

**STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES**  
**September 23, 2014**

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, September 23, 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, Gregory Poss, and Steven Apicella

MEMBERS ABSENT: Larry Ingalls, Ray Davis, and Heather Stefl

STAFF PRESENT: Jeff Harvey, Evelyn Keith, Steve Hubble, and Denise Knighting

DETERMINATION OF QUORUM

Dr. Larson: The Board consists of 7 members and 2 alternates and I'll note tonight that we have 7, no, 6 so far. Who are we missing? Heather! We expect to have 7. So anyway, we have Dr. Ernest Ackermann here, far left, Mr. Danny Kim here next to me on the left, and the right Mr. Robert Grimes and Steven Apicella next to him. That's Gregory Poss there and then Mr. Jeff Harvey is with the County so he won't be voting tonight. The County staff is represented by Mr. Jeff Harvey. He's the Director of Planning and Zoning. We have also with us Evelyn Keith, Zoning Technician and Denise Knighting, Administrative Manager. 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 then 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 limit for each individual speaker and a 5 minute 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 will, even though this public hearing was opened and remained open, we'll follow this procedure tonight. 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 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 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. We still currently have 6 members. We actually are expecting to have our 7<sup>th</sup>, but if there are only 6 I will remind the applicant that you must have 4 affirmative votes to approve an application. If you do not think that there are enough members present tonight that will enable you to receive a fair hearing than you have the right to defer the hearing until another meeting. However you may defer the hearing for this reason only once in a 12 month period. Deferral requests are granted at the sole discretion of the Board. The applicant may withdraw his or her application at any time prior to a vote to approve or deny

the application provided the applicant has not withdrawn a substantially similar application within the last 12 months. Any person or persons who do not agree with the decision of this Board shall have 30 days to petition the Stafford County Circuit Court to review our decision. Also be aware that the Board will not hear any denied application for a variance or special exception that is substantially the same request for at least 1 year from the date of our decision. I now ask that anybody who has a cell phone, pager, or electronic device, please silence it. It is the custom of this Board to require that any person who wishes to speak before the Board shall be administered an oath. Therefore, I ask that anyone who wishes to speak tonight, stand and raise your right hand. Do you hereby swear or affirm that all the testimony before this Board shall be nothing but the truth? Thank you, you may be seated. The Chair asks that when you come down to the podium to speak, please first give your name and address clearly into the microphone so that our recording secretary can have accurate record of the speakers. Also, please sign in on the form in the back on the table at the back of the room. Thank you. And I would ask that members of the Board also to remember to turn on your microphones so that we can get an accurate recording for the minutes. Are there any changes or additions to the advertised agenda?

Ms. Keith: No changes to the agenda.

Dr. Larson: Okay. I actually have one. Before the part of adoption of the minutes I'd like to discuss with the Board our procedure for minutes.

Ms. Keith: Thank you.

#### DECLARATIONS OF DISQUALIFICATION

Dr. Larson: Before we hear the case that's continuing, does any Board member wish to make any declaration or statement concerning any of the cases to be heard before the Board tonight? Hearing none. Thank you. I'll now ask the secretary to read a summary of the case that's open now.

#### 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.

Ms. Keith: 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

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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: Thank you. Are there any questions for staff?

Mr. Apicella: Mr. Chairman, I beg the Board's indulgence. I have several questions for Public Works and Planning staff. My first series of questions are to Public Works staff. I think we have a representative here. Mr. Steve Hubble. I think you have to say your name and...

Mr. Hubble: Sure. Steve Hubble, acting Director of Public Works.

Mr. Apicella: Thank you. Again, I apologize. I have several questions, Mr. Hubble. Can you explain what a certificate of use is?

Mr. Hubble: Yes. A certificate of use is a document that's issued by the County that establishes what use is permitted on a particular property.

Mr. Apicella: Is it synonymous with a certificate of approval?

Mr. Hubble: Not necessarily.

Mr. Apicella: Okay. Are certificates of approval or use issued for any other purposes beyond shooting ranges?

Mr. Hubble: I'm unfamiliar with one other than this at this time.

Mr. Apicella: And who issues these documents?

Mr. Hubble: In the Code the certificate of use for a shooting range is issued by the Director of Code Compliance. That specific title is a bit of an antique in the County, so essentially that falls to my role as the acting Director of Public Works. In the 90s the Public Works Department was known as Code Compliance and now I serve in that function upon renaming of the department.

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Mr. Apicella: I know it's probably broad, but can you, and despite the antiqueness of the terminology or past use of Director of Code Compliance, but can you tell me what the role is of the Director of Code Compliance, or Code Compliance in general?

Mr. Hubble: Sure. At the time that that term was used Code Compliance was essentially responsible for County functions that dealt with constructions, building and environmental oversight, so generally they dealt with zoning enforcement, building permitting and inspections, and environmental inspections and we do those functions currently, not zoning anymore and in additions to other functions.

Mr. Apicella: And you've performed this role for some time?

Mr. Hubble: I have been acting Director since September the 2<sup>nd</sup>, Assistant Director since 2012.

Mr. Apicella: From you vantage point, is the Director of Code Compliance a governmental official acting in the interest of and on behalf of the Stafford County citizens?

Mr. Hubble: Yes.

Mr. Apicella: Does the Director issue any official documents on behalf of the County?

Mr. Hubble: Can you be more specific about what... can you give an example of a document?

Mr. Apicella: Well, the certificate of approval, is that an official document?

Mr. Hubble: I would say yes. Generally most documents are issued under my supervision. For example, in the context of building, the Building Official would issue a certificate of occupancy for building. She works under my direction.

Mr. Apicella: Stafford's provisions for shooting ranges are covered under Section 2631 through 2634. Under these chapters, anyone who wants to install or operate an indoor or outdoor shooting range must get a certificate of approval from the Director of Code Compliance?

Mr. Hubble: That's correct.

Mr. Apicella: And an applicant must file an application with your office to do that, to start that process?

Mr. Hubble: That's correct.

Mr. Apicella: And the Director of Public Works serves in that capacity?

Mr. Hubble: That's correct.

Mr. Apicella: Under the County Code the Director of Code Compliance has authority to set certain conditions regarding the operations of shooting ranges such as the time and manner of shooting, and the types of weapons and ammunitions, is that correct?

Mr. Hubble: That's correct.

Mr. Apicella: And what is your process for issuing a certificate of use?

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Mr. Hubble: The process in the past has been that a written request is sent to the County, an inspection is conducted, the noticed of the fee for the certificate is provided to the applicant, and then upon its payment the certificate is issued.

Mr. Apicella: And who else, beyond the Public Works staff, assists in that review.

Mr. Hubble: I'm unclear on prior years, but at this point I'm not aware of others that assist, other than folks within our department.

Mr. Apicella: But you also do a review on site?

Mr. Hubble: From my understanding that's been the process in prior years.

Mr. Apicella: Okay. What happens if and when there are issues with the application, the site, or the use? Do you work with the applicant to try to correct any issues? Do you, first of all, identify those issues and then work to try to resolve those issues?

Mr. Hubble: I'm really unclear how to address that in this instance. Generally the process has been that the use has found to have been acceptable and the certificate has been issued. Since this process is a bit of anomaly for this use, I'm not sure I can address that appropriately outside of the context that we have for this particular item.

Mr. Apicella: And I'm speaking in general, not necessarily just specific to this case, but to your knowledge, when was the first certificate of use issued to Crucible.

Mr. Hubble: I think it's my understanding that it was 1999.

Mr. Apicella: Were there any limitations set in the first certificate issued to Crucible?

Mr. Hubble: I'm unaware of any.

Mr. Apicella: The Crucible site had two shooting ranges, I think, back in the late 1990s or early 2000s. Is that...

Mr. Hubble: I'm unaware of that history.

Mr. Apicella: Okay. How does the County staff look at or adjudicate the number of ranges on a site?

Mr. Hubble: I'm not sure that we've done that in this particular context.

Mr. Apicella: Okay, but, in this particular case, if you go to do a review I'm presuming that Crucible or any particular applicant can't have an unlimited number of shooting ranges that when you go on site you would see what's reasonable and appropriate given the set of circumstances at that site. Is that a fair...

Mr. Hubble: It doesn't appear in looking at the weapons code 26 that there is any restriction placed on the number of ranges that would be allowed.

Mr. Apicella: But you can set the conditions, so that seems to be a pretty broad...

Mr. Hubble: That appears to be our purview if we wanted to.

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Mr. Apicella: Okay. Some exhibits were provided by the applicant that included copies of their certificates of use that were actually issued to Crucible. I don't know if you have the benefit of them in front of you, but can you...if you do and if you don't I'll pass you what I have...can you tell me what it says at the right hand corner of the document?

Mr. Hubble: Are you looking at a specific year?

Mr. Apicella: Right now I'm looking at 2013.

Mr. Hubble: Okay. Just a second. It's at the back of a large stack of paper.

Mr. Apicella: Mr. Chairman, may I actually give him my copy to kind of expedite it?

Dr. Larson: Certainly.

Mr. Hubble: Thank you. It says certificate use then use zoning certificate.

Mr. Apicella: Zoning certification?

Mr. Hubble: In this context it says certificate.

Mr. Apicella: Okay, and what does the certificate of use issued to Crucible say in the body of the document, if you look down it says: the building or lot may be occupied as a...can you read the rest for me?

Mr. Hubble: It says as a shooto, which I guess is a typo, shooting range out, which I assume is outdoor, that that's... that large text is probably an abbreviation that's pulled from our permitting system, is why that doesn't...

Mr. Apicella: I think somewhere else in the document it does say outdoor shooting range.

Mr. Hubble: This building or lot may be occupied as a shooting range outdoor in the district under the Zoning Ordinance, and subjects to the privileges, requirements, limitations and conditions prescribed by law. This certificate does not in any way relief the owners or any other persons in possession or control of the building or any part thereof from obtaining such other permits or licenses as may be prescribed by law for the uses or purposes for which the building is designed or intended, nor from complying with any lawful order issued with the object of maintaining the building in a safe or lawful, I'm guessing a word is left off, but I would assume - manner. The Virginia state wide fire prevention code requires all businesses to be inspected annually. Your business may be subject to a fire prevention inspection annually and one more fire prevention code permits. For additional information please contact the Department of Fire, Rescue and Emergency Services.

Mr. Apicella: Thank you and this document or a similar document has been issued at least 14 times or around 14 times since 1999?

Mr. Hubble: That's my understanding.

Mr. Apicella: Okay, up to this point has anyone or any entity contested any certificate of use issued to Crucible for an outdoor shooting range...to your knowledge?

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Mr. Hubble: I'm unaware of any others besides this one.

Mr. Apicella: Okay. Thank you. Mr. Chairman, those are the only questions I have for the Public Works Director. I do have some questions for the Planning Director.

Dr. Larson: Yes, of course. Other questions?

Dr. Ackermann: So was the site inspected every year.

Mr. Hubble: It's my understanding that it has been in the past.

Dr. Ackermann: Was it last year?

Mr. Hubble: 2013 or 2014. Both I believe.

Dr. Ackermann: So your office, or that office is aware of any changes that have taken place?

Mr. Hubble: Yes.

Dr. Ackermann: Thank you.

Dr. Larson: Another question?

Mr. Kim: During your inspection, if you can give us kind of the cliff notes of what you guys do. Is it just, you come out at a certain time? Do you come out unannounced?

Mr. Hubble: I can only provide the perspective for the one that I participated in which was this year's, 2014. We made an appointment with the folks at the Crucible. It was a couple of weeks ago. We came out. We did a walking tour of the 5 shooting ranges that are there currently and we observed the conditions. There was life fire at one of them, the rest were not having any fire because of safety reasons with us being there and then it was our charge to go back and review the conditions there in accordance with the guidance that we have for ranges which is issued by the national rifle association.

Mr. Kim: The one that you were involved with inspection wise, did you see any violations? Is there something that I might have missed here that you can tell us?

Mr. Hubble: Nothing specific at this point.

Mr. Kim: Okay, great. Thank you.

Dr. Larson: I have a question. These certificates of use are issued every year, correct?

Mr. Hubble: They have been in this purpose.

