I think they had berms there to also stop explosions and things of that nature. I think they did a lot of shaker test too. So you take ammunitions what it would hold up to. I think that was one of the primary uses at that place. And I remember as a child, I'm a lifelong Fredericksburg resident, born and raised in this region, so I'm not some outsider coming in. I lived in the area and I've been around it. I don't know anyone who ever complained about this stuff going on till 10 o'clock at night. And...I'm trying to do this in a delicate way...to be told in front of all of you and I've been put under oath I hope and I hope they were, that we didn't hear explosions and that that didn't occur, is basically calling me a liar, or someone isn't telling the truth when they come up here. I know what I heard and an airplane doesn't remotely come close to what I've heard. Something explodes. I can't tell you what it is, because I'm not there and if someone else could truthfully come up here and tell us exactly what does explodes and where all of those deposits of led and what not go afterwards. And I know, like for a police officer, he has to account for every round. I know every round that goes onto that place should be accounted for. We ought to know how many rounds every year, every day are shot there and it ought to be a big part of your decision.

Dr. Larson: Any other question for this witness. Thank you, Sir.

Mr. Meyers: Thank you.

Mr. Kim: Can we have... yes... your response. Thank you.

Mr. Garman: I think, again, John Garman, 60 Jack Ellington Road. I think, to answer your question, the affidavit from Ken Malley probably is the most direct, experienced that I've been able to find on what happened on the property. Ken will talk about the activities that happened there. He tried to capture them in an email we put then in an affidavit that we had signed. That probably, you know, I've also spoken with the 17 years old that was sweeping the floors when his dad ran the place in the 70s, but because it's so detached from where it is now, and because he's in California and quite honestly doesn't have a dog in the fight now, not really interested in being involved in what goes on, but form discussions with them, the thousands of gallons of fuel that they ignited, the rounds going into the vehicles to see how the engines, how the engines perform with 50 caliber rounds doing the same, the dead cord wrapped around motors and cut into pieces and the driving of vehicles, I think he speaks to vehicles around the course to see some sort of failure there. I know that we pulled out centrifuge arms that are 20 feet in length roughly. So that would mean a large centrifuge. I know that we've...these are pieces of big cast iron that we've pulled out of the woods. Large I-beams that we've pulled out of the woods. I do know that there are new...if you google the NTS and GEL that you'll find complaints about their 24 hour diesel generator testing for the Ft. Belvoir folks. Again, this is all stuff that you read and stuff that you talk about, but this is the kind of environment that was described to us, to not myself but to the owners, when they decided to move there in 1999. Because you wanted to move into a place that what we're doing has already been done. And so that's what got us there to begin with.

Dr. Larson: Other questions? Thank you. Alright, in view of the fact that we have received a substantial volume of material within the recent past, within the last day or two and the late hour and the fact that, at least I have some questions that I want to research before I think I can make a decision on

***Board of Zoning Appeals Minutes
August 26, 2014***

this, I would like to leave the public hearing open on this case and defer it till next time, if the Board is of a mind to support that.

Mr. Davis: I would second that motion.

Dr. Larson: That's not a motion. I'm asking for one.

Mr. Ingalls: I'm not going to be here next week so that will relieve me a lot of responsibility. Next month, month, month, month.

Dr. Larson: So is there a motion to that effect.

Mr. Davis: I motion to defer until next month.

Dr. Larson: Second?

Dr. Ackermann: Second? But I have a question. How long do we have? Do we have to make a decision within 60 days?

Dr. Larson: 60 days from today is my understanding.

Dr. Ackermann: Just in case we can't meet next month because of a hurricane or something.

Dr. Larson: Right. Okay, any discussion on the motion?

Mr. Ingalls: Since I'm not going to be here, I'm going to vote no.

Dr. Larson: Those in favor say aye.

Mr. Davis: Aye.

Ms. Stefl: Aye.

Dr. Ackermann: Aye.

Dr. Larson: Aye. Any opposed?

Mr. Kim: No.

Mr. Grimes: No.

Dr. Larson: Two no's?

Mr. Kim: Three no's.

Dr. Larson: Okay let's do this again. Those in favor raise your hand. Four. Opposed? Three. Motion passes 4-3. Alright so for the audience, this hearing will continue on the 23rd of September at 7 o'clock. Before we leave I'd also like to note for the record some of the issues brought up by the public. The Board of Zoning Appeals doesn't rule on these, but I want to note them for the record. The issue of

***Board of Zoning Appeals Minutes
August 26, 2014***

noise for the firing range and whether it's been appropriately determined to be within the Ordinance, the hours of firing, the potential lead pollution, and the potential stray bullets escaping the property. Some of which are safety issues. Alright. I'm going to also suggest that we defer the other unfinished business to the Board if there are no objections to that. So is there a motion to adjourn?

Mr. Kim: Motion to adjourn.

Dr. Larson: Second?

Mr. Ingalls: You didn't want to take up any of the other business that we had?

Dr. Larson: No. Second?

Mr. Grimes: Second.

Dr. Larson: All those in favor say aye.

Mr. Davis: Aye.

Dr. Ackermann: Aye.

Mr. Ingalls: Aye.

Ms. Stefl: Aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

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

UNFINISHED BUSINESS

2. By-laws

3. Preamble

OTHER BUSINESS

4. Special Exceptions

ADOPTION OF MINUTES

April 22, 2014

May 27, 2014

ZONING ADMINISTRATOR'S REPORT

*Board of Zoning Appeals Minutes
August 26, 2014*

ADJOURNMENT

With no further business to discuss the meeting adjourned at 10:09 p. m.