Dr. Larson: What would happen if the County declined to issue a certificate of use?

Mr. Hubble: I'm unclear on that. It's probably a legal question.

Dr. Larson: Could the entity continue to use their property in the way that they have without a certificate of use?

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Mr. Hubble: I think that's a question better answered by an attorney.

Dr. Larson: Okay. I guess I'm a little surprised I can't get an answer to that. So, we don't know? Can staff help me out? Why do we issue certificates of use?

Ms. Keith: I'm actually ask you to direct your question to Jeff Harvey please.

Dr. Larson: Go ahead Jeff.

Mr. Harvey: Mr. Chairman, reading 26-31 of the county code, it says no person shall install, set up, or operate an indoor or outdoor gunnery or shooting range within the County unless he has a current certificate of approval therefore issued by the Director of Code Compliance. So if someone is operating a shooting range without the certificate than they are in violation of this section of the county code.

Dr. Larson: And then what would be defined as a current certificate of use?

Mr. Harvey: It would be one that's valid for 12 month, pursuant to section 26-33.

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

Mr. Kim: If they're found in violation, what is their consequences of being in violation of the code. Lock the doors? Do you guys go out...I mean...I'm not sure on the process...I mean, is it a fine, or is it a citation?

Mr. Hubble: It's unspecified in the Code for this particular article.

Mr. Kim: It's unspecified. Okay great, thank you.

Mr. Apicella: The public works department, code compliance, you all enforce other provisions of the code, ensuring that the folks who have permits or what have you are following the rules, county's procedures of the County and if they're not you would stop their actions up until the point where they fix those problems, I presume. Say somebody was building a house and they weren't following the rules, you would say, hey, time out, you gotta make these corrections before you can proceed forward.

Mr. Hubble: If, for example, in our environmental ordinances we have specific enforcement criteria that we would follow to attempt to secure compliance.

Mr. Apicella: Thank you.

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

Mr. Apicella: Mr. Chairman, I have a few questions for planning staff which I believe is represented by our Planning Director, Mr. Harvey. Mr. Harvey, Crucible is operating under M-1 zoning?

Mr. Harvey: Yes, that's the current zoning on the property.

Mr. Apicella: Are they currently classified as an industrial school?

Mr. Harvey: I'm not aware that classification has been determined for the use yet.

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Mr. Apicella: So what current M-1 uses is Crucible currently operating under?

Mr. Harvey: I guess they have not received a certificate of occupancy for the site, so that's yet to be determined.

Mr. Apicella: To your knowledge, what has Crucible asked for in their CUP?

Mr. Harvey: They have a pending conditional use permit application to operate as an industrial school.

Mr. Apicella: And what would that get them that they don't currently have?

Mr. Harvey: The definition of industrial school includes potentially outdoor firing ranges and other activities associated with teaching various different industrial type of activities. I can read the definition if the Board would like.

Mr. Apicella: Sure.

Mr. Harvey: An industrial school is defined as an establishment which primarily teaches usable skills to prepare students for jobs in a trade or business that include but not limited to mechanical or chemical transformation of materials and goods into finished products, assembly or disassembly of machinery or equipment, use of chemicals and solvents for finished products, the discharging of firearms, defensive driving techniques, driving trucks, or heavy equipment.

Mr. Apicella: Thank you. What recommendation did the Planning Commission make on the CUP?

Mr. Harvey: Mr. Apicella, I do not recall.

Mr. Apicella: I believe the majority... I'm on the Planning Commission, so I believe the majority recommended against approving the CUP. That's my recollection, but I guess that could be verified, and I believe one of the major issues was hours of operation and noise. Has Crucible modified their CUP since it was voted on by the Planning Commission?

Mr. Harvey: Not that I'm aware of. In the case of a conditional use permit the County would be imposing the conditions.

Mr. Apicella: Right, but what's being requested in the application that's what I guess I'm asking for. So, again, hours of operation were, I think, proposed, some certain uses were proposed in the CUP. Have they modified that as it's moved forward to the Board of Supervisors?

Mr. Harvey: It's not moved forward to the Board of Supervisors as of yet. I would have to check the record to see if there's been any additional offers of changes to the conditions.

Mr. Apicella: In reading the Zoning Administrator's April 10, 2004 determination, she indicated that certain uses in the CUP application are not permissible in outside areas in M-1 zoning and that no county official had authorized such uses thus far. So as I recall what's in that letter, 2 of the 3 items that were touched on, explosive detonations and driving track, were deemed not permissible uses. Is that correct?

Mr. Harvey: Yes.

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Mr. Apicella: And that there was no county documentation to suggest in any way that any county official had approved those uses thus far.

Mr. Harvey: Correct.

Mr. Apicella: So, for those two item that, again, I think we're proposing the CUP, how would those be dealt with going forward if and when the application moves forward to the Board of Supervisors?

Mr. Harvey: Well, as discussed just a second ago, those two items are in conflict with the provision of the zoning ordinance. For the M-1 district it requires indoor activities or that the activities be conducted indoors, so that may require code amendment in order to allow those types of activities outdoors.

Mr. Apicella: Or you might ask the applicant to withdraw those proposed uses?

Mr. Harvey: That could be a consideration.

Mr. Apicella: Okay. I've heard the term, or I've read the term outdoor weapons training center mentioned or some similar verbiage mentioned several times in several documents. Is that anywhere in Stafford's Code, that terminology?

Mr. Harvey: I'm not aware of that specific terminology.

Mr. Apicella: So the only definitions or context on shooting ranges are in two parts of the Code, one would speak to the certificate of use, and I have it right in front of me which code section that is and also in terms of noise, the noise ordinance. So there are no other terms or definitions that are associated with outdoor weapons training?

Mr. Harvey: Not that I'm aware of.

Mr. Apicella: And as far as you know, again, back to that particular section of the Code, the Director of Code Compliance has some authority in terms of setting the conditions, hours of operation, type of ammunition, and weapons that may be used at a particular shooting range. Is that correct?

Mr. Harvey: Yes, Mr. Apicella, I could read the Code section if you'd like.

Mr. Apicella: Sure.

Mr. Harvey: It's section 26-32, application and issuance, sub-section b) A certificate of approval applied for under this article may be issued by the director of code compliance, after inspecting the premises involved, only upon a finding that the discharge of firearms upon the range or area in question will not jeopardize life or property and that such range or area complies with all applicable provisions of this article. In issuing the certificate of approval, the director of code compliance may specify the time and manner of shooting and the type of firearm or ammunition which may be used on such ranges or areas.

Mr. Apicella: Thank you, Mr. Harvey. That concludes my questions, Mr. Chairman.

Dr. Larson: Any other questions for staff?

Dr. Ackermann: Not a question, just a comment (*inaudible, microphone not on*). (36:20)

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Dr. Larson: Okay, thank you. Any other questions for staff? Hearing none. Would the applicant or his or her representative come forward and present their case?

Mr. Coughlin: Mr. Chairman, members of the Board, my name is Michael Coughlin, here on behalf of Westlake Development. May I ask Mr. Hubble up as a witness and ask him a few questions before go into my presentation?

Dr. Larson: Why don't you present your case first and I'll consider that.

Mr. Coughlin: Thank you. Mr. Chairman, members of the Board, here is what is before the BZA. Of course this determination that the shooting range had become an approved use because the decision of the Zoning Administrator to allow the use of the shooting range was not appealed within the 60 day time period as prescribed in Virginia Code section 15.2-2311(c). That's really all that's before this Board. There's been discussion of vested rights under 15.2-2307. There's been a suggestions that this use has essentially more, just from what was there before, that it was therefore a lawful nonconforming use. Those issues are not before this Board, instead it's only whether this use has become an approved use pursuant to 15.2-2311(c). We believe that the Zoning Administrator of course is incorrect, because all that's been issued are certificates of approval and that's all that could have been issued, because the only code provision that speaks to a shooting range is found outside of the zoning ordinance and uses the term certificate of approval. So we have no zoning determinations, is our position. We have no zoning approvals, because all along this use has not been permitted under the zoning ordinance, instead there's a separate code provision, unrelated to the zoning ordinance that speaks to certificates of approval. And those are the only permits that had been issued. And they're issued annually. They're issued at the discretion of the director of code compliance who's a separate official from the zoning administrator, certainly today that's the case, and conditions can be placed on the approval. And those conditions can change from year to year, so how can you have a vested right under 15.2-2311(c) when it has to be renewed annually, the conditions can be imposed on the approval by an administrative officer, and those conditions can change every single year. That's not the way that one typically acquires vested rights under 15.2-2311(c). And let's remember, what we have here is clearly an illegal use and the Supreme Court of Virginia has not found one illegal use that it liked and wanted to afford protections to, under 15.2-2311(c). Not once. In the most recent case it made clear that the burden is on the property owner. Advancing an argument they have a right to operate an impermissible use, to prove that they have that right. And there, in the Norfolk case that we cited, the Norfolk 72 case, the Supreme Court said that an approval that is somewhat similar to what was issued here was not good enough. Before going any further I want to set the record straight. Just one thing that Mr. Harvey spoke to. Just to be clear, in the CUP the shooting range could not be operated outdoors as he read from the definition, you cannot operate shooting ranges even under the industrial school outdoors. In addition at the last hearing, and Mr. Apicella or Mr. Poss, you did not have the benefit of being at that hearing, but there was a suggestion by The Crucible that their use is very similar, looks very similar to what was there when NTS was there. I'm now going to pull up a few power point slides that will hopefully make it clear that that's not the case. This slide shows what the property looked like on the left in 1995, at that time The Crucible was not operating there. Their lease started in 1999. This is the last photograph that we have obtained from the county of what the property looked like before The Crucible started using the property. Now look at the property in 2014. You can clearly see that there has been a very significant expansion of outdoor activities, in fact outdoor shooting ranges. This slide is going to show you how the property has morphed between 2000 and 2014. Here it is again. As you can see, shooting ranges have immersed all over the property in 2000, that's when The Crucible did occupy the property. In The Crucible's own conditional use permit application it reveals that it has 5 ranges. So contrary to what was suggested by Mr. Garmin, there wasn't just one large shooting range out there that NTS was using, the prior property owner and user, that has now been turned into 5 ranges. No. You have 5 separate

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ranges, and in fact most recently, 2014 there is new area disturbance on the property. So without this Board putting a check on The Crucible I'm convinced that they will just continue to expand their operations under the pretense that, well, in 1999 we were told we can operate a shooting range, that means we can turn our whole property into just, you know, an outdoor weapons training facility. Although not completely germane to these proceedings because the zoning administrator did not determine that they have a lawful, non-conforming use, The Crucible is nothing like NTS. What NTS did was operate a testing facility. It tested. In all the materials submitted to you by The Crucible and us, most recently we submitted all the newspaper articles we could gather, that's our exhibit 30, all it talks about is testing on the property. There is a gun range that's indicated, that they had opened up, not clear whether it was indoor or outdoor, but that was a gun range to test bulletproof vests. That is not what The Crucible is doing here. You've also received a letter recently from Crucible's council. It suggests that The Crucible is less intense than what NTS was doing, although not germane, let's be clear he, The Crucible's personal training classes invite the class members, and these are not necessarily military folks or CIA folks, anyone from the public can attend these courses, the invitation is to bring 1,000 rounds of ammunition. That's pretty intense. In addition there's a suggestion in the letter submitted by council for The Crucible that this Board should make a determination that they have a vested right under 15.2-2307. Again, that was not addressed by the Zoning Administrator and we do not think that that is an applicable provision here. Also they suggest that they have not been found to violate County Ordinances, however, in fact, if you look at our exhibit 1, page 77, they were issued a fire prevention code violation because they did not have a permit to store 30,000 rounds of ammunition and multiple 5 pound explosives. Also, going to their theory that they're a lawful non-conforming use, they're trying to convince this Board that because in 1964 you could have outdoor uses and all that was required was adequate screening, that that rule should apply to them. That only works if they're a lawful non-conforming use which, again, is not before this Board and is not in fact the case, because they don't do what NTS did. What applies here is that their use needs to be indoors. So at the last hearing we gave you 3 reasons to determine that the Zoning Administrator was incorrect. Reason number 1; The M-1 regulations would supersede the weapons ordinance, indicate that all uses shall be enclosed...shall be conducted within enclosed buildings. And Mr. Harvey has confirmed that this was essentially not a consideration as the conditional use permit process was going forward, until we pointed out the provision of the code to them, but now is conceded, or at least conceded at the last hearing that their uses must be within enclosed buildings. In addition the M-1 district has never listed a shooting range as a permitted use. Reason number 2 that the zoning administrator is incorrect and this is what I'm going to focus the majority of my argument on for the rest of this proceeding, is that these aren't zoning determinations. And reason number 3 is that they are not a shooting range. So what they were approved for is not what they're doing. They're an outdoor weapons training facility. Shooting range is a defined term in the Code, and that's not what they're doing. So, going on to the point that they believe that they have a right to conduct an impermissible use under 15.2-2311(c). If that's what a party is relying on, the Supreme Court has said, the burden of establishing the vesting of a right to an otherwise impermissible use of property under code section 15.2-2311(c) falls upon the property owner. They cannot meet that burden. This was not a zoning approval and here's why. It was a shooting range approval outside of the zoning ordinance issued pursuant to 26-31. In the very section it also indicates that a certificate of approval issued under the provisions of this article may be revoked by the director of code compliance if the conditions upon which it was issued have changed. That's not the case with a site plan approval typically. If you get a site plan approval and you go out and build things and you then occupy them, you're zoning doesn't get to get turned upside down.

Dr. Larson: Mr. Coughlin, you're time has just about expired. Somehow our lights didn't work that time. I'll give you one more minute.

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Mr. Coughlin: I appreciate that. In addition it was Dan Schardein, the Director of Code Enforcement, not the Zoning Administrator, that issued the first 1999 permit. If you look at what he was at the time, that's our exhibit 17, page 57, he was indicated to be the director of code compliance. Furthermore we're talking about an annual certificate, not a permanent zoning approval. I'm not aware of other zoning approval that have to be issued annually. If it has to be issued annually you cannot have a vested right to that and that point is conceded by The Crucible in footnote 5 of their initial brief. Also, look at the certificates themselves. They state that the use may be occupied as a shooting range, subject to the privileges, requirements, limitation, and conditions prescribed by law, such as operating it within an enclosed building. There's just simply no binding zoning determination on file that they can operate what they're operating. There is no site plan approval. They haven't received one yet. There was a process they could have gone through in order to obtain a necessary zoning approval. You can get zoning determinations. That's what we request. You can get a vested rights determination. There's a form for that in the county. You can get a site plan approved if you're going to disturb that much land. And in that process you get a zoning approval that you can rely on. All they've got here is a shooting range certificate of approval. In sum, we would ask you adopt our finding that we've proposed and I reserve the right to address any rebuttal, or to make any rebuttal arguments if necessary.

Dr. Larson: Thank you, Mr. Coughlin.

Mr. Coughlin: Thank you.

Dr. Larson: Any questions for this witness?

Mr. Apicella: Mr. Chairman. Mr. Coughlin, you've mentioned that 15.2-2311(c) is the predominant code section we should look at and base our decision on. I actually feel compelled to read it as a result of your statement with the Chairman's indulgence.

Dr. Larson: Please, I've been meaning to do this myself. Go ahead.

Mr. Apicella: So, appeals to the Board, section C. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical errors. Okay, so is it your contention then that the certificate of approval is not a written order, requirement, decision, or determination.

Mr. Coughlin: Yes, not under the zoning ordinance.

Mr. Apicella: Can you tell me where it says zoning ordinance in this section?

Mr. Coughlin: It's in the zoning enabling legislation, so there is a chapter in the code related to zoning and subdivision and this provision is found there. So you can't have a vested right under this provision to some other permit. So if one were to receive, I'm trying to think of a good analogy, a right to mix concrete on a temporary basis, or some permit under the fire code, that is issued under the fire code. That might provide you protections under the fire code, and so that the code enforcement official acting

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in that capacity cannot change their mind, or maybe the can. This only relates to zoning decisions. And so all these decisions must be made by either the zoning administrator or someone acting in a zoning capacity. And it is our position that when you have a code provision outside of the zoning ordinance, you cannot act therefore in a zoning capacity.

Mr. Apicella: I appreciate that. That is your position. Again, I look at the certificate of use and as I said before in asking my question, right at the top it says certificate of use, use zoning certificate. Again, a reasonable person who accepts this document or was asked for this document might conclude that it does have a relationship to zoning. Again, I appreciate where you're coming from, but I'm not making the nexus that you've contended here. May I ask you another question? Are you again suggesting that the director of code compliance is not under the category of other administrative officer?

Mr. Coughlin: Not when they're acting in their capacity under the shooting range ordinance. Correct.

Mr. Apicella: And I believe in 1999 or somewhere thereafter Rachel Hudson who was the zoning administrator signed some of these certificates, I'm not quite sure in what capacity. I don't know if she had more than one hat, but I do recall somewhere in the documentation that it said that she had signed these documents. And I don't know if that was prior to any changes in the Code that the zoning administrator was part of the process in reviewing and approving these certificates of approval. That wasn't clear in the questioning and answer from Mr. Hubble. The last question I would have is, are you in any way contending that the written order requirement decision or determination was obtained through malfeasance of the zoning administrator or other officer, or through fraud.

Mr. Coughlin: We have not submitted any evidence to that effect.

Mr. Apicella: Okay. Thank you.

Mr. Coughlin: May I respond to one of the points you made in your line of questioning?

Mr. Apicella: Sure.

Mr. Coughlin: Sure. Related to the certificate of use, remember the code uses the term certificate of approval. My question for Mr. Hubble was going to be; do you have a separate form for issuing shooting range certificates of approval. My guess would be no. The County had one form. It just used the same form, yet they are two separate and distinct processes. There was an acknowledgment that this is a unique creature. There's nothing else like this. There's nothing else renewed annually. You know, these type of conditions that are imposed are unique and so I would submit that it's inescapable what it says, but it could only be a certificate of approval under the shooting range ordinance, which is separate and apart from the zoning ordinance. Just one last point. We had submitted the Norfolk 102 case. I did not bring extra copies for you, Mr. Apicella, but I do believe that they were provided by the attorney for...

Mr. Apicella: I read it and I'll actually speak to it later, so, thanks.

Mr. Coughlin: And if you just look at what that applicant and owner was relying on, it was something that was signed by the zoning administrator, and here, at least the most recent ones, were not. It was not something that needed to be renewed annually and so it's, you know, it may seem, to some degree, unfair, but what the Supreme Court has said is that when you're relying on something to say you can conduct an impermissible use, you had better be relying on something that clearly conveys a vested right. And for all the reasons that we've stated, we don't think that these certificates of approval do that.

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

Mr. Coughlin: Thank you.

Dr. Larson: Are there any members of the public that wish to speak in support of the application? Now before people come forward, by that it means the application was to, let's see, it was to overturn the zoning administrator's determination that the ranges were permissible, so if you think the ranges are not permissible, then this is the time that you would speak. We had some people speak last time, Leroy Rinker, Jeff Meyers, Matthew Dodd, Bill Roth, Catherine Shalaby, Vincent Hilliard, Linda Powell and Michael Chang. I would ask that those people do not speak again unless they have something substantially new to say. Your comments are already on the record, okay? So who in the public would like to speak? Sir.

Mr. Cummins: Daniel Cummins, I'm an unfortunate home owner in the area, listening to this God awful noise into the, what I consider late hours in the evening. I get up very early. When we purchased our property there early 1994/1995 this operation wasn't going on. If it was I wouldn't be living there. The weapons they use, I don't know what they are, but I'm a good mile or more from this operation, easily heard. I don't see how anybody that lives nearby with a small child gets that child to sleep at night. It amazes me. I just use earplugs. I have very good windows. The operation and use of that place they've noted back in the early 90s, doesn't really sound like the same thing they're doing here. I mean, this stuff is going on and I do not see how you can fit a training track into that, what, 88 acre parcel. I mean I think just the limitations on operating the vehicle and trying to do demonstrations of preventive driving and other things would just be impossible with any type of buffers between their operation and the rest of the public. I just think it's crazy to approve an operation that causes so much noise, again, so many residential areas that it butts up to. They should be out in 400-500 acres somewhere out in the middle of nowhere in the middle of it where they have 1.5 mile – 2 miles buffer around it and not 100 yards from the first homes that you run into. That's all.

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

Dr. Ackermann: I just had one. How often do you hear this noise?

Mr. Cummins: It varies. Time a day, sometimes 3 or 4 times in a day. You know, being at work probably not during the week, but on the weekends into the evenings. I mean its pitch dark and I'm out there and my wife and I love to sit on the back porch and have chiminea on these cool nights and enjoy the sky and then the animals. You can't hear diddly squat. I mean it's loud.

Dr. Ackermann: Not every day. I mean there've been days when I haven't heard it when I'm at home, but I would say probably almost every day I've heard it at one time or another.

Dr. Ackermann: Thank you.

Dr. Larson: Other questions for this witness? Thank you, Mr. Cummins. Would anybody else like to speak at this point. Seeing none. Would any member of the public wish to speak in opposition to the application?

Mr. Walk: I certainly would, unless you prefer to hear from others first.

Dr. Larson: Your choice.

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Mr. Walk: I'll go ahead. Thank you. And I do plan yield a portion of my time to Mr. Garmin. I see the timer here set at 3 minutes. I was told we'd have...

Dr. Larson: You'll have 10 minutes to speak.

Mr. Walk: Great. Perfect. First of all, thank you very much for hearing me again. I'm going to try not to repeat everything we went through last time. We've submitted a written letter that was done in large part to summarize what we went through last time for the benefit of the two members hearing our case tonight. Some key points that I do want to be sure get clearly communicated, and that is; we are dealing here on a very narrow issue, and that is the zoning administrator has issued a ruling that by virtue of these annual permits that were issued every year from 1999 forward, that that constitutes a decision or determination that cannot now be reversed, because my client has relied upon these permits and the 60 days allowed by code section 15.2-2311 has elapsed. Mr. Apicella asked some very prescient question of my adversary here and that is, do you content that this is not a ruling, decision, or determination. Well, of course it is. If you just look at the face of the permit. It says right on the face of it that it is, I want to get the right words, certificate of use and it's also called a zoning certificate and a good 8 or so of these were actually signed by the zoning administrator of the county.

Ms. Keith: Excuse me, Sir. So sorry to interrupt you, but can you state your name?

Mr. Walk: Oh I'm so sorry, it's John Walk with the law firm of Hirschler Fleischer, here on behalf of Crucible. The second question was, do you content that there was either malfeasance, fraud, or nondiscretionary error, and the concession was, of course not, that would be ridiculous. And then the third element is the reliance of our client. We've presented an exhibit J, I think, to our prior submission, the closing statement for buying the property and we paid 3.4 million dollars most specifically in reliance upon a zoning conformance letter that is exhibit I to our submission, but also substantially in reliance upon our having received these permits and having been approved each and every year for this activity. Also another aspect of this that came out in the questions, but I, again, want to emphasize it, and that is that these permits require by their terms an annual onsite inspection. So the idea that my client is out there secretly expanding their use and they're somehow flying under the radar screen is kind of ludicrous when you have situation where the permit has to be renewed annually and there's a specific requirements of an onsite inspection. I also want to point out to each of you very specifically the 2003 inspection report is almost kind of humorous and that it has a notation in it that says, oh by the way we don't really need to go out and inspect this year because the Sheriff's Department was just out there on the property doing training. So again, what Westlake is asking this Board to do is to substitute its judgment after the fact for the contemporaneous determinations made, not just once, but 14 times from 2009 right through the present time by the county officials charged with code compliance that our use was legal and a valid use of the property. I really want to try to yield as much time as possible to Mr. Garmin, because he wants to address specifically this idea of what NTS was doing on the property. Interestingly, when we started off here at our last hearing, Westlake's primary argument was that our use was just obviously illegal, because it doesn't comply with the current code requirements. We presented two alternative rationales under which the zoning administrator could have made that determination in 1999, 2000, 2001, and so on, that our use was legitimate. One of them was that we are grandfathered by virtue of NTS's prior use and Mr. Garmin will be addressing that. The other one that I do want to highlight before yielding the floor to Mr. Garmin is the alternative rationale regarding accessory use, and this very question came up, I think, Chairman Larson, you asked the question of Mr. Harvey last time. I may be mistaking on that, but I seem to recall it was you. You asked him about the airport. Private airports are a permitted use in M-1. And you said, Mr. Harvey, are you suggesting that you have to land the planes and take off inside somehow? And the answer was of course not, that the ordinance requires you to conduct the primary activity, in that case the repair and so forth of airplanes inside, but

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there are accessory uses permitted, such as fueling them, taking off, and landing. And that's a perfectly rational and legitimate alternative rationale under which these permits could have been granted. Last comment and then I need to sit down and let Mr. Garmin use the rest of our time, and that is, even though this was not part of the zoning administrator's ruling, the zoning administrator ruled based upon these annual permits under section 26-31, but we very much rely upon the zoning conformance certificate that we got in March of 2010. It's exhibit I to our submission. And this was done at a time where we were the lessee of the property and we were considering buying it, and so we did what you would expect a responsible property owner to do and that is, we went to the county and said, please confirm that our use is permitted on this property and we got a clean bill of health from the zoning department at that time, which we specifically relied upon in spending 3.4 million to purchase the property and if that's not a zoning determination I don't know what would be. With that I will sit down, unless there are question and yield the balance of time for Mr. Garmin.

Dr. Larson: I have a question.

Mr. Walk: Yes, Sir, Chairman.

Dr. Larson: The last thing you said. You said that the zoning department gave you something that you relied upon and spent 3.4 million, was that one of these use permits.

Mr. Walk: No, no, that was exactly what I wanted to be sure and emphasize as exhibit I to our...

Dr. Larson: The zoning determination?

Mr. Walk: And it is called zoning verification. This is not the shooting range thing. We certainly rely on those as well, but we very much want to point out exhibit I and J. Thank you.

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

Mr. Apicella: I do have a couple of questions.

Mr. Walk: Sure.

Mr. Apicella: So, again, I've read 23-11 and I've also read the Norfolk case and I agree with Mr. Coughlin, I'm sorry if I'm not saying his name properly, but that it says essentially that the property owner has to prove that they have a vested right and he's indicated that you haven't met that threshold requirement. What's your response to that?

Mr. Walk: I'm glad and thank you very much for bringing that up. The key distinction between our situation and the Norfolk case is, we have an official determination by the zoning administrator that we are a valid, non-conforming use, specifically as to the firing ranges. Westlake is now appealing that determination and under the controlling statute which you read earlier it is Westlake's burden if it wishes to overturn the zoning administrator's determination to prove that the zoning administrator somehow misapplied state law or misconstrued the Stafford county ordinance. In the Norfolk case, Mr. Apicella, what you had was a situation where the locality was seeking enforcement action against the use and the landowner was defending and opposing the determination of the locality by asserting vested rights in opposition to the attempted enforcement action by the city of Norfolk. And that's the key decision. If this were a situation where we did not have the zoning administrator's interpretation and instead we had Mr. Harvey or some other county official issuing us a zoning citation that said we were somehow

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violating the ordinance and we were now opposing that by asserting vested rights, then the Norfolk case would be the applicable law. That's just not the situation here.

Mr. Apicella: Can I ask you another question about the Norfolk case? So as I read the Norfolk case, the issue under 23-11(c) was that the jurisdiction from the appellant's point of view had provided a cash receipt that used the term eating establishment, not entertainment establishment and the distinction is, again, as I read it, entertainment establishment would allow a business to sell alcohol, and so the distinction was, again, the jurisdiction said eating establishment or eating place versus entertainment establishment. How is this situation different in the context of getting a certificate of approval from the county which specifically mentions shooting range as an authorized use?

Mr. Walk: Sure, glad to answer that as well. First of all, the issue, as you summarized in the Norfolk case, was whether this document in fact constituted a ruling that the desired use was approved and the whole thing of the court was, you really can't tell that from this document, as you have summarized, versus in our case, the question before this Board is, are we able to legally operate shooting ranges out on the property and we have permits that specifically say that we are. So there is absolutely no way that you can look at these permits and construe them to mean anything other than what they plainly are, and that is official county imprimatur on our operation of the very thing that's in issue in this case.

Mr. Kim: I do have one question.

Mr. Walk: Yes, Sir, Mr. Kim.

Mr. Kim: Yes, Sir. Okay, after listening to Mr. Coughlin, one of the issues that I understood that Westlake has is the expansion of The Crucible.

Mr. Walk: Yes.

Mr. Kim: Have you guys, maybe I missed it with all of the nice reading you gave us, did you guys obtain permits, zoning authority, I mean I don't know which proper channel you would have to go to to expand, because there is obviously a clear expansion from 2014 to some of the other exhibits there, or was it just kind of, I didn't see any permits or any kind of authority given to you guys to expand on the business.

Mr. Walk: Let me respond to that. First of all you, I don't know if this was purposeful or not, but you phrased your question in a way that it more or less assumed the answer on behalf of Westlake, that we have in fact expanded anything. We very much take issue with that. The only competent witness to testify before this Board has been Mr. Garmin and his testimony was that what NTS was doing was just sort of all over the property, willy-nilly as opposed to defined, confined areas, and what we have done is, we are operating within the same general area that NTS was operating in, it's just that instead of being diffused across a broad area, we have concentrated it into defined ranges with defined left and right perimeters and so forth, and that is the only competent testimony before the Board. Mr. Garmin is going expand upon that in just a moment. He has some more information to provide, but the second thing, Mr. Kim, that I would say in response is, again, what Westlake is asking you to do is to substitute your after the fact kind of determination, based on looking at some grainy aerial photos for the contemporaneous determination that was made by the zoning officials who were on the ground physically inspecting the property at the time. And so, if we were in fact out there expanding the use on how it would have come up in connection with one of these inspections and it did not.

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Mr. Kim: Well then, when Mr. Garmin comes up, would he be the right person to ask on just the aerial grainy views of the pictures that...

Mr. Walk: He will provide some additional clarity on those photos.

Mr. Kim: Yes. If I can ask what this little section is on the 2014 aerial to the 2000 or 2002...yeah, that would be wonderful.

Mr. Walk: He is the best and only witness that has been...

Dr. Ackermann: I have another question. Sir, are you referring to the zoning verification, exhibit I, as the one that approves a shooting range on your property?

Mr. Walk: I need to somewhat rephrase your question before answering it, if you'll forgive me, and that is, what that letter does is that says: your use, your existent use is a valid non-conforming use under the Stafford County Zoning Ordinance. So it is not limited to question of shooting ranges.

Dr. Ackermann: I just...I thought that's something you had said in your argument.

Mr. Walk: No, no, the legal permits were specific to shooting ranges. Exhibit I was our whole operation. Yes, Sir.

Mr. Apicella: I'm sorry, I do have a question about 26-31. Do you accept the notion though, that the county has, let's just say hypothetically speaking, the Board may agree that you have vested rights, do you accept the notion that the county can bound the number of shooting ranges that you can have on this parcel? That it's not unlimited.

Mr. Walk: Mr. Apicella, again, I know you think you're asking me a yes or no question and I hate to sound like I'm dodging it. Phrasing the question in the form of number of ranges is something that I disagree with. If you had said, do I accept a notion that we cannot expand a non-conforming use, the answer would yes, but the un-contradicted testimony that has been presented today before this Board, again, is that NTS was operating within a broad area. We have now carved out specific ranges within that area that was previously used by NTS. Our contention is, that is not an expansion. In fact we are operating in a more restricted mode than NTS was operating. But had you asked me, do I concede the idea that we can't expand a non-conforming use, the answer is absolutely yes.

Dr. Larson: Any other questions for this witness?

Mr. Apicella: I feel like I didn't get an answer. And it does cause me a bit of concern, which is, in the absence of these certificates bounding the number of ranges, again, is that, when I read the code section it seems to suggest, if not state, that the county can imply conditions. And to me those conditions could be the number of actual ranges. I'm not talking about whether or not it's a conforming use or non-conforming use. I'm talking about the number of ranges that could actually occur on this site at any given time. So right now, I think, there's no...that there's agreement that there's 5 ranges on the site now. Can you go to 20 ranges? 25 ranges? I mean, it's not a small parcel. So again, I'm asking, do you agree that the county can establish conditions as it says under 26-31, and one of those conditions can be bounding the number of ranges that can occur on this site?

Mr. Walk: Mr. Apicella, you put me in an awkward position of trying to answer in a yes or no form a question with very broad implications. For example, the code section you cited certainly does refer

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imposing conditions, however the law that overlays the whole area is that they need to be reasonable, they can't be arbitrary and capricious. So just to throw a hypothetical back at you, what if the county were to come back and say, we'll grant you a permit for operating your shooting range, but oh by the way, you can only operate it between 12 noon and 12:05 on odd numbered Thursdays. I would submit that would be arbitrary and capricious and the power to impose conditions is not, you know, just without any limits. Certainly one limit that I will readily acknowledge and conceive is the idea that if we are relying on non-conforming status, we cannot expand upon it. And so I'm using your example, we have 5 ranges now. If we were to go construct another 15 that probably would be some form of expansion of a non-conforming use, which is not permitted.

Mr. Apicella: Thank you.

Mr. Walk: Yes, Sir. And again, I usually go to great length to try to be responsive, even on the hard questions, so I apologize if you felt like I was dodging your question. I really did not intend to do that.

Dr. Larson: Any other questions for this witness? Okay, thank you, Mr. Walk. If I saw the time right, you had about 4 minutes left before we started asking you questions, so Mr. Garmin, you have 4 minutes.

Mr. Garmin: Thank you, Mr. Chairman and for the staff folks, my name is John Garmin of 60 Jack Ellington Road. I just want to speak real briefly to the historical use and I apologize for any repetition from my earlier presentation a month ago, but I want to paint a picture of the property that we moved into as a tenant in 1999 and that we bought later on in 2010. It was our intent to find a place that could house the intended activity that we were doing and so that obviously is a difficult challenge so we looked with very hard and scrutinizing eyes at the places that we intended to inhabit as a business. And so on arrival in 1995, I'm sorry 99, but here's the most recent photo in 99, again, we're 450 miles from the surface of the earth in this picture so I'll try to draw a little bit of an idea of what's going on. We heard last month from a person speaking that in 1975 the use of the property was something that she was aware of and that she did and so I was not around on this property in 1975 anyway, but the type of use, you can see here from an actual photograph, this is taken where the red circle is here and this is their outdoor use, again from at least before 1995, outdoor use of their 24 hours generator testing and in the documents that we submitted you can also recognize that the state allowed the increase of road size to permit large trucks to enter and exit the property for 24 hours at a time. And so this is the kind of early on use that we are aware of. As you move further around the property, in this area right here, again, outside, there was a centrifuge, and this is a representative photo not actual on the ground, there was a centrifuge used to rotate a 400 pound tomahawk missile motor and circles at high rates of revolution. And that happened in this area right here. As we move further around, and also, again, the picture is just a smudge on the map, as we move further around in this area, national driving safety control board was contracting with our facility to test the Pinto vehicles, and if you're aware in the mid-70s of their rear end collision and explosion capabilities. They were conducting these test, again a representative photo of a Pinto here blowing up, that had to be moved outside and actually had to be overseen by Stafford County Fire and Rescue as they were going on and that happened in this area here. The other thing that happened behind building 5 is that is where that impact of bullet proof testing took place, bullet proof vests, took place here in the back of what we call building 5. As you move further on down, you'll find the multiple pits that they had in this area to take a rocket and drop it from 40 feet. They used a 50 caliber weapon to impact the rocket motors to see how they would take place. They also took a rocket motor that had 100,000 gallons of fuel and allowed it to ignite to make sure that the way it would ignite was controllable and recognizable and I would assume to be an expected occurrence I assume in these rockets as they use them. Also down here they used hydrogen peroxide rocket fuel testing where they distilled hydrogen peroxide and looked at it as means of fuel for motors. The best picture I can draw in

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your mind is the jetpacks that men wear on their backs to propel them around. That's what was going on in this area. The other thing they did here is they use high explosives to detonate motors to break them in half and destroy them from government use, so you're talking high explosives enough to break up a large diesel motor that the government uses. So this is large impact stuff that's going on. While the photograph doesn't show the standoff zone, the photograph doesn't show the control tower and the activity from the control tower down to the blast detonation area. What it does show is a small area where the buildings are and then further around those...and there's a picture from the site in 1992, March 13<sup>th</sup> in 1992 a picture of the motor that they have, this is a large, it's a very difficult picture to look at, as you can see it's at night, very large forklift back here and that's part of the drop test from what I understand of the rocket motors. And then in this area is where they had their explosives storage and staging. So they would move over here, conduct their withdrawal of the explosives and begin their explosive handling and use in this area of the property over to the side and you can see the red, blinking light. The other thing that they use is, they use the AAVs, or amphibious assault vehicle road course to drive amphibious assault vehicles around the property in and out of this water hazard that's up here that we call the pond and back and forth on the property. Lots of use that was described to us that was compatible with use that we had intended. And in 1999 knowing that all this took place we still took it upon ourselves to start getting approvals, as you heard earlier, in 2010 before we committed any money to the property, we made sure again that it was an approved use. And that's what we made a lot of our decisions on and that's what allowed us to get government contracts, allowed us to do what we do now. With knowledge then of that activity that went on, to kind of give you an idea of what happened, it's in this area that we continued to use the same areas but in the discussion of disturbance and things like that, we then made the area more safe for our people to use by constructing berms, so the left and right lateral limits can be imposed, to flatten out the surface of the road so that in lieu of engineers we had now the shooters. So instead of trained technicians we had folks that were learning, so we used gravel to flatten the surfaces of the road out, I'm sorry, the surfaces that were using to make sure we using the appropriate area. And then as a technician I appreciate that I'm in a room with lawyers behind me and very intelligent people in front of me, but as someone that operates a range with consideration of numbers of ranges, it's difficult as a range owner to have a partition delineate a number of a range. We use number of ranges for our purposes of communication, but ballistic barrier on one range could easily break it from 1 into 2. So the number of ranges for us, again, going back to where they started in 95 until today, the number of ranges for us, while they're delineated on our form, in our conditional use permit application, they're delineated clearly, but it's been explained to me, once we achieve the conditional use permit, then there would be very clear boundaries drawn, but in the 2 year effort to get that permit we continue to be stalled with this process here. I'll take your questions.

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

Dr. Ackermann: I have one. In this slide that we have up here you've got the high explosive engine destruction. How often did that occur, do you know?

Mr. Garmin: Unfortunately, Sir, I don't have any numbers of frequencies.

Dr. Ackermann: Was it a yearlong project, or multiple years?

Mr. Garmin: Again, going back to 1966, I've given you the details that I have.

Dr. Ackermann: So you don't know with the 50 caliber discharge, or the 1,000 gallon cook off, the 1,000 gallon fuel cook off, or even, how about the Pinto test, how long did they go on?

Mr. Garmin: I do not, Sir.

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Dr. Ackermann: So we have no way of comparing the frequency of events that you've marked here with what's happening now.

Mr. Garmin: Okay.

Dr. Ackermann: Thank you.

Mr. Kim: So Mr. Garmin, when you purchased this property in 2010 you did your due diligence to make sure that you can facilitate the type of business you're trying to facilitate. Maybe I missed it, what did you do in the process to make sure, before you purchased this property, to...that you can actually run this type of business on your property?

Mr. Garmin: Every year we went to the county to ask.

Mr. Kim: And specifically you just said, hey look, I have a shooting range, or I have a testing facility? Or what kind of verbiage did you use?

Mr. Garmin: There's letters that you folks have in place and it says: pursuant to code, I apologize I can't quote it, we would like to have the county to please approve our use as a shooting range.

Mr. Kim: And the county has...the county...okay. Now the question that I asked Mr. Walk there that I wanted to ask you, when...it does look like there's a big expansion and like...I mean it's not as grainy as Mr. Walk said, but like from even 2002 to 2014, if you can kind of, I guess, explain what some of...like I mean, there's a...even from 2002 to 2014 there is a difference, and this might be a staff question, but do we need permits to do, I mean to tear down trees and make roads, or whatever you used them for, I mean, what are you using these areas for?

Mr. Garmin: I think you'll see, as you point to them, you'll see most of those as approach areas for the ranges. By that I mean the ability to see the impact area from areas that we shoot from, so in the case of all the way to the right you can see a small silver sliver there, that's a conex box that we store things in. That would be the range shooting area from 300 meter site. So in order to that the trees that were in front... obviously the trees that were in front of that are gone now. And that's the difference that you see there.

Mr. Kim: So this wasn't necessarily an expansion. This was more of the means of making it more functional?

Mr. Garmin: Absolutely.

Mr. Kim: So what is this right here?

Mr. Garmin: That is an area that we've cleared. That's an area that we've cleared to put our off-road vehicles on.

Mr. Kim: Just storage, or parking lot?

Mr. Garmin: Yes, exactly.

Mr. Kim: Okay. Great. Thank you.

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Dr. Larson: Any other questions for this witness? I have one, Mr. Garmin. With regard to the certificates of use, how does that work? Does the county come to you, or do you go to the county?

Mr. Garmin: We write a letter to the county about 30 to 60 days out. The dates will be clear, maybe two days out. We write a letter to the county that says: our 12 month certificate of use is coming to an end. Would you please schedule a visit so that we can renew our application. I believe there's some paperwork that goes along with that. That email goes in at the county's discretion and they contact us, we'd like to come out on Wednesday the 5<sup>th</sup>. We set that up, we bring the person out and he tours the facility and asks questions, comes back in, fills out the appropriate paperwork and then we pay a few and then we wait until the permit arrives in the mail.

Dr. Larson: So you understand that it is renewed every 12 month?

Mr. Garmin: Absolutely.

Dr. Larson: And what would happen if the county said we're not going to give it to you this time?

Mr. Garmin: I imagine it would be another large sum of money and large team of lawyers you would have to ask that question to.

Dr. Larson: Fair enough. Any other questions?

Mr. Poss: Mr. Chairman, I have a question. On these five ranges what types of weapons do you fire on these ranges?

Mr. Garmin: Predominantly 9mm and 556, 9 mm pistols and 556 rifles, but we have gone all the way up to 762 calibers. We have light and medium machine guns that we fire on the ranges. We have had, in the past, 50 caliber rifles out there as well.

Mr. Poss: And what type of explosions? Do you explosive devices?

Mr. Garmin: Typically no. Since the last finding from the Zoning Administrator we have not, but previous to that, similar to what NTS has done, we had used a self-imposed limit of a quarter pound charges that we would detonate for examples of IED. Again, since that letter has taken place we have not done that. But that's what we do, typically show people how an oppositional force would create a charge, take it out, detonate it, and then come back in.

Mr. Poss: Is there any way to describe how loud that would be? Do you have decibel ratings on that?

Mr. Garmin: There are decibel readings submitted here. Without having looked at it, I have trouble doing that. I would say on the order of 60 decibel, is the number that bounces about in my head as the limit with the county, and so I would contend then around 60 decibels.

Mr. Poss: Okay, thank you.

Mr. Apicella: Mr. Garmin, in the 14 years that you've been part of this process, has the county ever denied or asked you to make changes to your application, use, site, what have you?

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Mr. Garmin: Just to be clear, I have not been a part of the process since 99. We had been asked to submit response processes for noise. We've been asked to submit shooting times that we impose on ourselves. We have been asked to submit, actually, out traffic policies as well, as part of the process.

Mr. Apicella: And are you familiar with the Code section on approved shooting ranges, 26-31?

Mr. Garmin: As familiar as I can be.

Mr. Apicella: And did you accept and understand the notion that in issuing a certificate of approval the director of code compliance may specify the time and manner of shooting, and the type of firearm or ammunition which may be used on such ranges or areas?

Mr. Garmin: We worked with the County, to my knowledge, ever since we been there. Yes, Sir.

Mr. Apicella: Okay, thank you.

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

Mr. Garmin: Thank you for your time.

Dr. Larson: A 10 minute recess, reconvene at 8:46.

*The meeting recessed at 8:36 p.m.*

*The meeting reconvened at 8:46 p. m.*

Dr. Larson: Meeting will come back to order. Is there any member of the public who wishes to speak in opposition to the application, which means in favor of the firing ranges? Sir?

Mr. Darley: Good evening, Mr. Chairman, members of the Board. My name is Perry Darley. I'm here tonight speaking in support of The Crucible. Our house is approximately 1.5 miles south of The Crucible. It's easier to walk through the wood to get there, than it is to drive Holly Corners, 17 and then Richards Ferry. So I am familiar with their activities and what goes on there. As I understand, the determination by the zoning administration, The Crucible is operating within the law and is in compliance with the zoning requirement, and is an approved use, an existing approved use. I believe The Crucible provides necessary training to personnel and agencies that often operate in a very dangerous environment. These people who come here for training spend money in our area hotels, restaurants, and shops while not imposing an additional burden on the county for roads, schools, or emergency services. It is also my understanding the Westlake Development Corporation is seeking to have the BZA rescind a determination in their favor so they can close The Crucible and build a subdivision adjacent to The Crucible's training facility. It's very similar to someone building a subdivision under an airport and then trying to close the airport, because of their traffic or noise. Or perhaps building a house next to a farm and then complaining because the farmer is spreading dust on their car during harvesting or planting operations. I just don't think it's right for someone to build adjacent to an existing facility or operation and then ask for them to close it down for their own personal gain. I find that somewhat disingenuous. Again, I support The Crucible as a valuable member of our community and ask that you decide in their favor.

Dr. Larson: Any questions for this witness?

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Dr. Ackermann: So we heard from another resident about the noise. Do you have any comment about that? Do you hear any noise?

Mr. Darley: We frequently hear the gunfire, yes.

Dr. Ackermann: And it doesn't bother you?

Mr. Darley: It's not obtrusive to me. I am a fire arms enthusiast, so...

Dr. Ackermann: Okay, thank you.

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

Mr. Darley: We moved here, we bought the house in July of 2001.

Mr. Kim: Okay, thank you.

Dr. Larson: Any other questions for this witness? Thank you, Sir. Is there any other member of the public who wishes to speak in opposition to the application? If so please come forward.

Mr. Klinefelter: Good evening. My name is Ben Klinefelter. I spent the last 25 years of my life on outdoor and indoor shooting ranges as a firearm and tactics instructor. I have trained military in the use of deadly weapons to defend themselves and others from harm, no different than what The Crucible teaches its students. I'm employed full time by the Department of Energy in D.C. to train their police officers currently. I happen to live less than a mile from The Crucible, 0.7 to be exact. Some residents think it's annoying to hear The Crucible's gunfire in the middle of the day on select evenings when they have to conduct their fire arms training at night. It's understandable for new residents to move into the area and be surprised by the noise that happens on their selected training days. Like I said earlier. I live less than a mile away from their business and I hear their gunfire. I also hear the gunfire from neighbors shooting on their own property, hunters that are out in the spring time taking turkey and in the fall hunting deer as well as the occasional poultry in the off-season. I hear chainsaws and lawnmowers at all hours of the day, all days of the week. Do those residents have a permit to create that noise as well? Do we need to take away those residents' ability to use those chainsaws and lawnmowers because I don't like the noise it makes at all hours of the day and night. Or I don't like the timing of their noise. I hear the marines at Quantico launching artillery, blowing explosives at all hours of the day and night as well. Is the next step to tell the marines they can't do their training outdoors either. Crucible's training does not go on 24 hours a day, 7 days a week. I've met with them. I've asked about their hours of operation as a concerned resident. I've viewed their facility from a safety standpoint based upon my years of experience with shooting facilities and found nothing wrong or unsafe in what they do. A bigger concern for me is not the Crucible, but the current land development that is increasing the traffic on Richards Ferry Road. My wife and others have been run of the road several times because of dump trucks and construction equipment servicing the land development. The road has been blocked on several occasions due to those same trucks. The road is narrow. Property damage has occurred with those trucks and heavy equipment going off the road to avoid traffic and into ditches along the side, creating deeper ditches that would become a hazard when it snows in wintertime. This is a veteran owned company which employs veterans of our military. They train many different government agencies and military units that are sending people overseas into harm's way. The training they give on those outdoor ranges keeps those people safe in bad places. If you decide to prohibit Crucible from conducting their outdoor range operations you'll be voting against the veterans of this county and voting against the safety of our men and women overseas. I ask you to decide in their favor. Thank you.

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Dr. Larson: Any questions for this witness?

Dr. Ackermann: So what is The Crucibles hours of operation? You said you asked them about it.

Mr. Klinefelter: I asked them about it. They run, pretty much, from about 8 in the morning until sometimes 10 at night.

Dr. Ackermann: Thank you.

Dr. Larson: Any other questions for this witness?

Mr. Kim: How long have you lived there?

Mr. Klinefelter: I've lived there since 2008.

Dr. Larson: Okay. Thank you, Mr. Klinefelter. Any other members of the public want to come forward and speak in opposition to the application?

Mr. Runles: Good evening. My name is Frank Runles. I've lived there since January of 2013, so I haven't lived there that long, but I've lived there long enough to hear the gunfire and it's not obtrusive. It's no more obtrusive, as the gentleman before me said, than the hunters out hunting deer or turkey. I do hear it in the evening and I've heard it described as almost like a war zone. Well, being someone that served in a war zone and being someone who has two sons that have served in war zones, trust me, it does not sound like a war zone. What it sounds like to me, based on the training that they give at this facility, it's the sound of freedom in my opinion. Now I've spent 9 years in the military and 20 years in federal law enforcement. I've been around guns pretty much all my adult life, but I'm not a gun nut. The only guns I own are the guns that are issued to me by the federal government, the agency I work for. So I'm not a gun nut that thinks that, oh, everyone should have guns, no, no. I don't have a problem with people having guns. I don't have a problem with people not, but I do have a problem with companies that come in, that want to develop the property as residential areas, then say wow, we may have a problem selling these lots if we have a gun range nearby. You can't change the rules after the fact. The Crucible, from my understanding, and everything I've learned about this, I learned this evening sitting here. So I have no dog in the fight one way or the other, other than the fact that The Crucible had the appropriate permissions and they were granted the rights to run their business and I really resent it as a local resident that some company coming in and saying, yeah, we got a business that's thriving and their playing with the rules so we're going to change the rules on them so they're going to be out of compliance. And on other thing I want to address is, the amount of traffic, as the gentleman before me said, with the trucks, and the large equipment, and all the construction going on. I've been there two years and it's increased probably threefold since I've been there. I can only imagine how much more, if we get another housing division in this area. This is a small two lane road that goes down to about 1.5 lanes, and there are literally dump trucks on there from 7 o'clock in the morning to 8 or 9 at night and they're running people off the road. It is a hazard. You can't take a walk. You can't walk your dog for fear of being run over. Thank you.

Dr. Larson: Thank you. Sir, question.

Dr. Ackermann: So these, maybe it's not for you, but you have two older sons?

Mr. Runles: Yes.

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Dr. Ackermann: Do you have any young people, youngsters living with you?

Mr. Runles: Yes, the little girl that was sitting behind me, actually, is my daughter, 7 years old.

Dr. Ackermann: Okay. Thank you.

Dr. Larson: Any other questions for this witness?

Mr. Kim: Do you have any issues putting her to bed because of *The Crucible*?

Mr. Runles: No. She sleeps like a rock.

Mr. Kim: Great. Thanks.

Dr. Larson: Any other questions for this witness. Thank you, Mr. Runles. Any other members of the public wish to speak in opposition to the application, please come forward. Seeing none, does the applicant wish to respond and or add additional information?

Mr. Coughlin: Yes, Mr. Chairman. Mr. Chairman, I renew my request to ask Mr. Hubble a few questions.

Dr. Larson: No, you can't, but you can ask the questions of the Board and we may choose to ask Mr. Hubble.

Mr. Coughlin: Sure. Here would be the questions that I would ask the Board to direct to Mr. Hubble. The first questions would be, does the county have a separate form for certificates of approval under section 26-31 at sequence of the code versus certificate of use approval for any other type of use. The next question would be, are there any other certificates of use in the county that need to be renewed annually? The third question would be, Mr. Hubble, now that you're the Director of Code Compliance, if you were to be the one issuing this certificate of approval, would you be making a zoning determination? The next question would be, has the *Crucible's* certificate of approval expired, and if so, when? And therefore, Mr. Hubble, if it has expired, are they therefore not permitted to operate a shooting range on the property under the county's ordinances?

Dr. Larson: I think we actually asked that last one earlier. Okay.

Mr. Coughlin: So those would be my questions. So, I'll try and be as brief as possible. Let's look at the facts. The facts are, and in essence I think Mr. Garmin conceded this, they have expanded on the property. Did they need permits in order to do that? Yes. If you expand more than 2,500 square feet you need an erosion and sediment control permit. I would believe that you would also need a site plan due to the type of expansion that's occurred over time and it's not like it was just a little here and there. I mean you see, if you look at the aerials, there is some significant expansions between one aerial versus another. The question was asked, which was not answered, did they receive a permit, other than the shooting range permit to do this expansion. There was no answer to that, but we have asked for every single permit issued. We have seen no site plan. So what our client wants is the zoning ordinance to be followed. The implications of the zoning administrator's decision and condoning that decision could be significant here. It could essentially be an end around the conditional use permit process and in fact we've kind of brought this process to the County. But if the zoning administrator is right, that they have a permitted use and that they can just continue expanding, then what's the point of the Board of Supervisors imposing a requirement to have a conditional use permit for exactly this type of use. And

let's not forget, they applied for a conditional use permit with the intention of expanding, but if this Board condones the Zoning Administrator's determination, that they are a permitted use, the logical extension of their argument is that they can continue to expand. And in essence that the Director of Code Compliance's hand are now tied, that those conditions that he can admittedly impose may not be imposable anymore because they're somehow a permitted use, but remember, it's very tough to become a permitted use to an otherwise impermissible use and it requires first and foremost a determination under the zoning ordinance which is not what's occurred here. A couple of brief other points, I just want to make the record clear, we did not say that there has been no nondiscretionary error here. I think all we said is under the current code provision 15.2-2311(c) that we had no evidence of fraud or malfeasance, but we do think in fact that there has been a nondiscretionary that's occurred here. Regarding the grandfathering argument, in order for somebody to be grandfathered you must be a continuation of a lawful permitted use. And that's not what the evidence shows. You had testing, testing, testing. Now you have weapons training, or a shooting range, not a gun range for a limited purpose of testing. And, you know, eventually, shortly after 1999 I would presume, the NTS uses went away and if a non-conforming use stops for 2 years, I believe that's the rule in Stafford, you can't go back to that. So The Crucible could not now start doing testing and claim, oh, we're doing testing. We're doing just what NTS did, because they've always just been doing weapons training. That's how describe themselves. Regarding the accessory use argument, in order for something to be an accessory use it essentially has to be secondary to the principal use. It cannot be in terms of land area, and this is in the code and you cited this at the last hearing, the larger area, and if you just look at the amount of land consumed by the shooting ranges now it's at least equal to the other uses of the property, most of which are indoors. In addition, that use must be permitted. Your accessory use must be permitted under the ordinance. We know that today, if they were to try and operate this today, they would need a conditional use permit. They all along would have needed to be indoors and all along shooting ranges were not expressly permitted in the M-1 district. Regarding the verification, let's look at that. Again, we do not believe that's actually before the Board and something that you can make your decision based on, because that's not what the Zoning Administrator relied on, but if you decide to go there, here is all the zoning verification sets. This parcel was part of the 1978 comprehensive rezoning, the training facility, does not use the term shooting range, that exists has become non-conforming, doesn't say lawfully non-conforming, just non-conforming, with the definition changes for schools in Stafford county code section 28-25 definitions of specific terms, gives a date of validity and says that it is subject to change with approval from Stafford County. There must have been a reason why the Zoning Administrator did not rely on this. One of the reasons might have been, the Supreme Court of Virginia did not allow the county to rely, or the Crucible to rely on a similar zoning verification. Finally, here's another conundrum, the Zoning Administrator suggested that we had maybe a duty or obligation to appeal the earlier determinations, according to her. She morphs, or combines the 30 appeal period for a zoning decision with the 60 day estoppel essentially, against the county from changing its mind. So that's another reason why the decision is incorrect. But she suggested we would have a right of appeal. So that means every year we can appeal these issuances of certificates of approval if they're really zoning determinations. And we could be before this Board every year questioning whether this is right or wrong. And so that suggests that they are not zoning determinations really, again, because they have to get renewed annually. There's nothing like that elsewhere in the code that I'm aware of. Or, alternatively, somehow we're stopped from appealing them, that doesn't make any sense either and it also doesn't make sense that the Zoning Administrator's hands are tied now and forever, because of shooting range certificate that have been issued, when all along these uses were required to be indoors under the zoning ordinance. Thank you.

Dr. Larson: Any questions for this witness?

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Dr. Ackermann: I have a couple maybe. Is Westlake doing any development of any properties in that area at the present time?

Mr. Coughlin: Absolutely. What it's going through right now is the final entitlement process. It has some sewer extensions to its property so it has to obtain approvals from the county for those infrastructure plans. So it's zoned as an approved preliminary plan and now it's moving through the final stages of the entitlement process to get the final site plans for infrastructure approved and then it's going to start turning dirt and eventually building homes.

Dr. Ackermann: And when did that process start? I know you said it in your documents, if you could just refresh my memory, when the subdivision was planned or approved.

Mr. Coughlin: The original zoning is from 1989. Crucible acquired the property in 2002. After acquiring the property there were some struggles with the county as to whether it had a vested right under its 1989 zoning approval. It ultimately prevailed in those and has a specific agreement with the county as to what it can do on the property. In 2011 I believe that's when the preliminary plan was approved and now, like I said, they're going through the process of the final infrastructure plans to bring utilities to the site which are necessary to commence then the next phase of the development which would be land clearing and finishing lots.

Dr. Ackermann: And in 1989 it was National Testing Service there?

Mr. Coughlin: Presumably yes, I mean, based on what we have from the newspaper articles and even aerials.

Dr. Ackermann: Thank you.

Dr. Larson: Go ahead.

Mr. Kim: Okay. I do have one question. So this process of the adjacent property that Westlake has now from The Crucible, this process has been going on since 1989?

Mr. Coughlin: Yes, I mean that was the beginning process of the entitlement for the property.

Mr. Kim: It just seems like a very long time for...I mean...I don't, you know, do, don't build properties, so maybe I need some more clarification on why it's been 20 something years to, you know, you still have trees standing there, is what I'm trying to understand.

Mr. Coughlin: I can't answer as to, and maybe my clients can, as to why between 1989 and 2002 there wasn't more activity on the property, but it's my understanding that once our client acquired the property that they then began to pursue development, but there was an issue with the county as to whether or not they were in fact vested and there was a lawsuit and the county ultimately did everything it could to try and prevent development on this property. And so our client ultimately prevailed, worked out an agreement with the county, it then, during that process, obtained a proffer amendment, then ultimately it obtained its preliminary plan approval in 2011. So I think, once our client took over ownership of the property, they were doing their darndest to move forward in the entitlement process. Then you know of a little thing called the recession and people stopped building homes, but these folks still continued on in trying to get their entitlement finally in place.

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Mr. Kim: So did Westlake obtain the property in 1989 or was it a different company that they purchased it from?

Mr. Coughlin: It was a different company that they purchased it from in 2002.

Mr. Kim: Oh 2002 was the purchase of...okay, great. Thank you.

Mr. Coughlin: And if you look at the aerials from at least 2000, you see less in terms of land disturbance on the property. So I mean clearly the property has morphed over the time that our clients have even owned the property.

Dr. Larson: Other questions for this client?

Mr. Apicella: I'm curious. I don't know the full history of the Westlake parcel. You mentioned that there was a vesting issue. Can you tell me what that was, what was the argument that Westlake made that prevailed in this case?

Mr. Coughlin: I was not the attorney involved in that case and so I believe that the county was trying to claim that, you know, I'm assuming that the zoning had gone stale and in fact our clients prevailed with a settlement. So rather than going to a court there was a settlement reached with the county.

Mr. Apicella: Okay.

Dr. Larson: Question?

Mr. Poss: How many homes are currently in the Westlake subdivision?

Mr. Coughlin: The approved number of homes is 701.

Mr. Poss: 701. What's the make-up of the land? Acres?

Mr. Coughlin: Of the top of my head, I'm not sure I can answer that, about 400 acres, Sir.

Mr. Poss: About 400 acres. And what's the make-up of the lots? 3 acres, 1 acre?

Mr. Coughlin: Yes, they're smaller than 1 acre I believe. A quarter or a third of an acre.

Mr. Poss: Okay. And the new subdivision that is proposed or currently under construction, how many homes will be in that area?

Mr. Coughlin: What I'm giving you are the facts for the approved subdivision that is in the process of being entitled, but it has not yet been built. So there's only one Westlake subdivision that is adjacent to the Crucible's property.

Mr. Poss: Okay and that's the 701 properties?

Mr. Coughlin: 701 approved lots, yes.

Mr. Poss: How many lots are currently being occupied within Westlake?

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Mr. Coughlin: I believe at this point it is currently forested land.

Mr. Poss: Okay. Thank you.

Dr. Larson: Any other questions for this witness?

Dr. Ackermann: Is that the Westlake site or the property for where the proposed High School might be for Stafford County?

Mr. Coughlin: There is a kind of a contingent agreement regarding a school site with the county. It certainly wouldn't be the entire Westlake property, but if certain conditions are met, then the county would obtain a school site.

Dr. Ackermann: Okay. Thank you.

Dr. Larson: Other questions? Thank you, Mr. Coughlin. I have a couple of questions for staff. Mr. Harvey? The zoning code, pertaining to the zoning code in effect when, I forget the initials, but the testing place was in the property prior to 1999, let's just say at 1999, was a shooting range an approved use for that zoned district?

Mr. Harvey: Mr. Chairman, I don't believe the code had a shooting range listed in the M-1 zone at that time.

Dr. Larson: For conditional use permit or any type of permit?

Mr. Harvey: I don't recall that in the code. We can do some additional research, but that's my recollection, it was not listed.

Dr. Larson: Okay. That's all I had for Mr. Harvey. I had something for Mr. Hubble, if you could come forward? Mr. Hubble, thank you for coming back to the stand. You mentioned during your testimony that the office that you lead now used to be combined with the department of zoning. When did those functions split?

Mr. Hubble: The zoning function, from what is now the public works department, shifted back to the planning department around 2007.

Dr. Larson: Around 2007. Okay. The record shows that Rachel Hudson, which is listed as a building official / zoning official in the signature block, signed the certificate of use in August of 2007. Do you have any idea whether she could have been acting in a zoning capacity or a public works capacity? It says building official / zoning official. Is there an ambiguity about the capacity she was acting in there?

Mr. Hubble: I think any answer could give would be speculative, but generally in that time frame she acted in a zoning role.

Dr. Larson: Okay. Thank you. Before you step aside, I'm going to try to translate a few questions here. Does the county have separate forms for certifications of approval, as opposed to certifications of use?

Mr. Hubble: The certificate of use form that you see there pursuant to the shooting range is very similar to our other permit forms for building permits and occupancy permits, those type of things.

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Dr. Larson: Okay, and are there any other uses for a certificate of use, other than a shooting range?

Mr. Hubble: Outside of the normal building or zoning uses I'm unfamiliar with sort of any, what I would refer to as, non-traditional ones like this.

Dr. Larson: And when you approve one of these certificates of use, are you acting in a zoning capacity?

Mr. Hubble: My perspective is, I don't have that authority.

Dr. Larson: Yet the use, it still says use/zoning certificate.

Mr. Hubble: I think that may go back to your first question in terms of the form usage and the similarities between this form to other forms.

Dr. Larson: Okay. I guess I would suggest that if zoning is not an intended use of a certificate of use that that somehow be changed or taken off so there's no misunderstanding.

Mr. Hubble: Understood.

Dr. Larson: Any other questions for staff, this witness, or any other member of the staff?

Mr. Kim: Not sure who I could direct this question to, but I'm just trying to come up with solutions in my head. So if the Crucible did their changes to make parking lots for their equipment, I mean they would need to submit a permit plan of either grading or some sort?

Mr. Hubble: Generally there is more multiple regulatory layers in terms of different county ordinances, but for clearing land you typically have to get approval under the county stormwater and erosion control ordinance and then for expansion or new uses, you'd have to get approval under the zoning ordinance.

Mr. Kim: Okay, let...

Mr. Hubble: I'm probably better to speak on the environmental ones, Jeff's probably better to speak on the zoning part of that.

Mr. Kim: I appreciate that. Okay, so the other question I have is, when...if a company did expand and did make those changes without a permit, what would be some penalties that they would have to occur, I mean, is it close the doors, is it... I mean I'm not sure about the process here.

Mr. Hubble: I guess the general answer is, they'd be subject to the enforcement criteria that are laid out in those ordinances. I think the anecdotal answer would be, we would try to work with them to get them into compliance.

Mr. Kim: Great. Thank you.

Dr. Larson: Is there any other questions for Mr. Hubble or any other member of the staff? Okay, with that I will close the public hearing. I there a motion from the Board?

Mr. Apicella: Mr. Chairman, I would move to affirm the Zoning Administrator's decision in the April 10, 2014 letter.

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

Mr. Kim: I second that.

Dr. Larson: Discussion?

Mr. Apicella: Mr. Chairman, there were a number of claims, counterclaims, and legal arguments made in this case and while all was very interesting, much appeared to be outside the scope of, or which did not necessarily have a direct bearing on the appeal to the Board of Zoning regarding the Zoning Administrator's April 10, 2014 zoning determination letter involving Crucible properties. In reviewing the circumstances and all the material provided, including the minutes from the August 2014 BZA meeting, it appears to me, and as the attorney for Westlake indicated, the main point here is whether Crucible had a vested right under Section 15.2-307 or 15.2-2311, to continue operating one or more outdoor shooting ranges on this property zoned M-1. And having had that discussion, again, I think we excluded 15.2-307 from the discussion because that doesn't appear applicable. I would say I sympathize greatly with the neighbors' concerns regarding noise and quality of life issues and when Crucible's CUP was in front of the Planning Commission I didn't support it because of those concerns. That being said, I don't believe that this is an issue before us, or on which we can render a decision on this matter one way or the other in this case. Instead I think we're compelled to follow the state code and related case law and while there appears to be some contradiction between the M-1 uses and performance standards in the county code, and I would cite for example such as fleet, parking, motor vehicles, rental, tractor trailer parking, at least in my opinion, seem to be activities that occur outdoors irrespective of the performance standards in the code. It does not appear to me that an outdoor shooting range is a clearly permissible use in the M-1 district in Stafford. So upon reviewing the standards, again, I think that 15.2-307 does not apply, because I don't believe that code section is pertinent in this case. I did also review closely section 15.2-2311 in particular par (c) as well as the Norfolk 102 LLC versus the Norfolk case which was decided by the Virginia Supreme Court. In that case the court found that the threshold requirement for vesting and otherwise impermissible use in 2311(c) had not been met. The appellants argued in part that they received a cash receipt with the words "eating place" written on it and therefore were entitled to serve alcohol, however the appellant did not...the receipt did not say entertainment establishment which would allow alcohol sales, and no other documentation was produced indicating a government official in any way authorized alcohol sales by the appellants. And the point I'm trying to raise here, that the appellant couldn't demonstrate a government official had provided a specific written order, decision, or determination authorizing alcohol sales in that case. So in this matter before us, the property owner has demonstrated in my view that since 1999, but not before then, so for the past 14 years, they've received a county determination by an administrative official via a certificate of use, signed by the director of code compliance and/or the zoning administrator that they can operate an outdoor shooting range on the subject parcel. Additionally they built and operated a business based on such determinations. The annual certificate of approval authorizing outdoor shooting ranges that Crucible appears to be basis upon which the Stafford County Zoning Administrator made a determination in the April 2014 letter. That despite outdoor shooting ranges being otherwise unallowable in an M-1 district, Crucible had achieved a vested right in operating such outdoor shooting ranges by Stafford County's initial certification of approval in 1999 and the subsequent annual determinations thereafter. The same determination letter indicated that other proposed uses did not satisfy the vesting requirements in the code because there was no documentation indicating a county official had authorized such otherwise impermissible uses. I do not believe the annual 12 month nature of certificates of approval changes the vesting issue here, however I do hope and believe that, as with any other county use, the property owner has to abide by all the rules, requirements, and conditions established for such use. When this doesn't happen, the county, I believe, reserves the right to withhold such uses until such time as deficiencies have been corrected. I also don't believe that the number of

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shooting ranges is, or should be unlimited and that this is something the Director of Code Compliance may determine within his chartered duties as part of the annual reprocess if not clarify as part of the pending CUP. The bottom line, Mr. Chairman and my fellow Board members, I believe the Zoning Administrator made the correct determinations in her April 10, 2014 letter to Westlake and that Westlake's appeal is not substantiated on the merits or facts presented in this case.

Dr. Larson: Mr. Kim, you seconded, would you like to discuss?

Mr. Kim: I think Mr. Apicella said it well. I think you covered all bases and I agree, that's why I second it. Thank you.

Dr. Larson: Mr. Ackermann, I see you're kind of itching at the button, would you like to say something?

Dr. Ackermann: I'd like to say I certainly agree with Mr. Apicella in terms of his statement of sympathy for the folks who live in the area and have to put up with the noise and the fact that the code compliance could limit the number of zoning ranges and hours of operation. I don't buy the argument though that these yearly certificates offered by the department of the county give them a vested interest in it and so I can't support you motion.

Dr. Larson: I too cannot support the motion. I agree that the Crucible performs a service that's needed. That's not the question here. The fundamental question is, did the Zoning Administrator act correctly in her determination and in order to find that we either have to find that the use is an accessory use, a non-conforming use, or a vested use. The shooting range has never been an approved use in the M-1 district. It still is not. It has never been and is not. So if it has never been an approved use, you can't accessory use, because it's not a lawful use of the district. Same thing goes for non-conforming. It wasn't in conformance with the law and then the law changed. It was never in conformance in the first place. So I think that the accessory and non-conforming issues go away simply because of that fact, it was never allowed in the first place. The argument of vesting requires a little more discussion, but I also agree with Mr. Ackermann that a series of approvals by the county on a yearly permit is not a significant governmental act. The decision can change year after year. The same thing goes for that zoning verification where it says at the bottom, this decision can be changed. That's not a significant, affirmative, governmental act. Therefore I believe that they had no vesting rights as well. So I'm going to have to vote against the motion. Any other discussion?

Mr. Poss: Mr. Chairman, I would just say that I concur with Mr. Apicella and his opinion and argument for this case.

Dr. Larson: Other discussion?

Mr. Grimes: I have to agree with Mr. Apicella as well and I actually think that the zoning verification just kind of reconfirms that. I know that it mentions it became non-conforming by a change in definition. We're looking at certifications of use, which talked about the use of a shooting range or a shooting range operation. This zoning verification isn't about a shooting range, it's about a school and then it became non-conforming. So I do believe that the owner of the property is acting in good faith based on these determinations that they could continue their operation.

Dr. Larson: Any other discussion on the motion? Okay, I'll call for the question. Those in favor raise your hand. Okay, 4. Those opposed? Okay. Motion passes 4 to 2.

UNFINISHED BUSINESS

2. By-laws

Dr. Larson: Alright, we have some unfinished business, the by-laws which I think were in the package from last time. The wording of the by-laws. There were two changes, Sec 7-7. Basically the entire part says “the Board may defer any case prior to submitting the advertisement for a meeting. The chairman will poll the members of the Board and the deferral decision will be based on the agreement of at least 4 of 7 members voting. Regular members will be polled first. All member may be polled if required.” Then Section 7-8; “After the advertisement for a meeting is submitted, the deferral may only be granted at the meeting. Even if the deferral is granted, the Chairman may still open the public hearing to allow those members of the public present to comment on the case. If the Chairman opens the public hearing under these circumstances the public hearing will remain open for further consideration by the Board at a later date. Before proceeding to other business the Chairman will state the date at which the public hearing will be continued. In all cases the BZA will make its decision within the time limits establish by the relevant ordinance.” Is there any other discussion on this? We’ve had some emails several weeks ago.

Mr. Apicella: Mr. Chairman, as you know tonight I think we did not have panel of 7, so what would happen in the case of 7-7 if we only had 6 members when the way the verbiage reads it has to have the agreement of 4 of 7 members voting?

Dr. Larson: You have to have 4.

Mr. Apicella: That’s fine. I think it just needs to be clarified, because...

Dr. Larson: We can’t decide anything without 4 members voting affirmatively.

Mr. Apicella: I understand, but it says 4 of the 7 members voting. I’m just trying to clarify the last part. You may have circumstances where you may not have 7 members. That’s all I’m saying.

Dr. Larson: Oh, I see, alright. Okay, so I’ll change it to “The agreement of at least 4 members voting”.

Mr. Apicella: I’m sorry, I have one other...I’m not trying to be petty here. I’m just trying to make sure that our by-laws...not following our by-laws cannot necessarily be used against us in trying to undo a decision.

Dr. Larson: Sure.

Mr. Apicella: So on the other side it talks about the fact that you’ll announce the date of the public hearing. I take it there should be another sentence that says “should that date change, it will be publicly announced”. Again meaning that we can’t necessarily be beholden to a specific date. It might change, just like this case changed a couple of times.

Dr. Larson: Okay. Alright. Any other comments?

Dr. Ackermann: I’d like to move that we adopt these by-laws as amended at this meeting.

Dr. Larson: Second?

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Mr. Grimes: Second.

Dr. Larson: Those in favor say...discussion? Any more discussion? Those in favor say aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Poss: Aye.

Dr. Ackermann: Aye.

Mr. Apicella: Aye.

Dr. Larson: Aye. Those opposed? Okay, motion passes.

Ms. Keith: Mr. Chair, can we ask for clarification on the vote please?

Dr. Larson: Yes. What would you need to...Who seconded?

Dr. Ackermann: Mr. Grimes.

Ms. Keith: Thank you.

3. Preamble

Dr. Larson: Alright, then we have the preamble. The only change to the preamble was "The BZA is a quasi-judicial body whose members are volunteers". I added the word volunteer. Any comments on that? Move to accept?

Mr. Apicella: You just made that plural?

Dr. Larson: Yes, "members are volunteers", yes. Is there a motion to accept?

Dr. Ackermann: I move we accept.

Dr. Larson: Second?

Mr. Grimes: I second.

Dr. Larson: Those in favor say aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Poss: Aye.

Dr. Ackermann: Aye.

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Mr. Apicella: Aye.

Dr. Larson: Aye. Any opposed? Okay, motion carries.

**OTHER BUSINESS**

4. Special Exceptions

*This item was not discussed at this meeting.*

**ADOPTION OF MINUTES**

Dr. Larson: Okay, before we adopt the minutes, I wanted to have a short discussion on minute procedures. There was some discussion, probably 3 or 4 meetings ago now, about whether we can actually make changes to our minutes because they're recorded verbatim. Robert's Rules allows changes to minutes. They're called corrections and I have found instances where the recording is misread and the minutes are wrong. So I think we should allow ourselves the chance to fix minutes when we think they're wrong and minutes are fixed. It's not a single member doing the change. It's a vote by the Board, so it's not a single member making a change the way he wants it to read. He's making it accurate, and if everybody agrees, then that would be the change. Okay. The other thing I wanted to bring up was, when I was on the Home Owner's Association the final minutes were always signed by the president and the secretary. That denoted that they were final minutes and we haven't been doing that here and I would suggest that at a minimum we have the secretary, well, first of all, at a minimum we have a notation on the minutes on the date that they were approved and then the date that the secretary signs the minutes. The secretary's signature would then indicate to whoever is looking that those are the final minutes for the BZA's meeting at that time. And the secretary would then be checking to make sure that any changes to the draft minutes got into the minutes. Any discussion about that?

Mr. Grimes: Actually, I think that's a great idea on the minutes, because we make changes to the minutes and I don't think we actually get updates of those, once we've made the changes. They're either recorded and then just posted to the website. We don't ever back-check them for accuracy. We don't get another copy, so I think it's a great idea actually.

Dr. Larson: Okay, so procedurally if the staff then could show what changes had been made to the draft minutes and send them to the secretary so he could see what changes were made and maybe track changes, if you guys use track changes, that would be a good way to do it. So that it would be highlighted on the minutes and then he could accept changes and then sign the documentation and send it back. That would work.

Mr. Harvey: Yes, Mr. Chairman. With other Boards and Commissions, if there are questions on the minutes we bring them back for re-approval, once they're corrected.

Dr. Larson: Okay. We can do that or I assumed we were going to approve minutes as amended and then...I mean, that's the way I've done it before on the Boards I've sat on, is you make changes, people agree to the change and just approve the minutes as amended, but we can do it either way. Is there...

Mr. Kim: I like the way of, you know, approving as we amend.

Dr. Ackermann: Yes, I think that's more efficient.

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Dr. Larson: Okay, we'll do it that way then. So, speaking of minutes, we have the April 22<sup>nd</sup> minutes before us.

Ms. Keith: Mr. Larson, do you want the secretary's signature or yours and the secretary's signature.

Dr. Larson: Well, I don't have strong feelings one way or the other. I was going to just go with the secretary's signature, because our by-laws say the secretary is in charge of the minutes.

Ms. Keith: Okay.

Dr. Ackermann: At least that'll give the secretary something to do.

April 22, 2014

Dr. Larson: Alright so we're looking at the April 22<sup>nd</sup> minutes. Does anybody have any errors or omissions they want to point out in the April 22<sup>nd</sup> minutes?

Dr. Ackermann: I do have a question, Sir. There is entries in here where it says "inaudible, microphone not on". How does that affect our minutes? For example on line 49 and 52, it says "Dr. Larson: I really think the advertising is the...inaudible, microphone not on".

Dr. Larson: They take the minutes directly off the...

Dr. Ackermann: I mean, I understand how that happens, but...and I know you often say things of great importance and what if you did say something that was rather important and no one could recall what it is? And I made the mistake this time too, of speaking several times without turning my microphone on, and I'm sure I was just rambling about things, but...So these minutes have a legal stature?

Dr. Larson: I think that they get forwarded to the Circuit Court when...

Dr. Ackermann: So if an issue is brought up, appealing what we've done, it might happen, let's just say this time...

Dr. Larson: It might possibly happen this time.

Dr. Ackermann: It might. Then, I don't know, I mean is that...I don't have experience with other organizations where minutes are recorded this way. Do other parts of the County Government do they deals with that in any way, Sir?

Mr. Harvey: Mr. Ackermann, the Planning Commission also receives minutes in the same format. It would be up to the approving body to point out there is an error or problem and then make a correction if necessary. If we don't have a record of what was said, we don't have a record of what was said.

Mr. Grimes: Can I get clarification on, maybe staff can answer, we've had to provide some documentation recently for some request on some old cases, do they get a copy of the recording?

Ms. Knighting: *(Inaudible microphone not on)*. (02:42:09)

Mr. Grimes: Okay, so the recording is also kept. Okay, thank you.

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Dr. Larson: So if, for example, the case that we just heard, if that happened to go to Court, does the Court normally request just the written minutes or the recording too?

Ms. Knighting: I don't recall the court ever requesting the minutes, the attorney's request both audio and minutes.

Dr. Larson: Okay. But the attorneys normally ask for both. Thank you.

Dr. Ackermann: And then there have been times that attorneys brought a Court recorder in here also.

Dr. Larson: So with that discussion, are there any corrections to the April 22<sup>nd</sup> minutes? I actually have a couple. They are on page 42 or 52 and they deal with the numbers. Line 2037, okay, it says: if you look at the definition, the high intensities generate more than 100...should be daily trips; medium is between 50 and 100, and low is below 50. Again, I may have said 100, but I should have said 50. Okay. Sometimes I don't say the right number. That's all. Those are the changes that I had. Any other changes to the April 22<sup>nd</sup> minutes? Is there a motion for the April 22<sup>nd</sup> minutes?

Mr. Grimes: I motion to approve the April 22<sup>nd</sup> minutes.

Dr. Larson: Is there a second?

Mr. Kim: I second that.

Dr. Larson: All those in favor say aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Poss: Aye.

Dr. Ackermann: Aye.

Dr. Larson: Aye. Any opposed?

Mr. Apicella: Mr. Chairman, I'm abstaining. I wasn't here for that meeting.

Dr. Larson: Very well. Thank you.

May 27, 2014

Dr. Larson: The May 27<sup>th</sup> minutes. Are there any corrections to the May 27<sup>th</sup> minutes? Hearing none, is there a motion to approve?

Dr. Ackermann: I move we approve.

Mr. Apicella: Second.

Dr. Larson: Okay, those in favor say aye.

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Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Poss: Aye.

Dr. Ackermann: Aye.

Mr. Apicella: Aye.

Dr. Larson: Any opposed? I abstain, I was absent then.

August 26, 2014

Dr. Larson: Okay, next we have the August 26<sup>th</sup> minutes. Are there any corrections to the August 26<sup>th</sup> minutes? Bear with me for one second. I thought I had something.

Mr. Apicella: I think it was Mr. Walk was referring to a comment made by Mr. Ackermann. He attributed it to me, but I wasn't here. I don't know that that necessarily requires a change, but just a clarification, again, should this go to Court, that I was not here for that meeting.

Dr. Larson: That was for today's minutes?

Mr. Apicella: That was for the August 26.

Dr. Ackermann: It was the August minutes. He did refer to me as Mr. Apicella.

Dr. Larson: Oh, do you know where that is?

Dr. Ackermann: No, I'm sorry, I don't.

Dr. Larson: So you're saying that they have Mr. Apicella on the minutes as speaking?

Dr. Ackermann: No, no, no, I don't think so. I think the...

Mr. Grimes: Right here on line 396.

Dr. Ackermann: 396. Thank you.

Mr. Grimes: I believe it was Mr. Apicella asked a great question.

Dr. Ackermann: Yes, right.

Dr. Larson: 396. Ah. And you think he was referring to Dr. ...

Dr. Ackermann: Well, Mr. Apicella wasn't here.

Dr. Larson: Right, but do you think that was you he was referring to?

Dr. Ackermann: I think so. My memory is that way, yes.

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Mr. Apicella: Yes, when I read the Q and A it appears to me that he's talking about Mr. Ackermann.  
Dr. Ackermann.

Dr. Larson: Could you make that change that's on line 396, change Mr. Apicella to Dr. Ackermann?

Ms. Keith: Yes.

Dr. Larson: Any other changes to the August 26<sup>th</sup> minutes? Is there a motion to approve these minutes?

Mr. Grimes: I move to approve the August 26<sup>th</sup> meeting minutes.

Dr. Larson: Is there a second?

Dr. Ackermann: Second.

Dr. Larson: All those in favor say aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Dr. Ackermann: Aye.

Dr. Larson: Aye. Any opposed?

Mr. Apicella: Mr. Chairman, I abstain.

Dr. Larson: Very well.

Mr. Poss: Mr. Chairman, I abstain also.

Dr. Larson: Very well. Two abstentions. Motion passes with 4 affirmative votes.

**ZONING ADMINISTRATOR'S REPORT**

Dr. Larson: We appear to have made it, oh, Zoning Administrator's report.

Ms. Keith: No report from the Zoning Administrator.

Dr. Larson: Thank you.

**ADJOURNMENT**

Dr. Larson: Is there a motion to adjourn?

Mr. Kim: Mr. Chairman, I motion to adjourn.

Dr. Larson: Second?

Mr. Grimes: Second.

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Dr. Larson: Those in favor say aye.

Mr. Kim: Aye.

Mr. Grimes: Aye.

Mr. Poss: Aye.

Dr. Ackermann: Aye.

Mr. Apicella: Aye.

Dr. Larson: Aye. Any opposed? We're adjourned.

With no further business to discuss the meeting adjourned at 9:47 p.m.